

# GENERAL ASSEMBLY

FIFTEENTH SESSION

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## SIXTH COMMITTEE, 663rd MEETING

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

### AGENDA ITEM 12

Report of the Economic and Social Council (chapter VII, section II, paragraph 645 only) (A/C.6/L.469)

1. The CHAIRMAN said that the President of the General Assembly had transmitted to him a letter from the Chairman of the Third Committee (A/C.6/L.469) concerning paragraph 645 of the report of the Economic and Social Council (A/4415), together with a compilation of the views expressed by the members of the Third Committee on that paragraph. That question constituted item 3 of the Sixth Committee's agenda.

### AGENDA ITEM 65

Report of the International Law Commission on the work of its twelfth session (A/4425; A/C.6/L.467, 468) (continued)

2. Mr. MARCOS (Philippines) congratulated the International Law Commission and the Office of Legal Affairs on the excellent work they were doing in the codification and progressive development of international law.

3. It was too early yet to examine seriatim the draft articles on consular intercourse and immunities presented by the International Law Commission in its report (A/4425, para. 28), for it was necessary to await the comments of Governments on them. He hoped that a detailed study could be made at the next session. With regard to chapter III of the report, his delegation approved the Commission's decision to refer the draft articles on special missions to the United Nations Conference on Diplomatic Intercourse and Immunities to be held at Vienna in 1961. Some comment was, however, called for on the expression "special missions". The definition given in article 1 of the draft articles seemed inexact and insufficiently clear. Only the words "special task" showed the difference between a special mission and a regular mission. The sense would be clearer if the word "temporary" were inserted. His delegation would therefore propose the following definition: "A special mission means an official diplomatic mission composed of State representatives sent

by one State to another in order to carry out an assignment of a special and temporary nature." The word "diplomatic" had been added to indicate that it was a mission performing temporarily a function ordinarily within the competence of the permanent mission. It would also be desirable to include in the draft certain provisions relating to economic and trade missions.

4. It could not be denied that the tempo of the work of the International Law Commission, the Office of Legal Affairs and the Sixth Committee had slackened. That was due to lack of initiative on the part of the competent bodies in proposing new topics for study, to the absence of sufficient criteria to permit the General Committee to allocate items to the Sixth Committee, to the slowness of Governments in submitting their comments on draft articles and to delay in the codification of urgent questions.

5. As to the lack of initiative, neither the Sixth Committee, the International Law Commission, the Secretary-General nor a single Member State had proposed items for inclusion in the Committee's agenda at the present session. Yet, there was no lack of subjects for study. There were obsolete laws which must be reinvigorated and new laws must be devised to meet the complex demands of the space and rocket age. The first step towards legislation and codification was always a step in the right direction. The legal problems raised by the conquest of outer space must therefore be examined; some might even now form the subject of international agreements.

6. The criteria governing the allocation of items to the Sixth Committee, which were to be found in annex II to the rules of procedure of the General Assembly (A/3660), were unclear and imprecise. Owing to the lack of a definite rule for determining the jurisdictions of the various Committees, important legal questions, such as those concerning South West Africa, the treatment of people of Indian origin, the recognition of States, the interpretation of clauses of the United Nations Charter, the right of asylum and the covenants on human rights, had failed to reach the Sixth Committee.

7. Governments might also be reminded how important it was for them to be punctual in sending in the comments requested of them so that the codification and development of international law might proceed without delay. Finally, the efforts of jurists today should be directed towards the codification of principles of international law which would promote a more favourable international climate and strengthen peace. The secret of peace lay, perhaps, in the patient work of jurists and not in the manoeuvrings of politicians. Priority should therefore have been given to the codification of topics vital to the maintenance of a lasting peace throughout the world, such as the definition of aggression, the definition of air space and outer space, the responsibilities of States, territorial sovereignty, the principles of coexistence and co-operation among

States, and the peaceful settlement of disputes. Too much stress could not be laid on the importance of defining aggression. Before a final decision was taken, however, the opinions of new Member States must be heard so that the definition might be truly universal. The reason why work of that question was at a standstill at the present time was that political considerations were still too powerful. It was for that reason that his delegation deplored the introduction of political elements into the discussions of the Sixth Committee. If the Sixth Committee wished to attain its full stature, the jurists composing it must return to dispassionate and objective debate.

8. Mr. ROSENNE (Israel) considered that it was in order for the Committee to touch upon any matters referred to in the Commission's report, including those which appeared there solely for purposes of information, because it had a duty to express its views on the various political factors and trends which the Commission, a subsidiary organ of the General Assembly, ought to bear in mind. As to matters which were not mentioned in the report, while doubting whether it was possible to lay down any hard and fast rules, he believed that it would be preferable to discuss only problems directly connected with the codification and progressive development of international law.

9. Turning to the draft articles on consular intercourse and immunities, he said that his Government could not take any final decision before the competent authorities had examined the text and before the results of the Vienna Conference were known; but he would say that, at first sight, the draft appeared to be a technically competent piece of work. The Israel delegation was at present inclined to favour presentation of the final text in the form of a draft convention, but felt that, in that case, the Commission should include its suggestions regarding the final clauses, including, if necessary, a reservations clause, in accordance with its own suggestion of 1951 (A/1858, para. 33) and General Assembly resolutions 598 (VI) and 1452 B (XIV). He wondered, however, whether it was sufficient for the draft to be a technically competent piece of work; he had been much impressed by the remarks of the Yugoslav representative (652nd meeting, para. 24) to the effect that the Charter had introduced into international law certain radically new concepts, those of coexistence and co-operation among States, and that a sustained effort ought therefore to be made to promote the growth of international law in accordance with the principles embodied in the Charter, so as to contribute to the development of international law itself and to the consolidation of world peace. He wondered whether the draft would not gain considerably by taking greater account of those principles, which were all the more important in that certain countries had in recent years been adopting a minatory attitude towards the establishment and maintenance of diplomatic and consular relations between two other States and had at times succeeded in obstructing the development of those relations. In the view of the Israel delegation, such interference by a third State was completely incompatible with the Charter, with the new concepts of contemporary international law and with the principles of coexistence and co-operation between States.

10. With regard to chapter III of the report, on *ad hoc* diplomacy, his delegation would not oppose as an exceptional measure, the referring of the three draft articles on special missions to the Vienna Conference,

but regretted that it had proved impossible to observe the provisions of the Statute of the International Law Commission, particularly those requiring the consultation of Governments before the Commission drafted its final text. With regard to chapter IV of the report, his delegation associated itself with those speakers who had urged the Commission to continue its work on the law of treaties. It welcomed the growing ties between the Commission and the Inter-American Council of Jurists and the Asian-African Legal Consultative Committee, while sharing the hesitations expressed by Mr. Tunkin in the International Law Commission,<sup>1/</sup> and hoped that it would be possible to obtain fuller information about the latter's activities. He hoped that every university desiring to do so would be able to continue and expand its contribution to the Commission's scientific work, on the basis of article 26 of the Statute.

11. His delegation did not agree with the criticism which had been levelled at the Secretariat. It would be impractical to insist upon the principle of equitable geographical distribution being rigidly applied to every single unit of the Secretariat; it was enough that the principle should be applied in the Secretariat as a whole.

12. In his opinion, responsibility for the decline of the work of the Sixth Committee rested entirely with the Members of the United Nations, because it was they who approved both the content of the agenda and the allocation of items to the Committees. Neither in the General Committee nor in plenary meeting had any question been raised regarding the allocation of additional agenda items to the Committee. Moreover, the situation was likely to worsen in the future because, for some time to come, the Sixth Committee would have before it a series of interim reports from the International Law Commission calling for no substantive action. Nevertheless, he did not share the view that the decline of the Sixth Committee reflected the decline of the role of international law in the work of the United Nations. He believed that the real cure for the situation lay with the delegations themselves and with their representatives on the Sixth Committee, who should call attention both to the possibility of allocating more items to the Sixth Committee and to the drafting and advisory functions which it could undertake. In that connexion, the Special Committee on Methods and Procedures had recommended in annex I (para. 22) to the rules of procedure that "the allocation of items to committees might be effected in a less rigid manner and that questions which may be considered as falling within the competence of two or more committees, should preferably be referred to the committee with the lightest agenda"; he regretted that the recommendation had remained a dead letter. If the Sixth Committee were not allocated further items, he regretfully felt that consideration would have to be given to a far more radical suggestion: to convene the Sixth Committee only every other year, unless the Committee were seized of an urgent question.

13. The time had come for a thorough reappraisal of the status of the codification and progressive development of international law. He had no objection in principle to the establishment of a special committee composed of representatives of Governments for that

<sup>1/</sup> Yearbook of the International Law Commission, 1960, vol. I (United Nations publication, Sales No.: 60.V.1, Vol. I), 571st meeting, para. 33.

purpose, as proposed in the draft resolution before the Committee (A/C.6/L.467), but he thought that the terms of reference of that committee should be brought more closely into line with the terms of reference of the Committee of seventeen members established by resolution 94 (I), and that the International Law Commission should undertake a parallel investigation at its thirteenth session and report thereon to the General Assembly at its sixteenth session. His delegation attached particular importance to such an investigation by the International Law Commission, because it believed that the Commission was in a better position than an *ad hoc* committee of government representatives to draw conclusions from such conferences as the two Conferences on the Law of the Sea and the Conference on Diplomatic Intercourse and Immunities to be held at Vienna in 1961. Moreover, it would be interesting to know whether the members of the International Law Commission considered that adequate use was being made of existing facilities, particularly those offered by the General Assembly, to conciliate the political divergencies which were hampering the codification and progressive development of international law. Lastly, as a Main Committee of the General Assembly, the Sixth Committee obviously had wider functions than the codification of international law; he therefore urged the sponsors of the draft resolution to enlarge the scope of their draft.

14. Mr. HAJARNAVIS (India) congratulated the International Law Commission on the work it had done at its twelfth session, and especially the Special Rapporteur, Mr. Zourek, and the Chairman, Mr. Padilla Nervo.

15. In deploring the brevity of the Sixth Committee's agenda, he pointed out that certain questions could probably have been allocated with advantage to the Committee; he suggested that, in future, when an item fell within the competence of several Committees, the attention of the Assembly should be drawn at the proper time to the recommendation it had approved in resolution 362 (IV)—and contained in annex I to the rules of procedure—namely, that such items "should preferably be referred to the committee with the lightest agenda".

16. Some delegations had complained that the scope of the debates had been unduly enlarged. While he recognized the necessity of staying within certain limits, he thought that the scope of discussion in the Committee should not be unduly restricted by a narrow or mechanical interpretation of its agenda. It had been rightly said that the permanent task of the Sixth Committee was to consider measures to encourage "the progressive development of international law and its codification". The Committee's work must therefore be evaluated in terms of that goal and of the Purposes and Principles of the Charter.

17. While, at first sight, it might of course appear that the Committee accomplished little, it should avoid placing undue emphasis on its own work and attaching more importance to form than to substance. The decisions to be taken by the Third Committee and the First Committee respectively on the covenants on human rights and on disarmament, the achievement of independence by many dependent countries, the work of a number of national and international agencies co-operating with the United Nations, all indicated a progressive enlargement of the domain of international

law, and the progress achieved in practice was an encouraging portent for the future.

18. As the Polish representative had rightly said (656th meeting, para. 3), however, whenever the United Nations ventured into unexplored fields, it had to work out new methods of co-operation, which would eventually have to receive the sanction of law, and thus prepare the international law of the future. It was therefore important, not only to ascertain the rules currently governing the relations among States, but also to devise new apparatus for the new order to be established. Thus, as a corollary to the question of disarmament, for example, the Committee could draft an international penal code dealing with the crimes of preparation or advocacy of war. In that connexion, he supported the Ceylonese representative's proposal (658th meeting, para. 19) that the Sixth Committee should request the International Law Commission to study the question of neutrality.

19. Turning to the International Law Commission's report, he fully reserved his Government's position on the draft articles on consular intercourse and immunities, on which he would make detailed observations at the appropriate time.

20. Several representatives had pointed out that the borderline between consular and diplomatic functions was not always clear, and that there was a tendency for diplomatic functions gradually to absorb consular functions. Whereas the immunity of diplomatic agents was personal, that of consuls appeared to be functional. He therefore thought that it would be helpful to Governments if they had before them the results of the Vienna Conference on Diplomatic Intercourse and Immunities in their consideration of the draft articles relating to consular intercourse and immunities. In particular, a clear demarcation of diplomatic intercourse and immunities and a decision on the form in which the proposals were to be implemented would be of immeasurable assistance.

21. His delegation supported the proposal that the draft articles on special missions should be referred to the Vienna Conference and would be glad to assist the Conference in codifying the matter by contributing the work of Indian authors.

22. He entirely agreed with the analysis which the Polish representative had made of Article 101 of the Charter (656th meeting, para. 7). He regretted that the Asian countries were inadequately represented in the Office of Legal Affairs and pointed out that there were many jurists in Pakistan, Burma and India who had wide experience in the comparative study of their own and the Western systems of law.

23. His delegation wished to point out to the representative of the Union of South Africa, who had referred to the necessity for taking greater account of the legal aspect of problems (654th meeting, para. 14), that he was hardly justified, from the juridical point of view, in protesting about a matter which had already been decided several times by the General Assembly, or in attempting to justify discriminatory measures adopted in the most flagrant disregard of the provisions of the Charter.

24. In conclusion, he welcomed Cyprus and the new African States to the Committee.

25. The CHAIRMAN announced that the general debate on the International Law Commission's report was concluded and that, at its next meeting, the Committee

would consider the two draft resolutions before it (A/C.6/L.467 and 468).

The meeting rose at 11.55 a.m.