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CONTENTS



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) (continued)

1. U BO GYI (Burma) said that the Sixth Committee had a valuable contribution to make to the work of the General Assembly and to the establishment of the rule of law in international affairs. If the endeavours being made in that field and in the matter of disarmament and international co-operation were successful, the United Nations would have justified its existence.

2. With regard to the Committee's labours, he noted that the results so far achieved did not appear to be commensurate with the importance and urgency of the task. In fact, matters had come to such a pass that suggestions were being made that the subjects usually allocated to the Sixth Committee should be assigned to other Committees. He was against any suggestion of that kind, for he felt that the development of international law should go hand-in-hand with political, economic and social development. The representative of India had rightly stated before the General Assembly at the 906th plenary meeting that, unless the question of disarmament was solved in three or four years, it might be too late to do so thereafter. He would not claim that the two questions were of equal urgency, but he stressed the importance of establishing the universal rule of law. He suggested, therefore, that a target date, say within five years, should be fixed for the establishment of a series of essential principles and rules of international law which could serve as a guide for the determination of international disputes. Priority should be given to the extremely important subjects of State responsibility—including responsibility for aggression—international co-operation based on the principles of mutual respect for independence and sovereignty, the settlement of disputes by peaceful means, and the survival of the unfit. Adequate measures should be taken during that period to educate world public opinion to accept the United Nations as the organ for laying down international law and the International Court of Justice as the forum for the determination of international disputes. The publication of a juridical yearbook would help to make those objectives better known. In order to attain them, effective measures such as conventions should be initiated. Such measures would obviously fall within the province of the Sixth Committee, which would also be able to initiate complementary measures, such as the establishment of a United Nations constabulary, of which the United Nations Force in the Congo could form the nucleus. It should also set up an international conciliation commission for the purpose of settling such international differences as could be composed without reference to the International Court of Justice or an international arbitral tribunal.

3. The Burmese delegation did not consider that the mere establishment of a series of rules of international law was sufficient to secure peace. In order to be effective, they must be reinforced by other supranational institutions (international parliament, International Court of Justice, international constabulary and international conciliation commission) which, while they obviously could not be exact copies of similar national institutions, could approximate to them, as far as circumstances permitted. The existing supranational institutions gave grounds for hoping that one day States would of their own free will agree to submit their disputes to the International Court of Justice or to an international arbitral tribunal, or to the good offices of an international conciliation commission, instead of resorting to force.

4. The Sixth Committee could play an important role in that field by calling on the high legal talent of the Office of Legal Affairs of the United Nations. The Burmese delegation was far from claiming that all those aims could be achieved within five years, but it did consider that the planning of definite programmes was the best means of progressively developing and codifying international law and bringing about the universal rule of law.

5. The Burmese delegation reserved the right to comment at a later stage on the question of consular intercourse and immunities, which its Government was now considering.

6. Mr. GLASER (Romania) said that at a turning-point in history when colonialism was collapsing and dozens of peoples had formed independent States, when socialism had become a system of world importance, and science and technology were making unprecedented gains, the Sixth Committee was the only organ of the General Assembly which seemed oblivious of the world around it. When the United Nations Charter laid down that States should refrain from force or threats in international relations and that such relations should be governed by international law, it was dangerous that the Sixth Committee, which was primarily responsible for the activities of the United Nations in the field of international law, should be sinking into a decline and be reduced to inactivity. It was obvious that the implementation of resolution 1378 (XIV) on general and complete disarmament, unanimously adopted by the General Assembly on 20 November 1959, would

necessitate increased respect for international law. Yet, upon reading the list of items on the agenda of the Sixth Committee, one would be tempted to believe that nothing in the world had changed and that nothing in the world was changing. The Sixth Committee was instructed, together with the Second and Third Committees, to study paragraph 645 of the report of the Economic and Social Council, which did not appear to be of excessive concern to the Council, to reconsider the question of the publication of a United Nations juridical yearbook and, lastly, to examine the report of the International Law Commission on the work of its twelfth session.

7. In the past, the Sixth Committee had received very interesting—though to a certain extent deficient—reports from the International Law Commission on such questions as the definition of aggression, the law of the sea, diplomatic intercourse and immunities, etc. On the present occasion, however, the Commission was not submitting any questions to it directly, since the draft articles on consular intercourse and immunities (A/4425, para. 28) were to be communicated to Governments for their comments and the three draft articles on special missions (ibid., para. 38) amounted only to a reference to other articles on diplomacy pure and simple; lastly, the final chapter of the report explained why the International Law Commission was not submitting any other questions to the Sixth Committee. An attempt was being made to shut the Committee up in an ivory tower. The Sixth Committee found itself in an inadmissible situation. If the International Law Commission did not send the Committee any questions to discuss, it would in fact lose its "raison d'être". He agreed with the Burmese representative in objecting strongly to any proposal to put an end to the Sixth Committee and to distribute the agenda items among the other Committees. Steps must be taken to combat the evil. Above all, it was essential for the Committee to be kept informed of the work of the Office of Legal Affairs. For example, it would be useful for the Committee to know what advice the Office had given the Secretary-General since the fourteenth session.

8. Instead of being in a situation of dependence in relation to other bodies, the Sixth Committee ought to be giving them the necessary stimulus, in the legal sphere. Thus, it was the Committee's right and duty to assist the International Law Commission to direct its work properly so as not to waste time and effort on undertakings which were doomed to failure, such as the draft on arbitral procedure which, from the start, had not been viable because it ran counter to the desire of the peoples for sovereignty.

9. The Romanian delegation agreed with the USSR representative that, in the five reports on State responsibility,[1] the International Law Commission had again gone astray. Those reports, indeed, merely dealt with minor points and neglected the two essential questions, namely: 1. What were the acts which involved the responsibilities of States? 2. What action should be taken by the State whose responsibility was involved?

10. With regard to the first question, the Special Rapporteur of the International Law Commission had taken into consideration only those acts which encroached on the rights of aliens, but had completely ignored those which infringed the rights of States and violated the fundamental principles of contemporary international law: the right to peace, to sovereignty, to territorial integrity, and the right of self-determination of peoples. Yet those were the acts which primarily involved State responsibility, and any codification on the subject ought to be directed along those lines if it was to be made to correspond to present-day needs.

11. As to the second question, anyone reading the International Law Commission's reports would get the impression that State responsibility could only be expressed in the form of financial reparation. That was a mistaken conception, and the Romanian delegation rejected the idea that the dignity of man and the essential rights of peoples could be evaluated in money.

12. Besides those essential defects, the reports also revealed a wrong tendency in matters of detail. Thus, on the question of nationalization, instead of dwelling on the idea of the compensation payable by the nationalizing State, the Commission ought to have taken as the starting point the provision of article 1 of the two Draft International Covenants on Human Rights,[2] which stated that the right of peoples to self-determination included permanent sovereignty over their natural wealth and resources, and, consequently, the right to nationalize them. The colonial Powers which, when confronted with nationalization measures, sought to keep the subject peoples under the colonial yoke or to bring them back under it so as to have the benefit of property which did not belong to them, were infringing international legality and involving their State responsibility. A slogan said: "Restore at least in part what you have taken", which resounded throughout the world and was beginning to be heard also in the United Nations. There was no trace of that idea in the International Law Commission's reports.

13. The International Law Commission should therefore be asked to submit to the Sixth Committee, at the Assembly's sixteenth session, the principles it intended to follow in preparing its draft on State responsibility. In the meantime, the Sixth Committee could attempt, without delaying further, to reach agreement on the principles which should guide the Commission in its work.

14. With regard to the functions of the Office of Legal Affairs of the Secretariat, he considered that it was the duty of that Office to advise the Secretary-General whenever the latter was called upon, in his capacity as the executive agent of the Organization, to take decisions involving aspects of international law (as had been the case, for example, in the Congo). It was desirable that in the future the Secretary-General should keep the Sixth Committee informed of the activities of the Office of Legal Affairs; that could

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1/ Yearbook of the International Law Commission, 1956, vol. II (United Nations publication, Sales No.: 56.V.3., Vol. II), document A/CN.4/96; ibid., 1957, vol. II (United Nations publication, Sales No.: 57.V.5, Vol. II), document A/CN.4/106; ibid., 1958, vol. II (United Nations publication, Sales No.: 58.V.1, Vol. II), document A/CN.4/111; ibid., 1959, vol. II (United Nations publication, Sales No.: 59.V.1, Vol. II), document A/CN.4/119; ibid., 1960, vol. II (United Nations publication, Sales No.: 60.V.1, Vol. II), document A/CN.4/125.

2/ See Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part I), document A/3077, para. 77.

only have the effect of stimulating that Office and encouraging the Secretary-General to consult it more frequently. He suggested that, with respect to the past year, the Secretary-General might indicate to the Sixth Committee at an appropriate time, e.g. before 15 November, what opinions he had requested and received from the Office of Legal Affairs since the fourteenth session.

15. With regard to the composition of that Office, that question was an integral part of the wider problem of the structure and organization of the Secretariat as a whole, a problem which, contrary to what the United Kingdom representative had asserted (652nd meeting, para. 1), was in its legal aspects within the competence of the Sixth Committee, especially where the Office of Legal Affairs was concerned.

16. It was clearly essential that the structure of the Secretariat, the great majority of whose members were nationals of the United States or of countries allied to it, should be adapted as soon as possible to the realities of 1960. Since 1945, three new facts had come to dominate international life: the establishment of a powerful socialist system, the emancipation of the colonized countries and the formation of at least three military blocs, namely, NATO, SEATO and CENTO. Palatable or not, those facts could not be ignored.

17. In conclusion, he wished to examine the reasons for the decline of the Sixth Committee and of respect for international law. That situation was not due to chance, but was part of a long-term process brought about by forces at work not only in the United Nations but elsewhere, to whose advantage it was that relations between States should not be governed by international law.

18. Contemporary international law was essentially different from international law as it had existed before the First World War, i.e. before the great socialist revolution. Formerly, peoples had a right to start a war; when kings had no other means of compelling obedience, they could have recourse to guns. Today, under international law, Governments no longer had that right, whatever their motive might be. A war of aggression had become the most serious international crime. Accordingly, it was the United Nations duty to find a scientific definition of aggression. Everyone knew how the work on that question had begun and why it had rapidly failed. Certain delegations had maintained that it was not possible or even desirable to define aggression and that it was better to wait until the international situation improved before resuming the discussion. Yet it was precisely when that danger existed that the United Nations ought to redouble its efforts to find a scientific definition of aggression.

19. The role and the influence of the Sixth Committee were gradually diminishing. Both in the General Assembly and in the Security Council delegations frequently acted as though international law did not exist. For example, even certain doctrinarians in the United States recognized that China's seat in the Organization ought to be occupied by the representative of the People's Republic of China, and yet the inclusion of the question of the representation of China in the Assembly's agenda was being prevented. On the other hand, it included questions which, under the Charter, should not concern the General Assembly at all, such as the so-called questions of Hungary and Tibet. That was the work of the very Powers which were still defying international law outside the Organization, for example, by violating the air space of another State and were invoking a so-called right of necessity in order to justify such violations of the international legal order. To disregard international law in that way was one of the characteristic attitudes of nihilism.

20. The Romanian Government and people firmly believed that the function of international law should be strengthened, in order to maintain peace and security throughout the world. The Romanian delegation would support any proposal which sought to give international law its proper place and reactivate the Sixth Committee.

21. The CHAIRMAN said he gathered that the representative of Romania had made two proposals: a proposal to refer the question of State responsibility back to the International Law Commission, for it to widen the scope of the question; and a proposal requesting the Secretary-General to inform the Sixth Committee each year of the nature of his relations with the Office of Legal Affairs between sessions of the General Assembly. He asked whether those proposals would be submitted to the Committee in the form of a draft resolution.

22. Mr. GLASER (Romania) replied that, if other delegations found his suggestions reasonable, the Romanian delegation would be willing to prepare a joint draft resolution.

23. Mr. CACHO ZABALZA (Spain) said he would avoid all propaganda arguments and keep strictly to the subject before the Committee, which was the report of the International Law Commission covering the work of its twelfth session (A/4425).

24. The work of the International Law Commission had contributed greatly to the development of international law, and his delegation sincerely congratulated the Commission. When Mr. Padilla Nervo, the Commission's Chairman, had presented the report on the work of the twelfth session (649th meeting, para. 1) he had asked representatives to make comments on it. Unfortunately, members of the Committee could not do so without instructions from their Governments, whose agents they were. The draft articles on consular intercourse and immunities had already been sent to Governments, and the question of ad hoc diplomacy would be examined by the United Nations Conference on Diplomatic Intercourse and Immunities which was to meet at Vienna in the spring of 1961. The Sixth Committee should therefore simply take note of the report.

25. His delegation supported the proposal which the Bolivian representative had made (652nd meeting, para. 14). The General Assembly should not refer strictly legal questions to any Committee but the Sixth; for example, at the current session, the question of the right of asylum was on the agenda of the Third Committee, which could consider only its social aspect. The Bolivian proposal would make it possible to consider both the legal and the social aspects of the matter and to settle the question of the two Committees' competence.

26. He also shared the Bolivian representative's opinions on the work of the Secretariat and the geographical distribution of staff in the Office of Legal Affairs. He hoped that more Latin American jurists would be recruited into the Office.

The meeting rose at 4.50 p.m.

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