of attacks from community members who do not genuinely accept the principle of minimum order. The importance of the incident of the Soviet-Cuban quarantine is in its indication that such a clarification and application can effectively be made and that free peoples do not, as some have insisted, have to choose between the historic restraints of international law and their own survival.

MYRES S. MCDOUGAL

THE SIXTH COMMITTEE AND NEW LAW

There can no longer be doubt that a significant segment of mankind is in search of new law. This theme is on the lips of delegates of more than half of the Members of the United Nations as they speak in the Sixth Committee. What do they want in uttering the magic word "new"? The record suggests that the demand in the Sixth Committee can be understood only as a part of the appeal being voiced in all committees of the United Nations and in the specialized agencies as well. It is the reflection in law of the search for recognition of human dignity—to be achieved in part by satisfaction of economic and cultural needs such as food and literacy, and in part by recognition that the day of colonialism is over.[1]

Current consideration of a desirable future direction for the development of international law has evolved from this urge for recognition of human dignity through a series of stages understood only by those who have witnessed its evolution. It is personified in the item "friendly relations and cooperation among states conforming to the Charter of the United Nations" as it appeared on the agenda of the Sixth Committee during the 17th Assembly.[2] This item continues to be in the forefront of the contemporary development of international law as it becomes the principal business of the Sixth Committee for the 18th Assembly[3] and probably for many of the sessions that are to follow.

Superficially, the work of the Sixth Committee, especially as it has related to development of this item, has sometimes been treated as an inseparable part of the exacerbated rivalry between two hemispheres.[4] This mental association is, in part, because the U.S.S.R. and its allies have been quick to appreciate the extent to which the newly developing nations of both Hemispheres are in search of new law to embody their interpretation of recognition of their aspirations. Having comprehended the revolutionary force of these aspirations with their consequent advantage to those who espouse a world of revolutionary change, statesmen of the Communist-oriented states have called for the development of a new international

[1] See report of Mr. Pessou (Dahomey): "It was the Committee's duty to place its greatest hopes in the future of a law which would safeguard the dignity and integrity of mankind, and for that purpose each State should act in conformity with the principles of the Charter without looking to see whether the other States were actually observing those principles." See U.N. Doc. Prov. A/C.6/SR. 759, pp. 3–4.

[2] See General Assembly Res. 1686 (XVI), Dec. 18, 1961.

[3] See General Assembly Res. 1815 (XVII), Dec. 18, 1962.

[4] See report of Mr. Vasquez (Colombia), U.N. Doc. Prov. A/C.6/SR. 761, p. 15.

law of peaceful co-existence.[5] Some of the lawyers of the West were led astray for a time by this manoeuver and responded petulantly to deny that any change was required in the institutions of international law hallowed by time. This extreme response led many Western-oriented lawyers to error in their initial reactions to the proposals within the Sixth Committee and contributed to widespread belief that the Legal Committee of the General Assembly was engaged in nothing more than a phase of hostile international competition for the minds of men. The record suggests another evaluation.

Interventions in the Sixth Committee indicate that at the outset the Indians were among the first to establish the theme of "peaceful co-existence" as a cornerstone of their foreign policy by incorporating it in their Treaty with China in 1954 relating to Tibet.[6] This cornerstone was expected by Indians to be the beginning of a new structure of law designed to foster recognition that colonial relations between master and servant were over forever and that the long conflict relating to the Sino-Indian frontier was at an end. In the Indian mind "peaceful co-existence" was not a means to advance expansionist interests of any state. The same concept prevailed at the Bandoeng Conference in 1955, when the nations of Africa and Asia incorporated "peaceful co-existence" as one of the ten principles guiding their relationships.

Intertwining of the term with other meanings began when it was appreciated generally that the term had special connotation for the countries guided by men of Marxist persuasion. For them the term was related to a concept of world order evolved by Lenin to inspire the peoples of his fledgling Soviet Russia, which feared the great Powers of Europe and also Japan. Lenin was directing a policy of dual character—designed both to hold the armies of the great Powers at bay and also to prepare the way for the eventual deterioration of these very Powers through social revolution, supported, if not inspired, by the agency of the Communist International, founded by him in 1919. In the years that were to follow Lenin's death in 1924, "peaceful co-existence" was less frequently mentioned, but the bifurcated policy it represented was continued, although with varying intensity of support by Stalin for one or the other of its aspects, as the circumstances of the moment seemed to require.

Since Stalin's death in 1953 the term "peaceful co-existence" has been restored to constant use by Soviet spokesmen, and in 1961 it was placed in the Communist Party's new program as the cornerstone of Soviet foreign policy.[7] This espousal coincided with the declaration of the Soviet Prime Minister that the U.S.S.R. had become so strong that it no longer had to fear destruction from abroad. Is it any wonder that for

[5] See report of Mr. Pechota (Czechoslovakia), *ibid.*, SR. 753, p. 7.

[6] For a history of the emergence of the concept of peaceful co-existence in international law, see Me. Henri Cochaux, "Aspects Juridiques de la Coexistence," International Law Association, Report of the Forty-Eighth Conference, New York, 1958, pp. 468–484. For a review of the problems of the Sixth Committee as they appeared in the spring of 1962, see 1962 Proceedings, American Society of International Law 89–114.

[7] See Program of the Communist Party of the Soviet Union, 1961, Pt. I, Ch. 8.

many statesmen in the developed countries beyond Soviet frontiers, and even for some of the developing countries, the term has come to be synonymous with a foreign policy appearing to emphasize the expansion of a political system inspired by the Russian Revolution—the more so since Chinese armies have marched into the land of a treaty partner with whom the term was originally conceived as suitable for postwar use?[8]

This prelude is necessary to an understanding of the Sixth Committee's work. The term "friendly relations and co-operation" was designed by statesmen of several states who knew this history and feared that, if the "international law of peaceful co-existence" were made the subject of study by the Committee, there would be confusion in some minds with the meaning given it in Lenin's time. Law under this concept might exist only to restrain marching armies, while leaving frontiers open to infiltration of agents desiring to subvert internal social and political orders in spite of the United Nations Charter restrictions on interference in internal affairs.

By degrees sufficient numbers of the experts of the newer states came to understand the hesitancy of those with longer diplomatic experience to accept "peaceful co-existence" as a goal of foreign policy and hence a concept to be fostered by international law. At the 16th Assembly the agenda item presently in use was accepted by a majority to express the desire to revise law in such measure as present circumstances required. Proponents of "peaceful co-existence" accepted the change, but only after indicating that in their minds it was equivalent to the majority's term.[9]

What is the task of the Sixth Committee in light of this history? It is to determine what can be accepted by a majority of the Members of the United Nations as the direction and extent of amendment of international law to meet the desires of the developing states for recognition of their aspirations. By this is meant that the Sixth Committee delegates must make the politico-legal decisions necessary to the development of international law so that law may advance, to the advantage of the world community, the position of its developing states.

Experience suggests that the world community will be served by establishing a balance between independence and responsibility. The developing states must be liberated from any threat of resubmission to colonial status. They must be aided in maintaining their independence, but at the same time they must accept their responsibilities to maintain peaceful relations among themselves and even to espouse domestic policies that offer no cause for complaint from other states on the ground that internationally recognized interests are being denied redress through existing institutions for settling disputes. There cannot be aggressive activity

[8] See report of Mr. Quintero (Panama): "The ideal of 'peaceful coexistence', which seemed to be the central point of the draft resolution [presented by Czechoslovakia] aroused the distrust of many countries, not because those words were improper or expressed an idea which was reprehensible in itself, but because the circumstances surrounding the birth of that slogan had rendered it suspect to many." U.N. Doc. Prov. A/C.6/SR. 760, p. 8.

[9] See report of Mr. Morozov (U.S.S.R.), *ibid.*, SR. 764, pp. 13–14.

designed to create a new hegemony, whether justified by ancient claims to territory, the need for economic integration, or the advantages to be expected from unity. There must be no new Alexander of Macedonia, no new Julius Caesar.

Such a policy of politically acceptable change requires maintenance of the essential fabric of international law, with amendment of those institutions that are acknowledged by the majority of the international lawyers of the Sixth Committee to foster continuation of colonial or semi-colonial relationships between states or the creation through aggressive action of new relations of domination by one former colony over another former colony. This position would require elimination from the body of international law of principles and institutions that in the past have permitted and facilitated forceful intervention in the affairs of other states to create or protect already established economic or political advantages of foreigners over citizens of the weaker state. Although recognition of such principles and institutions has been on the wane of recent years and would seem to be incompatible with the Charter, Sixth Committee delegates suggest that they are still a nightmare for many statesmen of former colonies or small underdeveloped states. It may be well to review all circumstances under which force has been permitted in the past for such purposes, and to make a formal and specific renunciation of force in such circumstances in the future. General obligations to renounce force suffer from the reputation acquired by the Briand-Kellogg Pact. Specific obligations must be defined.

What would such a policy of revision of international law in the interests of friendly relations and co-operation require in practice? A starting point in the analysis can be the views of the newly liberated states in declaration of what is necessary to recognize their newly acquired dignity. As evidence of these desires, take the first draft submitted to the Sixth Committee by ten such states in association with three states of longer independence, but subject in the past to constant threat of intervention from neighbors in whom they still have less than complete confidence.[10]

To this group, suspicion of those with power requires that international law be amended to assure peaceful relations between states in a spirit of "good neighborliness regardless of differences, the degree of evolution or the nature of their political, economic or social development." In an effort to be more specific, they declare that the principles they seek to fortify exist already in the Charter of the United Nations and require reaffirmation only as the following: (1) abstention from recourse to the threat or use of force in any manner incompatible with the United Nations; (2) settlement of disputes solely through negotiation or other pacific means; (3) co-operation between states in all phases of international relations; (4) recognition of the right of self-determination of peoples; (5) recognition of the right of sovereign equality; and (6) respect for, and execution of, obligations assumed by treaty or other sources of inter-

[10] *See U.N. Doc. A/C.6/L. 509, Nov. 21, 1962.*

national law conforming to the aims and principles of the United Nations.

International lawyers must be candid. This declaration provides none of the detail required for amendment of the existing body of international law. The statement in its own terms is said to be a reaffirmation of existing general principles, and the lawyers are asked to provide the detail to implement them at future sessions of the Sixth Committee and in comments made to the Secretary General in the interim. Consequently, any hints as to what the detail will be can be found only by looking beyond the draft resolution presented by the states primarily concerned.

Slightly greater specificity appeared in the compromise draft resolution presented by some of the small states of East and West, together with the group already referred to, and eventually adopted by the General Assembly as the guide to future activity in the Sixth Committee.[11] The resolution selected four subjects for immediate detailed examination: (1) abstention from the threat or use of force against the territorial integrity or political independence of any state or from any other action inconsistent with the purpose of the United Nations; (2) settlement of disputes by peaceful means; (3) non-intervention in matters within domestic jurisdiction; and (4) sovereign equality.

By this enumeration the sponsors indicated their dissatisfaction with existing international law as to what constitutes aggression; what constitutes domestic jurisdiction; existing mechanisms for peaceful settlement of disputes; and what remains as the vestige of colonialism.

Delegates from the developing countries were more specific in their speeches. Tunisia[12] held that consular privileges and immunities had led to a real mutilation of sovereignty under the system of capitulations, and that the small countries consequently had certain reservations about the customary law that existed on the subject of consular rights. The Delegation objected to the International Law Commission's draft because it put consular officials on the same footing as diplomatic agents, and such an extension was prejudicial to small countries. The delegate spoke specifically against inviolability of premises and of the pouch as unnecessary to the free exercise of consular functions. He was frank to say that opposition was rooted in the still fresh memory of the privileges that had been granted in the past to colonial Powers.

Indonesia[13] had previously objected to the law of the sea because it took inadequate account of the sovereignty of states that were archipelagos. Concepts of territorial belts that permitted warships of hostile Powers to sail at will through straits between islands of the archipelago subjected the developing state to threat of pressure that was intolerable. Likewise, Indonesia[14] objected to the attitude that had been manifested in some

[11] See U.N. Doc. cited note 3 above.

[12] See report of Mr. Zoukir (Tunisia), U.N. Doc. Prov. A/C.6/SR. 775, p. 3.

[13] See report of Mr. Jusuf (Indonesia). General Assembly, 16th Sess., Official Records, 6th Committee, Legal Questions, Summary Records of Meetings, Sept. 20–Dec. 15, 1961 (New York, United Nations, 1962) p. 71 (SR. 702, par. 25).

[14] See *ibid.*

states that a developing state had no right to nationalize subsoil while leaving intact the right of a foreign owner to the surface of the land.

India [15] was fearful of the misuse of cultural exchange. It referred to efforts to impose culture and ways of thought under the guise of a civilizing mission. If such aims were absent, India stood open to all cultural influences as she had stood open to them in the past.

Chile [16] was fearful of negotiation of differences between strong and weak states. It preferred other means of settling disputes because small states might be induced to negotiate with powerful states under outside pressure. Japan [17] also noted the necessity for a review of the machinery for implementing the obligation of states to settle disputes peacefully, and suggested accumulation of the norms of conduct that had emerged in settling the manifold disputes arising out of the complexities of human life.

Tunisia,[18] in a second intervention, raised the question of economic, cultural and social assistance, calling for complete abandonment of the concept of charity in such relationships and the substitution of the concept of international solidarity. By this the delegate meant reaffirmation of the economic interdependence of all countries, that is, the concept that the economic well-being and cultural advancement of the developing countries are essential to the well-being of the strong Powers themselves, and assistance is not a graceful act performed by them to help paupers. He noted, as examples of the agreements Tunisia preferred, those that had been negotiated to maintain prices on coffee and cotton goods, in which co-operation had achieved improved prices for raw materials and also expansion of markets for European industrial goods.

Sierra Leone [19] was intent only upon reaffirmation of the principles of the United Nations Charter. The delegate met the oft-repeated statement of some of the strong Powers, that restatement of Charter provisions was unnecessary, by favoring a proclamation of faith that the United Nations continued to support these principles after many years.

Guatemala [20] expressed fear lest the internal structure of small states collapse under pressure from political parties serving great Powers, and urged that any declaration of principles ban the "type of party which constituted interference in countries' domestic politics, interference against which the country affected had the right to react." Mexico [21] spoke of its own revolution as establishing a balance between the rights regarded by natural law as inherent in the dignity of the human person and the rights which modern doctrine would call social guarantees. He called for a similar balancing between the individual state and the international

[15] See report of Mr. Miskra (India), U.N. Doc. Prov. A/C.6/SR. 770, p. 2.
[16] See report of Mr. Bernstein (Chile), *ibid.*, p. 10.
[17] See report of Mr. Sunobe (Japan), *ibid.*, SR. 754, p. 3.
[18] See report of Mr. Zoukir (Tunisia), *ibid.*, p. 5.
[19] See report of Mr. Collier (Sierra Leone), *ibid.*, SR. 756, p. 3.
[20] See report of Mr. Quissoñes (Guatemala), *ibid.*, p. 14.
[21] See report of Mr. Moreno (Mexico), *ibid.*, SR. 758, p. 11.

community . Dahomey [22] castigated the Powers that justified their own aberrations on the ground that others were not observing the Charter. The delegate asked each state to attend to the legality of its own actions regardless of the illegality of others.

The Thai delegate provided the most exhaustive bill of particulars as to what was outmoded in international law.[23] He denounced as still remaining in international law the concept of intervention, even by arms, to protect the lives and property of nationals living in a foreign country. He declared that the African and Asian countries could no longer tolerate application of the rules of traditional international law regarding state responsibility and the treatment of aliens, stating that aliens could not expect preferential treatment over nationals.[24] He reviewed the history of chartered companies that had been granted governing rights over areas in the Far East, and noted that, although these companies had ceased to exist, private overseas corporations not infrequently exercised a large measure of control over the economy of less developed countries and could thus interfere in their internal affairs.

State immunity from jurisdiction as it existed in international law was denounced when it related to state trading, for the Thai delegate saw no reason why there should be favor to one party in foreign trade. As to international disputes generally, the provisions of Article 33 of the Charter of the United Nations seemed to be not always used in the spirit of justice, particularly when the dispute was between a great Power or a colonial Power and a small African or Asian state. He noted that the small state was subjected to all types of pressure.

The complaint of the small states over pressures exerted during diplomatic negotiations was heard frequently, notably when Austria's delegate recounted its experience [25] and Finland hers.[26] To the small states some means of settling international disputes had to be devised that required compulsory submission of the dispute. The optional clause of the Statute of the International Court of Justice was declared insufficient. No issue was as frequently alluded to by the small states as the matter of the inequity of diplomatic negotiation.[27] Israel [28] suggested that general acceptance had to be won for the idea that recourse to procedures calling for settlement of disputes by impartial arbitrators was not a hostile act.

Not all criticism was leveled by the small states at existing law. Colombia's delegate [29] saw the need to adapt international law to the new fields

[22] See report of Mr. Pessou (Dahomey), *ibid.*, SR. 759, pp. 3–4.

[23] See report of Mr. Sucharitkul (Thailand), *ibid.*, SR. 763, p. 8.

[24] Afghanistan also shared this view. See report of Mr. Tabibi (Afghanistan), *ibid.*, SR. 762, p. 8.

[25] See report of Mr. Herndl (Austria), *ibid.*, SR. 766, p. 4.

[26] See report of Mr. Saario (Finland), *ibid.*, SR. 765, p. 18.

[27] See report of Mr. Iqbal (Pakistan), *ibid.*, SR. 761, p. 3; also report of Mr. Anoma (Ivory Coast), *ibid.*, SR. 762, p. 18, and report of Mr. Mirfenderskiki (Iran), *ibid.*, p. 14.

[28] See report of Mr. Rosenne (Israel), *ibid.*, SR. 767, p. 14.

[29] See report of Mr. Vazquez (Colombia), *ibid.*, SR. 761, p. 16.

opened up by development of atomic energy, the use of outer space, and the sense of economic insecurity manifest in the developing countries. Afghanistan [30] found it necessary to establish some rules guaranteeing to inland countries access to the sea. The Philippines [31] favored establishment of rules relating to the extension of international assistance for development so as to avoid sensitive questions of national sovereignty.

What can be concluded in the light of the sentiments expressed in the record and from the resolution adopted by the Sixth Committee? Above all else there is evident the cry for the recognition of the dignity of the new states, with avoidance of any vestige of the colonial status from which they have only just emerged. This plaint rests upon the feeling that insecurity lies not only in the threat of renewed military intervention but also in economic and cultural assistance, where there may be strings attached that will bind or be intended to create bonds for the new state so that it cannot make its own decisions.

A candid appraisal of the details presented by the delegates in support of their complaint suggests that in some measure their fear is based more on expectation than reality, and that it is the fear of a party who has been disciplined for so long that when the discipline is removed by the ending of control there is disbelief that his liberation is real. The complaint also rests upon a misunderstanding of what independence really means for a state that is not equipped with vast resources of its own. The statesmen of the small but experienced states in Western Europe have known for generations that their choice of policies is definitely circumscribed by the policies of their great neighbors and their lack of resources. The new states of Africa and Asia that are weak and lacking in resources cannot hope to exceed the independence of Denmark, Finland, The Netherlands or Luxembourg because of very practical reasons, but they have a right to aspire to recognition of the dignity that is enjoyed by the small Western European states. If that dignity can be accorded to them, and they learn also of the limitations on independence of action that is inevitable for states with limited resources, the way should be open to their peace of mind for which every statesman of a great Power should strive.

There can be no reason why international law cannot be revised in those details to create what the new states want, or much of it, without establishing conditions of international chaos. International congresses concerned with the law of consular intercourse or of the sea can find responses to the fears of the former colonies, who see in consular privileges and immunities the means of perpetuating spy networks of great Powers on their soil, or, in the law of the sea, perpetuation of the military threat created by great navies in the past.

Economic and cultural aid can be funneled through the international agencies already existing, so that the great Powers are not suspected of attaching strings. Experience has shown that the World Health Organiza-

[30] See report of Mr. Tabibi (Afghanistan), *ibid.*, SR. 762, p. 8.

[31] See report of Mr. Jimenez (Philippines), *ibid.*, p. 16.

tion, UNESCO, the United Nations Special Fund and UNRRA have functioned well, and that the peoples who have benefited do not harbor misgivings about the Powers who have contributed to the resources used.

Even the much-discussed question of nationalization, which is admittedly the least satisfactory subject for the capital exporters, is not beyond the ingenuity of human beings to resolve. It is evident that a means must be found to increase the trade of the nationalizing Power so that reimbursement may be provided, and, if for political reasons this becomes undesirable, the great Powers concerned must provide for reimbursement of their own nationals who are having to bear the cost of a policy designed to benefit the broader interests of the whole nation. If investment is made through international agencies such as the International Bank, it may be possible to establish the thought in the receiving Powers that nationalization without prompt and adequate payment reduces credit standing and cannot be undertaken lightly without careful evaluation of the consequences of such loss. It is one thing to nationalize property of a creditor of long standing that has exerted political influence through its credits for many years, and another to default on a loan made by an international agency.

It is evident from the complaints in the Sixth Committee that the problems currently faced and causing tensions and distrust in contemporary law are mainly caused by a style or manner of acting rather than by the state of the law itself. The specific principles and institutions of international law that have been selected by the delegates of the developing countries for criticism are only incidental to the whole body of international law. They can be altered and the situation rectified without loss of the order that international law provides in the world community. Attention must focus on the style of conducting relations with the developing countries rather than on the substantive law.

Nothing has been said to this point about revision of international law to meet the desires of the U.S.S.R. and the peoples' democracies. This has been intentional, since the fabric of international order can be maintained if contemporary international law is rectified to meet the demand for dignity expressed by the developing states. If this need is met, many of the suggestions of the Soviet delegates for rectification will also have been met, since they stem either from the period in Soviet history when Soviet aspirations were not far different from those of the currently developing states, or from Soviet desires to espouse the cause of the currently developing states in expectation that, by doing so, friends will be won in important segments of the world.

Perhaps it is too much to expect that Soviet desires for change in international law exceeding those of the developing states can remain unanswered with impunity, yet that is what seems desirable. To the extent that consensus rests upon satisfaction of the preponderant majority of the Members of the United Nations, that consensus can be had, if the developing countries reach agreement with the developed countries of the West. The Eastern countries can be expected to find it advantageous to evidence

their good will by avoiding recalcitrance, for if they do not, they will be isolated and lose all influence among the developing states, in which lie such hopes as they may have for future long-range influence upon social conditions.

In summation, let lawyers of the United States, together with colleagues of the other developed states of the West, strive for such rectification of the whole body of international law as may be found necessary to reassure the developing states that dignity is accorded them; let the developed states create a style of activity that exudes respect for nations regardless of size, culture and power, and there will be no risk of losing the main body of international law which has in the main evolved of recent years in such a way that it serves the cause of order and does so without threat to interests of responsible states, no matter how weak. This should occasion no difficulty for the United States, for the good-neighbor policy incorporates such a concept, and American statesmen have already indicated their willingness to accept modifications of international law in specific spheres where inequity results from traditional practices.

Perhaps the greatest difficulty for some of the developing states lies in the American desire to protect American investors in these countries, but even here a solution has usually been found unless, as with Cuba, efforts to influence her political decisions with regard to the U.S.S.R. has made it necessary to terminate trade as a measure of pressure designed to protect the United States from annihilation.

After all, what all Westerners ought to be seeking is world-wide permanent toleration of diversity in political programs designed to achieve modernization. The Communist-oriented states still profess to see no possibility of permanent toleration, although circumstances may extend indefinitely the program of "peaceful co-existence" espoused by some of them. Westerners have no such compulsion to change the world to their own image institutionally. Westerners are increasingly aware that a distinction needs to be drawn between institutions and functions. If certain specific institutions cannot be preserved because developing states feel that they prevent modernization in terms of enhancement of human dignity through ample supply of food, clothing and homes, let them be changed so long as in their altered form there is preserved the function which the old institutions were intended to serve, namely, the production of wealth and the enhancement of human dignity, without which modernization is impossible. If this be done, international lawyers of states to which Hugo Grotius has long been a revered figure can accept change in the corpus of their law to assure that the dignity of no one, whether individual or state, is degraded. This is the honorable task of the Sixth Committee as it resumes its deliberations in 1963.

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