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

In the absence of the Chairman, Mr. Rosenne (Israel), Vice-Chairman, took the Chair.

AGENDA ITEM 65

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

1. Mr. CAPOTORTI (Italy) fully endorsed three of the fundamental features of the eight-Power draft resolution (A/C.6/L.467), on which most members of the Committee also appeared to be in agreement: namely, the urgent need for the development of peaceful relations among nations; the need to review the work programme of the International Law Commission at the General Assembly's sixteenth session; and the fact that it would be useful for Member States to submit their views and suggestions in the meantime.

2. On the other hand, the Sixth Committee was divided with regard to the part the International Law Commission should play in determining what new topics required codification. Although it had been the Commission which had made the choice in 1949, the draft resolution did not provide for its participation in that task, which would be entrusted to a special committee. That procedure, however, might be construed as indicating a lack of confidence in the International Law Commission. Moreover, before the list of new topics for codification was drawn up, the political views of States and of General Assembly organs would have to be examined in conjunction with the technical views of the Commission, for a subsequent difference of opinion might give rise to a conflict of jurisdiction and cause loss of time. Lastly, the establishment of a special committee would also create difficulties; too small a committee might not be sufficiently representative, while a larger committee would duplicate the work of the Sixth Committee.

3. In his view, it was preferable not to add to the number of organs, but, instead, to make use of those already in being, quite apart from the fact that the Commission would, in any case, have to spend some time examining the list of topics prepared by the special committee.

4. For those reasons, the Italian delegation supported the eleven-Power amendments (A/C.6/L.472), which resolved the difficulties.

5. Mr. NUÑEZ (Ecuador) said that, while the aims pursued by the sponsors of the draft resolution were laudable, he did not think the Sixth Committee was empowered to establish a new committee whose terms of reference would be similar to those of the International Law Commission.

6. In his opinion, the Commission had performed a difficult task very well; needless to say, however, the Committee retained the right to give the Commission directives when it saw fit.

7. It was true that there were many legal problems requiring study, but the establishment of a special committee whose eventual composition and competence were far from clear would raise serious difficulties. It would be preferable to increase the membership of the International Law Commission, so as to enable the Commission to arrange a better division of its work. Such a decision, however, was a matter for the General Assembly which, in the Statute of the International Law Commission, had fixed the number of the Commission's members.

8. On the basis of those considerations, his delegation supported the eleven-Power amendments.

9. In conclusion, he recognized that, as the Romanian representative had pointed out (666th meeting, para. 27), there was no disputing the need to adapt international law to developments in the world situation. It was the function of law to interpret the present and even, to some extent, to anticipate the future, and the amendments took that aim into account.

10. Mr. LOOMES (Australia) said that he was in general accord with the objectives of the draft resolution, but doubted whether the method proposed for attaining them, i.e., the establishment of a special committee, was suitable in that particular instance.

11. On the other hand, he fully supported the procedure provided for in the eleven-Power amendments. In his opinion, the International Law Commission was singularly well fitted, both in composition—as prescribed by articles 2 and 8 of its Statute—and in functions, to perform the task which the draft resolution defined in the precise terms of article 18 of that Statute. Moreover, the Commission had undertaken such a survey of the whole field of international law at its very first session.

12. It would be preferable, therefore, to make use of a body which was already in existence and which enjoyed the Sixth Committee's full confidence; that would in no way impede the General Assembly in taking whatever action it deemed necessary.

13. His delegation therefore supported the eleven-Power amendments and, if they were accepted, would vote in favour of the draft resolution.

14. Mrs. LADAS-PHYDAS (Greece) considered that, as the representatives of the Ukrainian SSR (665th meeting, para. 20) and Romania (666th meeting, para. 27) had said, the words "the purpose" in the first preambular paragraph of the draft resolution should be replaced by the words "one of the purposes".

15. Moreover, the version of the third of the amendments proposed by the eleven Powers for the seventh preambular paragraph of the draft resolution related to situations which had actually arisen and should therefore be stated in an affirmative form, as follows:

"Considering that it is desirable to ascertain the new topics susceptible of codification or suitable for progressive development which have arisen in the field of international law, the alterations which should be made in any of the topics for codification by the International Law Commission and the new order of priority which should be given to the consideration of any of these topics".

16. As to the operative part of the draft resolution, she endorsed the sponsors' aims but did not think they could be attained by establishing a special committee. Such a committee, lacking the International Law Commission's great experience, would duplicate the latter's work, since, under article 18 of the Commission's Statute, one of its specific functions was to survey "the whole field of international law with a view to selecting topics for codification" and, under article 1, its general object was "the promotion of the progressive development of international law and its codification".

17. Her delegation therefore supported the eleven-Power amendments.

18. Mr. TRUONG CANG (Cambodia) welcomed the unanimous adoption, at the 664th meeting, of the draft resolution (A/C.6/L.470), which was a happy augury for the future of the Committee's work on the development of international law. For the first time, the Sixth Committee had complained of the scanty nature of its agenda, although that point had not been made during the distribution of items among the different Committees, which would have been the proper stage at which to take it up. That lack of items was one of the shortcomings deplored by the Secretary-General in a speech he had made on the occasion of the fifteenth anniversary of the establishment of the United Nations, and all members of the Sixth Committee were in agreement in seeking to expand their work programme. It remained only to decide whether that task should be entrusted to the International Law Commission or to a special committee, or whether the intermediate solutions proposed by the representatives of Brazil (666th meeting, para. 16) and Burma (*ibid.*, para. 10) should be adopted.

19. For his part, he would suggest that the task should be entrusted to the Commission itself—possibly after enlarging its membership in order to improve the geographical distribution of the members—so that the benefit of the Commission's experience might be retained.

20. He joined with the delegations of Ceylon, Burma, India, Peru and Romania in proposing that the question of neutrality should be included in the list of new topics to be surveyed by the Commission. The head

of the Cambodian delegation, at the General Assembly's fourteenth session (798th plenary meeting, para. 136), as well as Professor Chaumont, in a lecture at the Academy of International Law of The Hague in July 1956,^{1/} had shown that sincere neutrality, as distinct from neutralism, was compatible with the spirit of the Charter and represented an effective means of contributing to international peace and security.

21. Mr. MOLINA LANDAETA (Venezuela) said that it had been his delegation's intention, in sponsoring with seven other delegations the draft resolution, to breath new life into the Sixth Committee and the International Law Commission. He was glad the members of the Committee recognized the need to survey the whole field of international law in order to give fresh impetus to the Committee's work and to take into account, in developing the law, the economic, social and other transformations taking place throughout the world. It should consequently be possible to reach agreement on that point, if not unanimously, at any rate by a majority. The only differences of opinion which had arisen related not to substance but to procedure.

22. The sponsors of the draft resolution, in proposing the establishment of a special committee, had not for one moment thought to question the competence of the International Law Commission. They had wished to relieve it of a complex study which the Commission itself could not have carried through successfully in all respects. The special committee would be entrusted with preparatory work, and it would be the International Law Commission's task to follow it up.

23. Venezuela was prepared to accept the suggestions which had been made to improve the wording of the draft resolution and would not be intransigent with regard to the establishment of a special committee. It should be noted, however, that, at its thirteenth session, the International Law Commission would have a particularly heavy and difficult task to perform, and he wondered, in the circumstances, which course could best be taken: that of forcing the Commission to delay its work by asking it to survey the whole field of international law, or that of entrusting the latter task to a special committee. All logical considerations seemed to point to the second solution.

24. He proceeded to make some general observations on the various suggestions which had been made. It had been proposed that Article 1 of the Charter should be mentioned in the first preambular paragraph. He saw no reason, however, why all the objectives of the Charter need be mentioned; that would imply an unwarranted lack of confidence. The eleven-Power amendments contained other changes of a purely drafting nature and, since there was no disagreement as to substance, it would be sufficient for the various delegations concerned to come together in order to agree on a solution.

25. In addition, Brazil had proposed (666th meeting, para. 16) as a compromise that the Sixth Committee should be instructed to survey the whole field of international law and to refer its conclusions to the

^{1/} Charles Chaumont, "Nations Unies et neutralité", Académie de droit international, *Recueil des cours*, vol. 89 (1956).

International Law Commission. The Sixth Committee would thus replace the proposed special committee. The Venezuelan delegation had given that idea its attention and did not oppose it outright; he still felt, however, that it would be preferable to entrust the task to a special committee rather than to the Sixth Committee. It should be understood that the views he had just expressed were those of Venezuela alone and did not commit the co-sponsors of the draft resolution; he might wish to speak again in order to state his delegation's views if the course of the discussion made that desirable.

26. Mr. MAURTUA (Peru) observed that, judging from the debate, several delegations thought that the International Law Commission itself should undertake the study called for by the eight-Power draft resolution. That view could no doubt be justified by invoking the argument of continuity; for the International Law Commission was expressly authorized to deal with questions of codification and development of international law. But assignment of the task to the special committee also had its advantages: its members would represent States rather than serving in an individual capacity; the committee would consequently be guided by the interests of States rather than by the inclinations of jurists.

27. The draft resolution proposed that the special committee should be asked to survey the whole field of international law. That survey would undoubtedly reveal the existence of trends of thought, theoretical tendencies and facts reflecting social and economic changes which should be translated into law.

28. As his delegation had already pointed out (661st meeting, para. 39), it would be useful, for example, to make clear the distinction between neutralism and the legal concept of neutrality. There were other areas wherein the developments could be translated into law and could form the subject of study, such as questions relating to the law of the sea, colonialism, the obligation to transmit information on Non-Self-Governing Territories, the principle of self-determination, the recognition of States and non-intervention in the internal affairs of States, as well as the peaceful settlement of international disputes. He would not go into all the possible studies which the proposed special committee might undertake. However, in view of all those phenomena of modern life, only a survey of the whole field of international law could provide a sound basis of judgement. Could the International Law Commission discharge that task and had it already done so in reality? On the contrary, those general problems had only been studied by the Commission in a fragmentary manner.

29. The extension of the rule of law, which was brought about by the conclusion of conventions, reflected, through such instruments, a continuous process, the process of development of institutions. Consequently, the primary aim should be to reflect the situation as it actually existed, namely, in a state of continuous change. The Peruvian delegation did not dispute the competence of the International Law Commission, but the Commission had been forced to deviate from realities.

30. On the other hand, account should be taken of law which had crystallized, whether it had been codified or not, and, on the other hand, of elements of law symptomatic of future reactivation or develop-

ment—of law in action, which the International Law Commission sometimes appeared to disregard. A stimulus should therefore be given to law in order to ensure that the criteria in the process of development reflected the trends of all aspects of international life.

31. He was surprised to note that some delegations had detected criticism of the International Law Commission in the draft resolution and feared that the establishment of a special committee might create difficulties. In his opinion, the problems involved were so complex that they exceeded the scope of the International Law Commission and required the collaboration of auxiliary organs. The establishment of the special committee would not raise any insurmountable difficulties.

32. Mr. GLASER (Romania) remarked that, when he had stated at the 666th meeting (para. 27) that his delegation was not against the second of the eleven-Power amendments calling for deletion of the sixth paragraph of the preamble of the draft resolution, he had not meant to deny in any way the impact of new trends on the development of international law or to suggest that no reference should be made to them in the draft resolution; he had merely wished to indicate that, in his view, that idea might better be included in the seventh preambular paragraph, which stated that "it would be desirable to survey the present state of international law...". Indeed, the Romanian delegation wanted to emphasize that idea, and would point out that the impact of new trends was in no sense past history, as the proposed wording appeared to indicate; it would therefore suggest that the words "have had an impact" should be replaced by the words "have had, now have and shall continue to have an impact". It should further be stated that it was a "powerful" impact. He said, in conclusion, that the sponsors of the draft resolution might have been right in devoting a special paragraph to that important idea.

33. Mr. MAURTUA (Peru) shared the view of the Romanian representative that it was unfortunate that the past tense had been used in the seventh preambular paragraph stating that "the many new trends... have had an impact on the development of international law" and recalled that, from the outset, his delegation had requested that the sentence be drafted in the present tense. On the other hand, the Peruvian delegation was not sure that the impact of the new trends should be described as powerful, as the Romanian representative had suggested. It would be up to the special committee, after as thorough a study as possible, to determine the extent of that impact. He therefore suggested that the sixth paragraph of the preamble should read: "Considering that the many new trends in the field of international relations may have an impact on the development of international law,".

34. Mr. PERERA (Ceylon) protested the interpretation given to the draft resolution by certain delegations which saw in it a more or less severe criticism of the International Law Commission. The sponsors had certainly had no such intention; if they had had, they would have expressed it clearly. Moreover, he recalled that some of the co-sponsors of the draft resolution—Iraq, Mexico and the United Arab Republic—were represented on the International Law Commission.

35. Reviewing the background of the question, he asked the members of the Committee to go back to the records of the lengthy debate of 1947 on the functions and role of the International Law Commission. Several representatives had cited the Statute of the International Law Commission contained in General Assembly resolution 174 (II), but he emphasized that resolution 94 (I) on the progressive development of international law and its codification was even more important, because, by adopting it, the General Assembly had explicitly recognized its obligation under the Charter to stimulate studies and make recommendations to promote the progressive development of international law and its codification, and had considered the methods to be used towards that end. The sponsors of the draft resolution had acted with the same intentions. It was natural that, at a time when the Sixth Committee was concerned with the slow pace of the codification and progressive development of international law, the General Assembly should wish to assist the International Law Commission in that task, all the more as the Commission, in paragraph 68 (b) of its report on the work of its tenth session (A/3859), had noted that the tasks referred to it by the Assembly had delayed its own programme of codification. To refuse it assistance would be to strike another blow at the General Assembly and the Sixth Committee. It was clear from articles 15, 16, 17 and 18 of the Statute of the International Law Commission that the General Assembly was not bound simply to wait until the Commission submitted projects for its consideration.

36. The sponsors of the draft resolution had not taken a drastic position. On the contrary, they had expressed themselves in very moderate terms and were not refusing, *a priori*, to consider any reasonable suggestions which might be made to them. For example, they were prepared to consider improving the wording of the sixth paragraph of the preamble which, in their view, was the most important, but they would certainly not agree to delete it because that would amount to stripping the draft resolution of all meaning. The problem was not, as the representative of Thailand had maintained, when he had introduced the eleven-Power amendments (666th meeting, para. 4) to save the draft resolution, but to

save the very principles stated therein, principles designed, twelve years after the establishment of the International Law Commission, to give fresh impetus to international law in the light of recent developments.

37. The codification and the progressive development of international law were not mutually exclusive; they were merely different, in that codification was almost exclusively a matter for the Commission, whereas the more general objective of progressive development was also the responsibility of the General Assembly, which made recommendations on the subject every year in the light of the situation. If the General Assembly were to be denied that function, all the resolutions under which it had referred certain questions to the International Law Commission would be bereft of meaning.

38. The first of the eleven-Power amendments, in its first paragraph, reproduced the terms of article 18 of the Statute of the International Law Commission and, in its second paragraph, did not go as far as the original text. He had already said that the sponsors could not accept the second of the amendments deleting the sixth paragraph of the preamble of the draft resolution. The third of the amendments did not reflect the consensus of opinion expressed in the debate, namely, that priority should be given to the question of State responsibility. As to the operative part, the text of the draft resolution went further than that of the fourth of the amendments; the appropriate time to draw up a new list of topics for study would be in 1961, when the five-year term of the members of the Commission would expire.

39. Mr. VALLAT (United Kingdom), referring to paragraph 68 (b) of the report of the International Law Commission on the work of its tenth session which the representative of Ceylon had just cited, observed that it was clear from paragraphs (a) and (b) of that paragraph that the International Law Commission had been speaking of something entirely different: it had not complained about the delay imposed on its work, but had simply tried to explain the reasons for that delay.

The meeting rose at 1.15 p.m.