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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.2, A/C.6/L.474) (concluded)

1. The CHAIRMAN drew attention to the new revised text of the draft resolution (A/C.6/L.467/Rev.2) submitted by twenty-four Powers and to the amendment submitted by the delegation of the Ukrainian Soviet Socialist Republic (A/C.6/L.474).
2. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said that the purpose of his delegation's amendment was to stress the importance of the observance of international law in strengthening international peace, in developing friendly and co-operative relations among the nations, in the settlement of disputes by peaceful means and in advancing economic and social progress throughout the world. The revised draft resolution stated that the conditions of the world today gave increased importance to the role of international law. That was certainly true. But it was not enough simply to have a set of rules, standards and principles relating to international life; the world must see to it that they were obeyed. Law was only truly useful when it was observed by the subjects of law—and in the case of international law, those subjects were States and their Governments. As the importance of international law itself increased, so did the importance of its observance by all States in the context of current international relations. The effectiveness of international law, as many representatives had pointed out in their statements, depended upon the attitude to it of States and their Governments. The amendment tried to reflect the views expressed on that point, and he hoped that it would be supported by all delegations.
3. The representative of Mexico (669th meeting, para. 18), while expressing sympathy with the suggestion made by the Ukrainian delegation at the 665th meeting (para. 19) along the lines of its present amendment, had nevertheless opposed it, on the ground that it would upset the balance of the draft resolution. He could not agree with that. The reference in the amendment to the increasing importance of the observance of the principles of international law was entirely in keeping with the stress laid in the draft resolution on the increasing importance of international law itself and the need for reviewing it in order to find new topics for codification and progressive developments. The

two obviously went together. Moreover, while the earlier Ukrainian suggestion had been for an additional preambular paragraph, the present amendment merely called for the addition of a few words to the second preambular paragraph. In that form, surely, no one could claim that it upset the balance of the draft resolution. What was important, however, was that the vital point expressed in the amendment should not be omitted entirely.

4. Mr. KACHAN (Byelorussian Soviet Socialist Republic) observed that the third version of the draft resolution differed considerably from the earlier ones, the sponsors having dropped the idea of establishing a special committee to survey international law with a view to the preparation of a new list of topics for codification and progressive development. His delegation had not been opposed to that idea, but neither was it opposed to the present suggestion, that the task should be assigned to the Sixth Committee. What was important, after all, was not who should do the work but that something should be done, some progress made. The stagnation in international law must be overcome, if it was to reflect contemporary historic trends and satisfy the requirements of social development. His delegation therefore approved the proposal to include in the provisional agenda of the sixteenth session the question "Future work in the field of codification and progressive development of international law". It also warmly supported the amendment to the draft resolution submitted by the Ukrainian delegation. The draft resolution should stress not only the increased importance of the role of international law in strengthening international peace, but also the importance of the strict and undeviating observance of international law by all Governments—a point which was at present omitted, but should be included, since it was directly related to the first and indeed complemented it. Peace was undermined and tensions grew as soon as individual Governments failed to observe the recognized principles of international law. When that happened, international law inevitably lost its significance, became empty and meaningless. In recent years, there had been many examples, now familiar to all, of the failure of the Governments of certain imperialist States to respect the elementary rules of international law. The amendment was intended to remind Governments that, without the strict and undeviating observance of those rules, peaceful relations between States could not be maintained and developed. His delegation would vote for the twenty-four-Power revised draft resolution, as amended by the Ukrainian delegation.

5. One important point dealt with in the draft resolution was the need for a review of the programme of the International Law Commission in the light of recent developments in international political life. No one would deny that striking social and political changes had taken place, affecting the lives of hundreds of millions of people. It was absolutely essential to find

a legal basis for the solution of the many new and urgent problems on the settlement of which world peace and security depended. Up to now, practically nothing had been done in that direction. In the United Nations, international law had become a matter of routine. Considering that even groups of ordinary citizens were meeting to discuss that problem, it was clear that the matter was one of particular urgency for the jurists of the world. That was why a review of the programme of the International Law Commission was so necessary. It was to be hoped that the Commission, as also the Sixth Committee and the Office of Legal Affairs, would devote every effort to working out rules and principles which would have a decisive effect on the preservation of peace and international security. He entirely agreed with the representative of Mexico that the International Law Commission and the Sixth Committee had an important and creative part to play. The jurists composing those bodies, as well as the members of the Office of Legal Affairs, must act in the spirit of the times; they must be the bearers of progressive humanitarian ideas, ideas making for peace, democracy and social justice.

6. Mr. CERNIK (Czechoslovakia) said that his delegation, conscious of the importance of international law in the life of the world today and of the unsatisfactory state of the Sixth Committee's work in recent years, had welcomed the step taken by eight delegations in submitting the original draft resolution (A/C.6/L.467). The second paragraph of the preamble was particularly important. But of equal importance to the goals referred to in the paragraph, undoubtedly, was the observance by all States of the rules of international law. His delegation therefore fully supported the Ukrainian amendment. The amendment was entirely consistent with the Charter, which, in its Preamble, linked the preservation of peace with the observance of international law. That connexion had also been pointed out in other international documents—for example, in the Bandung Declaration.^{1/} It might perhaps be argued that it was so obvious that there was no need to stress it in the draft resolution. Unfortunately, however, the international conduct of some States was such that the link between peace and the observance of international law needed to be emphasized. A number of speakers in the Sixth Committee had already felt the need to draw attention to it. The Soviet representative (651st meeting) and the representatives of Ghana and New Zealand (659th meeting) might be quoted by way of example. All three had stressed the importance, not only of the existence of international law but also of its acceptance and application. The Czechoslovak delegation considered the Ukrainian amendment to the draft resolution essential, and hoped that the draft resolution, thus amended, would be adopted. Its adoption would reflect credit on the Sixth Committee, which had taken the initiative in endeavouring to further the development of international law as a means of creating friendly relations between States and preserving peace in the world.

7. Mr. QUINTERO (Philippines) said that, while his delegation had had no real objections to the earlier texts of the draft resolution, it felt that the new compromise text was an improvement, and was better calculated to promote its sponsors' intention. He could agree to the amendment proposed by the Ukrainian

delegation, and hoped that all members would be able to support the final draft.

8. Mr. GLASER (Romania) said that the second paragraph of the preamble of the draft resolution was laudable in its aims, but insufficient. He himself, the Soviet representative and others had already emphasized how important it was that Governments, in their decisions and actions, should show respect for the rules, principles and institutions of international law.

9. The fact that not all Governments nowadays showed such respect was the main cause of the unsatisfactory situation to which so many references had been made. The current rules of international law were not perfect, it was true; but much more important for the maintenance and strengthening of peace was the attitude of Governments towards international law. Some Governments acted as if international law did not exist, and ignored its rules; such an attitude was incompatible with peace. A number of representatives had attributed the present unsatisfactory state of international law to some other cause—for example, to the struggle between monism and dualism. That was an unrealistic and purely academic approach; the real cause was undoubtedly the fact that some Governments, acting in the interests of certain groups, ignored the rules of international law. But all Governments signatories to the United Nations Charter were pledged under the Charter to further the interests of all peoples and, to that end, to ensure that international law was respected and obeyed. Governments must respect what they had agreed on—pacta sunt servanda. Treaties were one of the sources, and perhaps the richest and most necessary element, of international law. They should not, however, be regarded as identical with jus gentium, for there were other sources of international law. It was to the whole field of international law—including all those sources—that the Ukrainian amendment to the draft resolution referred.

10. The Mexican representative had explained (669th meeting, para. 18) that the sponsors of the draft resolution had decided not to include the Ukrainian amendment in their text because it had no close connexion with the rest of the draft; yet, unless States respected international law, the latter could play no part in strengthening international peace—an idea which had been embodied in the Charter. Moreover, the amendment reflected the general feeling of members of the Sixth Committee; the representative of New Zealand, for example, had stressed (659th meeting, para. 37) that there was a need for all States to reaffirm their willingness to abide by the international obligations they had assumed.

11. In connexion with the original draft resolution, he had stressed (666th meeting, para. 28) that the Sixth Committee should give priority not to technical aspects, as the United States representative had advocated (665th meeting, para. 3), but to the most urgent current problems. What could be more urgent than a solemn reaffirmation of the importance of the strict and undeviating observance by all Governments of international law? The Sixth Committee should not live in an ivory tower; it should not limit itself to studying purely technical questions; it must be alive to what was happening in the world. Just as many nuclear physicists, alarmed at the possible applications of their technical discoveries, had signed petitions protesting against the use of their work for man's destruction, so

^{1/} Final Communiqué, Asian-African Conference, held at Bandung from 18-24 April 1955.

the Sixth Committee could not remain indifferent to the rules it was drafting, or to their application by States.

12. There were those who doubted the very existence of international law, or denied its effectiveness on the ground that there were no sanctions for its enforcement. But if existing sanctions were inadequate, the Committee should try to perfect and strengthen them. Above all, the Committee should not close its eyes to reality; the fact that a crisis now existed in international law because some Governments thought they could violate it with impunity was undeniable. The Ukrainian amendment would help to promote the development of the machinery necessary for the enforcement of international law. In that sense, it was wrong to say that it was not directly connected with the draft resolution.

13. Only if Governments strictly and undeviatingly respected international law would peace in the world be secure. For that reason, his delegation would vote for the draft resolution and for the Ukrainian amendment.

14. Mr. TABIBI (Afghanistan) said that the Ukrainian delegation's useful amendment, which he unreservedly supported, had not been incorporated in the draft resolution not because the sponsors objected to it, but because it had not been introduced formally. In his view, the insertion of the amendment would strengthen and improve the draft resolution.

15. Mr. TODOROV (Bulgaria) said it had become clear during the general debate that the majority of delegations were disturbed at the fact that, in the field of the progressive development of international law and its codification, the United Nations had not kept pace with the social, economic and political developments which had been taking place in the world during the past ten years. Many delegations had expressed concern over the defiance of international law. When the established and fundamental principles of international law were violated, the orderly conduct of international affairs became impossible, and friendly and co-operative relations among States were jeopardized. International law alone could not help to strengthen world peace; what was needed was the strict observance of its principles by all members of the international society. He supported the Ukrainian amendment, which conveyed that important idea and would improve the second paragraph of the preamble of the revised draft resolution.

16. His delegation felt that the draft resolution was open to improvement in many respects; unfortunately, however, several delegations, despite the clearly expressed desire of the majority, had persistently obstructed the adoption of a clearer, more workable and more effective draft resolution. Those delegations had sought to prevent the Committee from discussing the codification and progressive development of international law on the pretext that that question was not on the Committee's agenda and that the work of the Committee was purely technical in nature. In those circumstances, the draft resolution represented a compromise which was a retreat from the original draft resolution.

17. In the present epoch, new economic and political developments posed new problems for international law. The revolutionary changes which had taken place in the world called for new international rules and principles to govern the relations among States. The development of the socialist system, the progressive

elimination of colonialism, the struggle of the peoples for self-determination and independence necessitated the revision of certain established principles of international law and the formulation of new ones. All of them would have to reflect the desire of the peoples of the world for the maintenance of world peace and the development of friendly international relations based on peaceful coexistence.

18. Guided by those considerations, his delegation would vote for the Ukrainian amendment and for the draft resolution as a whole.

19. Mr. PERERA (Ceylon) said his delegation did not agree either that international law was the province of a single State or group of States, or, as the Marquess of Salisbury had put it, that international law depended on the prejudices of text writers. The Ceylonese delegation's view was that international law was the common law of mankind. Even if at one time it had been developed by a particular family of nations, it was today being created by the international community as a whole.

20. The Ukrainian representative had presented his suggestions at a time when the sponsors of the draft resolution had been primarily engaged in defending what they considered to be the keystone of their text: the establishment of a special committee to study and survey the whole field of international law and make suggestions with regard to the preparation of a new list of topics for codification and progressive development. During the general debate, however, many delegations, including his own and the Mexican delegation, had stressed the importance of the strict observance by all States of the principles of international law. That idea was expressed in the Ukrainian amendment, which his delegation whole-heartedly supported. The amendment would strengthen the draft resolution and give greater coherence and force to the preamble.

21. Miss LAURENS (Indonesia) said that the draft resolution gave expression to the generally felt desire for a revitalization of international law in the light of the momentous political, economic and social developments which had been taking place in the international community. While Indonesia had always been a firm supporter of the rule of law in international relations, it felt that international law must take due account of those developments. While international law had sometimes in the past appeared to be the creation of a relatively small number of economically and politically developed nations, which had therefore been in a position to dominate its development, it was her delegation's sincere hope that the progressive development of international law would bring about a greater degree of universality, through the contributions and the active participation of the many new nations which had emerged on the international scene. Only then would international law be able to play its rightful part in international affairs, and only then would it be possible to call for its strict and undeviating observance by all States. The adoption of the Ukrainian amendment would therefore seem to be somewhat premature. If the Committee was unanimously in favour of the proposed amendment, her delegation would not oppose it; it wished, however, to make clear its view that the second paragraph of the preamble should be regarded primarily as evidence of the need for a revitalization of the role of international law in international relations, which alone could ultimately lead to the universal observance of international law.

22. Mr. YASSEEN (Iraq) said that international law should be respected no less than national law; the difficulty of enforcing international law should not be taken advantage of to ignore or violate it. His delegation felt that the Ukrainian amendment strengthened the draft resolution and clarified its purposes, and it would accordingly vote in favour of it.

23. Mr. MAURTUA (Peru), recalling his previous statement (667th meeting, para. 33), said that he would have preferred the seventh preambular paragraph of the revised draft resolution to read: "Considering that the many new trends in the field of international relations may have an impact on the development of international law." The present text was worded somewhat too emphatically, and might be taken as prejudging a question which could be decided only on the basis of a thorough study. As for the eighth preambular paragraph, he wondered whether, at the present time and under present circumstances, the direction which the International Law Commission had given to its work could be modified. When would the broader approach touched on in the eighth preambular paragraph be applied? It might, in any event be argued that, apart from requests made by the General Assembly, the Commission should have complete freedom to determine the direction of its work. Referring to operative paragraph 2, he suggested that Governments be urged to show their interest in strengthening international law by submitting their views in time for the Sixth Committee to consider them at the sixteenth session of the General Assembly. Moreover, the Secretary-General should circulate the replies of Governments as soon as they were received, in order to stimulate the interest of Governments in the question. The amendment proposed by the Ukrainian SSR had been supported by technical arguments and also by somewhat political arguments. On the basis of the technical arguments which it preferred, his delegation would vote for the amendment.

24. Mr. STAVROPOULOS (Legal Counsel) said that, although it was customary to wait until a number of replies had been received from Governments before circulating them, the Secretariat would undertake, in the present case, to circulate each reply as soon as it was received.

25. Mr. ROSENBAUM (United States of America) thanked the Chairman for the efforts he had made to help the Committee to reach a generally acceptable solution. The Romanian representative had inaccurately interpreted the statement he had made at the 665th meeting, but he was certain that the record would make his position clear. His delegation would vote in favour of the amendment, for it was highly desirable that certain Governments should be reminded of the necessity of respecting the whole field of international law—by which he meant the substantive, not the technical, rules of international law. It was important for all States to realize that they had duties as well as rights, for example, the duty to submit contested claims to impartial international investigation, the duty to ensure the right of accused aliens to see the diplomatic officers of their State, and the like.

26. Mr. VALLAT (United Kingdom) thought that the amendment proposed by the Ukrainian SSR was redundant, and that it tended to confuse the question of the codification and development of international law with that of its observance and enforcement. On the other hand, since he agreed that all Governments should

observe international law, he would vote for the amendment. He wished to stress that the revised draft resolution would not prevent the International Law Commission from giving its views to the General Assembly at the sixteenth session, should it see fit to do so, and would not prevent the General Assembly from taking any particular action at the next session.

27. Mr. GLASER (Romania) stressed that he certainly had not misinterpreted the United States representative's previous statement. He was pleased that the United States representative now agreed that the substantive, rather than the technical, aspects of international law were of primary importance.

28. Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation, while it was not one of the sponsors of the revised draft resolution, felt some responsibility for it because some of the points it made with regard to the present state of international law in the United Nations had been advanced by his delegation in its opening statement (651st meeting). However, the text of the revised draft resolution was not as good as it might have been. Although most delegations had shown dissatisfaction with the unsatisfactory state of international law, many had not shown sufficient readiness to determine the direction in which further efforts should be guided. Thus, operative paragraph 1 did not adequately indicate the character of the new topics to be selected. The Indonesian representative had been justified in expressing doubts concerning parts of the text: the failure to include a reference in the preamble to the direction which the development of international law should take had allowed some delegations to hope that certain unprogressive rules of international law could be imposed on the newly-independent States of Asia and Africa. Unfortunately, the short-comings in the draft resolution could not be avoided at the present time, because certain delegations had been unwilling to go further.

29. His delegation felt that the amendment proposed by the Ukrainian SSR went some way to correct some of the defects of the preamble; accordingly, it would vote for that amendment. It would also vote for the revised draft resolution, despite its lack of clarity on certain points, because it constituted a forward step, and might provide the basis for a more practical and useful study at the next session of the General Assembly. His delegation believed that the majority of States were in favour of strict and undeviating observance of the principles of international law recognized in the United Nations Charter and in other general agreements, such as State sovereignty, the right of peoples to self-determination, the liquidation of the colonial system, and the like. The principles of international law should not be unchanging and static, but should reflect the new relations in the world resulting from the recent attainment of independence by many States.

30. Mr. CHAMMAS (Lebanon) drew attention to the fact that Lebanon had been omitted from the list of sponsors of the revised draft resolution, although his delegation had expressed the wish, at the 671st meeting (para. 24), to join the sponsors. As for the amendment proposed by the Ukrainian SSR, his delegation would vote for it, because it stressed the principle of respect for international law. For the same reason, his delegation had voted in the Second Committee for a provision recommending that the sovereign right of every State to dispose of its wealth and its natural

resources should be respected in conformity with the rights and duties of States under international law.^{2/}

31. Mr. NINCIC (Yugoslavia) regretted that, because of an error, Lebanon had been omitted from the list of sponsors of the revised draft resolution. The amendment proposed by the Ukrainian SSR was entirely acceptable to his delegation.

32. The CHAIRMAN said that Lebanon would be listed as a co-sponsor of the revised draft resolution.

^{2/} See operative paragraph 5 of the joint draft resolution contained in document A/C.2/L.461/Rev.4; that text was adopted by the General Assembly as resolution 1515 (XV).

33. He suggested that, if there was no objection, the amendment proposed by the Ukrainian SSR (A/C.6/L.474) be deemed to be incorporated in the revised draft resolution (A/C.6/L.467/Rev.2).

It was so decided.

34. The CHAIRMAN invited the members of the Committee to vote on the revised draft resolution (A/C.6/L.467/Rev.2), as thus amended.

The revised draft resolution, as amended, was adopted unanimously.

The meeting rose at 5.40 p.m.