

United Nations GENERAL ASSEMBLY

SIXTEENTH SESSION

Official Records



SIXTH COMMITTEE, 698th
MEETING

Wednesday, 18 October 1961,
at 11.15 a.m.

NEW YORK

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Chairman: Mr. César A. QUINTERO (Panama).

AGENDA ITEM 77

Enlargement of the International Law Commission (A/4805, A/C.6/L.481 and Add.1, A/C.6/L.482, L.483 and Add.1) (continued)

1. The CHAIRMAN asked the representative of Ghana if he wished to press the motion for the closure of the debate which he had made at the 697th meeting.

2. Mr. E. K. DADZIE (Ghana) replied in the affirmative.

3. Mr. EVANS (United Kingdom) said that there had been some suggestion at the preceding meeting that the vote on the proposal to increase the size of the International Law Commission could or should carry no implications with respect to the distribution of the seats. He was unable to accept that view, for the following reasons.

4. First, there was no doubt that, in 1956, the vote to increase the Commission's membership from fifteen to twenty-one had been taken on the basis of the gentleman's agreement concerning the distribution of seats, which had been recorded in the report of the Sixth Committee.^{1/} On the present occasion, when the Committee voted to increase the Commission's membership by four seats, there would be a general understanding that those four seats would be assigned to nationals of African and Asian Member States. Both past and present practice, therefore, supported the view that the vote on the draft resolution (A/C.6/L.481 and Add.1), as amended (A/C.6/L.483 and Add.1), could and would carry implications concerning the distribution of the seats.

5. Secondly, it was necessary to think of the future of the International Law Commission; he thought that all recognized that the Commission could only work effectively if it had a well-balanced membership.

6. Thirdly, the representative of Ghana had made it clear (697th meeting, para. 6) that, in his view, a vote for the draft resolution would be a vote for ten seats for Africa and Asia. He was confident that that representative would be the first to recognize that an arrangement of that kind had to be mutual. The African and Asian Member States would claim ten seats in the coming elections, but it was implicit in the

arrangement that they should reciprocally recognize the legitimate claims of other groups.

7. Fourthly, it was clear from the general debate that a great majority of the members of the Committee supported the 1956 gentleman's agreement; an element of disagreement still remained, but it was of a very limited character. Once the sponsors of the draft resolution had agreed to accept an increase of four seats in the Commission's membership, the difference between them and the sponsors of the amendment concerned only one seat, i.e., the question whether the representation of Eastern Europe should be increased by one seat at the expense of other regions. With respect to the other twenty-four seats, there was agreement between the sponsors of both proposals.

8. In his opinion, the foregoing summed up the true measure of understanding in the Committee, and his delegation was prepared to vote on that basis.

9. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he did not object to the closure of the debate, but, since the United Kingdom representative had already given an explanation of his delegation's position, he requested the same privilege for himself before the Committee.

10. The CHAIRMAN said that he would be granted that privilege.

11. Mr. ALVARADO (Venezuela) opposed the closure of the debate because the very important question of the distribution of the Commission's membership had not been made clear. The representative of Ghana had said (692nd meeting, para. 36) that the Commission's membership should be as follows: United States and Western Europe: seven seats; Africa and Asia: ten seats; Eastern Europe: four seats; Latin America: four seats. The representative of Venezuela could not agree that Latin America's present representation of four and one-half seats should be reduced to four seats.

12. Mr. REYES (Colombia), too, opposed the closure of the debate. He agreed with the representative of Venezuela that the question of the distribution of the seats had not been clarified. In the view of his delegation, it was vitally necessary to respect the present distribution, particularly in so far as the representation of Latin America was concerned.

13. Mr. PLIMPTON (United States of America) asked the representative of Ghana if it was not true that he and the other sponsors of the amendment had decided not to press for a reallocation of the seats in the International Law Commission.

14. Mr. E. K. DADZIE (Ghana) replied that the sponsors of the amendment had accepted the United States suggestion that the Commission's membership should be increased to twenty-five, on the condition that the present distribution of seats should not be

^{1/} Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 59, document A/3427, paras. 13 and 16.

affected. They had thought it unfortunate that their own plan for a redistribution of the seats had found no support, but they had been willing to withdraw it. He wished to make it perfectly clear to the representatives of Venezuela and Colombia that the present proposal did not envisage any reduction in the representation of Latin America.

15. The CHAIRMAN said that, since two speakers had opposed the closure of the debate, it would be necessary to put the motion to a vote.

The motion was adopted by 49 votes to 17, with 13 abstentions.

16. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the vote in the Sixth Committee (485th meeting) to enlarge the International Law Commission in 1956 had been taken in markedly different circumstances from those which prevailed at present. As the United Kingdom representative had observed, the 1956 vote had been coupled with a gentleman's agreement; no such agreement, however, existed in 1961. Moreover, the 1956 agreement had concerned the enlargement of the Commission's membership to twenty-one; it could no longer be considered valid if the Commission's membership was further enlarged to twenty-five. No matter what interpretation representatives of western countries might place on the present proposal, it was impossible to read more into it than was to be found in the actual text. With the adoption of the draft resolution, the 1956 gentleman's agreement would cease to exist and no amount of ingenious reasoning would serve to revive it. His delegation wished to make it quite clear that it would no longer consider itself bound by that agreement.

17. His delegation would vote in favour of enlarging the membership of the Commission to twenty-five, but it would do so with considerable regret. It had become only too clear during the debate that any further enlargement of the Commission would not contribute to its efficiency. A learned body such as the International Law Commission, composed of distinguished scholars and jurists, should be kept as compact as possible and not expanded *ad infinitum*. Any changes in its composition should be made on the basis of a redistribution of the existing seats. Unfortunately, logic had yielded to political pressure and most representatives had found themselves in disagreement with the Soviet position.

18. The present situation was utterly unjust. Seven and one-half seats were allotted to the western legal system. Yet, the socialist legal system which was entirely new in principle, being based on the elimination of class exploitation, and which had been adopted by more than 1,000 million people in countries which accounted for more than 40 per cent of the world's production, had only three seats in the Commission. The proposal that the 1956 agreement should continue in force was unjust, unwarranted and improper; it was opposed not only to the interests of the socialist States but also to those of the international community. He was unwilling to accept the United Kingdom representative's view of "balanced representation" in the Commission, whereby the representation of the western States would be double that of the socialist countries. In fact, the socialist States were entitled to ask for equal representation with the Western Powers in the Commission, although they had not done so at the present time in view of the

precedents which had been established concerning the composition of the Commission.

19. The USSR delegation would vote for the enlargement of the Commission, on the understanding that there was no agreement governing the composition of the Commission and that the USSR would support at least ten candidates from the African-Asian States.

20. Mr. BLIX (Sweden) said that the Swedish delegation, as one of the sponsors of the draft resolution, was glad that the aims of that draft were about to be attained. His delegation had been happy to accept the amendment so that a unanimous decision could be reached. There were, of course, differences of opinion concerning the validity of the gentleman's agreement of 1956: the USSR representative had just expressed one view on that point and, at the preceding meeting, the Ghanaian representative had stated the other. He was confident that, regardless of that difference of opinion on the legal aspect, the vast majority of members held the view that, except for the addition of the four African-Asian members, the composition of the International Law Commission would not be subjected to any change.

21. Mr. AMMOUN (Lebanon) said that it seemed to his delegation that the majority, if not all, of the members of the Committee favoured the enlargement of the Commission by four seats. In his delegation's view, the only question before the Committee was that of the enlargement of the Commission; the distribution of seats in the Commission was clearly outside the Committee's competence. The present composition of the Commission had been established in 1956 by a gentleman's agreement, which bound only the parties to that agreement. Thus, the enlargement of the Commission might be the subject of a resolution, but the distribution of the seats could be governed only by an agreement.

22. At the preceding meeting, the Ghanaian representative, who had spoken on behalf of all the sponsors of the amendment, had asserted, quite properly, that Ghana, not having been a party to the 1956 agreement, was not bound thereby. Lebanon, however, had been a party to that agreement and his delegation considered that the gentleman's agreement remained in force and was binding on Lebanon until amended by the same procedure by which it had been adopted. Acquired rights must be respected. In any event, he had been particularly impressed by the views expressed by certain Latin American delegations, which had convincingly demonstrated how vast had been the contribution of their jurists to public international law. The extent of the Latin American contribution, however, did not diminish the claims of other countries. What had been agreed upon in 1956 still held for the States which had taken part in the agreement; only by mutual consent could those States revoke that agreement.

23. In conclusion, he stated that, while his delegation would vote in favour of the enlargement of the Commission by four seats, it did not consider that the vote on that question could affect the 1956 gentleman's agreement. It was generally understood, however, that the four additional seats would be allocated to the African-Asian countries.

24. Mr. NISOT (Belgium) said that Belgium considered itself bound by the gentleman's agreement of 1956, to which it was a party. With that agreement in mind, his delegation would vote in favour of the enlargement of the Commission by four seats.

25. Mr. CADIEUX (Canada) expressed his satisfaction that general agreement had been reached on the enlargement of the International Law Commission and that the representation of those new States which had become Members of the United Nations since 1956 would be assured. He was confident that the addition of four new members from the African and Asian States would enable the Commission to perform its work more effectively.

26. Canada would vote in favour of the enlargement of the Commission, on the understanding that, as a result, the African-Asian States would secure ten seats in the Commission. It was convinced that the distribution of the existing twenty-one seats would continue to be governed by the gentleman's agreement of 1956. His delegation did not acknowledge the right of any party which had benefited from that agreement to denounce it unilaterally. On that point, he fully supported the statement made by the Ghanaian representative at the preceding meeting.

27. Mr. DE LUNA (Spain) was pleased that agreement had been reached on the representation of the African countries in the Commission. Spain had been a party to the 1956 gentleman's agreement. That agreement could not constitute a legal obligation, since the members of the Commission were elected by secret ballot; hence, the only effect of a violation of the agreement by one of the parties would be to demonstrate that that party had failed to honour the commitments of a "gentleman".

28. The argument for increased representation of the socialist countries which the representative of the USSR had just advanced would appear to infringe the principle of the sovereign equality of States. The USSR representative had referred to the population and industrial production of the socialist States, but if those were the criteria to be employed in the allocation of seats in United Nations bodies, the smaller countries would be overwhelmed. In fact, the socialist States had more members in the Commission than their number alone would justify.

29. Mr. ABRAHAMSON (Denmark) recalled that his delegation had originally supported the addition of two seats to the Commission for the new African States. In its view, nothing had happened since 1956 which necessitated basic changes in the Commission. In the light of the debate, his delegation was now prepared to vote for the addition of four seats, on the understanding that those seats would be allotted to the African-Asian States. His delegation would have been pleased if a general agreement had been reached on the composition of the Commission, but as that had not been the case, Denmark considered itself bound by the gentleman's agreement of 1956.

30. Mr. MORRISSEY (Ireland) recalled that in his statement (692nd meeting, para. 19) he had said that, while the twenty-one member Commission was big enough, the new African States must be represented, and the Irish delegation would therefore support the draft resolution. While it had not changed its opinion about the size of the Commission, his delegation had accepted the amendment proposing the enlargement of the Commission's membership to twenty-five, because it had found that the new States could not otherwise be adequately represented. It was unfortunate that there was still a difference of opinion concerning the matter of composition. In his delegation's view, the problem confronting the Committee was to ensure representation for the African States concerned;

there had been no new circumstances which would induce Ireland to depart from the gentleman's agreement of 1956.

31. Mr. USTOR (Hungary) said that, in the view of his delegation, the vote to be taken on the draft resolution would not settle the question of the distribution of seats in the International Law Commission. Hungary, which was anxious to see justice done to the new States, was glad to observe that the problem of the representation of the African and Asian States in the Commission seemed to have been solved satisfactorily. It only remained to ensure equitable representation of the socialist countries—and he was sure that all present would know what was meant by the term "socialist countries"—in the International Law Commission.

32. The question of the representation of the socialist countries was, in essence, a question of the proper application of article 8 of the Commission's Statute. The representative of Mexico had said (694th meeting, para. 27) that the term "principal legal systems of the world" generally implied a body of fundamental notions that governed the organization of the internal legal institutions of a group of countries. Thinking in terms of tradition, that would bring to mind the distinction between the Napoleonic—or Civil law—system and the Anglo-Saxon system of Common law. Further classification led to definitions on a geographical basis. The socialist revolution in Russia had, however, given rise to a new social and economic system differing radically from previously existing systems and entailing a complete change in the legal superstructure. That new system, based on collective ownership of the means of production, had been adopted by a number of countries which accounted for one-third of the world's population. The laws of the socialist countries were by no means uniform or monolithic, for national tradition and peculiarities persisted within the group. Nevertheless, the legal systems of those countries were quite unlike those of countries which maintained and promoted the role of private capital and the "free enterprise" system. Logically, therefore, in defining the principal legal systems, a main division would have to be made between the legal system of the socialist countries, on the one hand, and that of the rest of the world, on the other. The latter category could then be subdivided into Civil law and Common law systems, and so on, and the former category could also be subdivided. The differences to be noted within those two types of systems, however, were very minor compared with the differences to be observed between the two categories. Justice, therefore, demanded that the socialist legal system, which had been adopted by 1,000 million people, should be equitably represented in the International Law Commission; the Czechoslovak request (693rd meeting, para. 4) that five seats should be allocated to the socialist countries was really extremely modest.

33. As a lawyer in pre-socialist Hungary, he had had the tragic experience of seeing how the law operated to the detriment of the poor. There were many instances in international life, too, of how the strong oppressed the weak by resorting to legal arguments and legal means that would prevent justice from being done.

34. In the socialist countries, the gap that had previously existed between law and justice had been eliminated. Socialist jurists sought to promote and

develop an international law that would serve the cause of justice and to maintain those rules that served the cause of peace and ensured peaceful co-existence between States having different social systems. Moreover, socialist jurists were in favour of establishing such norms of international law as would do away with any form of colonialism or economic exploitation. The equitable representation of the socialist countries in the International Law Commission was therefore in the interest of all countries striving for economic independence and thus, primarily, in the interest of the countries of Africa and Asia and even of Latin America. It might even be said that universal interests demanded the proportionate representation of the socialist countries in a Commission concerned with the codification and progressive development of international law. The development of a new law acceptable to all peoples of the world was in the interests of peace and security. There would be no point in evolving a system of law that was unacceptable to one-third of the world's population, because its representatives had not been able to exercise the necessary influence in the drafting of it.

35. The Hungarian delegation therefore regretted that it had not been possible to reach an agreement that would have assured the equitable representation of the socialist countries in the International Law Commission. It still hoped that the present state of affairs might be remedied either by a subsequent agreement or in the course of the election of members to the Commission.

36. Mr. DOROGIN (Byelorussian Soviet Socialist Republic) recalled that in his statement (693rd meeting, para. 19) he had urged an equitable distribution of the seats in the Commission. As, regrettably, no agreement had been reached on that point the gentleman's agreement of 1956 had now lapsed, for that agreement was not a treaty but merely a mutual understanding. Moreover, more than half the members of the Committee were States which had not been Members of the United Nations in 1956 and did not consider themselves bound by the gentleman's agreement. An agreement which half the members of the Committee did not consider binding could not have much force. In any event, it was evident that the socialist countries must be granted equitable representation in the Commission. The United States representative had asserted (694th meeting, para. 36) that certain countries of the communist group, such as the Ukrainian and the Byelorussian Soviet Socialist Republics, could not be regarded as distinct and self-governing Member States. In making that discriminatory statement, the United States representative had shown his ignorance of the federal character of the Union of Soviet Socialist Republics, in which each State was a sovereign State.

37. His delegation would vote in favour of the enlargement of the Commission, but it did not consider itself bound by the 1956 gentleman's agreement.

38. The CHAIRMAN invited the members of the Committee to vote on the draft resolution (A/C.6/L.481 and Add.1), as amended (A/C.6/L.483 and Add.1).

The draft resolution, as amended, was adopted by 87 votes to none.

39. Mr. BREIVIK (Norway), explaining his delegation's vote, said that the Norwegian position had

been clearly stated on earlier occasions. Norway was in favour of increasing the number of seats in the International Law Commission to twenty-five, provided that the four new seats were allocated to the African and Asian countries and that it was clearly understood that the 1956 agreement was still in force. From the discussions he had gained the impression that most other delegations were of the same opinion regarding the 1956 agreement.

40. Mr. MUSTAFA (Pakistan) wished to record his delegation's deep appreciation of the decision that had just been taken by the Committee. It was his delegation's understanding that the resulting enlargement and change in the composition of the Commission would be exclusively for the benefit of the African and Asian countries. As far as other geographical regions were concerned, Pakistan considered it fair and appropriate that the 1956 agreement should remain in force and should continue to be binding upon those countries—including Pakistan—which were parties to it. It could thus be assumed that the seats originally allocated to the Latin American and the Western and Eastern European countries would remain unchanged. Moreover, that view seemed to have met with wide-spread, if not unanimous, agreement among the members of the Committee. There had, in fact, been no change in circumstances since 1956 except for the fact that the membership of the United Nations had been increased by the admission of a number of African and Asian countries which had not been parties to the agreement and which were, consequently, at a disadvantage in the matter of representation in the Commission. There had been no increase in the membership of the United Nations as far as other geographical regions were concerned, nor had any new civilizations or legal systems evolved in those regions.

41. He had listened to the arguments put forward by the representatives of the Soviet Union and of Spain and was inclined to find those of the latter more convincing. While admiring the considerable achievements of the Soviet Union in the conquest of space, he could not help feeling that, if such achievements were to be taken as the basis for allocating seats in the International Law Commission, most countries would be decidedly under-represented. On the other hand, if the size of a country's population were to be the determining criterion, the Asian region, including that of Indo-Pakistan, could claim twice as many seats as the whole of Europe.

42. Mr. PECHOTA (Czechoslovakia) said that, while his delegation had voted in favour of the draft resolution, as amended, it regretted that, on the present occasion, the outcome of the discussions had not been in the best traditions of the Committee. By increasing the membership of the International Law Commission to twenty-five, a new situation had arisen which called for a new and fairer agreement on the distribution of the seats. Despite all the efforts that had been made, it had proved impossible to reach such an agreement. Now that the previous agreement had, in effect, been annulled by the decision that had just been taken and no new agreement had been achieved, a difficult situation had to be faced. His delegation differed from those who maintained that no change had occurred in the 1956 gentleman's agreement; that agreement had been automatically annulled, not on account of any unilateral withdrawal of parties but because it now lacked a legal basis, since it had been concluded on the assumption that the Commission would consist of

twenty-one members. Those who wished to reach some understanding along the lines of the previous agreement were free to do so, but their decision could not be binding on those who held a different view. Any such agreement would be of scant value and would not serve the real needs of the United Nations. It was for those reasons that Czechoslovakia had suggested informal conciliatory methods with a view to arriving at an agreement. It still believed that further consideration might be given to that course, which offered some hope of achieving success before the elections were held.

43. Mr. VANABRIKSHA (Thailand) said that his delegation had agreed to the addition of four seats to the International Law Commission with a view to improving the representation of the African and Asian countries. In principle, Thailand was in favour of reviewing the allocation of seats, but, as that could not be undertaken at the present time, it would agree to the 1956 agreement being maintained at the forthcoming elections, in the hope of a subsequent review.

44. Mr. PERERA (Ceylon) felt that, in view of the circumstances of the discussion, his delegation's affirmative vote required some explanation. Ceylon did not subscribe to the view that the 1956 agreement still stood, for the simple reason that such agreements could not be expected to last indefinitely. Whatever the proposed increase in membership, the entire question was of extreme importance and required careful study if the equitable representation of all States and systems was to be ensured. In view of the statements that had been made by certain Western representatives, he wished to state clearly Ceylon's view that the principle *quieta non movere* was not a proper basis on which to approach the 1956 agree-

ment. The remarks made by the representative of Hungary had been most apt. Although such considerations might be out of place in the discussion of the present item, now that the question had been raised, it must be made clear that the African and Asian countries could not support the view that international law was a monopoly of the West. In recent years, the development and codification of international law had derived strength from the contributions of the African, Asian, Latin American and socialist countries. The African and Asian countries in particular had developed new concepts concerning nationalization, State responsibility, neutrality and coexistence. They viewed international law not as a static, but as a dynamic subject to be developed.

45. For all those reasons, Ceylon had supported the Czechoslovak proposal (690th meeting, para. 9), which, it felt, would have saved considerable time.

46. Any attempt to read a non-existent meaning into the decision that had just been taken would be an attempt to limit the sovereign equality of States. While personal interpretations were perfectly in order, it would be legally incorrect to attempt to interpret such a decision on behalf of the entire Committee. Since no equitable solution seemed to be in sight, Ceylon had supported the addition of four seats to be allocated to the African and Asian countries in the Commission. In its desire to see justice done to all groups of States, however, it would have favoured a complete redistribution of seats. In the circumstances, the 1956 agreement could no longer be considered binding.

The meeting rose at 1 p.m.