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Enlargement of the International Law Commission (continued). 27

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.483 and Add.1) (continued)

1. Mr. SAHOVIC (Yugoslavia) said that his delegation supported the general principle of enlarging the International Law Commission in accordance with the increase in the membership of the United Nations. In that respect, the problem was a clear and unequivocal one. No one could deny the need to increase the membership of the Commission so that the new African Members could be represented. Furthermore, there was no doubt, as experience since 1956 had shown, that enlargement and geographical redistribution were twin aspects of the problem of the Commission's membership and that they could not be separated if the problem was to be solved successfully. That was why his delegation considered that the necessary changes in geographical distribution should be made at the same time as the membership of the Commission was increased. That would be in the interests of the Commission's work, for it could not carry out the codification and progressive development of international law successfully without the co-operation of all States. Article 8 of its Statute, therefore, should be applied in the light of the changes which had occurred in the international community. Since the first enlargement, which had taken place in 1956, the Commission had achieved important results that had been favourably received by the majority of the Members of the United Nations. Its work had proved satisfactory to the largest possible number of States and it had intensified its relations with regional organizations. It had also been asked to intensify its relations with national and international institutions. The conclusion to be drawn was that it was necessary to ensure adequate representation of all legal systems in the Commission. Consequently, his delegation supported the amendment (A/C.6/L.483) to the joint draft resolution (A/C.6/L.481 and Add.1) and called for adequate participation by new Members of the United Nations in the Commission's work and for a new geographical distribution of seats in the Commission, which would help it to achieve better results.

2. Mr. TABIBI (Afghanistan) said that, although his delegation had not always approved all of the Commission's work, it nevertheless acknowledged that

the latter had always satisfactorily performed the task defined in Article 13 of the Charter. The first enlargement of its membership in 1956 had been prompted by the same concern as was felt at the present time: to give the countries of Africa and Asia the representation they deserved. For that purpose, it was not enough to take into account the increase in the membership of the United Nations; the factor to be given primary consideration was the diversity of the forms of civilization and legal systems which the new Members presented. He did not think, as did some representatives, that the members of the International Law Commission were independent experts; it must not be forgotten that the candidates were nominated by groups of States and appointed by an assembly of States and that they were the interpreters of the juridical thinking of their own countries. Among the present members, representatives of Latin America, Western Europe and Eastern Europe had taken a direct and active part in the codification of certain subjects. It was only just that representatives of other legal systems should now take part in the Commission's work. Today, no region of the world could claim to possess a monopoly of knowledge. For that reason, his delegation had welcomed with satisfaction the United States initiative in asking that the question should be included in the agenda (A/4805). Another argument in favour of enlarging the Commission was that it would achieve better results if it could divide itself into small working groups. He had advocated that method for several years and knew that certain representatives would be prepared to approve it if it were not for their fear that small committees would not be representative. They would be if the Commission had a larger membership. His delegation, therefore, supported the general principle of increasing the number of seats, whether by two or by four, in the interests of the countries of Africa and Asia. It would be a good thing if representatives could meet privately and if those informal consultations could lead to a gentleman's agreement, as in 1956, concerning the distribution of seats.

3. Mr. PECHOTA (Czechoslovakia) wished to explain his previous statement (690th meeting), since certain representatives seemed to question the validity of his arguments. Those representatives, who wanted to provide a mechanical solution for the problem before the Sixth Committee, refused to acknowledge that the enlargement of the International Law Commission and the equitable distribution of the seats in it were two inseparable questions. The reasons which had prompted an enlargement of the Commission in 1956, namely, the changes which had occurred in the international community and in the structure of the United Nations, were still valid today, especially so, as the changes which had occurred in the last five years were much more important than those which had taken place in the interval between the Commission's

establishment in 1947 and 1956. It had been said that those changes had been taken into account in the draft resolution submitted by the United States and seven other countries. If that was the case, why were the sponsors of the draft unwilling to think in even broader terms with a view to attaining greater objectivity? A complete redistribution of the seats in the Commission would doubtless call for sacrifices on the part of those areas which were over-represented, but it would allow a just balance to be restored. If the United States proposal were adopted and two seats were given to the African countries, it could be asked at whose expense that rather modest acknowledgement of Africa's role in the establishment of international law would be made. The United States representative had said that the rule laid down in 1956 for the distribution of seats should not be changed. According to that rule, the countries of Asia and Africa formed a single group, to which only six seats were allotted. In fact, however, they occupied seven seats, since the Commission itself had agreed that Asia ought to be better represented. The result of the United States plan would, therefore, be that those two great continents would receive only one additional seat and that one of the two seats requested for Africa would be given to it at the expense of the present representation of Asia. He noted, in passing, that, according to the Secretary-General's memorandum on the election of members of the International Law Commission (A/4779), the 1956 agreement had provided only five seats for the countries of Asia and Africa.

4. His delegation thought that agreement should be reached, before the elections, on the general redistribution of seats in order to avoid any differences of interpretation with respect to the 1956 agreement and in order not to force the new Member States to accept an agreement in which their interests had not been taken into account. He had the impression that some delegations tended to disregard the main principle governing the Commission's composition, namely, that it should represent the principal schools of political and legal thought in the world today. It was undeniable that the legal thinking of Western Europe was based on outmoded concepts of the colonial era. It was necessary, therefore, to restore the balance between the legal systems—some conservative, others progressive—represented in the International Law Commission and, for that purpose, to acknowledge the contribution made by the socialist countries to the progressive development of international law by increasing the number of seats assigned to them. In order to remove the present disproportion between the representation of Western Europe and that of Eastern Europe, the socialist countries should have not less than a total of five seats.

5. With regard to the further discussion of the item, his delegation had already proposed the appointment of a small sub-committee (690th meeting, para. 9), composed, for example, of two representatives of each of the four or five major areas of the world, and presided over by the Chairman, Vice-Chairman or Rapporteur of the Committee. The Sixth Committee was not in the habit of taking hasty decisions and it would not be the first time that it had used that procedure in order to arrive at the best solution.

6. Mr. OTO (Cameroun), welcoming the admission of Sierra Leone to the United Nations, said that, for some time past, history had seemed anxious to undo

the wrong which centuries of slavery had done to the African continent. Renascent Africa, as a member of the international community, could henceforth offer the latter the benefit of the cultural and other riches which it had held in reserve for so many years.

7. Turning to the question under discussion, he said that the African continent had made its own contribution to the reformulation of an international law which was accepted as a means of "strengthening international peace", in the words of General Assembly resolution 1505 (XV). In view of that contribution of the African States and of the recent emergence of nineteen of them on the international scene, the enlargement of the International Law Commission seemed urgent and necessary. The joint draft resolution took note of those realities without, however, superseding the gentleman's agreement of 1956.

8. An enlargement of the Commission, accompanied by a general redistribution of seats, had also been proposed. The specific case of Africa did not seem to justify an immediate redistribution of that kind. Up to the present time, the Commission had not yet constituted a representative whole. But when Africa could make its own effective contribution to it, the Commission would truly be that symbiosis of the "main forms of civilization and of the principal legal systems of the world" which it was called upon to be under the terms of its Statute. The gentleman's agreement was still binding on those who had concluded it and the redistribution should consist of an addition of African members.

9. In conclusion, his delegation supported the draft resolution, of which it was a co-sponsor, and did not accept the suggestion of the representative of Czechoslovakia that a sub-committee should be appointed.

10. Mr. LUTEM (Turkey) recalled that, as early as at its second session, the General Assembly, in its resolution 174 (II), had recognized the desirability of establishing a commission representing the "chief forms of civilization and the basic legal systems of the world". The idea had been incorporated in article 8 of the Statute of the International Law Commission, and the Statute had been amended in 1956 (General Assembly resolution 1103 (XI)) and the number of seats increased in order to satisfy that standard. With the entry of nineteen African States into the United Nations, it was just, and generally admitted to be so, that greater representation should be provided in the Commission for the African continent.

11. Nevertheless, several members of the Committee thought that the enlargement proposed in the draft resolution should not affect the present distribution of the remaining seats. The Canadian representative had outlined, at the 691st meeting, the difficulties that redistribution would entail and the Turkish delegation fully shared his views. The only areas not fully represented were Africa and Asia, but particularly Africa. But no change had taken place in the other areas which would justify further alterations.

12. It had been correctly held that the new Member States were not bound by arrangements concluded before their entry into the United Nations. Consequently, it was logical and fair that a new agreement applying to them only should be concluded, without prejudice to the agreement relating to the other areas. At the 691st meeting, the representative of Upper Volta had quite properly drawn the Commit-

tee's attention to article 5 of the Statute of the International Law Commission and had suggested that the proposed increase, which, in his view, was too modest, should be reviewed at a later date. That suggestion was taken into consideration in the amendment to the draft resolution. The immediate goal should be to make it possible for two African States to be represented in the International Law Commission. That number might be increased subsequently by a redistribution of the ten seats set aside for the African-Asian countries.

13. In conclusion, his delegation would support the amendment, provided that ten seats were allocated to the African-Asian countries. But if agreement should not be reached on that point, it would support the arrangement proposed in the draft resolution. He hoped that the Committee, in accordance with its tradition, would succeed in reaching unanimous agreement on a satisfactory solution to the problem.

14. Mr. AMMOUN (Lebanon) believed that the important debate in which the Committee was engaged would determine whether international law would continue to be bound to old concepts which had originated in a world where the nations had been divided into the ruling and the ruled, or whether those out-dated ideas would be cleared away to make room for a new law, formulated by all nations together. Democratic principles demanded that the new law should be made by those to whom it was to apply. The democratic spirit was undoubtedly the spirit of the United Nations, and it should be reflected in the legal organs of the United Nations as well as in its political organs.

15. Since the International Law Commission was an instrument for the development of law, its composition should reflect that of the contemporary world itself. Only on that basis could international law keep pace with the world's social and political development. It was in that spirit that his delegation had co-sponsored the amendment which sought to increase the number of the members of the International Law Commission to twenty-five. His delegation was convinced that, while politics now occupied the forefront of the stage in the General Assembly and in the Security Council, the International Law Commission and the International Court of Justice, as the legal organs of the United Nations, would, in the future, play an increasingly important part in international relations to achieve the goal of an international community governed by law. The International Law Commission worked slowly but surely to build a world in which law and justice would prevail. In that world, the nations of the five continents should be on an entirely equal footing.

16. The principle of equality inevitably required that the various groups of nations should be equitably represented in the international legal organs. It had been argued that the work of the International Law Commission had nothing to do with politics. But international politics was a reflection of international relations to which law must adjust; hence, politics could not be divorced from international legal activity. It was well known that the sources of international law were largely customary; they were thus the result of a practice which was consistent with the necessities of international relations.

17. If the various legal systems of the world, which differed widely from one continent to another, were to be represented, international relations were to be promoted and democratic principles were to be re-

spected in the codification and formulation of international law, both the number and the distribution of seats in the International Law Commission must be revised. It was not possible to distribute the seats equitably with a total membership of twenty-three and, if it was felt that a Commission could function effectively with twenty-three members, the addition of two more members ought not to disrupt its operation. Moreover, in view of the profound changes which the present generation had witnessed, changes which affected the very concept of international relations, no effort should be spared to adapt the United Nations organs to the new requirements of the international community.

18. For those reasons, he associated himself with the Ghanaian representative in urging the sponsors of the draft resolution to consider the views of those delegations desirous of securing an enlargement of the International Law Commission which would enable it to meet the demands of the contemporary era.

19. Mr. DOROGIN (Byelorussian Soviet Socialist Republic) felt that the question of the enlargement of the International Law Commission was inextricably bound with that of a redistribution of seats. The present distribution was inequitable, and the Commission could ensure the progressive development and codification of international law only if all the legal systems existing in the world were adequately represented in it. Obviously, the new countries which had recently become Members of the United Nations must be given their proper place in the Commission. But there were other groups, including the group of the socialist countries, which did not have a sufficient number of seats. Those countries, whose legislation was based on the principle of equality of rights, mutual assistance and friendship among peoples, could make a valuable contribution to the development of international law. Their increased participation would add to the success of the Commission's work and that was an additional reason for remedying an injustice of long standing. The socialist countries had the right to be represented in the Commission on the same basis as the western countries. He hoped, therefore, that all delegations would support their request. He was convinced that, with good will, the Sixth Committee would find a solution which was acceptable to all.

20. Mr. DABBAGH (Saudi Arabia) thanked the sponsors of the draft resolution for the initiative they had taken. There was no question that African civilization was destined to influence the development of international law and that the participation of the African States was urgently required if the Commission was to have a genuinely universal character. But the proposed enlargement raised a question of principle: it would constitute a precedent which might be deemed unfortunate in the long run even though it helped solve the immediate problem.

21. Whether the method of redistribution or that of enlargement was adopted, negotiations would be necessary and a working group might have to be established before a decision could be reached. For its part, his delegation would not oppose the conclusion of a new gentleman's agreement; that might be the best way to attain the objectives in view. Nor did it oppose the addition of two, or even four, African members; indeed, it would prefer the addition of four seats, as that would ensure Africa a more equitable representation.

22. Mr. JUSUF (Indonesia) said that his delegation was not opposed in principle to the draft resolution. However, after hearing the explanations of the United States representative, he wondered what would be the most judicious way to enlarge the International Law Commission. The United States representative had proposed (689th meeting, paras. 3 and 4) that the new seats should be assigned to the countries of the central and southern part of Africa, as that was now the sole area not represented in the Commission, and he had added that, since those countries had nominated two candidates, two additional seats should be provided. Did that mean that, if they had submitted six candidates, the number of seats in the Commission should have been increased to twenty-seven? In any case, the candidates who had been nominated by Nigeria and Cameroun respectively would receive the full support of the countries of Africa and Asia. But the assignment of seats in the various organs of the United Nations to the African and Asian countries should not be in the nature of a charitable gesture; the object was not to have the Sixth Committee play the part of a reception committee but to satisfy the just demands of the African-Asian countries and to apply in their case the rule of equity, which called for an equitable distribution of seats.

23. The United States representative had said that a regional distribution should be envisaged for Africa only, since, at present, the latter was not represented in the Commission. While it was undeniable that Africa and Asia together comprised almost half the States Members of the United Nations, it could not be forgotten that Africa constituted a whole and the Committee could not mortgage the future by reserving only two seats for that continent in the Commission. The United States proposal, therefore, did not go far enough.

24. Some representatives had emphasized the competence that was required of members of the Commission and the technical nature of its work. But there was no question that there were competent jurists in all parts of the world and it must not be forgotten that, under the terms of the Commission's Statute, representation of the main forms of civilization and of the principal legal systems of the world had to be assured.

25. He shared the opinion expressed by the representative of Spain (691st meeting, para. 5) that an addition of two seats would not do full justice to the legal systems of Africa and Asia. Moreover, it was not the addition of those two seats that would impair the technical efficiency of the Commission.

26. It was impossible to separate the question of the enlargement of the Commission from that of the redistribution of seats. That redistribution should be carried out on the basis of the groups existing in the world, without again bringing into question the seats at present occupied by representatives of those groups. From that point of view, it would be fair to distribute the seats in the following way: ten seats for the African-Asian group, seven for Western Europe and the United States, four for Latin America and four for the socialist countries.

27. Mr. Falilou KANE (Senegal) said it was necessary that the countries which had been newly admitted to the United Nations—whether African or others—should be given equitable representation in the International Law Commission. He therefore welcomed the initiative taken by the sponsors of the draft

resolution. In his opinion, however, it was also necessary to provide representation for the new Member States in other organs of the United Nations, such as the Security Council, the Economic and Social Council and the International Court of Justice. Moreover, he refused to believe, as did certain representatives, that, in order to safeguard the Commission's working efficiency, the number of additional seats must be limited to two. Would that not be to sacrifice justice to efficiency? And would it not be to show a lack of objectivity and a contempt for African realities to say that two jurists alone, however eminent, could represent the main forms of civilization of the entire African continent? He accordingly considered that the proposed enlargement, which would increase the membership of the Commission from twenty-one to twenty-three, was plainly inadequate. Consequently, he supported the amendment and asked the sponsors of the joint draft resolution to accept that amendment without its having to be put to a vote.

28. He could see no objection to a redistribution of seats after agreement had been reached concerning their number. In his view, what was most important was that the representation of the new Members should be both just and realistic and that calm should preside over the meetings of those jurists whose qualifications admitted them to seats in the Commission.

29. Mr. CRISTESCU (Romania) recalled that, under the Commission's Statute, the main forms of civilization and the principal legal systems of the world should be represented in the Commission. As a number of speakers had observed, the present distribution of seats in the Commission did not accord with the principles of the Charter or with the terms of the Commission's Statute. It reflected only in part the situation which had existed in 1956. The gentleman's agreement on which that distribution was based had been drawn up at a time when the United Nations comprised seventy-four Members and, even at that time, it had not ensured equitable representation. Since then, many States had attained independence and they too should be assured of representation. The composition of the Commission, therefore, must be revised in the light of the changes which had occurred in the world, and all deficiencies should be corrected.

30. One of those deficiencies was the under-representation of the African countries which, by reason of the culture, civilization and wisdom which they had accumulated in the course of centuries, were in a position to make a valuable contribution to the progressive development of international law and its codification. However, the two seats which the sponsors of the draft resolution proposed to assign to those countries would be very far from ensuring the just representation of Africa. In that connexion, the argument that members of the Commission had to be highly qualified would be only a poor excuse.

31. Nor was it possible to tolerate the continued existence of a western majority in the Commission. The representation of the Asian countries must also be improved and the socialist countries given adequate representation. That problem could not be solved by simple arithmetic. A just solution had to be found which would make it possible to reach a new gentleman's agreement. The following distribution had been advocated: seven seats for the United States and Western Europe, four for Eastern Europe, ten for Africa and Asia and four for Latin America. In

his opinion, that distribution did not ensure a fair representation of the main forms of civilization and of the legal systems of the world, since it gave the western countries a much better representation than the socialist countries, which had a population of several hundred million inhabitants. He emphasized that the valuable contribution made by the socialist States to the progressive development of international law must be taken into account.

32. For those reasons, the Romanian delegation agreed with the majority of the delegations that it was necessary first to reach agreement on a new distribution of seats which would ensure a just representation in the Commission, and then to determine the number of seats. His delegation also thought that it would be helpful for that purpose to appoint a sub-committee to study the composition of the Commission.

33. Mr. THEYSSET (France) said that the problem was less a legal than a political one, or even a problem of simple equity. Since 1956, the United Nations had gained new Members, most of which came from the African continent. They had to be given their rightful place in the various organs of the United Nations, a place which nobody could deny them. In the present case, therefore, their representation in the International Law Commission must be ensured.

34. There was unanimous agreement with respect to the principles involved; that was not the case, however, with respect to the ways and means of applying them. It was really extremely difficult to find an arithmetical formula to reflect the changing countenance of the international community. What had been decided in 1956 was no longer considered acceptable in 1961, and what might be laid down in the present

year would no doubt be challenged in the future. In his opinion, therefore, it was necessary to take steps to correct the most obvious defects of the present arrangement, without hoping to arrive at an ideal solution—which, after all, would only be a temporary one—but also without giving rise to any new injustices.

35. The Commission had a specific task, defined in article 1 of its Statute, namely, "the promotion of the progressive development of international law and its codification". That was a technical task, and the Commission must therefore be neither too small nor too large to carry out efficiently the work entrusted to it. Its special character should be preserved and the proposed enlargement of its membership should be kept within as close limits as possible.

36. It was necessary, on the one hand, to give the new Members—especially the countries of Africa south of the Sahara—their rightful place in the Commission and, on the other hand, to make sure that the latter remained sufficiently small to be able to continue to function efficiently. To sum up, therefore, the Committee must find the meeting-point of those two guiding lines, and, when the time came to vote, his delegation would support whichever draft resolution was in conformity both with the legitimate aspirations of the new African Members and with the spirit of the Statute of the International Law Commission.

37. The CHAIRMAN announced that Indonesia and Senegal wished to be included among the sponsors of the amendment (A/C.6/L.483 and Add.1) to the joint draft resolution.

The meeting rose at 1 p.m.