Provisional

For participants only

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International Law Commission
Seventieth session (first part)

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Held at Headquarters, New York, on Monday, 21 May 2018, at 3 p.m.

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Present:

Chair:	Mr. Valencia-Ospina
Members:	Mr. Argüello Gómez Mr. Aurescu Mr. Cissé Ms. Escobar Hernández Ms. Galvão Teles Mr. Gómez-Robledo Mr. Grossman Guiloff Mr. Hassouna Mr. Hmoud Mr. Huang Mr. Jalloh Ms. Lehto Mr. Murase Mr. Murphy Mr. Nguyen Mr. Nolte Ms. Oral Mr. Ouazzani Chahdi Mr. Park Mr. Peter Mr. Petrič Mr. Rajput Mr. Reinisch Mr. Ruda Santolaria Mr. Saboia Mr. Šturma Mr. Tladi Mr. Vázquez-Bermúdez Mr. Wako Sir Michael Wood Mr. Zagaynov

Secretariat:

Mr. Llewellyn	Secretary to the Commission

The meeting was called to order at 3.05 p.m.

Commemoration of the seventieth anniversary of the Commission (*continued*)

Conversation with the Sixth Committee

Mr. Valencia-Ospina (Co-Chair), speaking in his capacity as Chair of the International Law Commission and welcoming participants, said it was fitting that the main feature of the current meeting in commemoration of the Commission's seventieth anniversary was a conversation between members of the Commission and representatives of the Sixth Committee of the General Assembly. That conversation would be channelled through two successive panel discussions that would take place immediately following the introductory remarks.

Every year since its first session in 1949, the International Law Commission had submitted an annual report to the General Assembly informing it of the work that the Commission had carried out at its annual session. The Sixth Committee's consideration of the Commission's report took the form of a substantive debate that attracted the participation of legal advisers from permanent missions to the United Nations as well as from foreign ministries of States Members of the United Nations, many of whom were present at the current meeting. The debate in the Sixth Committee and the General Assembly resolution on the work of the Commission were tangible expressions of the close relationship that existed between the Commission, an expert body, and its parent organ, composed of representatives of Governments of Member States.

That relationship was recognized in the statute of the International Law Commission and was central to the Commission's working methods, lending a unique character to its work, throughout the course of which Member States had an opportunity to comment on the Commission's products. Each year, they had an opportunity to address individual chapters of the Commission's annual report or the annual report as a whole, whether orally in the Sixth Committee or in writing, and could provide comments and observations, as well as furnish evidence of State practice on specific questions addressed to them in chapter III of the report. Once the Commission had completed a topic on first reading, it once again invited comments and observations on the text from States, which were taken into account during the Commission's consideration of the topic on second reading. As previous Chairs of the Commission had stressed, the success of the work of the Commission, which was practice driven, depended as much on sustained dialogue with the Sixth Committee as it did on cooperation from Governments in the form of written comments and observations, including information on State practice. Those inputs were valuable to the Commission in the discharge of its functions, as they ensured that its work was not based exclusively on theoretical formulations. It was to be hoped that the conversation at the current meeting would stimulate further reflection on ways in which the relationship between the two bodies could be strengthened.

The expression of that relationship was particularly far-reaching when it concerned the Commission's final drafts. In that connection, it was significant that article 20 of the Commission's statute provided for the preparation of its drafts only in the form of articles. The Commission had, however, increasingly undertaken and concluded work on drafts couched in terms of "principles", "conclusions", "guidelines", "model clauses" or as the "final report" of a study or working group. Those were the forms that would be given to the final products of several of the topics on the Commission's agenda, including the four to be adopted on first or second reading at the current session.

It was noteworthy that, from the beginning of the millennium until 2014, the Commission's recommendation with regard to all final sets of draft articles it submitted to the General Assembly had been for the General Assembly to take note of the draft articles in a resolution, reproduce the text in an annex thereto, and only at a later stage, consider the possibility of elaborating a convention on the basis of the draft in question. At its sixty-eighth session, the Commission had gone back to its pre-2000 practice, by squarely recommending to the General Assembly the elaboration of a convention on the basis of its draft articles on the protection of persons in the event of disasters.

In the period from 2000 to 2014, the Commission's departure from its earlier practice had been an attempt to conform to the reluctant attitude that was openly and increasingly being shown by the General Assembly towards the elaboration of international conventions on the basis of the Commission's final drafts. Such an attitude was clearly reflected in the fact that, since 2004, no convention had been adopted by, or under the auspices of, the General Assembly on the basis of a final draft submitted by the Commission. In the past 20 years, the Commission had submitted nine final drafts to the General Assembly on various topics, all intended to serve as the basis of an international convention.

For its part, the General Assembly had reacted by limiting itself to implementing the Commission's

recommendatory formula through resolutions that it adopted periodically — in general, at three-year intervals — while repeatedly delaying, in a recent case indefinitely, its consideration of the Commission's recommendation that its final drafts should be transformed into international conventions. That was a deplorable state of affairs, which called for prompt and effective remedial action by the General Assembly through the Sixth Committee.

Mr. Gafoor (Co-Chair), speaking in his capacity as Chair of the Sixth Committee, said that the relationship between the Sixth Committee and the Commission was an organic and symbiotic one. The Sixth Committee played a number of important roles, three of which he wished to highlight. First, as one of the Main Committees of the General Assembly, it fulfilled its traditional role as a forum for the discussion of legal matters by policymakers. Its policymaking role was ultimately manifested in the resolutions it adopted, which were the result of careful, deliberate and wide-ranging consultations and negotiations involving considerable interaction between representatives of the Committee and legal advisers from capitals.

That was especially true of its discussions concerning the annual reports of the International Law Commission, which exemplified the close relationship that existed between the Committee and the Commission. The interaction between the two bodies was one of the unique features of the Committee's "international law week", which was held during the annual session of the General Assembly. The debate and negotiations concerning the Commission's report were intended to result in clear policy guidance and decisions on matters relating to the work of the Commission.

The second role played by the Committee was that of a negotiating forum. Through its working groups and subsidiary bodies, the Committee had, over the years, concluded a number of important instruments, including on the basis of drafts resulting from the Commission's work. Indeed, the Convention on the Law of the Non-Navigational Uses of International Watercourses had been negotiated by the Working Group of the Whole of the Committee on the basis of draft articles prepared by the Commission. The last time that the Committee had proposed the convening of a diplomatic conference — the traditional forum for concluding and adopting such instruments — had been with respect to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, whose text had been prepared by the Commission, and which had been the subject of further negotiations in the context of *ad hoc* and preparatory committees established on the Committee's recommendation.

The third role of the — Committee was that of consensus-building. Through informal consultations, for example, the Committee had facilitated the discussions leading to the adoption of a generally acceptable decision concerning the articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The Committee continued to use modalities such as working groups and informal consultations to help build consensus on particular issues.

Over the past 15 years, the Commission had submitted to the Committee eight completed projects, which remained in the Committee at various stages of discussion. The task facing the Committee was to bring those discussions and documents to a successful closure. To do so, it would have to navigate and address legal, policy and other considerations in order to build consensus and reach political agreement. That was no easy task, but by working collectively within the framework of the Committee and by continuing to serve as a platform for building consensus and finding political agreement, the Committee could make an important contribution to reaching agreement on some of the most important issues before it.

It was noteworthy that there was a remarkable degree of professionalism and collegiality within the Committee, as well as a positive spirit of cooperation that prevailed among all members. Those qualities were an important asset to the Committee as it worked together with the Commission in helping to build consensus on important issues of international law.

Mr. Valencia-Ospina (Co-Chair) said that the remainder of the meeting would take place in the framework of panel discussions. The first of the two scheduled panel discussions would focus on the structural challenges facing the Commission and the Committee, which he would moderate, while the second panel discussion would offer reflections on the interaction of the two bodies in the present and the future, and would be moderated by Mr. Gafoor. There were four panellists for each panel, consisting of one legal adviser from the capital of a Member State and one from a permanent mission to the United Nations, as well as two members of the Commission. After the remarks by the panellists on each panel, the floor would be open for an interactive discussion.

Panel discussion I: — The Commission and the Sixth Committee: structural challenges

Mr. Valencia-Ospina (Co-Chair), speaking as moderator, said that the panellists were to address the relationship between the two bodies, with emphasis on

the structural challenges that existed to the progressive development and codification of international law. For his own part, he preferred to set the tone for the discussion by referring to the well-known and relevant provisions of the Commission's statute. Before doing so, however, it was worth recalling that both Article 31 *a* of the Charter of the United Nations and article 1 of the statute, in describing the respective and complementary tasks of the General Assembly and the Commission, mentioned progressive development ahead of codification. The same was true of the title of General Assembly resolution 94 (1) of 11 December 1946, by which the General Assembly established a Committee of seventeen Members of the United Nations and directed it to study "the methods by which the General Assembly should encourage the progressive development of international law and its eventual codification". It was on the recommendation of the Committee on the Progressive Development of International Law and its Codification, known as the "Committee of Seventeen", that the International Law Commission had been established.

Article 15 of the Commission's statute defined the two main tasks of the Commission identified in article 1. It provided that the expression "progressive development of international law" was used for convenience as meaning the preparation of draft conventions on subjects which had not yet been regulated by international law or in regard to which the law had not yet been sufficiently developed in the practice of States. Similarly, it provided that the expression "codification of international law" was used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already had been extensive State practice, precedent and doctrine.

The different stages to be followed by the Commission in fulfilling each task were described in articles 16 and 17 and 18 to 23 of the statute. However, the Commission had, early on, taken the position that the statutory distinction between the two concepts was unworkable, consequently amalgamating them and following a single consolidated procedure. It had repeatedly characterized the outcome of its work on a topic as constituting both progressive development and codification, finding it impracticable to label each draft provision that it provisionally adopted as reflecting one or the other concept. Nevertheless, some members of the Commission, especially during the past two quinquenniums, had inveighed against that well-established practice. In their view, the Commission would be well advised to alert States by clearly identifying as such any specific provision that they deemed to constitute progressive development, especially when the Commission's final product was a set of draft articles.

Mr. Alabrune (France), panellist, said that his country placed special importance on the Commission as an organ entrusted with the vital mission of codifying and developing international law. Observance of international law was one of the guiding principles of the foreign policy of France and a key factor in its national legal system. In fact, it had been at the instigation of the first French member of the Commission, Mr. Scelles, that the French Constitution of 1946 had embodied a system of constitutional monism. That explained why France had had a deep attachment to the Commission and had been actively involved in its work since its inception.

There was no doubt that the relationship between the Commission and the Member States was a determining factor in the Commission's success. Nevertheless, a number of questions had arisen in recent years, including, at times, whether it was advisable for the Commission to maintain its existing form. He would begin by examining the development of the relationship between the Commission and the Member States. He would then turn to the structural challenges facing the Commission and would end by putting forward some ideas on how to respond to those challenges.

Concerning the development of the aforementioned relationship, he said that the Commission had close organizational ties with the Member States that could be traced back to General Assembly resolution 174 of 17 November 1947, in which provided for the establishment of the Commission. The Commission was composed of members elected by the General Assembly from among lists of candidates submitted by Governments. Some Commission members had previously represented their Governments in the Sixth Committee, while others had previously performed or were still performing official functions for their Governments while simultaneously serving on the Commission.

States had the opportunity to make their views known at different stages of the Commission's work. They could propose topics for the Commission to consider, although admittedly they did not do so frequently enough, and they could also weigh in on the priority to be given to a particular topic. In addition, they provided data and information that were useful to the Commission's projects; they received the Commission's report each year and had the opportunity to comment on it during the debate in the Sixth Committee; they had the last word on what action would

be taken on the Commission's final products; and they participated in negotiating multilateral conventions and signing or ratifying them when the Commission's final product was a draft convention.

One of the keys to the success of the Commission's final products was the extent to which they took into account the expectations of Member States, irrespective of whether the products represented the codification or progressive development of international law. That was inherent in the Commission's codification mandate, which required it to carry out a detailed examination of the practices and views of States. The codification exercise also entailed collecting information on the topic in question with a view to identifying a composite formulation that reflected as harmoniously as possible the practice of States in a particular area. That exercise was made more complex by the diversity of cultures and legal systems in the world and, obviously depended to a large extent on the efforts of the Special Rapporteur.

Taking into account the expectations of States was also very important for the Commission's other mandate — the progressive development of international law. In the context of that process, the data and information provided by Governments and the wishes they expressed, as well as the dialogue the Commission had with delegates in the Sixth Committee, were crucial factors in assisting the General Assembly to determine what action to take on the Commission's completed texts — whether that meant taking no action, taking note of the text or using it as a basis for negotiating and concluding a convention. The quality of the relationship between the Commission and Member States had enabled the Commission to contribute to the conclusion of major international conventions in the past.

The more modest results achieved by the Commission in recent years could be explained in part by the challenges encountered in that relationship as a result of several factors. The first factor related to the limited means available to States to effective keep abreast of and participate in the work of the Commission. To successfully follow the progress of the debate in the Sixth Committee on the Commission's annual report required States to mobilize considerable resources, including the human resources needed to ensure the presence of one or two representatives in the Committee's meetings, as well as the extensive research required to prepare for those meetings. It was also important for States to communicate pertinent observations to the Commission on the various topics for which the Commission requested information each year in chapter III of its annual report. However, the increasing number of topics dealt with by the Commission clearly challenged the ability of States and the Commission itself to give those topics in-depth consideration.

The second factor related to the limited means available to the Commission to grasp and take into account the diversity of practices, cultures and opinions of States. The biggest risk for the Commission was that it might reduce the basis for its work to a very small number of worldviews, cultures or languages, or even to only one. For that reason, a special effort was required to ensure that Special Rapporteurs received information on developments in as many legal systems as possible.

The third factor concerned the large number of topics considered by the Commission, including 9 at the current session and 11 at the sixty-ninth session. Obviously, the increase in the number of projects and topics was not conducive to an in-depth consideration of each topic and could hinder the progress of the Commission's work.

Beyond the number of topics, it was their content that might give rise to doubts, given that the success of the Commission's work depended on it selecting topics that were of genuine utility to States – or to which there was not overly strong opposition on their part – and for which they were willing to provide follow-up, for example in the form of a convention. Since its establishment in 1947, the Commission had completed projects on a large number of topics corresponding to the classic branches of international law. Nevertheless, for the past few years, the utility of certain topics included in its programme of work could be regarded as doubtful, inasmuch as those topics did not reflect genuine needs or required a level of technical expertise that delegations in the Sixth Committee did not possess.

The fourth factor concerned the temptation for the Commission — and perhaps even at times for States — to steer away from a draft convention in favour of standards often characterized as "soft law". That understandable trend nevertheless gave rise to doubts about the nature of the Commission's work and of international law, and in some cases could result in a purely academic product that was sometimes infused with an ideological or symbolic dimension and that could not hold the interest of States when those products did not adequately reflect their expectations, their desires or their practices. The desire expressed by the Commission and its Special Rapporteurs that a project should serve as the basis for the formulation of a convention implied that the end product had to be sufficiently consensual — the dialogue between the Committee and the Commission being the best way of

ensuring that — and to reflect the expectations of Member States.

Turning to some ideas for improving the relationship between the Commission and Member States, he said that, first, the Commission should re-focus on its core mandate, which was general international law. Indeed, it was illusory to expect the Commission to work effectively on topics that were very technical or very specialized in nature. Secondly, the Commission should undertake some practical reforms, including by limiting the number of topics on its programme of work to four or five. That would enable the Commission to move ahead more quickly on each topic, or at least to consider each topic in greater depth, and would facilitate dialogue with States, without taxing their capacity to consider the Commission's proposals.

Thirdly, the Commission should adopt the most universal approach possible by strengthening its capacity to understand the practice and case law of the different regions of the world and by rigorously observing its own system of rules on working languages. Along those lines, the use of at least two working languages could only enhance the quality of the Commission's written output, especially in the context of the Drafting Committee.

Fourthly, Member States should convey their expectations more clearly to the Commission and propose topics that they identify with for the Commission's programme of work, as Poland had done recently with reference to the topic of the duty of non-recognition of illegal situations in international law. Several new topics had been suggested by States in 2017, and hopefully that trend would continue. It was also important for States to present candidates who fully met the requirements stipulated in the Commission's statute as being persons of recognized competence in international law. And lastly, it was important for Member States to support the Commission's work by providing information to it, and by engaging in an ongoing dialogue with it, for example by collaborating with academia, as the Codification Division had done when preparing its memorandum on ways and means for making the evidence of customary international law more readily available (A/CN.4/710).

In conclusion, he hoped that, through the efforts of both the Commission and Member States, there would be a new-found commitment to a strong and constructive dialogue between them. The high point of that dialogue remained the debate in the Sixth Committee on the Commission's annual report, which took place in a privileged forum, in particular because of the presence in New York of numerous legal advisers from the capitals of Member States. At the same time, it was important for the Commission's meetings to continue to be held in Geneva in order to afford it the best conditions for its work.

Mr. Hmoud (International Law Commission), panellist, said that the seventieth anniversary of the Commission was an important milestone in the development of international law in the post-Second World War era. The Commission had played a key role in the development of various areas of international law, including the law of treaties, the law of the sea, diplomatic and consular law, international criminal law and the law on State succession. Its work had also been instrumental in the international law-making process in other areas.

At the time of the Commission's establishment and the drafting Article 13 (1) of the Charter of the United Nations, certain areas of international law had already been established through practice, thus enabling the codification of the corresponding rules. However, the drafters of Article 13 (1) and of the Commission's statute had perceived the progressive development of international law to be as important as the codification of customary international law. That was why, in article 15 of the statute, a separate description was given for each term. Subsequent articles in the statute provided that the General Assembly, Member States, and other organs of the United Nations, or official bodies established by intergovernmental agreement, could submit proposals and multilateral conventions for progressive development, while the Commission was to initiate a survey with a view to selecting topics for codification.

Nevertheless, the process had proved to be flexible enough over the years, and the Commission's projects had been a mix of codification and progressive development. That was due, in part, to the fact that the line between the two functions was unclear, especially in terms of identifying the relevant practice that could serve to identify a rule of customary international law as being ripe for codification. That situation, together with the fact that practice was sometimes mixed and contradictory and that the pronouncements used to identify a rule were not always sufficiently clear in terms of whether the rule in question was a rule of customary international law or an emerging rule, had led to the blurring of the lines between progressive development and codification.

With regard to certain topics, the Commission had nevertheless sometimes chosen to identify whether a proposed rule or conclusion constituted progressive development or codification. In making that assessment,

it took certain key elements into account: the viewpoints of its own members, who were jurists from a variety of legal backgrounds; the commentaries to the draft provisions, which referred to such aspects as approach, reasoning, practice, precedent and doctrine; and the reactions of States and other actors towards a particular project, as expressed in the Sixth Committee or in replies to questionnaires prepared by the Commission.

Another element considered in that assessment was the form of the outcome of the Commission's work. If it consisted of draft articles that were suitable for adoption in the form of a treaty or other legally binding instrument, the line separating codification and progressive development was less relevant. When the outcome was a study, the emphasis was on the current state of the law, the state of practice, judicial precedents and doctrine, and not as much on identifying which provisions were codification and which were progressive development.

In short, the Commission did not adopt any single approach, but used a combination of elements to determine whether or not the delineation between progressive development and codification was relevant. In his experience, what was important for the Commission's work was not making such a distinction but rather ensuring that each of the Commission's products received the acceptance and recognition it deserved and carried legal value and weight in the eyes of the international community.

Among the challenges to the progressive development of international law and its codification were the fact that the Commission was not the only entity that played a significant role in identifying, developing or crystallizing rules of international law, despite the fact that it had received its mandate from the General Assembly. Others included international courts and tribunals, treaty bodies, national courts and institutions, international organizations and non-governmental organizations. Furthermore, the Commission's role vis-à-vis the international community was an advisory — and, in many instances — an expository one.

Another challenge was the Commission's need to take into account the work of specialized bodies in certain technical areas when selecting topics to include in its programme of work and when determining the nature and content of its outcome on those topics. It had done that in the past and would continue to do so in the future, but scientific and technical advances, as well as sub-specialization in various areas of law and transnational law, continued to pose a challenge. The Commission could take advantage of those challenges by focusing on the value it could add to the development and identification of rules in any field of international law and not spreading itself too thin and undermining its outcomes.

The idea that the Commission should confine itself to areas of general international law had not been borne out by its experience. Over the years, the Commission had embarked on specialized topics, in such areas as the environment, human rights and investment law. Its work had authoritative value and had been cited by courts and tribunals, as well as in the practice of States and international organizations. The Commission had included topics of general international law as well as topics in specialized areas in both its long-term and its short-term programmes of work.

Another challenge was the need to strike a balance between being assertive in choosing topics that were relevant to the international community and taking principled legal positions on the content of the its work. The Commission's work did not concern States exclusively; it concerned the international community as a whole, including national and international courts, international organizations and other expert bodies, as well as individuals, who were the ultimate beneficiaries of its work. The well-being, security, prosperity and development of the world's people could be achieved through respect for international law, and the Commission was definitely making progress in that direction through its work.

Ms. Felson (Belize), panellist, said that many of the points she had planned to raise had already been raised by other speakers. She appreciated Mr. Hmoud's description of the difficulty involved in drawing a distinction between progressive development and codification. That point was relevant when considering the role of the Commission in the context of the larger, multilateral legislative process, which had become increasingly democratized. She also appreciated the observations made by Mr. Alabrune concerning the challenges facing the Commission and the Sixth Committee, and possible ways of addressing them. The expectations of States were indeed a very important consideration, particularly when examining the structural challenges of the relationship between the Committee and the Commission. The Committee provided guidance to the Commission, and the Commission had to work within certain limits to ensure that its products were legitimate. That point had been illustrated in the discussion on the distinction between progressive development and codification and the reservations expressed by some representatives of Governments about merging the two, on the grounds that the distinction was relevant in terms of how States

might wish to follow up on the Commission's recommendations on a particular project. It was necessary for the Commission to pay attention to the interests of States, in order to ensure that it was responding to them. Whether or not it was doing so within certain confines depended on what the Committee communicated to the Commission.

There appeared to be much hesitation to focus on progressive development because of a desire to avoid casting the members of the Commission as legislators. The tendency was therefore to hew closer to the concept of them as codifiers. However, it must be recognized that there was a very dynamic aspect to international law, and the Commission's work was addressed to a wide range of actors, including States, arbitral tribunals, individuals, lawyers, and non-practitioners alike.

Although much focus had been placed on the relationship between the Commission and States, that focus needed to be expanded to include the international community as a whole. The Commission had actually recognized the importance of that point when it had expressed a willingness to consider topics that would be of interest to the international community as a whole. As a representative of a small island developing State, she very much appreciated the opportunities she had to interact with the Commission on the topics it had taken up. And although she agreed that the general principles of international law that the Commission had already considered were very important for the way in which States interacted in the wider global community, States also faced new existential challenges related to the growing role of non-State entities in international law.

As various speakers had noted at the previous meeting, the prospects for the development of international law were very mixed, and there were challenges posed by multilateralism, the rise of unilateral approaches and threats from terrorism and other transnational crimes that must be confronted. In addition, small island developing States, like her country, were facing the prospect of permanent loss and damage from climate change, which would drastically change their territorial integrity. Part of the Commission's commitment to meeting the expectations of States entailed its ability to address some of the urgent concerns of States. It was therefore necessary to go beyond the two-way street in which the Commission and the Committee operated and to consider the demands and the urgencies that the international community as a whole faced when deciding how to address some of the challenges posed to the development of international law.

Mr. Petrič (International Law Commission), panellist, said that, although the commemorative speeches delivered at the previous meeting had illustrated the importance of the Commission and its glowing achievements, there were also a number of challenges facing the Commission, and he wished to address some of those.

At the time of the Commission's establishment, humanity had only just emerged from the horrors of the Second World War, the United Nations had just been founded, and there were strong expectations that the world would work together to ensure its collective security respect for the rule of law. Against that backdrop, the Commission enjoyed great respect, and there were high hopes for its success. International relations were less complex, and it was in fundamental areas of international law that codification was required, such as diplomatic, treaties and maritime relations, all of which at that time were governed by rules of customary international law. In the first 40 years of its existence, the Commission had helped States to codify and progressively develop the pillars of contemporary international law, including but not limited to the law of treaties, diplomatic law, consular law, the law of the sea, and the law of State succession.

However, the Commission was currently not without its problems. Some criticized its composition and claimed that members who had represented their Government in the Sixth Committee could not be sufficiently independent in their work for the Commission. He disagreed because he had worked for his country's Ministry of Foreign Affairs and had also been a member of the Commission for more than a decade. Practically speaking, that situation had not adversely affected the Commission's work. He also disagreed with the claim that Commission members who were not independent scholars could not be independent as members of the Commission.

One of the main problems facing the Commission concerned generally its relationship with Member States, and more specifically, the selection of topics, the contribution of States during the consideration of the Commission's topics and the action taken with regard to the Commission's final products. Indeed, in the past 20 years, there had been several instances in which note had been taken of the Commission's proposals, but then they had been shelved, and no further action had been taken with regard to them. Moreover, there had been very few instances in which States had participated actively in discussions on the Commission's future work, and the reactions of States to the Commission's work were usually, though not always, few in number.

During the debate in the Sixth Committee, there was a sense of cooperation between the Commission and Member States. The question of how to improve that cooperation had often been discussed by the Commission, mainly in its Working Group on Methods of work. The fact that the Commission had decided to hold the first part of its seventieth session at Headquarters in New York had been a step in the direction of promoting greater cooperation between the two bodies. He hoped that, as a result of that step, States would contribute more to the Commission's work and would increasingly use the Commission's end products, irrespective of the form in which they were presented.

Turning to the selection of topics for the Commission's programme of work, he noted that, as a lawyer, he had always believed that the law served the weak, because the strong did not need it. That general rule applied in both national and international relations. In his view, small States, in particular, should use international law to pursue their goals and should participate actively when international law was being shaped. Unfortunately, that had not been the Commission's experience, as it had rarely received comments on its work from countries other than those in the West. The Commission had been requested to consider some of the problems faced by small island States as a consequence of climate change, and he hoped that it would have enough courage to pursue that work.

Concerning whether the Commission's future topics should be general or specific, some general topics that might be considered were: subjects of international law and sources of international law, such as general principles of law. However, looking farther ahead, he could see an increasing number of specific topics on the horizon. That was because international life had become very complex, and regulation was needed in many areas, including the environment, communications, information and foreign investment, to name a few. He did not believe that the Commission, as it was currently composed, would be capable in the long run of dealing with such specific, yet very urgent, problems. There was a definite need to explore new ways of including technical, scientific and specialized knowledge in the Commission's work. Perhaps, together with Member States, the Commission could consider making some changes along those lines in the future.

Another problem related to topics that were considered to be what he would call "politically contaminated" but which nevertheless had legal dimensions that needed to be addressed. They included the protection of minorities, the protection of indigenous populations, the responsibility to protect and self-determination. He suspected that the number of potential self-determination claims was very high. If the Commission was not the right body to deal with that issue, then the question arose as to which one was the right body. Questions also arose as to whether such decisions should simply be left to the discretion of States on an *ad hoc* basis or whether they required some technical input from the standpoint of international law.

With regard to topics concerning human rights, the Commission should not be so reserved about including them in its programme of work. He was proud that the Commission had completed its work on the protection of persons in the event of disasters, especially of its inclusion of a separate article in that project that referred to human dignity — something that was not included in many other documents but should be.

Turning to the issue of the Commission's interlocutors, he noted that the Commission was a body that served and assisted States with the codification and progressive development of international law. Its partners in dialogue were the Member States, through the Sixth Committee. In that regard, the Commission had been successful and productive. However, given its accumulated knowledge and wisdom and its new kinds of products, which could take the form of conclusions, guidelines or principles, for example, the Commission actually addressed a much larger audience — one that included all those who believed in the rule of law and that it represented the common future of humanity.

In that context, he wished to recognize the tremendous contribution of the Secretariat to the Commission's work and that of the International Law Seminar that was held each year during the Commission's session. Its importance derived from the fact that it was one of the ways in which the Commission spoke to a larger audience, in particular to those young people who were dedicated to international law.

Mr. Valencia-Ospina (Co-Chair), speaking as moderator, invited the participants to pose questions to the panellists.

Mr. Tladi (International Law Commission) said that, since the statements had tended to focus only on the Commission, he wondered whether the panellists might consider discussing ways in which the Sixth Committee could improve its working methods. For example, a number of issues had been pointed out by Mr. Petrič, such as the role that the Committee could play in the selection of topics and the fact that it had generally not played that role. There was also the issue of the action taken with regard to the Commission's final products once they were submitted to the General Assembly, the role that the Committee could play in that regard and the factors responsible for the delays, which

could include working methods, the decision-making process used or the requirement for achieving consensus. He asked whether the need for consensus, at least in terms of the relationship between the two bodies, hindered their cooperation or made it difficult for the Committee to agree to consider many of the Commission's proposals, such as that of the negotiation of a convention on the protection of persons in the event of disasters.

Mr. Valencia-Ospina (Co-Chair), speaking as moderator, said that the points raised by Mr. Tladi seemed to fall more within the context of the second panel discussion, as they concerned the practical measures that could be taken to enhance the relationship between the Sixth Committee and the Commission.

Mr. Gafoor (Co-Chair) said that one of the unique features of the Sixth Committee was that it had always worked on the basis of consensus. He himself had been an advocate of consensus in the context of the Committee's deliberation, precisely because it provided a solid foundation. There had also been some debate within the Committee at its seventy-second session about the unprecedented use of voting in the Commission on certain matters and whether that was helpful or not. There had been a temptation to put some things to a vote in the Committee on certain topics, but the Committee had done its best to avoid it. That was therefore a continuing issue that would have to be grappled with, and he did not have any easy answers to the question that had been posed in that regard.

In his view, the larger question was how to enhance communication between the Commission and the Committee to address the Committee's actions concerning the Commission's final products. The annual session of the Committee provided a platform for such communication, but it needed to be strengthened. It afforded a crucial opportunity each year that should be used to full advantage, and it was important to explore ways of enhancing communication between the representatives of Member States in New York and members of the Commission in Geneva. Nor did he have any easy answers for Commission members concerning the reform of the Sixth Committee's working methods, since, ultimately, those methods were geared to building consensus and to finding an outcome that the Committee could embrace and that would add value for the Member States.

Mr. Grossman Guiloff (International Law Commission) said that, although there were indeed situations in which a distinction could be made between the designation of a provision as progressive development and its designation as codification, it was not always easy to make that distinction because, when engaging in a more granular analysis, conceptual problems and disagreement often arose as to whether a provision reflected progressive development or codification. In that regard, it was not unheard of, in either the legal tradition or the diplomatic tradition, to leave certain matters unresolved. Of course, the Commission should aspire to be as clear as possible, but there were numerous instances in which there was some degree of ambiguity in that regard, and they required flexibility on its part. For example, in the Commission's discussions concerning the legal personality of international organizations, many members believed that such personality was recognized by customary international law and others believed that it was not. It was better in such situations not to attach a label to a concept but to leave space for discussion and for the development of the law. That applied not only to the work of the Commission but also to the comments of States. It seemed to him that that principle was part and parcel of the legal discussion concerning the normative value of a provision. It was therefore clear to him that the question of whether a provision expressed a rule of customary international law was not a binary one. Indeed, many cases that had been brought before the International Court of Justice had involved the same discussion about whether the content of a particular rule constituted customary international law. That was an indication that a more detailed analysis of the issue was required.

Ms. Pürschel (Germany) said that the two tasks of the Commission had been discussed at the most recent session of the Sixth Committee. The Committee thought that the Commission should not portray its work as codification of existing customary international law when there was insufficient State practice to support that thesis. The two different aspects of the Commission's work must remain very definitely separate, a clear-cut separation that had to be reflected in the final product of the Commission's work. Whenever it put forward new rules of international law, the method that should be used was to propose a draft treaty and not merely to formulate draft articles to be used directly by national courts and others in determining existing international law.

The International Law Commission was one of the most respected and prestigious institutions in the field of international law. That was not least due to the impeccable care and high standards to which it adhered when making its determinations. It had a role that was different from that of a non-governmental organization, which could engage in advocacy and argumentation to pursue a political goal. The Commission was an organ

of the United Nations that had been created by States Members of the United Nations. It received its mandate from States and its members were elected by States. Its work was often directly considered by national courts, but also by executive and legislative branches when determining the state of current international law on a specific issue. That pertained to the part of the Commission's mandate relating to the codification of existing international law. There was no doubt that the Commission's mandate also extended to making suggestions for desirable progressive development of international law to be adopted by States. However, when the Commission blurred the line between those two aspects of its mandate, it called into question the very foundation of its legitimacy. It was States, and not the Commission, that created international law: hence, any substantial change of international law must be agreed upon, by States, by treaty.

Mr. Saboia (International Law Commission) said that the world was changing, and even though the Commission was seventy years old, it must also continue to change. To do so, it had constantly to adapt to the needs of States and societies. As Mr. Petrič had made clear, there was a need for a balance between the Commission's traditional topics and those that corresponded to the changing needs of the world around it.

During the Commission's most productive years, it had come to understand that it was practically impossible for a clear-cut distinction to be made between progressive development and codification of international law. Mr. Hmoud had described the difficulty of working on international law with the tools of mechanics. The Commission's members were neither mechanics nor engineers. The tools they required were subtlety, together with technical knowledge and evaluations of various aspects of the law. A former member of the Commission, Mr. McRae, had written an article on that very subject, saying that if the Commission broke with such ways of proceeding, if it adopted rigid and mechanical practices, it would become paralyzed, unable to proceed in a creative manner.

It was important to keep in mind that the Commission was a group of experts. Certainly, they were elected by States, but as long as they were members of the Commission, they were independent experts. That did not mean that they should be insensitive to the views and needs of States: on the contrary, having a clear understanding of the points of view of States was very important. In fact, the Commission frequently asked for more such information. But it needed to retain its independent judgment and should not be constrained, either by a mechanical view of progressive development compared with codification, or by a notion of what kind of decision-making process it should adopt. While the Sixth Committee worked on the basis of consensus, the Commission sometimes resorted to indicative voting, both in the Drafting Committee and in plenary.

Panel discussion II: The Commission and the Sixth Committee: reflections on the interaction in the past and the future

Mr. Gafoor (Co-Chair), speaking as moderator, invited the panellists to address a key question that was undoubtedly on the minds of many participants in the meeting, namely what the Sixth Committee and the Commission could do differently and better, against the background of the seventy-year collaboration between the two bodies and the a context that was much changed from seventy years earlier, with new issues and the new political and geopolitical situation within which the two bodies operated.

Mr. Zagaynov (Russian Federation), panellist, said that his recent election to the International Law Commission was a distinct honour for him, but he had originally been invited to participate in the panel discussion as Legal Adviser to the Russian Federation and was speaking in that capacity.

Although the Commission was celebrating its seventieth anniversary, the idea of codifying international law was several centuries old. Despite the passage of time, the objective had always remained the same: to create a more just world order and to prevent war and conflict. Among the many international jurists who had contributed to the Commission's work in the past, he wished merely to name a few from his country: Mr. Vladimir Koretsky, Mr. Grigory Tunkin, Mr. Nikolai Ushakov and his immediate predecessor, Mr. Roman Kolodkin, a former Special Rapporteur, who had prepared three reports on the topic "Immunity of State officials from foreign criminal jurisdiction." The Commission's achievements would also have been impossible without the professionalism and devotion of the Secretariat.

The interrelationship of the Commission and the Sixth Committee was a subject of paramount importance. Although it was a subsidiary body of the General Assembly, the Commission had a large degree of autonomy, while the political guidance from the Sixth Committee provided it with insight into the needs and expectations of States.

The Commission's early successes had largely resulted from its having set a high bar from the very start in selecting topics for its long-term programme of work.

In the 1960s and 1970s, it had prepared texts that had formed the basis for a number of key international instruments. In the very first decades of its work, it had undertaken the study of the most challenging and topical issues of international law, with the result that in later years, the number of international instruments adopted on the basis of its work had substantially declined.

In his opinion, that did not mean that there was less of a demand for its work. The Commission was currently considering a number of important topics. The formulation of its long-term programme of work was even more important now, being crucial to whether or not its work was favourably received by States and would result in the drafting of international instruments. It was precisely in that area that a balance must be maintained between the requirements of States and the independence of the Commission.

Since 1992, a procedure for preparing outlines and summaries of potential topics had been put in place. According to articles 16 and 17 of its statute, the Commission could consider proposals submitted by the General Assembly, Members of the United Nations and principal organs of the United Nations other than the General Assembly concerning the progressive development of international law and its codification. Whereas in its early years it had received numerous proposals and tasks from the General Assembly, of late they had become fewer in number. That situation would have to be reversed. It might be worthwhile to hold a special discussion on how to improve the existing procedure for deciding on topics and pursuing work on them. One option might be to set up a system for approval and endorsement of topics by both the Commission and the Sixth Committee.

Mr. Igor Lukashuk, a former member of the Commission, had once remarked that the Commission was a victim of its early success: it had gone from codification work in mainstream areas of international law to tackling more complex and less central issues. Nevertheless, many of the texts the Commission had drafted in recent years had great contemporary relevance: those on the responsibility of States for internationally wrongful acts, those on the responsibility of international organizations and those on diplomatic protection came to mind.

The fact that those texts were either still awaiting action by the Sixth Committee or were no longer being considered by it was not because of the Commission, but rather the Committee — in other words, States, which for one reason or another were not in favour of a convention in a given area. However, even some of the Commission’s texts that had not received the “blessing” of States were being used by courts which saw them as a part of customary law. Even texts that had not been finalized by the Commission were being quoted.

There was an opinion that a text prepared by the Commission was of such high quality that the input of States could only spoil it. He did not agree with such an approach. On the other hand, if States could not agree on a given subject, then work on that subject could not be considered as completed. The issue of the Sixth Committee’s decision to work by consensus had been raised earlier during the discussion, and it was truly important. The Sixth Committee was one of the few United Nations bodies that remained faithful to the principle of consensus — to its credit. It was understandable that unanimity in the Committee could be hardly achieved if the Commission itself was unable to reach consensus.

Regarding the pace of work in the Commission, he said that sometimes it was better to make haste slowly. Many of the Commission’s most successful projects had taken years to be finalized. Not all Governments had the capacity to respond rapidly to the Commission’s texts, but that did not mean their views were less important. Prolonging discussion on a topic often allowed more views to be collected and duly addressed.

Another practical problem concerned the honorariums of Special Rapporteurs, who devoted a significant amount of time and intellectual effort to preparing their reports. Since 2002, when the General Assembly had adopted its resolution 56/272 without consulting the Commission, any remuneration to members of the International Law Commission was limited to US$ 1 per year. The Russian delegation had from the very start supported the Commission’s efforts to convince the General Assembly to review the matter and hoped that a continuing dialogue on the subject would result in a practical solution.

The codification and progressive development of international law was an ongoing process. As long as human endeavours were pursued in various spheres and as long as people kept striving for better and more harmonious relationships, the work of codification and progressive development of international law would continue to be of enormous use to international society.

Ms. Escobar Hernández (International Law Commission), panellist, said that a constructive and efficient relationship between the Commission and the Sixth Committee was a precondition for the General Assembly to properly fulfil its mandate, under the Charter of the United Nations, of initiating studies and making recommendations for the purpose of encouraging the progressive development of

international law and its codification. As the relationship between the Commission and the Sixth Committee had evolved over the years, the differing natures and functions of the two bodies had become evident. While the Sixth Committee was the primary forum for fulfilling the mandates of the General Assembly, the Commission was a subsidiary body responsible for developing studies and projects from a technical, juridical perspective. The question now was whether the most effective means were being used to achieve a constructive relationship between the two bodies.

The first of such means was the choice of topics. Although the statute permitted States to propose topics to the Commission, that had rarely occurred of late. Thus, the choice of topics had been left in the hands of the Commission, and the lack of participation by States in that process appeared to have resulted in a disconnect between topics of greatest interest to States and those that were incorporated in the Commission's programme of work. That, in turn, had caused States to lose interest in the work of the Commission.

The way in which the Commission transmitted information on its work was essential for smooth interaction with the Sixth Committee. It now occurred mainly through the Commission's annual report to the General Assembly, the reports of Special Rapporteurs and the summary records of its proceedings. What was missing was rapid means of providing the Sixth Committee with information on what the Commission was doing. Also lacking were direct channels to enable Special Rapporteurs to inform the Sixth Committee about their work.

However, the Commission also needed to receive inputs from States. Those had been diminishing of late, and a clear lack of geographical representation had been evident in those received. Many explanations might be found for that phenomenon, but foremost among them was material difficulties faced by the many States that had very small international services entities. Also, the growing number of questions that the Commission was posing to States, especially at a time that a number of texts were being considered on first reading, made it difficult for States to provide all the information that was essential to the conduct of the Commission's work.

In the past few years, the Sixth Committee had begun to criticize the Commission for making slow, if any, progress on certain topics. That criticism brought to the fore an essential question, namely how the Commission and the Committee could create effective interaction mechanisms. She therefore wished to propose ways of making the flow of information between the Commission and the Committee quicker and more effective, facilitating a more viable and lively dialogue.

First, a collaborative space on the website of the Commission could be created. The website had undergone huge improvements in recent years, but the structure remained that of a source of information, not of dialogue. Subject to financial resources — which were in the hands of States — nothing prevented the incorporation in the website of a space to which solely Member States, members of the Commission and the Secretariat would have access. It would serve to provide information on and reactions to the work of the Commission in a direct and flexible form, speeding up communication between States and the Commission all year long, not just during the sessions of the General Assembly. It would also facilitate the involvement of States that lacked the capacity to write formal comments but could provide the Commission with information less formally.

Secondly, delegations in the Sixth Committee had repeatedly requested that the Commission should meet in New York. Judging from the current experience, that obviously did not result in greater participation of legal advisers in the Commission's work. However, the organization of official meetings during the General Assembly, instead of side events as at present, to be devoted to the discussion of certain specific topics on the Commission's agenda on which work was well advanced or had become controversial might help to improve collaboration between the Commission and the Committee.

Mr. Horna (Peru), panellist, said that the words "cooperation" and "dialogue" had been frequently by various speakers. They were the key to success in the relations between the Commission and the Sixth Committee. However, the distinction between the roles of both entities must be kept in mind. A technical role had been assigned to the Commission, whereas the role of the governmental representatives in the Sixth Committee was to provide political guidance in the Commission's work. The Commission's contribution to international law largely depended on how well the dialogue with the Sixth Committee worked.

Much had been said today about the lack of response to the Commission's work and how to interpret it. It did not, in his view. necessarily indicate a lack of interest among States. Every year, the General Assembly reacted to the Commission's output and made specific requests for the consideration of topics that corresponded to the priorities of States.

In general, the practice of making specific requests was to be encouraged. However, the Sixth Committee had at times also chosen to establish subsidiary organs other than the Commission — for example, ad hoc committees. There were also permanent committees, such as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, working groups and intersessional groups through which the Sixth Committee sought to intensify contacts among its members. The side events organized throughout the year, particularly during the General Assembly, were likewise instrumental in promoting dialogue.

Regarding how the Commission and the Sixth Committee influenced each other, he said that some members of the Commission also served as delegates to the Sixth Committee. Joint achievements of the two bodies included the 1958 Geneva Conventions on the Law of the Sea, which contained provisions on maritime limitation that had subsequently been incorporated in the United Nations Convention on the Law of the Sea.

There were also less successful cases of interaction. For example, the United Nations Convention on Jurisdictional Immunities of States and Their Property had been completed by the Commission in 1990 but adopted by the General Assembly only in 2004: 14 years of "time out" in the relations between the Committee and the Commission. Another problem in such relations was the tendency for the Committee to simply take note of the Commission's products but to take no meaningful action. As pointed out earlier, it had been 14 years since any of the texts produced by the Commission had been adopted at an intergovernmental conference. It was to be hoped that the situation would change, and there had been some signs of late that it might. Another danger was that the Sixth Committee would simply mirror the Commission's discussions, whereas the debates in the Committee should be of a political, not juridical, nature.

There were several practical measures that could be taken to improve relations between the Sixth Committee and the Commission. The Sixth Committee should not merely endorse topics that were to be considered by the Commission, it must also propose them itself. The Commission's terms of reference should be more clearly delineated by the Committee: with proper guidance, the Commission would be able to achieve results relatively rapidly. An informal meeting between the Chairs of the Commission and of the Sixth Committee could be envisaged at the start of each session of the General Assembly, focusing on areas where action by the Committee was needed. Informal dialogue should be increased, not only between States in the Sixth Committee and the Commission, but also with representatives of the academic community. A decision could be taken for the Commission to hold one part of its session in New York once every quinquennium, with due regard for article 12 of its statute. Lastly, input from relevant government ministries like those of justice or the environment should be incorporated in the comments and observations made by States in the Sixth Committee on the work of the Commission.

Looking forward, he would like to see the Commission retain its current, global vision of international law, while also coexisting with specialized forums and working in more specialized domains itself. He hoped it would count more women among its members. It should continue to revise its working methods, including with regard to the frequency of its meetings and its decision-making procedures. It should become truly multilingual, working in all six official languages at all stages of the development of its products. It should carry out its long-term programme of work and ensure that it included topics that corresponded to the needs of Member States.

In conclusion, he said that as long as the international community continued to evolve, and despite the threats to multilateralism and the increasing complexity of the law, the Commission's work would remain central to the efforts to achieve a world order based on scrupulous respect for international law and the Charter of the United Nations.

Mr. Hassouna (International Law Commission), panellist, said that as a former delegate to the Sixth Committee and a current member of the Commission, he had a particular interest in the subject of interaction between the two bodies. The Commission's relationship with the Sixth Committee was central to its work. The very fact that the Commission had succeeded in having a significant impact on international law was attributable to its unique relationship with the Sixth Committee – a relationship that was both reactive and proactive, but always firmly founded upon interaction and communication.

In addition to the presentation to the Committee every year of the Commission's annual report, an interactive dialogue took place between Special Rapporteurs and interested members of the Sixth Committee during the General Assembly. At other times of the year, informal briefings were provided by members of the Commission. The Commission's current meeting in New York was also designed to promote greater formal and informal interaction between members of the Committee and of the Commission. He

thought the experience had been successful and might be conducive to holding additional meetings in New York, at least once in each quinquennium. The current session in New York had been an opportunity for members of the Commission to explain their views on various topics at the numerous side events that had been scheduled almost daily. During the session, an open debate had been held on the role of the Security Council in upholding international law, during which the Security Council was reminded of the Commission's achievements.

The Commission was generally autonomous in its relationship with the Sixth Committee, and the General Assembly had recognized that it should not be subject to detailed directives from either body. The Commission depended on the Sixth Committee and the General Assembly for the guidance and information that they could provide in its efforts to make international law clearer and more accessible. The Commission and the Committee took differing approaches to international law, one reason being the composition of the two bodies. The Commission was composed of independent experts who avoided politics in their discussions. Although they normally worked on the basis of consensus, on very controversial issues they sometimes resorted to voting. Their independence encouraged impartiality and objectivity, although they could be influenced by their legal backgrounds and national experience. The Sixth Committee, on the other hand, was made up of government representatives who brought a political background and perspective to their discussions and served as advocates for their Government's interests. Regretfully, the very election of members of the Commission was influenced by political considerations, not just the qualifications of the candidates.

Certainly, both the objective perspective of Commission members and the subjective perspective of government representatives were needed in order to bring the full scope of international practice to bear on codification work and to ensure that it was relevant and needed by States. If the two bodies did not collaborate, the Commission's work would be in danger of becoming too academic and irrelevant, while the Sixth Committee would risk losing expertise on cutting-edge issues of international law.

One of the ways the Commission was seeking to enhance its relationship with the Sixth Committee was through the ongoing review of its methods of work by the Working Group which he chaired. The experience gained during the current interaction with the Sixth Committee would undoubtedly enrich the Working Group's upcoming discussions in the second half of the Commission's session. However, he hoped that the Sixth Committee would undertake a similar review of its methods of work in order to be more engaged with the Commission.

The Commission's growing practice of producing principles, guidelines, conclusions and reports of study groups, instead of draft articles for treaties or conventions, was a reaction to the diminished support of States for creating binding obligations through treaties. There seemed to be a disconnect between the Commission's expectations and those of States. Even with some of the Commission's most successful projects, including the articles on State responsibility and the articles on the expulsion of aliens, the Sixth Committee was continually postponing the consideration of their final forms. While the Committee did not explain its decisions regarding the final form of the Commission's output, it sometimes cited the hesitation of States about certain aspects and requesting further comments from Governments, as it did on the topics of prevention of transboundary aquifers and diplomatic protection. There must be better communication between the Commission and the Committee in such instances. One suggestion for preventing one of the Commission's products from being stalled in the Committee was for States to submit their preferences for the final outcome of topics in their comments throughout the deliberation process. Another idea would be for the General Assembly and the Sixth Committee to recommend topics for codification to the Commission, thereby ensuring that the topics had garnered the necessary political support. That procedure had been successfully used for the adoption of the Rome Statute of the International Criminal Court.

In its analysis of the topics on its agenda, the Commission always considered the views of States expressed through their written comments and statements in the Sixth Committee. However, the number of States that submitted written comments was consistently limited; the perspectives of African and Asian States in particular were underrepresented. That problem would have to be faced if all the regions of the world were to have a say in the formation of international law. The solution might lie in encouraging the participation of countries through regional United Nations procedures and regional organizations. For example, the Asian-African Legal Consultative Organization could play an important role by encouraging its members to submit their views on the various topics on the Commission's agenda.

It was sometimes argued that the Commission had completed the bulk of its work and was now facing an identity crisis in a time of fragmentation of international law. It was generally recognized that the Commission

might not be the proper institution for addressing emerging technical areas of international law. Indeed, the proliferation of specialized bodies to codify certain fields of international law, such as outer space and economic relations, had reduced the scope of the Commission’s work. In his view, the Commission should continue to explore specialized areas of international law in collaboration with scientists and experts in the relevant fields and specialized international institutions, as exemplified by the informal meeting that the Commission had held with scientists in the form of a dialogue organized by the Special Rapporteur for the topic “Protection of the atmosphere”, held on 4 May 2017, where the scientists had explained to the Commission some of the scientific nuances relating to the law on the protection of the atmosphere.

Although the Commission’s future had been described as uncertain by some commentators, its institutional knowledge and its partnership with the Sixth Committee made it uniquely positioned to continue to codify and progressively develop international law. The Commission actually played a greater role and assumed more important responsibilities when States failed to agree on the development of international law. It had always adjusted to the needs of the international community. Now, as it ventured into areas of international law that were not as settled as the topics it had addressed seventy years earlier, it must remain attuned to how it could fulfil its mandate while responding to the needs of all States.

Mr. Li Yongsheng (China) said that he wished to warmly congratulate the International Law Commission on the occasion of its seventieth session. Over the past seventy years, the Commission and its members had made important contributions to the codification and progressive development of international law. He was pleased to note that the first two women to be elected to the Commission had come from China and Portugal.

The Commission’s main objective was to work with States to formulate international *lex scripta*, to promote certainty in and universal compliance with international law. How to adapt to the current international situation and to promote the transformation of the Commission’s outputs into *lex scripta* was a subject that deserved in-depth consideration. Within the United Nations framework, there were several institutions and mechanisms involved in international legislative processes. If the work of the Commission could not be effectively strengthened, the Commission’s traditional advantage in international legislative work could be adversely affected. Against that background, he had several suggestions.

The Commission and the Sixth Committee could jointly identify the international community’s priorities with regard to international law and orient the Commission’s work towards the real needs of the international community. In doing so, they should pay more attention to the need for specialized topics of international law. The Sixth Committee should provide more guidance and respond more proactively to the work of the Commission. It should explore the possibility of formulating international conventions on the draft articles already concluded by the Commission or on some of the Commission’s outputs that were ripe for codification. Coordination between the institutions and mechanisms within the United Nations involved in international legislative processes should be strengthened and the multiplicity and fragmentation of international law should be reduced. Lastly, the wider dissemination of the Commission’s output should be promoted.

Mr. Gafoor (Co-Chair), speaking as moderator and summing up the discussion, said that it had been rich and detailed and would give cause for further reflection. He thanked the panellists for their remarks and the many suggestions made on how to improve the relationship between the Committee and the Commission. His own thoughts on that subject were that the partnership between those two institutions was critical to the success of each. Each side of the partnership needed to reflect on what could be done better, given that the whole context of multilateralism was changing and that now more than ever, a rules-based multilateral system was needed. The Commission had become more relevant, not less, seventy years on. Similarly, the work of the Sixth Committee had become more important, not less. He was not pessimistic about the role of both bodies in the future, but they had to seize the opportunity and adapt to the current environment.

There was a need for mutual respect between the Commission and the Committee. The Commission was, clearly, an independent and autonomous body and it could and should have its own working methods. It was equally important, however, that there should be no isolation or lack of communication between the two bodies. The outcome of the Commission’s work was important, but it was not everything. The very process of communication, awareness-raising and building up knowledge of its work among delegates, especially those with fewer human and financial resources, was also equally important.

Closing remarks

Mr. Gafoor (Co-Chair) gave special thanks to the Chair of the Commission for joining him in moderating

the interactive discussions and remained optimistic that the partnership between the Commission and the Sixth Committee could yield benefits to the United Nations and the rules-based system of multilateralism and international law.

Mr. Valencia-Ospina (Co-Chair) said it remained for him to express appreciation to his fellow Moderator and to the panellists and other participants, and to highlight the importance of the many relevant points raised, which would certainly enrich the dialogue between the Commission and the Sixth Committee.

The meeting rose at 6.05 p.m.