

# United Nations GENERAL ASSEMBLY

SIXTEENTH SESSION

Official Records

SIXTH COMMITTEE, 697th  
MEETING

Tuesday, 17 October 1961,  
at 11 a.m.



NEW YORK

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

*In the absence of the Chairman, Mr. Yasseen (Iraq), Vice-Chairman, took the Chair.*

## 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. Mr. JEAN-LOUIS (Haiti) pointed out that his Government had not submitted a candidate for the International Law Commission and was therefore not personally concerned in the present issue. He approved the initiative taken by the United States in co-sponsoring the draft resolution (A/C.6/L.481 and Add.1), and his Government was prepared to support it together with the amendment proposed by Ghana and seven other delegations (A/C.6/L.483 and Add.1). With respect to the gentleman's agreement of 1956, he felt that it was not yet appropriate to revise it.

2. Mr. E. K. DADZIE (Ghana) said that the delegations, in submitting their amendment to the joint draft resolution, had not been concerned with safeguarding the interests of the African and Asian countries alone. He realized that the parties to the 1956 gentleman's agreement must continue to regard themselves as bound by that agreement until they repudiated it. He could not agree, however, that the new States, such as Ghana, which had attained independence after 1956, should be bound by an agreement arrived at in their absence. In the opinion of his delegation, all States should be ensured equality of representation in the Commission, subject only to the rights and obligations of the parties to the 1956 agreement. The Committee now had before it two drafts: the joint draft resolution introduced by the United States and the amendment proposed by Ethiopia, Ghana, Indonesia, Iran, Lebanon, Libya, Senegal and Thailand, increasing the membership of the Commission to twenty-five. He was grateful to the United States delegation for having accepted that amendment; that acceptance, in his opinion, should serve to prevent one of the few dead-locks which had ever threatened the Sixth Committee. He therefore moved, under rule 118 of the rules of procedure of the General Assembly, that the debate on that item of the agenda should be closed.

3. The CHAIRMAN announced that, in conformity with rule 118 of the rules of procedure, permission

to speak on the closure of the debate would be accorded only to two speakers opposing the closure, after which the motion would be put to the vote.

4. Mr. ORIBE (Uruguay) said that, before deciding whether or not to oppose the motion for closure, his delegation would ask the Ghanaian representative to clarify his position. As the Uruguayan delegation understood it, the sponsors of the draft resolution and the sponsors of the amendment had reached agreement on the number of seats to be added to the International Law Commission. It was not clear, however, whether they were also *ad idem* on maintaining the gentleman's agreement of 1956, particularly, as the Ghanaian representative had said that Ghana did not consider itself bound by that agreement.

5. Mr. MATINE-DAFTARY (Iran) had taken the Ghanaian statement to mean that the motion for closure would relate only to the draft resolution and the amendment before the Committee, and that the question of the redistribution of seats in the Commission would remain open.

6. Mr. E. K. DADZIE (Ghana) recalled that he had said that the gentleman's agreement of 1956 would continue to bind those States that were parties to it. But agreement with the sponsors of the draft resolution had been reached only on the addition of four seats, which would be allocated to the African and Asian States and would thus raise the number of African-Asian representatives in the Commission to ten. Consequently, if the motion for closure of the debate were carried, it would not prejudice the right of the parties to the gentleman's agreement to pursue, at the appropriate time, any matter which concerned that agreement. The sponsors of the amendment still felt that a general redistribution of seats would be the best solution, but, obviously, their view had not been accepted by the sponsors of the draft resolution. Thus, the situation was as the Iranian representative had described it.

7. Mr. MUSTAFA (Pakistan) noted that there was substantial support in the Committee for the view that any change in the composition of the International Law Commission should favour the African-Asian States exclusively. Moreover, the Ghanaian representative had said that the gentleman's agreement of 1956 was binding on the parties thereto. On that understanding, his delegation would support the motion for closure of the debate.

8. Mr. MATINE-DAFTARY (Iran) drew attention, once again, to the fact that the motion for closure related only to the draft resolution and the amendment enlarging the International Law Commission. The question of the gentleman's agreement would be left open and might be considered at a later date.

9. Mr. ORIBE (Uruguay) said that, having heard the explanations of the Ghanaian representative, he would have to oppose the motion for closure. In his first

statement, the Ghanaian representative had declared that Ghana had taken no position concerning the distribution of the existing twenty-one seats, since it had not been a party to the gentleman's agreement of 1956; but, in his second statement, by declaring that the adoption of the draft resolution, as amended, would increase the African-Asian representation in the Commission to ten seats, the representative of Ghana had implied acceptance of the gentleman's agreement, under which six seats were allocated to the African and Asian States. In his delegation's view, the question whether the 1956 agreement would be maintained had to be decided before the Committee voted on the draft resolution and the amendment before it; otherwise, the General Assembly, in electing the members of the Commission, might not follow the distribution stipulated in the gentleman's agreement of 1956.

10. Mr. PESSOU (Dahomey) agreed with the preceding speaker that the Ghanaian position regarding the gentleman's agreement should be made clear before the vote. The Ghanaian delegation could not regard the agreement as binding in some respects and not binding in others.

11. Mr. E. K. DADZIE (Ghana) replied that, in his preceding statements, he had made one statement of law and one statement of fact. He had first stated, as a matter of law, that the gentleman's agreement existed between the parties thereto and that, as between those parties, it would remain in force until duly revoked. He had further stated, as a fact, that, if the Committee voted for the draft resolution and the amendment before it, the seats reserved in the Commission for the African-Asian States would be increased by four. It was a matter of interpretation, which he was disinclined to rule upon, whether the delegations that might vote for the draft resolution and the amendment would later be deemed to have accepted the agreement by implication.

12. The CHAIRMAN said that, as he understood it, the Ghanaian representative had asked for closure of the debate on the question of the number of seats to be added to the Commission, but not on the question of the distribution of seats.

13. Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the representative of Ghana had moved the closure of the debate on the item "Enlargement of the International Law Commission", which was the only subject under discussion. If there was to be any further discussion concerning the redistribution of seats in the Commission, the inclusion of such an item on the agenda would have to be approved by the General Committee. In any case, there was no need for any formal discussion on the new allocation of seats on the Commission, since the matter would be decided by a secret ballot when the time came for elections. Besides, the question of redistributing the seats on the Commission could not be decided by a simple majority vote, as the representative of Uruguay had suggested. Such a course, which had no precedent in the history of the United Nations, would be not only undemocratic but contrary to the principle of elections by secret ballot. It would amount to imposing the view of one group of States on others, whereas the 1956 agreement on the distribution of seats—although not a signed instrument—had been reached unanimously with the participation of all delegations. The procedure adopted in the past must therefore be followed on the present occasion,

and there could be no voting on the question of redistribution. There was, admittedly, no reason why, after the adoption of a draft resolution on the enlargement of the Commission, informal discussions might not be continued outside the Committee with a view to reaching a unanimous agreement on the allocation of seats before the elections took place. But after the voting on the draft resolution and after delegations had explained their votes, the question of the "enlargement of the International Law Commission" would be formally disposed of. That was the customary procedure in United Nations bodies.

14. The CHAIRMAN said that he would allow further speakers to take the floor, since the discussion related to the scope and import of the motion introduced by the representative of Ghana.

15. Mr. E. K. DADZIE (Ghana) explained that his motion would not prevent the parties to the original agreement from pursuing their negotiations informally.

16. Mr. PERERA (Ceylon) fully endorsed the remarks made by the representative of the Soviet Union and agreed that the discussion related exclusively to the enlargement of the International Law Commission. It might simplify matters if the sponsors of the draft resolution formally announced their acceptance of the amendment thereto.

17. Mr. ORIBE (Uruguay) considered that the situation had been clarified to some extent, especially regarding the suggestion made by the representative of the Soviet Union. It was now quite clear that the USSR delegation no longer insisted on discussing the redistribution of seats in the International Law Commission, since that would necessitate the formal inclusion of such an item in the Committee's agenda. If the Committee adopted the draft resolution, as amended, it would be agreeing to increase the membership of the Commission by four seats, to be allocated to the African and Asian countries, while maintaining the 1956 agreement in force. Consequently, with the question of the redistribution of seats eliminated, the Committee's only remaining duty in connexion with the item under discussion was to vote on the eight-Power draft resolution, as explained by the United States representative in his most recent statement (695th meeting, para. 21). There was, therefore, no longer any need for the Uruguayan delegation to oppose the motion for the closure of the debate.

18. Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, said that he had purposely refrained from attempting to interpret the text of the draft resolution, for, if each of the many jurists present were to engage in such a procedure, the Committee would never conclude its consideration of the item. He feared that the representative of Uruguay was trying to read into the draft resolution something which it did not contain. That text was quite clear and the Committee need only vote on it as it stood.

19. Mr. PLIMPTON (United States of America) said that it was clear from the statements made by the representative of Ghana that he wanted the membership of the International Law Commission to be increased by four members and that those four seats should go to the countries of Africa and Asia. The United States delegation was in general agreement with that position, and if that proposal were voted on and adopted, the distribution of the remaining twenty-

one seats on the Commission would remain unaffected and would continue to be governed by the gentleman's agreement of 1956. He suggested that the Chairman might ask if any delegation disagreed with the fact that the adoption of the joint draft resolution, as amended, would have the effect which he had just described.

20. The CHAIRMAN said that it was very important that the Committee should be perfectly clear as to the exact meaning and scope of draft resolutions on which it was called upon to vote.

21. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the proposal made by the United

States representative was out of order and would, if accepted, establish a dangerous precedent. The Committee was, in effect, being called upon to accept comments by the United States representative which were not a formal part of the text of the draft resolution.

22. Mr. ORIBE (Uruguay) moved that the meeting should be adjourned.

*The motion was carried by 39 votes to 30, with 10 abstentions.*

The meeting rose at 12.30 p.m.