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

## AGENDA ITEM 65

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

1. Mr. AGOLLI (Albania) expressed his delegation's appreciation of the work done by the International Law Commission to encourage the development of international law and its codification. The draft on consular intercourse and immunities (A/4425, para. 28), while requiring amendment in certain respects, was a satisfactory preliminary text, embodying the basic principles of international law in that sphere. Consular law was one of the oldest institutions in international law, having been in existence since the time States were first organized and trade relations between them established. In time past, it was true, the consular role had been much more important than it was today, for the commercial functions formerly discharged by consuls were now the concern of special trade representatives, and consular activity was now confined almost entirely to administrative matters affecting nationals of the State of the consulate. Nevertheless, over the centuries, certain principles and rules of consular behaviour had grown up and found a place in a number of international texts. The present was the first time that an attempt had been made to embody them in a single international instrument which could be generally accepted. His delegation would have some more comments to make on the provisions of the draft when it was discussed article by article.

2. The Commission's report referred also to the subject of State responsibility. The document submitted on the subject dealt with it only superficially, from the point of view of restitution for damage done in the territory of a State to the person or property of aliens. As many previous speakers and in particular the representative of the Soviet Union (651st meeting, para. 10), had said, the question of State responsibility included such important aspects of international law as the responsibility of States for the violation of the rights of peoples and nations to self-determination, the violation of the sovereignty of other States and so on. His delegation therefore believed that the International Law Commission ought to give the subject priority at its thirteenth session and to formulate such principles and standards as might contribute to the maintenance and development of friendly relations between States and peoples. The document in question reflected the views

of American lawyers only and could not serve as a basis for discussion.

3. He could not leave the subject of the International Law Commission and its report without referring also to the work of the Sixth Committee and the Office of Legal Affairs. It was clear from the agenda of the present session that the Committee was not playing its proper part in the progressive development of international law. The United Nations Charter in various ways stressed the role of international law in the struggle of peoples for State sovereignty, in the peaceful coexistence of States regardless of differences in their social systems and in the development of co-operation between all countries. In fact, the new principles of international law aimed at the maintenance of international peace and security had been further developed by the United Nations Charter itself, which was the most important international instrument governing the legal relations between States since the Second World War. Various principles such as those of the peaceful settlement of international disputes, non-aggression, collective security and so on had been generally recognized, even by the imperialist Powers. Nevertheless, in practice, those Powers had frequently violated them, conducting a number of aggressive wars against former colonial countries, as for example Indonesia, Viet-Nam, the Korean People's Republic, Egypt and Yemen. More recently, there had been other violations of the principles of international law in connexion with the events in the Congo, in the preparation of an armed intervention by the United States in Cuba and in the violation of the airspace of the Soviet Union by United States aircraft.

4. The only way to secure guarantees against such violations was, he thought, to increase the role of the Sixth Committee and the Office of Legal Affairs in international law. There were, however, points of view current at the present time which indirectly supported such violations. There was, for example, the theory of the absolute subordination of international to domestic law which some Western Powers maintained in order to justify their violations of the principles of international law. There should, in his delegation's opinion, be no conflict between internal and international law, and there could be no question of one prevailing over the other. The influence of the imperialist view to which he had referred was apparent in the work of the Office of Legal Affairs. That was only natural in view of its composition, which was entirely out of keeping with the principles of a fair geographical distribution. With such a staffing it obviously could not work in a way that would be in the interests of all Members of the Organization; the example of the Harvard Law School draft on State responsibility<sup>1/</sup> was a case in point. In effect, the Office worked only in the interests of one group of States, the United States and

<sup>1/</sup> Harvard Law School, *Convention on the International Responsibility of States for Injuries to Aliens* (Preliminary Draft with Explanatory Notes), Harvard Law School, 1959.

its military partners. That was not surprising, since the Legal Counsel had unequivocally declared that he did not want persons from the socialist countries working in the Office of Legal Affairs.

5. Mr. KACHAN (Byelorussian Soviet Socialist Republic) believed that previous speakers had been right in linking the question of the work of the Sixth Committee and of the Office of Legal Affairs of the United Nations with the present item of the agenda; in fact, those bodies had common tasks and should combine their endeavours to perform them. His delegation, too, was concerned with the failure of the Sixth Committee in recent years to live up to the high level expected of it as the body responsible for dealing with questions of international law and preparing recommendations in that sphere for the General Assembly. That the Committee was not dealing with present-day problems affecting the current needs of States was only too apparent from the meagreness of its agenda at a time when so many issues of historic importance remained to be resolved.

6. All who were sincerely concerned to secure compliance by all States with the principles and standards of international law should no longer tolerate the decline in the role and the work of the Sixth Committee. If appropriate action were not taken to correct the situation now, the Committee would soon find itself with no work at all to do. There appeared to his delegation to be a direct connexion between the tendency in that direction and the attitude of the host country, the United States, to legal science. Theories were current in the United States which amounted to a denial of the significance of international law, to its outright rejection. Mr. Hans J. Morgenthau, Professor at Harvard University, for example, an exponent of the sociological trend in United States juridical literature, reduced international law to a level of insignificance and in his works openly advocated the use of force in international relations. State sovereignty, he maintained, was incompatible with a strict, effective and centralized system of international law. A similar position was adopted by leading United States jurists, and the teaching of international law was being curtailed in United States universities and colleges. There could be no doubt that that negative attitude to international law reflected the views of the rulers of the United States; and it was clearly an attitude which suited the Governments of States which did not wish to respect justice and legality, which imposed and supported reactionary régimes and violated the air space of other countries.

7. That negative attitude to international law—a profoundly reactionary trend which had blossomed on United States soil—exerted a pernicious influence on the Office of Legal Affairs. The fact that nationals of the United States and of its allies held 75 per cent of the professional posts in that Office, including nearly all the senior posts, created conditions which were not conducive to the progressive development of international law and which inevitably made for a narrow and one-sided approach to international problems. The representative of Czechoslovakia (655th meeting, paras. 4 and 5) had drawn the Committee's attention to the incorrect behaviour of individual members of the staff of the Office of Legal Affairs who had been exceeding their competence and even violating the United Nations Charter. The Legal Counsel's attempt to defend his staff had been unconvincing. Indeed, his ex-

planations had been contradictory. Having previously said that his office could not on its own initiative introduce questions for consideration by the Sixth Committee, he had then argued that officials should not be punished for showing initiative.

8. The Office of Legal Affairs could and should take the initiative, so long as it was not one-sided and did not favour the interests of one group of States over those of another. Furthermore, the principle of geographical distribution should be respected. The Committee was entitled to expect that the Secretariat would take urgent steps to ensure that the Soviet Union, the East European countries, and the countries of Asia, Africa and Latin America—and not only the United States and its partners in military blocs—were represented in the Office of Legal Affairs. A fairer geographical distribution would be conducive to better work on the part of that Office. Its activity would also be given greater impetus if a concrete and direct relationship was established between the Office of Legal Affairs and the Sixth Committee. Although the Secretariat was accountable to the General Assembly, the Office of Legal Affairs, which was part of the Secretariat, had not thus far regarded itself as answerable to the Sixth Committee. It might be useful to establish a system whereby the Office of Legal Affairs should submit an annual report to the Sixth Committee on its work during the preceding year, its commitments at the time of reporting and its future plans. Such a practice would allow the Committee to exercise direct influence on the work of the Office of Legal Affairs, to help correct mistakes and to put forward timely recommendations. It would, indeed, be useful if the Legal Counsel made such a report to the Committee at its current session.

9. Whereas the Byelorussian delegation fully supported the Soviet Union's constructive proposals on how to enhance the role of the Sixth Committee, it disagreed with the opinion of the speakers who had described all efforts to bring the Committee's work into closer touch with the urgent requirements of the present day as an attempt to impose upon the Committee the discussion of political issues. That point of view, which had been defended by the representatives of Australia (660th meeting), Portugal (659th meeting) and a number of other States, had been expressed with particular emphasis by the representative of the United States (660th meeting), who, furthermore, had ascribed to the representatives of the USSR and of other socialist countries attitudes which they had not adopted. The representatives of the socialist countries had not, for example, mentioned the existence of three blocs in the world, nor could they have done so. The Western military and political alliance, consisting of three aggressive organizations—NATO, SEATO and CENTO—and based on a network of United States military bases, maintained a strict military discipline which was binding on all its members. One was therefore fully justified in describing it as the bloc of the Western Powers, particularly since its member States always acted jointly on all major foreign political issues, even going so far as to sacrifice the national interests of their respective countries to the policy of the United States. The groups of the socialist countries and of the peaceful countries of Asia and Africa, on the other hand, did not qualify for classification as "blocs". They were not aggressive in character, had no bases on the Territory of other States, and did not support

reactionary régimes or suppress movements for national liberation.

10. The Sixth Committee and the International Law Commission should discuss the legal aspects of fundamental international problems, such as the problem of peace and peaceful coexistence. It involved a number of principles of international law which should guide States with different economic and social systems in their struggle for peace and in their peaceful competition or co-operation. Again, no justification could be found for the failure of the Sixth Committee and the International Law Commission to define aggression. It was to be hoped that those bodies, acting within the framework of their competence, would seek effective ways and means of contributing to peace and peaceful coexistence which, as Mr. Khrushchev, the head of the Soviet Government, had told the General Assembly (869th plenary meeting), was the only way in which international relations should develop.

11. The Legal Committee could not stand aside from the problem of disarmament, even though it was being discussed by the First Committee. While a number of representatives, including the representative of Burma (653rd meeting, para. 1), had dealt with that problem, other speakers, such as the representative of the United Kingdom, had turned their backs on it. The representative of the United Kingdom should not forget the English saying "People who live in glass houses should not throw stones". It was no secret that the "British aircraft carrier" might be the first to suffer in a thermo-nuclear war, and the danger of such a war breaking out increased as the arms race went on.

12. The jurists on the Sixth Committee should also raise their voices in defence of the colonial peoples and should help them to attain independence as soon as possible. The Sixth Committee and the International Law Commission should investigate the legal aspects of the colonial problem. The colonial system should be declared a gross violation of the elementary standards of international law.

13. The Byelorussian delegation shared the view of those who had praised the work of the International Law Commission on the draft articles on consular intercourse and immunities. Those draft articles, together with the government comments thereon, should provide a basis for an international convention. It should be said, at the same time, that the International Law Commission had been marking time on the codification of the principles defining State responsibility. Moreover, its first steps in that direction, involving the codification of the principles of State responsibility for damage caused to the person or property of an alien, were out of tune with present-day conditions. The Commission's thirteenth session should be devoted specifically to a study of State responsibility. In particular, in accordance with the Charter and General Assembly resolution 799 (VIII), the Commission should codify the principles determining State responsibility for interference in the internal affairs of other countries, for lawless acts and other violations of international law.

14. Mrs. LADAS-PHRYDAS (Greece) said that the Chairman of the International Law Commission, in his excellent introductory Statement on the Commission's report (649th meeting), had clearly indicated the direction which the discussion in the Committee should take. Unfortunately, many speakers, under the influence of purely political considerations, had gone

beyond the points at issue. The Committee should try to make peoples and States acknowledge international law as the foundation for the settlement of disputes arising among them; but it could not succeed so long as its members thought and acted with solely political aims.

15. The remedy for the dwindling agenda of the Sixth Committee did not lie in unfounded attacks on the Secretary-General, the Legal Counsel and the Office of Legal Affairs. The work done thus far by the Legal Counsel and the Office of Legal Affairs deserved nothing but appreciation. The cause for the decline in the importance of the Sixth Committee was not lack of confidence in the Committee; it was rather the general attitude of States towards international law. It was not sufficient for a State to proclaim that it ardently desired the establishment of international rules and the codification of such rules in treaties and conventions; each State had also to create and maintain conditions propitious to that end. Thus, some States had expressed the view that the International Law Commission's draft on arbitral procedure (A/3859, para. 22) and the revised draft statute for an international criminal court (A/2645, annex) would impair State sovereignty. If those States were sincerely interested in the progressive development of international law as a means of securing peace, they should be prepared to sacrifice a small fraction of their sovereignty to support such measures. As Professor Scelle had said,<sup>2/</sup> every treaty, every duly recorded and valid international undertaking, entailed a renunciation of sovereignty. Her delegation agreed with the representative of Burma (653rd meeting, para. 3) that the mere establishment of rules of international law would be ineffective unless complemented by the establishment of supranational institutions with authority to enforce the rules. As long as States were unwilling to accept limitations on their freedom of action in the general interest, the outlook for the progressive development of international law would be dark.

16. The revival of the Sixth Committee required action by the Committee itself, by the other Committees of the Assembly, and by the Member States. The Sixth Committee could not, of course, embark on the discussion of questions unrelated to the items on its agenda, since, as the representative of Thailand (657th meeting, para. 3) had pointed out, rule 99 of the rules of procedure precluded Committees from introducing new items on their own initiative. Accordingly, she hoped that, as a first step, the General Committee and the General Assembly would revise their attitude, and would allocate more substantial items to the Sixth Committee. In addition, more attention should be paid to the recommendation of the Special Committee on Methods and Procedures (A/3660, annex I, para. 22) that questions falling within the competence of two or more committees should preferably be referred to the committee with the lightest agenda. The General Assembly's recommendations concerning methods and procedures for dealing with legal and drafting questions (*ibid.*, annex II, part I) left it to the judgement of a committee whether or not to refer matters for legal advice to the Sixth Committee. Consequently, the proposals made by some representatives that the Sixth Committee should discuss items which had not been re-

<sup>2/</sup> *Yearbook of the International Law Commission*, 1957, vol. II (United Nations publication, Sales No.: 57.V.5, Vol. II), document A/CN.4/109, para. 10.



ferred to it, such as the draft Declaration on the Right of Asylum (A/4452), were contrary to the rules of procedure. However, rule 13 (e) of the rules of procedure provided that the provisional agenda of the General Assembly should include all items proposed by any Member of the United Nations. She suggested that all delegations urge their Governments to make use of their rights under rule 13 (e). In that connexion, Governments—and the Secretary-General—should give thought to questions which would arise from the recent increase in United Nations membership. Thus, a further review of the methods and procedures of the General Assembly, to assure that the Assembly sessions would not continue to increase in length, might be in order. The various procedures for voting might also be examined.

17. Turning to the report of the International Law Commission, she said that the comprehensive draft articles on consular intercourse and immunities (A/4425, para. 28) represented a most valuable contribution to the unification and development of international law. It had been gratifying to note that all delegations had approved the draft articles in principle. The question of the form of the international instrument in which the draft articles should be incorporated should, in her delegation's view, be decided at a later stage. The wording of article 23 was particularly pleasing to her delegation, which held the view that the receiving State must have the right to declare a member of the consular staff *persona non grata* for sufficient reasons, without being required to indicate those reasons. With regard to chapter II of the draft articles on consular privileges and immunities, her delegation believed that any privileges and immunities granted to consuls and honorary consuls should be based on the principle of reciprocity. It fully subscribed to the Commission's decision to omit any definition of honorary consul from the draft (*ibid.*, introduction to art. 54, para. (3)). In its view, the matter was sufficiently covered by article 1 (f), which provided that a consul might be a career consul or an honorary consul and left States free to define the latter category. The draft articles on special missions were acceptable, but would, of course, be subject to more thorough study at a later stage, when they might perhaps be supplemented not only by the

three articles of the 1958 draft (A/3859, para. 53) mentioned in chapter III of the report, but by articles 2, 4, 6, 7 and 10 as well. Notwithstanding the need for further consideration, her delegation supported the Commission's recommendation that the articles on special missions be sent, as an exceptional measure, directly to the United Nations Conference on Diplomatic Intercourse and Immunities to be held at Vienna.

18. Mr. CACHO ZABALZA (Spain) said that the Soviet bloc, in the political campaign it was waging under the guise of a legal discussion, had chosen as its target the Office of Legal Affairs and, in particular, one official, Mr. Liang. It was his view that Mr. Liang's action in asking the Harvard Law School to revise its 1929 draft Convention on Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners<sup>3/</sup> had been entirely proper. The representative of the USSR, who, in the past, had frequently declared that he favoured co-operation with other legal bodies, had now apparently changed his opinion. Mr. Liang had requested the co-operation of the Harvard Law School, because no other legal body had prepared a draft on the subject. Moreover, the revised Harvard draft<sup>4/</sup> had been submitted to the Commission as a private publication and not as a United Nations document. The Commission had approved the step taken by Mr. Liang without comment, and its Chairman had thanked Professor Sohn for his statement. The initiative taken could not have been intended to influence the Commission, which had not even begun its consideration of the subject of State responsibility. Moreover, at the fourth meeting of the Inter-American Council of Jurists, which Mr. Liang had attended as an observer, many other views on State responsibility had been heard, as Mr. Liang's report<sup>5/</sup> clearly indicated.

The meeting rose at 12.30 p.m.

<sup>3/</sup> Harvard Law School, *Research in International Law, II, Responsibility of States* (Cambridge, Mass., Harvard Law School, 1929).

<sup>4/</sup> See footnote 1.

<sup>5/</sup> See *Yearbook of the International Law Commission, 1960*, vol. II (United Nations publication, Sales No.: 60.V.1, Vol. II), document A/CN.4/124, paras. 101-140.