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

Tribute to the memory of Mr. Alejandro Alvarez, former judge of the International Court of Justice

1. The CHAIRMAN paid a tribute to the memory of the eminent Chilean jurist, Mr. Alejandro Alvarez, who had died in Paris at the age of ninety-two after a career dedicated to the development of international law, especially inter-American law. He left behind a large volume of work of high quality in that field.

*On the proposal of the Chairman, the members of the Committee observed a minute of silence in memory of Mr. Alvarez.*

2. Mr. RODRIGUEZ (Chile) thanked the Committee and the Chairman, on behalf of his country, for the tribute paid to the memory of Mr. Alvarez. As a judge of the International Court of Justice, Mr. Alvarez had rendered judgements which had made legal history, and he had been one of the first to establish the existence of a specifically American type of international law.

AGENDA ITEM 65

Report of the International Law Commission on the work of its twelfth session (A/4425) (continued)

3. Mr. MOROZOV (Union of Soviet Socialist Republics) said that respect for the rules and principles of international law, as laid down in the United Nations Charter, was essential to the peaceful coexistence of States. The primary responsibility for finding a solution to the current juridical problems connected with the maintenance of peaceful relations between States lay with the International Law Commission, whose task was to develop and codify international law, and with the Sixth Committee.

4. A glance at the work of the International Law Commission and that of the Sixth Committee with which it was indissolubly bound up, indicated a steady decline in the activities of the United Nations in the legal field. At one time, the Commission and the Committee had worked together to formulate positive principles of international law and had drawn up important instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide.

But more recently, practically all the questions directly connected with the maintenance of international peace and security, as for example the question of the definition of aggression, had been set aside, while certain countries had made vain efforts to carry through proposals such as the International Law Commission's drafts on arbitral procedure and on the establishment of an international criminal court which would impair the sovereignty of States. The only work which had brought concrete results over the last few years had been that leading up to the adoption of the conventions on the law of the sea; at the present session, no positive recommendation had been placed before the Sixth Committee by the International Law Commission.

5. The reasons for that disturbing situation were not technical but political. The proposal to define aggression had been opposed in the International Law Commission and the Sixth Committee by the United States and its allies, so that they would be left free to pursue their policy of aggression in Korea, Egypt, China, the Congo, Algeria and elsewhere. Those same Powers were trying to prevent principles categorically condemning colonialism and proclaiming the right of all peoples to exploit their natural resources as they saw fit from being included in the covenants of human rights. Thus, the importance of international law was being ignored, and the Sixth Committee was no longer fulfilling its proper function.

6. It might be wondered why the Office of Legal Affairs of the Secretariat, which, through the Secretary-General, was entitled to place before the General Assembly any matter it deemed important, had done nothing to improve matters. Actually, the only major issue it had submitted to the Assembly for examination since the draft convention on genocide in 1948 had been the question of reservations to multilateral conventions.

7. There again, the reason was not technical but political. The Office of Legal Affairs was made up of eminent lawyers, but three-quarters of them were nationals of the United States and its allies. The neutral countries of Asia and the Latin American countries had only one representative each in the Office, while the socialist countries and the African countries were not represented at any level. All the posts at the Director level were held by United States nationals, with the exception of the post of the Legal Counsel, equivalent to the post of an Under-Secretary. Such a situation was inadmissible and was flagrantly at variance with the principle of equitable geographical distribution laid down in the Charter. A redistribution of the Director posts among the nationals of the Western bloc, the neutral countries and the socialist countries would be needed before the Office of Legal Affairs could make a real contribution to the preparation of important legal instruments.

8. Turning to the International Law Commission's report on the work of its twelfth session (A/4425), Mr. Morozov said that the draft articles on consular intercourse and immunities contained in chapter II were based on government practice, with due regard to international conventions, and they reflected fairly well the conventions concluded in recent years between the USSR and a number of Asian and African countries. Provided that some of the provisions could be drafted more precisely, it should be possible for most States to adopt the draft articles.

9. State responsibility was a matter of great moment; but the work of the International Law Commission on the subject was proceeding slowly and the progress made was hardly satisfactory. General Assembly resolution 799 (VIII) requested the International Law Commission to undertake the codification of the principles of international law governing State responsibility as being desirable for the maintenance and development of peaceful relations between States. But the measures which the International Law Commission was proposing to take in that direction made it clear that the actual organization of its work left much to be desired. The International Law Commission had confined itself to dealing with the international responsibility of the State for injuries caused in its territory to the person or property of aliens.<sup>1/</sup> That was not in accordance with the instructions given the Commission under resolution 799 (VIII). There was no justification for so narrow an attitude, for the imperialist States were daily interfering in the internal affairs of other States, and it was therefore indispensable that the principles of international law relating to illegal acts committed by States should be codified. Consequently, the draft articles called for study on a very broad basis. The reports already issued on the question by the International Law Commission showed that the Commission had overlooked a number of serious errors. According to the preliminary draft submitted by its Special Rapporteur,<sup>1/</sup> an alien had certain privileges not enjoyed by a citizen of the State where he was residing. Article 19 was contrary to international law, since it stipulated that a claim by an alien against a particular State was international in character. Article 20 provided that the State of nationality could bring an international claim to obtain reparation for the injury sustained by the alien. That was nothing more than a pretext to justify interference in the internal affairs of another State, especially by a wealthy State in the affairs of a less wealthy State, and thus to stifle nationalist aspirations in the interests of the colonial Powers. Under the cloak of legal provision, the International Law Commission's reports endeavoured to justify the aggression committed during the last few years by France and the United Kingdom against Egypt, and by the United States against Cuba. The provisions in the preliminary draft which gave legal backing to the claims of the colonial Powers and enabled them to exploit the economic resources of under-developed countries must therefore be eliminated. In fact, those guilty of exploitation should be required to compensate the State which was the victim of their colonialist policies.

10. The International Law Commission should first of all give priority to the principles governing the

<sup>1/</sup> Yearbook of the International Law Commission, 1958, vol. II (United Nations publication, Sales No.: 58.V.I, Vol. II), document A/CN.4/111, annex.

relations between States and present a preliminary draft to the Sixth Committee during the coming year. The Governments of States Members of the United Nations could study those basic principles during the two or three months between the time when the work of the International Law Commission ended and the work of the Sixth Committee began. The Commission would look into the question in the light of the comments of the various States and the observations made in the Sixth Committee, and would thus be in a position to place a final text before the General Assembly fairly quickly. The principles to be considered would include the principles governing State responsibility in the event of violation of national sovereignty and of the right of peoples to self-determination, especially their right to exploit their national resources; State responsibility in the event of subversive activities, espionage, terrorism, violation of territorial integrity, etc. The codification of such principles would be a step forward in the direction of codification of rules of international law calculated to foster the peaceful coexistence of States with different political and economic systems, and would at the same time rouse the United Nations from its torpor in regard to legal matters.

11. He appealed to all delegations to look carefully into the work of the Commission and the Sixth Committee so as to dispose of the attitude of contempt for international law and thus to work for the maintenance and strengthening of peace.

12. Mr. STAVROPOULOS (Legal Counsel), in the exercise of his right of reply, stated that the attacks by the Soviet Union against the United Nations Office of Legal Affairs were unfounded, for it was not for the Office of Legal Affairs to take the initiative regarding the questions to be considered by the Sixth Committee. Its function was merely to aid the Committee in the work which the Committee had decided to undertake, and he wished to point out in that connexion that the inclusion of the question of genocide in the agenda of the Sixth Committee had been proposed by the delegations of Cuba, India and Panama<sup>2/</sup> and not by the Office of Legal Affairs. Furthermore, neither the Soviet Union delegation nor any other delegation had ever suggested to the Office of Legal Affairs that it should take such initiative.

13. In regard to the question of the geographical distribution of staff, he stated that the Office of Legal Affairs at present had twenty-five legal officers from fifteen different countries: six from the United States, two from France, two from the United Kingdom, four from Western Europe, two from Eastern Europe (one of whom had just been recruited), seven from Asia, one from Latin America and one from the British Commonwealth. It thus appeared that the areas which could be regarded as the least favoured were Latin America and Africa. The problems connected with the recruitment of legal officers in Latin America were well known to many representatives. As for Africa, he was pleased to announce that, in consequence of the admission of new Members from that continent, the Office of Legal Affairs was recruiting three African staff members. He wished to recall that United Nations staff were not chosen because

<sup>2/</sup> Official Records of the General Assembly, Second Part of the First Session, Sixth Committee, Summary Records of Meetings, Annexes (annex 15).

they belonged to a particular political or military bloc but, so far as possible, in accordance with the provisions of Article 101, paragraph 3, of the Charter which stressed "the necessity of securing the highest standards of efficiency, competence and integrity" and which added that "due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible". He also referred to Article 100 which stated that "In the performance of their duties, the Secretary-General and the staff shall not ... receive instructions from any Government or from any other authority external to the Organization" and that they were "responsible only to the Organization". He took pride in the fact that, in the fourteen years of its existence, no member of the Office of Legal Affairs had acted contrary to the provisions of Article 100 and that all members of that Office had been above all else international civil servants loyal to the United Nations. He concluded by challenging anyone to find a single example where the General Assembly as a whole had rejected any suggestion put forward by the Office of Legal Affairs.

14. Mr. MOROZOV (Union of Soviet Socialist Republics) was happy to note that the facts which he had put forward had not been disputed by Mr. Stavropoulos. The Legal Counsel and he himself disagreed only with regard to the political significance of those facts. Mr. Stavropoulos had said that fifteen countries had been represented in the Office of Legal Affairs, but he had failed to specify to which of the three large groups of Powers they belonged. The fact was that 75 per cent of the staff of the Office of Legal Affairs consisted of nationals of the United States and of countries that were its direct military allies. The Legal Counsel had said that seven staff members had come from Asian countries, but the fact was that only one of them, who, moreover, was only an assistant officer (P-1), came from a neutral country in Asia. That situation must therefore be remedied by offering important posts to nationals of the socialist and the neutral countries. The manning-table of the entire Secretariat should, of course, be revised, but the lack of balance was most marked in the Office of Legal Affairs. With regard to the activities of that Office, Mr. Morozov recalled that the Secretary-General had by no means always been impartial. For example, at the time when reservations to multilateral conventions had been under consideration, he

had attempted to impose on the Soviet Union the adoption of provisions contrary to the principle of national sovereignty. Those suggestions had not, moreover, been accepted.

15. With reference to the Convention on Genocide, he was surprised that the Legal Counsel did not remember the special draft prepared by the Secretariat<sup>3/</sup> with the aid of experts recruited for that purpose; that draft had been taken into consideration in the final text of the Convention. Thus, twelve years ago, the Office of Legal Affairs had felt that it could take part in the work of the Sixth Committee.

16. Mr. STAVROPOULOS (Legal Counsel) pointed out that only two of the six top-ranking members of the staff of the Office of Legal Affairs were United States citizens. He then read out the distribution, by nationality, of the posts in the Office of Legal Affairs. On the matter of reservations to multilateral conventions, he recalled for the benefit of the Soviet Union representative that the Secretariat's position had been contrary to the stand not only of the USSR but also to that of the United States and that of Latin America.

17. The Office of Legal Affairs was prepared to take any steps that might improve the Sixth Committee's work. It was also prepared to hear any suggestions from the representatives of Member States.

18. Mr. WENTWORTH (Australia) thought that the questions which had been raised by the Soviet Union representative were not within the jurisdiction of the Sixth Committee. He wondered whether Soviet staff, being imbued with the principles of Leninism which encouraged Communists to infiltrate "bourgeois" bodies in order to destroy them from the inside, would be able to abide by the rules of conduct incumbent upon every international civil servant.

19. Mr. PERERA (Ceylon), speaking on a point of order, pointed out that the reference by the Australian representative to the principles of Leninism was entirely irrelevant to the work of the Sixth Committee.

The meeting rose at 6 p.m.

<sup>3/</sup> Ibid., Second Session, Sixth Committee, Summary Records of Meetings, Annexes (annex 3).