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Chairman: Prince WAN WAITHAYAKON (Thailand).

Ways and means for making the evidence of customary international law more readily available: report of the Secretary-General (A/2170) (*continued*)

[Item 55]*

1. Mr. RECHENDORFF (Denmark) said that he had always doubted the necessity and advisability of the publication of a United Nations juridical yearbook. It was debatable whether such a publication should be undertaken by the United Nations or should be left to other or private organizations. In addition, there seemed to be a great deal of uncertainty about the scope of such a yearbook and the Secretary-General himself had expressed doubts as to its usefulness. Finally it was likely to be a costly proposition. For all those reasons, he was inclined to agree with the United Kingdom delegation that the project should be postponed for the time being.

2. With regard to the proposal for a consolidated index to the *League of Nations Treaty Series*, he agreed with the United Kingdom representative that such an index would not be sufficiently useful to justify the cost and he was convinced that the Fifth Committee would oppose the proposal.

3. On the other hand, he supported the proposal for a list of treaty collections and the proposal for a *répertoire* of the practice of the Security Council, provided that the cost of the *répertoire* remained more or less within the figure quoted in the Secretary-General's report. (A/2170).

4. Mr. IBRAHIM KHAN (Pakistan) said that in keeping with the view it had expressed at the sixth session¹ his delegation still felt that while a United Nations juridical yearbook would be a useful vehicle for publishing international arbitral awards and decisions of national courts, national legislation should be included only if accompanied by a full description of

the growth of whatever domestic legislation was involved.

5. It was felt in many quarters that the publication—which had been supported by the International Law Commission and a number of learned institutions—would be a vast, expensive and difficult undertaking which in the end might result in duplication of work and consequently represent a waste of effort, time and money. Those dangers could and should be avoided. One possible way might be, as suggested in the Secretary-General's report, to apply rigid criteria in the selection of material. The juridical yearbook would be very useful, not only for the reasons stated, but also in that it would serve to promote new and progressive legislation in various countries.

6. Mr. BARTOS (Yugoslavia) said that a juridical yearbook, compiled along the lines suggested by the International Law Commission, would serve the useful purpose of codifying the growing number of legal texts and decisions of United Nations bodies. They should be systematically collected, compared and reconciled with one another if the discrepancies occurring in spite of the Secretariat's and delegations' efforts were to be avoided, and the publication should be accessible not only to those working in or near the Organization, but also to students everywhere.

7. It was argued that the Secretariat should confine itself to work of direct interest to United Nations legal bodies and should not undertake costly projects which were already being carried on by private institutions. But surely the Secretariat was fully entitled to undertake any work designed to make the evidence of international customary law more readily available. Such work was fully in conformity with Article 1, paragraph 4, and with the third paragraph of the Preamble to the Charter. The publication might be a positive contribution towards the accomplishment of the purposes of the Charter and was unlikely to interfere with the Secretary-General's other important responsibilities towards the General Assembly and the Security Council. In that connexion, he expressed support for the Belgian representative's suggestion for a compilation of the legal decisions of the General Assembly.

* Indicates the item number on the agenda of the General Assembly.

¹ See *Official Records of the General Assembly, Sixth Session, Sixth Committee*, 298th meeting.

8. As the French representative had pointed out at the previous meeting, personal bias and incompleteness were permissible in private compilations, but they were out of the question in a document prepared under the auspices of an international organization. That was why such projects were of particular interest to countries like his own, with limited means, which hitherto had depended entirely on the publications—and frequently misrepresentations—of private institutions. An objective publication along the lines suggested would go a long way towards ensuring greater respect for international law and eliminating many causes of misunderstanding.

9. Some representatives had voiced apprehensions concerning the cost of the project. However, the real expenditure as outlined in the Secretary-General's report would be \$166,800 and not, as some representatives had warned, \$300,000.

10. In view of the reasons stated, his delegation would support any proposal for concrete action at the current session, while not committing itself to every single one of the proposals in the Secretary-General's report. It was also in favour of the preparation of a consolidated index to the *League of Nations Treaty Series*, which represented a useful source of international law.

11. Mr. PEREZ PEROZO (Venezuela) said that the cost of publishing a United Nations juridical yearbook had to be balanced against the usefulness of the publication. On the whole, his delegation doubted the advisability of compiling a juridical yearbook in view of the many difficulties pointed out in the Secretariat's report. The project was so vast that it was bound either to be incomplete or to cost more than expected and to duplicate the work done by other organizations. True, the United Nations had published yearbooks on other subjects but none so wide in scope. As had been pointed out at an earlier meeting, most questions before the General Assembly had a legal aspect and if, as suggested in paragraph 21 of the Secretary-General's report, the juridical yearbook recorded the decisions of only some among United Nations bodies, legal matters arising in bodies other than those strictly concerned with legal questions would perhaps be omitted. Nor did the *Yearbook* published by the International Court contain sufficiently comprehensive accounts of the circumstances leading to requests for advisory opinions.

12. He was not convinced that the advantages of a juridical yearbook were as yet great enough to offset the high cost involved. Not that the project should be abandoned altogether; the Secretariat might continue with its existing staff, and in consultation with governments or their delegations assemble legal material suitable for publication in a yearbook at some future date. It might also use the services of duly authorized honorary correspondents. His delegation would support any draft resolution to that effect.

13. Mr. ROBINSON (Israel) remarked that the idea of a juridical yearbook had become somewhat confused. The original plan had been to implement article 24 of the statute of the International Law Commission by publishing, under the auspices of the United Nations, current material on customary international law. Subsequently that plan had been expanded to cover not only customary international law but also the law of

the United Nations. Finally, it had been proposed in addition that the United Nations should sponsor a publication describing the very significant new trends in international law. Those three different schemes should always be borne in mind during the discussion of the proposal for a juridical yearbook.

14. In view of the somewhat negative approach of the Secretary-General's report and the lack of enthusiasm manifested in the statements of various delegations, he doubted whether a final positive decision could be taken at the current session. However, the matter should not be shelved completely and further studies should be made. Both the report and the debate had given undue prominence to the financial implications of the proposal. He felt that that emphasis was somewhat out of place in a public body because, although a family had to adjust its needs to its income, it was surely more appropriate for a public body to adjust its budget to its needs. The Secretary-General's report treated the question of financial implications very thoroughly but it did not give a sufficiently clear picture of the need for a juridical yearbook or yearbooks.

15. Much had been said about the tests which a juridical yearbook would have to satisfy. It had to be complete and at the same time must not include any data easily available elsewhere. In a yearbook dealing with the law of the United Nations, those two requirements could quite well be met if the publication included all the material not easily found elsewhere and simply referred to other points dealt with in readily accessible documents. However, the material was not necessarily easily available simply because it had been printed. For example, it had taken him a full three hours to locate a certain decision of the Administrative Tribunal, which was supposed to be readily available in the United Nations library. In addition, material could not be regarded as readily available to all countries if it had to be purchased in hard currencies. It was of course easy to set standards for new publications, but it should be pointed out that none of the other yearbooks published by the United Nations satisfied the standards which had been suggested for the juridical yearbook. For example, the *United Nations Yearbook* contained no material which could not be found elsewhere and yet no one could deny the usefulness of the publication. Furthermore, the suggestion that it was unnecessary for the United Nations to publish significant decisions of national courts relating to problems of international law, was based on the assumption that the *Annual Digest and Reports of Public International Law Cases* would always continue to exist, whereas in fact its continued existence was extremely problematic.

16. The problem could not be solved by a purely technical approach. The impact of the United Nations on international law and the far-reaching developments of recent years—some of them due to the influence of the United Nations itself—should be given due attention. First, the area to which international law was applicable had expanded enormously, owing to the emergence of many independent States in recent years. Secondly, although those States had only recently gained their independence, they were the heirs to ancient civilizations and some way had to be found to combine their ancient traditions with the body of international law as developed in modern times. Thirdly, the number of

questions covered by international law had vastly increased, a development which was reflected in the establishment of the many specialized agencies of the United Nations. Finally, the applicability of international law was gaining new dimensions: whereas in the past only States and belligerents had been subjects of international law, the United Nations and—in a way—the specialized agencies had been held likewise to be subjects of international law, as a result of the advisory opinion of the International Court of Justice on the question of reparations for injuries incurred in the service of the United Nations.² In the process of co-ordinating the work of international organizations, such bodies as the Technical Assistance Board, which was not a single international organization but a combination of such organizations, were created and challenged the traditional concepts of international law.

17. The United Nations had not had time to deal with those highly significant developments. On the other hand, there were disquieting tendencies toward the fragmentation of universal international law into national, continental and ideological blocs. In addition, the function of international law in international relations was being questioned. A comparison between Professor Lauterpacht's *The Function of Law in the International Community* and Percy E. Corbett's *Law and Society in the Relations of States* would demonstrate the setback suffered by international law in recent times.

18. Attempts at codification were apt to reveal disagreement rather than agreement, but the attempts should not be abandoned. It would perhaps, be advisable for the United Nations to concentrate, under Article 13 of the Charter, on points where something of practical value could be achieved, rather than on the least promising aspects of codification. The Legal Department of the Secretariat should approach the problem with rather less timidity. It might be borne in mind that the Technical Assistance Programme had been a completely revolutionary idea in its field and was working very well in practice. It was high time that some thought was given to the possibility of extending technical assistance to law, in order to help countries which were underdeveloped as regards their supply of basic legal documentation. It might of course be argued that that was a task for the United Nations Educational, Scientific and Cultural Organization, but the one project which UNESCO had undertaken in that field—the publication of an abstract on international political science—did not really meet the need. UNESCO was concerned with political science in general rather than with international law in particular.

19. There was a very definite need for a series of abstracts or digests of the various periodicals, books and pamphlets dealing with international law. At the moment, abstracts were made by UNESCO of only ten out of the forty relevant periodicals and there was no provision at all for covering books and pamphlets. Not a single periodical on international law was published east of Cairo, and countries obviously could not be expected to purchase every legal publication. Consequently, a series of abstracts would be extremely helpful to all countries.

20. Although he doubted whether a decision could be taken at that session on all three aspects of the proposal for a juridical yearbook, he believed that there was no reason to delay a decision on the proposal for a yearbook covering the law of the United Nations and on his own proposal for a series of abstracts covering new developments in international law. Accordingly, he suggested that the Secretariat should devote special attention to those two points with a view to submitting a report at the following session of the Assembly.

21. With regard to the proposed list of treaty collections, he pointed out that the United Nations had already made a start in that direction. There again, he noted that the Secretary-General's report was based on the false assumption that the *Manual of Collections of Treaties and of Collections relating to Treaties* by Denys P. Myers (1922) was readily available. In actual fact, the *Manual* was out of print and it was extremely difficult to obtain a copy. It was therefore useless to suggest the publication of a supplement to a manual which was not itself available. In any event, the *Manual* prepared by Myers did not cover treaties exclusively; it contained a great deal of material which was of more use to the scientific researcher than to the legal practitioner. Some of the collections it listed were of purely historical interest. He therefore suggested that instead of publishing a supplement to Myers' *Manual*, the Secretariat should publish a new list omitting the material contained in Myers's work which was not strictly required by the legal practitioner, and adding any new collections issued since 1922.

22. The Secretariat's outline for a repertoire of the practice of the Security Council was excellent, although of course there would probably have to be changes in the plan as the work developed. It was high time that some work was undertaken on such a repertoire, because it would be very useful if a conference were called to review the Charter in 1955. Indeed it would be useful to have a repertoire not only for the Security Council but also for the other organs of the United Nations and, if possible, a work which would cover the application of the Charter as a whole.

23. Mr. HERRERA BAEZ (Dominican Republic) said that the Secretary-General's report on the item under discussion gave most prominence to the juridical yearbook. It quoted the comments of governments, United Nations bodies and private organizations interested in international law, all of them being agreed on the importance of the publication of a juridical yearbook of the United Nations. The need for such a publication could not be underestimated; however, the real problem was its contents. There was admittedly much doubt and difference of opinion on that question. In that respect the Secretary-General's report might be regarded as making a rather negative contribution, since it merely expressed views on what the juridical yearbook should not contain and not be, instead of stating what the publication should contain. Admittedly, paragraph 20 of the report referred to the need for a definite criterion to determine the contents of the yearbook and to govern the selection of the material to be included. However, the criterion suggested by the Secretary-General's report in paragraph 21 was too narrow. The possibility of duplication between the probable contents of the juridical yearbook and that of other existing United Nations publications should not be exaggerated.

² See *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory opinion of April 11th, 1949, ICJ Reports, 1949.

gerated. The yearbook should be wider in scope. It should cover not only the States Members of the Organization, but also all the States of the international community. Furthermore, so far as national legislative provisions were concerned, the yearbook should not be confined to the topics recommended for codification to the International Law Commission, as paragraph 61 of the report suggested. The publication of national legislation relating to questions of international law also affected the problem of the unification of municipal law. Nor should the publication of decisions rendered by national tribunals be confined exclusively to questions relating to the United Nations. In that respect the co-operation of the national associations for the United Nations in each country would be helpful.

24. With reference to point D of section IV in paragraph 61 of the report, he said that the yearbook should give special scope to the publication of draft conventions and reports adopted by the Inter-American Council of Jurists, which furnished valuable evidence of the progress of the codification and the progressive development of international law in the inter-American regional system.

25. To sum up, his delegation supported the idea of the publication of a juridical yearbook of the United Nations, and also considered that the possible overlapping of its contents with other existing publications should not be a cogent reason for rejecting or indefinitely postponing its publication. His delegation also supported the proposal of Ecuador that the yearbook should be published in Spanish, too.

26. He added that as a general rule his delegation, in making up its mind concerning proposals for publications by the Secretary-General, had taken into account the relative desirability of each proposal from the point of view of its financial implications and accordingly took the view that the publication of a consolidated index to the *League of Nations Treaty Series*, being a costly proposition, was not justified, since indexes to that series were already in existence, though they might perhaps be inconvenient to consult. His delegation supported the publication of a list of treaty collections and of a *répertoire* of the practice of the Security Council, both publications being justified by reason of their practical usefulness and necessity and of the low cost involved. With respect to the *répertoire* of the practice of the Security Council, the Secretary-General in his report had given a tentative outline of the contents of the *répertoire*, from which an exact idea of the publication could be formed.

27. Mr. QUENTIN-BAXTER (New Zealand) agreed with many of the preceding speakers in supporting the proposals for a *répertoire* of the practice of the Security Council and a list of treaty collections. In deciding on the latter the Sixth Committee should take into account the considerations put forward by the representative of Israel.

28. He was not convinced that a consolidated index to the *League of Nations Treaty Series* should be prepared; the cost would far surpass the advantages derived from it. The decision on that proposal should not, however, prejudice the continued publication of the useful indices to the *United Nations Treaty Series*.

29. The question of a juridical yearbook required careful examination, for which the Secretary-General's

thorough report furnished a suitable basis. In defining the scope of the yearbook, possibly in consultation with legal experts, the Committee should remember that the publication, though unquestionably within the competence of the United Nations, had to satisfy stringent standards and be of proved usefulness so as to justify the large expenditure involved. The work, being of permanent value, should be printed. It should be more than a mere duplication of existing satisfactory publications. Lastly, there was the possibility, suggested in paragraph 70 of the Secretary-General's report, that the gaps in published material to be covered by the yearbook might "better be dealt with by an expansion of existing United Nations publications or by the launching of new special publications of limited scope".

30. Mr. TOUS (Ecuador) said that he would confine his statement to the points in the Secretary-General's report upon which there had been general agreement, either for or against, in the Sixth Committee.

31. His delegation was in favour of the publication of the list of treaty collections and the *répertoire* of the practice of the Security Council; both would offer great advantages and could be carried out without any additional personnel and at a comparatively low printing cost. The arguments against the idea of a *répertoire* of Security Council practice (paragraph 102) were the very reasons for which his delegation considered that it should be published: the procedures of the Security Council had never been very clear and the proposed publication would do much to explain its work to the world.

32. The proposed consolidated index to the *League of Nations Treaty Series* would be simply a duplication of work already being done by the United Nations. It might be possible to make some suggestions for the improvement of existing methods, but the expense of the new project was not justified and accordingly he would not support it.

33. There was a wide divergence of opinion in the Committee on the subject of the proposed United Nations juridical yearbook. The report was somewhat negative on the subject and its conclusions tended to be vague, giving a series of alternatives from which the Committee would have to make its choice with great care. In that connexion, he pointed out that there was some discrepancy between the title of the report and its contents; to begin with, it was not made clear to whom the evidence of customary international law was to be made "more readily available" and, secondly, many points in the report were outside the framework of customary international law.

34. He was convinced of the general value such a yearbook would have, although it might differ with regard to the method of presentation. If even the learned and well-documented International Law Commission felt the need for a United Nations juridical yearbook, there could be no doubt of its usefulness. His personal experience had revealed serious gaps in the material available to his country. The larger countries with great libraries at their disposal might have little interest in the proposed publication, but he would appeal to them, on behalf of the less well-equipped countries, not to allow the proposal to be abandoned.

35. Paragraphs 5 to 13 of the report described the origin of the proposal and the slight discussion it had

aroused at the fifth and sixth sessions of the General Assembly. The Government of Israel had transmitted its observations to the Secretary-General, outlining several kinds of material that might be suitable for inclusion in such a yearbook (paragraph 8), three of which corresponded to suggestions made by the International Law Commission; a new type of material might be the judicial findings of the United Nations specialized agencies.

36. The general impression gained from the report on the proposed publication was one of discouragement. By contrast, his delegation felt that the need for the publication was especially acute in the under-developed countries and that some action, if only on a limited scale, ought to be taken at the current session. Perhaps a small sub-committee should be appointed to consider the proposed publication in detail. The contents of the yearbook ought certainly to be limited in the early stages and the Committee would perhaps agree eventually upon a few of the more useful items, such as significant legislative developments in various countries, classified in the manner indicated in paragraph 24.

37. The estimate of the expenditure required for the juridical yearbook was admittedly out of the question for the first year; however, by concentrating upon a few items only it would be possible to reduce the estimate to a maximum of \$10,000, and even then to produce the yearbook in the five working languages, instead of in English and French only, as suggested in the report. Indeed, the English- and French-speaking countries did not need the proposed yearbook as much as did many countries speaking other languages.

38. The Ecuadorean delegation would support the joint draft resolution before the Committee (A/C.6/L.255) but it intended to submit an amendment setting forth its ideas concerning the juridical yearbook.

39. Mr. LIANG (Secretariat) explained that the report presented the proposal for a United Nations juridical yearbook as a maximum project, basing the suggested table of contents in paragraph 61 on the hypothesis that the arguments advanced in the preceding paragraphs had been accepted. Moreover, of the eight topics listed in paragraph 24, seven were already receiving the attention of the Secretariat and would involve no further financial obligations; numbers (1) to (3) had in fact already formed the subject of United Nations publications and work was progressing on numbers (4) to (7). There would therefore be no need to include those topics in the proposed yearbook, although any material received subsequent to the publication of the volumes in question could find a place there. It was unlikely, however, that much additional material would become available in the near future after the greater part had appeared in the specific publications.

40. The main concern of the Secretariat had been to provide the most ample material possible for the widest possible dissemination. In the opinion of the Secretariat, the sources of customary international law could best

be publicized in the form of specific works rather than in an all-comprehensive juridical yearbook. Any disagreement that might exist related not to the value of the material in question but only to the form in which it should appear.

41. It had been suggested on more than one occasion that the main contents of the juridical yearbook should be an analysis of the legal problems of the United Nations. That would indeed be a colossal undertaking and the Secretariat, in its report, had endeavoured to narrow the field. The great difficulty of an analysis of United Nations legal problems lay in the work of separating legal issues from other issues in items considered by committees other than the Sixth. Hence the reluctance of the Secretariat to undertake so formidable a task.

42. There were various yearbooks that could serve as a model for the proposed juridical yearbook, although the type of learned article which formed a great part of the contents of many yearbooks was unsuitable in a United Nations publication.

43. The representative of Israel had said that the continued existence of the *Annual Digest and Reports of Public International Law Cases*, edited by Professor Lauterpacht, was problematic. Mr. Liang was aware of the publication's financial problems and had had the idea that, instead of including the decisions in question in the juridical yearbook, the United Nations might be able to assist the *Digest* in continuing its publication, in accordance with the suggestion of the Institute of International Law that, as far as the decisions of national courts on international laws were concerned, the United Nations might "render more service to international law by subsidizing existing publications than by undertaking similar work" (A/2170, annex II, Section I, para. 3).

44. The representative of Israel had drawn attention to three different aspects in respect of the compilation of the juridical yearbook. The Secretariat had already taken the first two into consideration and would give serious consideration to the third, namely the new developments in international law. However, in order to deal with these developments adequately, the task would involve interpretation, analysis and objective criticism rather than purely documentary presentation. While there might be some documentary material on the subject, this material would not throw much light on the developments which the representative of Israel has in view unless they were interpreted. A greater contribution to the science of international law could perhaps be made by publicists writing in their own names than by the inclusion of such matters in a juridical yearbook. He fully agreed with the representatives of Israel and Ecuador, however, that further consideration should be given to the question of a juridical yearbook when more ample material was available. It was certainly not the intention of the Secretariat that the idea should be abandoned.

The meeting rose at 1.10 p.m.