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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. Mr. DE OBALDIA (Panama) said that his country, by reason of its relative military and economic weakness, attached perhaps even more importance than others to the existence of international relationships founded on law. Consequently, it considered the International Law Commission to be one of the most important bodies of the United Nations.

2. The International Law Commission, as had been pointed out, was a technical and scientific body into whose activities and decisions considerations of a political nature should not enter, much less prevail. Nevertheless, the fact could not be disregarded that the principal organs of the United Nations must reflect in some manner or other the realities of the modern world, or, to use more concrete terms, political realities.

3. In 1947, when the International Law Commission was established, the United Nations comprised only fifty-seven Member States, and it had then been considered that fifteen seats were required to allow for representation of the various groups concerned. Consequently, on the accession of further States to membership in the United Nations—a political fact—it was considered advisable to raise the number to twenty-one in 1956.

4. The liberation of the peoples of Africa and their admission into the United Nations was another political fact which had to be taken into account. The simplest, most equitable and quickest way to do so would be to expand the International Law Commission by admitting to it representatives of the new States of central and southern Africa.

5. He did not think it possible to set any optimum figure for the size of the Commission. In 1949, the optimum figure of fifteen had been found satisfactory by the Commission. But in 1956, the membership had been raised to twenty-one, without any noticeable effect on the efficiency of that body. The efficiency and quality of the work of the Commission depended first and foremost on the quality of its members, not on their number. Any difficulties that might result

from a further increase should be overcome by the members of the Commission themselves when the time came.

6. With regard to the suggestion made by certain delegations that the seats be distributed afresh, his delegation did not see any need to revise the gentleman's agreement of 1956, which had only been reached after lengthy negotiations involving much hard work and substantial concessions on all sides. Moreover, the situation did not seem to justify such a step. The only new factor since 1956 was the presence at the United Nations of the new African States. In order to take that into account, it would be sufficient to allocate seats to representatives of those new Member States. The delegation of Panama consequently supported the draft resolution (A/C.6/L.481 and Add.1), but it would not oppose the appointment to the International Law Commission of three or four African representatives, if that should prove in the last analysis to be the wish of the majority of the members of the Sixth Committee.

7. Mr. REYES (Colombia) said that he wished to amplify his previous statement made at the 689th meeting. In doing so, he had in mind, more particularly, the comments made by the representative of the Soviet Union at the same meeting. In pointing out that the new African States were not fairly represented on the International Law Commission, that representative had very cleverly injected a new factor into the discussion, namely, the question of a general redistribution of seats, since he had claimed that the present distribution was unfair and that the "socialist" countries were also entitled to exert more "influence" in the International Law Commission than they had hitherto been able to do. The Colombian delegation had been somewhat taken aback at the unusual manner in which the Soviet representative had thus introduced a political factor into a technical discussion. One could well ask whether his intention was to give international law a socialist tinge, and whether it was on that account that he had urged that the socialist countries should be able to exercise a greater "influence". To put the matter in such terms was to venture on dangerous ground and to run the risk of allowing the tensions of the cold war to extend into a sector from which they must be excluded at any price.

8. Other delegations, particularly those of the Eastern European countries, had also claimed that the socialist bloc, precisely because of its political ideology, should be more generously represented on the Commission. In support of that argument, those delegations had adduced the principle that politics and law were indivisible. On the question of the relations between politics and law, other delegations—not from the socialist camp—in particular Lebanon (690th meeting, para. 22) and Nigeria (692nd meeting, para. 22), had been heard to say the progressive development of international law and its codification

could hardly be studied without also taking the political evolution of the world into consideration.

9. It had certainly never been the Colombian delegation's intention to underestimate the close relationship between law and politics. It was evident that any economic, social or legal system was inevitably linked to a certain political conception, and that, in its turn, any political system presupposed a certain conception of mankind, of society, of the State, of the world and even of God. Such indeed was the conception of humanity in an era—deemed today a time of ignorance, but which had in reality been one of the most clear-sighted epochs—when there was a hierarchy of values and when theology, religion, morality, politics, economics and law were inseparable to the human mind. The destruction of that unity had led to the contradictions and disasters of the contemporary world. The divorce of politics from morals which had taken place at the beginning of modern times had been the cause of abuses of all kinds: the separation of economics and ethics had made possible the abuses of capitalism, while the severance of the ties between morals and law had resulted in the dehumanization of legal institutions and standards in the name of utilitarianism.

10. Consequently, it was indubitable that all things that affected mankind inevitably affected politics, and it was natural that political notions, which were, fundamentally, philosophical, should influence the spirit both of private and of public law.

11. But when some sought to accentuate the influence of a political system on the development of international law, the consequences of that influence should be weighed. It must be remembered, in the first place, that all politics should be placed at the service of the human individual. Clearly, politics should also be concerned with the collective destiny of mankind, so as to guide it. But in either case, the human individual must always be the main concern, the alpha and the omega, of politics. What indeed would be the use of technical and scientific progress and the spectacular conquests of land and space if those achievements were to be at the expense of the freedom and dignity of man?

12. His delegation was not alarmed at the existence of politics, in the old and noble acceptance of the term, provided that they served the fundamental rights and freedoms of the human individual, and if those principles were thoroughly respected, it was unnecessary to insist on an arithmetical distribution of the seats. But if, on the contrary, the intention was to provoke a silent struggle between the powers, to bring influences and propaganda into play, that stratagem must be firmly denounced, for the issue would no longer be a struggle for the progress of humanity but rather for the base interests of different groups.

13. The representative of Lebanon had said that politics had had a decisive effect on the development of contemporary international law. As for the socialist countries, they almost went so far as to say that it was they who had invented the principle of the right to self-determination and the principle of sovereign rights over natural resources. That assertion also was debatable. In the matter of international law, as in many other fields, principles that were held to be recent were not always so.

14. The representative of Spain had recalled at the 691st meeting that the right to self-determination had

already been thought of at the time of the conquest of America, and that the principle of the equality of men and races, which was the very basis of the anti-colonialist theory, dated as far back as the Congress of theologians at Valladolid, held in 1494. That theory, today supreme, was in no way linked to the evolution of any new ideology. It might even perhaps be said that it might find its most fruitful possibilities of renewal on the basis of traditional principles. The truth was that the world was now experiencing an admirable universal awakening and that the peoples, having become aware of their rights, were ready to fight to the death in order to win them. The defeat of colonialism was a matter for rejoicing, and the freedom of the peoples must be saluted. His delegation hoped that, like Sierra Leone, many other independent nations would soon be added to the membership of the United Nations.

15. Now that the old colonialism had been rooted out, care must be taken lest it be replaced by a new colonialism, worse than the first, camouflaging, under the pretext of ideological solidarity, the enslavement of the peoples and the violation of the rights of man.

16. Lastly, it should be emphasized that the progress of international law did not rest so much on the definition of principles and standards as on their application. In that respect, he found it hard to see how the principle of the right to self-determination could be reconciled with dictatorship of the proletariat—the socialist doctrine—or how the principle of non-intervention could be connected with the existence of international bodies for political action, whose final aim was the conquest of political power and the imposition of a certain social order. The situation was the same in the field of human rights. That was why his delegation had always urged, and still urged, that the establishment of bodies competent to ensure the protection of those rights should go hand in hand with the enunciation of the principles.

17. In conclusion, having outlined the reasons why representation of a political nature was unjustified, he added that such representation would neither be practically possible nor would it be in accordance with the spirit of the Statute of the International Law Commission. His delegation would oppose any redistribution of the existing seats, and would favour only an enlargement of the Commission that would ensure both equitable representation for the African-Asian countries and wider representation for its own area, which was fully justified by the importance of the legal system that Latin America had established and perfected.

18. Mr. KIKHIA (Libya), speaking as a co-sponsor of the amendment (A/C.6/L.483 and Add.1), said that the suggestion made by the United States (689th meeting, para. 4), which certainly represented a step forward for the African-Asian countries, did not, however, offer the most equitable solution. As the representative of the Soviet Union had pointed out (*ibid.*, para. 12), the present distribution of seats in the International Law Commission no longer reflected international realities nor was it in accordance with the spirit of the Statute. Most representatives, especially those from Africa and Asia, apparently shared that point of view.

19. His delegation was not enthusiastic about the enlargement, for, with goodwill, it should not even be necessary. Originally, the Commission had been conceived, in the interest of efficiency, as a very small

body of eleven, fourteen or fifteen members at the most. None the less, for practical and political reasons, the number had been increased in 1956 to twenty-one, as it had proved impossible through elections—although they offered a good opportunity—to arrive at a rearrangement of the seats which would have demanded sacrifices from all. The existing situation was a similar one, and it appeared that once more the only practical means of re-establishing justice was a further enlargement. His delegation, in a realistic spirit, had therefore accepted that principle.

20. In order to ensure a true equilibrium, the membership would have to be increased not to twenty-three but to twenty-five. He hoped none the less that the enlargement would not impair the efficiency of the Commission which, in order to avoid that danger, could set up sub-committees, drafting committees or working groups.

21. As for the distribution of the twenty-five seats, his delegation supported the plan suggested by the representative of Ghana, namely, ten seats for the countries of Africa and Asia, seven for Western Europe and North America, four for Eastern Europe and four for Latin America. That distribution appeared to be the best, for it took into account the total number of States Members of the United Nations, geographical areas, major forms of civilization, principal legal systems, size of populations and, lastly, the division of the world into political and ideological blocs. It did not impose heavy sacrifices on any group. The African-Asian countries would gain a few seats and Eastern Europe would gain one seat, which appeared just and equitable.

22. His delegation did not think it necessary to consider the permanent members of the Security Council as forming a separate group of States, as they belonged to the groups which he had just mentioned. However, for obvious reasons, the validity of which could not easily be contested, his delegation considered that the African-Asian countries ought to be taken as a single group. That was all the more necessary, since there were at present only three African candidates, a *de facto* situation which would have to be regularized in future elections. Moreover, his delegation, guided by the wish to reinforce African solidarity and to safeguard African-Asian unity, was opposed to any specification of the African representation. Libya knew only one single Africa, composed of a mosaic of races, religions, languages and civilizations forming an African personality which was part of the great advance of the African-Asian peoples. There was no reason to distinguish between North Africa, Africa south of the Sahara, White Africa and Black Africa. Libya had always tried to combat that trend, so inimical to the African interests, and would continue to do so.

23. As for the gentleman's agreement of 1956, it was no more than a verbal arrangement, provisional and unofficial, and could only be valid for new elections with the agreement, specific or tacit, of the Sixth Committee. Libya therefore urged the Committee to reach another amicable agreement on the basis proposed by the representative of Ghana. In any event, the Sixth Committee should express an opinion on the gentleman's agreement of 1956 and decide clearly whether to maintain it, modify it or abolish it.

24. Mr. CASTAÑEDA (Mexico) said that he brought no preconceived notions to the matter under con-

sideration; it involved no question of principle and should therefore find its solution through the exchange of ideas during the general debate. He regretted that members of the Committee should have immediately split into rival groups, as though a political debate were involved. He personally believed that, while there was nothing to prevent a modification of the 1956 agreement, it was not necessary to revise it radically and start again from the very beginning.

25. The representative of Spain had said that, since the function of law was to ensure the stability and security of human relations, past agreements should not be altered with impunity, as that would remove the foundation for support in the future and thus bring about a dangerous situation of insecurity. His delegation did not share that view, which proved illogical when coupled with a proposal to enlarge the membership established by the 1956 agreement, for any change necessarily meant an amendment of the agreement. Moreover, the 1956 agreement was typical of the situation which, by its very nature, called for periodic review.

26. Nevertheless, a complete revision of the 1956 agreement would not be helpful, for it set out the general lines of balanced membership of the Commission. It was not perfect, but it was fundamentally sound. An increase in the number of seats, without any modification or reduction of the posts, already agreed upon, would seem sufficient to meet the needs of the moment.

27. With regard to the principles which should govern the composition of the Commission, it might be asked to what extent the criteria laid down in article 8 of the Statute excluded political considerations. In speaking of "the principal legal systems of the world", one generally had in mind a body of fundamental notions that governed the organization of the internal legal institutions of a group of countries. It was thus a sort of *jus gentium* common to a number of countries, as, for example, Roman law, Anglo-Saxon law or Germanic law. But that criterion was too vague when it came to fixing the composition of the Commission. If, on the other hand, the expression was interpreted to mean the attitude certain groups of countries adopted towards international law and, more particularly, towards its progressive development through the establishment of new standards, the criterion was more realistic. In that sense, the attitude of Latin America was different from that of the European countries from which it had inherited its legal institutions. But that meant making a distinction between the different attitudes of groups of countries on contemporary international problems, at which point one was drawn into politics, whether one liked it or not.

28. As to the "main forms of civilization", they were not a very helpful guide, as they could not be easily defined apart from regional or political groupings.

29. Since the criteria laid down in the Statute were difficult to apply in practice, recourse was had to the traditional criterion of geographical representation. That principle, however, should be judged by the standards laid down in the Statute, including that of competence as in article 2. His delegation considered, for example, that Western Europe should have a larger proportion of seats than it would receive upon a simple arithmetic division of the United Nations membership. Indeed, the international law of Western

Europe possessed many branches which had played and were still playing a vital role in the development of international law, a role that was quite out of proportion with the relatively small number of countries in the area. That was an undeniable historical reality. The different branches in question should be represented as widely as possible in the Commission, yet without detriment to the other regions of the world. Thus, one factor to be weighed against strict geographical distribution was the existence of distinct systems. Another such factor—and there the countries of Eastern Europe came to mind—was political prominence. To attempt to develop international law in the present day and age without the adequate participation of the socialist countries would be like writing on the sand.

30. As far as the new African States were concerned, the need for their representation was obvious. Nobody would contest their right to participate in drawing up an international law which paid due regard to their interests.

31. In short, the Mexican delegation had no fixed ideas on the best way to balance the membership of the Commission. It believed that too great an increase in the number of members would be inadvisable, but held that it would be difficult to do justice to all countries without raising that number to twenty-five. The distribution of the twenty-five seats should be achieved through negotiations, but, in any case, without adversely affecting Latin America. In 1956, five seats had been allocated to Latin America, although one of the seats was to be shared, in alternation, with a member of the British Commonwealth (see A/4779, para. 4). In view of Latin America's contribution to international law, it would be unfair not to preserve its five seats at a time when the total number of members was to be increased.

32. Mr. ORIBE (Uruguay) considered that, except for any increase of seats for the benefit of the African countries, the 1956 agreement should be respected, since it was based on the representation of the world's various legal systems. His delegation would accordingly support the joint draft resolution which favoured the African countries. It also accepted the idea set forth in the amendment to that draft, for a difference of two seats could hardly disrupt the Commission's work. As far as the distribution of those four new seats was concerned, he seconded the view of the Mexican representative that it should not work to the disadvantage of the Latin American countries. Uruguay was proud of its legal tradition and, while it was ready to support any proposal which would enable Africa to contribute more fully to the development of international law, it could not agree that Latin America should suffer as a result.

33. Mr. SINHA (Nepal) said that, if the world wished to continue moving forward on the road of progress, without bringing about its own destruction, it must build world order on the solid foundations of international law. It was quite natural, therefore, that the question of enlarging the International Law Commission, which was the very body engaged in working out the rules of international law, should arouse great interest. His delegation welcomed the initiative taken by the United States on behalf of the countries of Africa, but it considered that an increase of only two seats was not sufficient. The countries of Africa and Asia possessed more than half of the world's popula-

tion and represented cultures and civilizations which were at once very ancient and very modern; ancient, because they went back many centuries before the Christian era, and modern, because those were the countries that had seen the principle of self-determination emerge in opposition to the principle of colonialism. He was not among those who believed that the Commission's work would suffer from a small enlargement of the membership. Two additional seats could scarcely make a difference, and such an increase would help to do justice to the African and Asian countries. Nevertheless, his delegation would not insist on any definite figure, provided that the interests of the weak and under-represented countries were safeguarded. Without denouncing the 1956 agreement, his delegation asked that it be revised to take account of the changes in the world situation and of the increase in the membership of the United Nations, in order that the rules drawn up by the Commission might induce general acceptance thanks to their universal nature.

34. Mr. PLIMPTON (United States of America) said he would like to comment on certain points in the debate.

35. The Czechoslovak delegation had asked that five seats in the International Law Commission should be given to the socialist countries (693rd meeting, para. 4). Yet, the term "socialist" was not precise. Socialism should not be confused with communism. Socialism existed in many countries, in different forms and to a greater or lesser degree. Hence, the term "socialist" should not be used to describe the Eastern European group of States. In any case, the United States delegation thought the request unjustified and was opposed, for the following reasons, to the allocation of four, and all the more of five, seats in the Commission to the communist countries.

36. Since the communist countries had acceded to the 1956 agreement, their number had not increased. If they had found the agreement just and equitable in 1956, they should find it still more generous in 1961, since the total membership of the Organization had increased, while their own number had not. However, the United States did not intend to ask for a smaller representation of the communist countries. They made up about one-tenth of the membership of the United Nations—a proportion reflected in the present composition of the Commission—and, if they were to have four seats, the Commission should have thirty members. Nor could certain countries of the communist group, such as the Ukraine and Byelorussia, be considered as distinct and self-governing Member States. Lastly, it seemed unnecessary to increase the number of seats held by those countries, because their spokesmen always held identical views. If five seats were given to the communist countries, the Commission would hear five voices singing the same song to the baton of the same conductor. In fact, one seat would be enough. Yet, he did not suggest that the number of seats held by the communists should be reduced to one; he wished only to call attention to the monolithic quality of communist opinion. Moreover, certain representatives thought that the Asian countries were already under-represented. If the number of seats given to other groups were increased, the representation of the African-Asian group would be diminished. The allocation of further seats to the communist group would necessarily involve increasing very substantially the size of the International Law Commission and that would impair its efficiency.

To comply with the communist countries' request would depart from the essential purpose of the joint draft resolution, which was to ensure the adequate representation of African countries in the International Law Commission.

37. He was not aware what contribution the communists had made to legal thought since 1956, although the Czechoslovak representative, in supporting the increase which he proposed, had spoken of such a contribution. He recalled the achievements of the United States in the legal field, such as the curriculum undertaken by the Harvard University, the interest aroused in all universities by the study of international law and the importance of legal publications.

38. However, there was no question of comparing the legal "production" of various countries or groups of countries, but of deciding how the new seats were to be distributed. The United States representative reserved the right to return to the question after consulting other delegations again on the number and distribution of the seats to be created.

39. Mr. MOROZOV (Union of Soviet Socialist Republics), exercising his right of reply, said the debate showed clearly that the United States and the other colonial Powers had failed in their attempt to keep their dominant position in the International Law Commission. The African-Asian, Latin American and socialist countries had rejected the very clever United States plan to make a present of two seats to the Africans, whom the United States considered as second-class jurists.

40. It might have been hoped that the United States representative, in a spirit of conciliation, might not have pressed his proposal after hearing the objections of various representatives. But he had been content to elude the question about the number of seats his

delegation proposed to offer to the African-Asian group, and had reserved the right to return to the subject. One might ask if the United States representative thought that he could still deceive public opinion and, by cunning intrigues, gain the support of the majority.

41. The United States representative had realized the failure of his "initiative" to maintain the dominant position of his country and of the Western Powers in the International Law Commission, and had followed the tactics of the cold war in order to disguise his failure. If he had known of the achievements of the USSR in the legal field, he could certainly not have questioned the contribution of Soviet jurists to international law. No one could deny the importance of the Declaration on the granting of independence to colonial countries and peoples, which well illustrated that contribution.

42. Instead of becoming involved in such digressions, it would be better to try to work out a new gentleman's agreement ensuring the equitable distribution of the seats in the Commission, because it was inadmissible that the western countries should continue to hold twice as many seats as the socialist countries.

43. He refused to follow the example of the United States representative, who was trying to poison the debate, and he asked all representatives to make an effort to reach a just and equitable solution.

44. Mr. PLIMPTON (United States of America) said he had not disputed the contribution of the Soviet jurists to international law; he had only said that he himself had not studied the legal work in the USSR since 1956. He, too, hoped for a serene atmosphere in the Committee.

The meeting rose at 1.5 p.m.