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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) (continued)

1. Mr. DE LUNA (Spain) said that the USSR representative's opposition to the proposal that two seats should be provided in the International Law Commission for the new States of central and southern Africa was apparently based on the belief that such a modification would maintain the present distribution of seats in the Commission and thus perpetuate a situation which, viewed in terms of mathematical proportions, could only be regarded as unjust. In fact, the Soviet representative was attempting to persuade the new States that the objective of the eight-Power draft resolution (A/C.6/L.481 and Add.1) was to retain a discriminatory allocation of seats that favoured the imperialist and colonialist Powers. Curiously enough, however, whether the solution forwarded by the United States or the Soviet approach was adopted, the great Powers would continue to occupy five seats; the alleged discrimination in the United States proposal could thus benefit only the smaller European Powers and the Spanish American countries, which had come into being 150 years ago by the same anti-colonialist process that had fathered the new African and Asian States.

2. Moreover, he shared the belief expressed by the United Kingdom representative at the 690th meeting that the Union of Soviet Socialist Republics had accepted the gentleman's agreement of 1956. The fact that the USSR representative, in accepting that agreement, had not been enthusiastic about doing so was irrelevant. In relations between States, conciliation between differing interests and opinions was necessary if peaceful coexistence was to be achieved. And when agreements were reached, the law could not take into account the unexpressed feelings of the parties: silence showed consent.

3. It was undoubtedly true that the African and Asian countries did not have adequate representation in the Commission; but, in dealing with that situation, the stress should be placed, not on the lack of absolute proportional equality, but rather on the great variety of civilizations and legal systems to be represented. Spain was in favour of an increase in the seats allotted to the African and Asian States in the Commission, in accordance with its established policy of supporting the equality of rights, privileges and opportunity of all Members within the United Nations. The Spanish position was a logical consequence of that Christian universality which had led Vitoria and Suárez, at the height of the Spanish Empire's power, to call into question the legitimacy of the Emperor's claims to America—claims based on conquest—and to assert the absolute equality of Indians and Spaniards. In line with that tradition, Spanish publicists had been the first among the western jurists to direct attention to preoccupation with European law as a serious defect in the law of nations. He cited, as but one example of that preoccupation, the fact that treatises from Wheaton to 1950 had stated that neutrality was a concept unknown before the Middle Ages, whereas actually, the chancellor of the Indian Emperor Chandra Gupta had written about neutrality 2,000 years before Vitoria and Grotius. Similarly, scholars from Israel had been responsible for the moral concept which had formed the basis for the humane treatment of prisoners of war; and Spanish orientalists had proved conclusively that the most important laws of warfare had been created, not by Christianity, but by Arab theory and practice. The very names by which international law had been designated in the past indicated to what extent it had been identified with European international law alone. It was now time to correct that erroneous preoccupation with European international law and to carry forward the progressive development of international legal principles from the universal viewpoint rather than from the one-sided approach of western culture and legal systems alone.

4. Law was not, as the positivists asserted, simply a command issued by a political authority; on the contrary, laws must be written on the foundation of the moral law of nature. But, of course, the State must issue the laws; and, while he could not share the Togolese representative's view (690th meeting, para. 30) that politics should influence the allocation of seats on the Commission, he did not doubt that the political consequences of that allocation must be given consideration.

5. It was the consensus of opinion in the Committee that the Asian and African States must be given more representation in the Commission. His delegation saw no reason, however, to conclude a new gentleman's agreement, since it might be disavowed in the future as readily as the 1956 agreement had been. His delegation believed that the increase of two members proposed in the draft resolution was clearly inadequate to do justice to the African and Asian legal systems. It would prefer the addition of four members. It had not been impressed by the argument that an increase of more than two members would impair the Commission's technical efficacy. That type of argument was always employed by the great Powers, since any increase in the size of such a body would mean a

relative decrease in their influence in it. Again, as his delegation had stated at the twelfth session of the General Assembly (728th plenary meeting, para. 85) in connexion with the proposal to increase the number of Vice-Presidents of the Assembly, it did not believe in the magic of numbers; so far as it was concerned, all numbers were equally good. Moreover, his delegation believed that, if the Commission adopted a system of working through sub-committees, expansion of its membership would not impede its work.

6. In conclusion, he urged the members to put aside personal and national interests and strive to build a world order based on law.

7. Mr. CADIEUX (Canada) said that, in considering the question under discussion, it was necessary to determine whether there should be an over-all redistribution of seats without an expansion, whether there should be redistribution with an expansion or, finally, whether there should be an expansion and a redistribution of seats, but only of those seats comprising the expansion.

8. The first of those possible courses could be achieved without falling short of the requirements stipulated in article 8 of the Commission's Statute. However, in order to ensure that the twenty-one new Members of the United Nations were represented on the Commission, it would be necessary to deprive other groups of States of a percentage of the seats allocated to them under the 1956 gentleman's agreement. Since no group of States would wish its allocation to be disturbed, such a course would probably result in a complete dead-lock and, on those grounds, must be rejected.

9. With regard to the second alternative, there seemed to be general agreement that some expansion of the Commission's membership was necessary. The Canadian delegation nevertheless thought that a general redistribution of seats would not be practicable, however wise it might appear in theory. It had been said that the agreement reached in 1956 was an unsatisfactory one and that there was a compelling need to revise it completely. There might be some force to that argument if there were any factors to show that the 1956 over-all agreement was now entirely out of date. But the only relevant development that had occurred since 1956 was that twenty-one new States, including nineteen African nations, had joined the Organization; that development in no way affected the basis of the 1956 agreement and it could and should be dealt with on a separate basis.

10. Representatives from Africa and Asia had stated that there was a need for redistribution because, in their view, their group was under-represented. Similar claims were being made by the Eastern European countries. However, it was hard to judge the validity of those claims or the validity of similar claims that other groups of States might be justified in advancing, if it were decided to undertake an over-all redistribution of seats even within the context of an expansion. Redistribution combined with expansion involved other difficulties as well. For example, the Commission would have to be increased to an extent that might impair its efficient functioning as a technical legal group. It might be reduced to a forum in which various political groups would mechanically state rigid positions, in which case the original purpose of establishing the Commission would be lost. Moreover, the suggestion that the distribution of seats should be reorganized on a political basis was contrary to the aims for which the Commission had been created.

11. The Sixth Committee had a responsibility to ensure that the original purpose of the Commission was not defeated. Its members were supposed to be individual experts in the field of international law rather than representatives of States. They were expected not only to be able to interpret international or domestic law as applied in their geographical regions, but also to express views that took account of general principles of international law and the views of their colleagues concerning international or domestic law as applied in other geographical areas. Great emphasis must accordingly be placed on the provision, appearing in article 8 of the Commission's Statute, that the "persons to be elected to the Commission should individually possess the qualifications required". Insistence on arbitrarily allotting seats to a very specific geographical area, without regard to the qualifications of the individual concerned, should be avoided.

12. It was true that law and politics were closely linked, but it would be a mistake to confuse the two. Obviously, the role of the International Law Commission was not to attempt to participate in the making of political decisions or to deal with political problems. In view of the relationship between law and politics, it would, of course, have to take political factors into account in its work; but, essentially, it must focus its attention on the formulation of international rules with a view to promoting the progressive development of international law and its codification.

13. He could not agree that the work of the Commission consisted of contests between different geographical areas, the outcome of which was determined by the number of votes received by each group. Regional and ideological considerations must be given due weight, but the rule of law was something more than the mathematical expression of a geographical allocation of votes or political compromises. In view of the essentially legal role of the Commission, it would clearly be inappropriate to attempt to accord to the distribution of seats the political emphasis that had been suggested.

14. The third alternative, namely, expansion with a redistribution of seats limited to the geographical areas represented by the new Members, represented a fair compromise in regard to the two problems of expansion and distribution. On the problem of expansion, the eight-Power draft resolution called for a modest increase which took account of the increased membership of the Organization without being liable to affect the nature of the Commission or alter its expert character. On the problem of distribution, the draft had the effect of leaving the 1956 allocation untouched.

15. The representative of the United States had pointed out (689th meeting, para. 3) that the proposal sought not a general enlargement of the Commission but a specific enlargement, limited to the one geographical region not at present represented on the Commission. The two new seats were thus not intended to represent the whole geographical region of Africa, since some portions of that continent were considered to be represented under the 1956 agreement. It could thus be said that the third alternative involved an element of re-allocation in that it added

two seats to the number assigned to Africa and Asia. The advantage of that approach was that it supplemented rather than superseded an existing arrangement and avoided the danger of attempting a new general redistribution, which might involve the Committee in lengthy discussions and might present difficulties for the Commission itself.

16. Canada's support for the draft resolution did not imply that it considered the 1956 solution ideal or that the proposed modifications would make it perfect. It merely seemed to represent the best solution available in the circumstances.

17. As to the proposal made by the representative of Czechoslovakia (690th meeting, para. 9), Canada felt that the establishment of a small working group would only be necessary if a complete redistribution of seats were to be undertaken. The far preferable solution embodied in the draft resolution would not require reference to a working group.

18. Canada was as anxious as any country to provide all States and groups of States with an opportunity to participate in the work of the International Law Commission, and its comments and suggestions had been made with that essential point in mind.

19. Mr. TSURUOKA (Japan) recalled that, since 1956 when the General Assembly had increased the membership of the International Law Commission to twenty-one members, a sufficiently large number of new Member States had been admitted to the United Nations to necessitate a further increase. The proposal contained in the draft resolution met that need by providing for an increase in the Commission corresponding to the increase in the membership of the Organization. The new seats should accordingly be reserved exclusively for the benefit of the new Members admitted to the United Nations since 1956. While increasing the membership of the Commission, the proposal would not impair its present functioning. It avoided any risk of encumbering it by keeping the number of additional seats within reasonable bounds. The draft resolution thus had the merit of reconciling the two conflicting requirements of giving the utmost satisfaction to the new Member States wishing to participate in the Commission and of ensuring the efficient functioning of that body. The Japanese delegation considered that there was no need to alter the existing distribution of seats. Belonging to the African-Asian group, Japan was naturally inclined to favour improved representation for that group in United Nations bodies; however, it did not wish thereby to damage the interests of other groups. It thus considered that the best solution to the problem was afforded by the draft resolution, which deserved the Committee's support.

20. Mr. SHARP (New Zealand) said that his delegation supported the draft resolution and wished to congratulate the sponsors on their initiative in presenting it. The proposal contained in the draft simplified what would otherwise be a very complex problem. During the discussions, much had been said about geographical distribution, systems of government, political considerations and representation of nations according to the size of their populations. However, it should be noted that the Statute of the International Law Commission made no mention of geographical representation—a notion with which the New Zealand Government had full sympathy—nor was there any reference to political considerations. Recognized competence in international law was the first requirement mentioned. The fact that, at present, there were many countries with legal systems more developed than those of other countries might result in one region securing greater representation than might normally be obtained on a strict mathematical basis.

21. The authors of the Statute had taken steps to ensure that the main forms of civilization and the principal legal systems of the world would always be represented. But if the Statute were to be interpreted strictly, it was necessary to consider what impact the newly independent States had in relation to the main forms of civilization on the one hand, and the systems of law on the other. It seemed to be in the latter field that the newly admitted nations would have a growing influence. Although many newly independent States had inherited the law of the former controlling nation—as in New Zealand's own case—in the course of time they might develop a distinctive legal system of their own. At that stage, special note of those legal systems would have to be taken into account in determining the composition of the Commission. Pending that stage, however, it appeared very desirable that the newly independent nations should be represented on the Commission; that could be achieved by invoking the principle of geographical representation, even though that principle was not specifically mentioned in the Statute.

22. In that respect, the proposal that the two additional seats should be allocated to new African States seemed an excellent one. New Zealand considered that those additions might appropriately be made through the gentleman's agreement negotiated in 1956. The representative of the Soviet Union had pointed out (689th meeting, para. 10) that the agreement had been reached only after considerable debate in the Sixth Committee and after the conclusion of informal negotiations. An arrangement arrived at after so much time and trouble should surely be preserved and not lightly cast aside. It had been suited to the situation existing in 1956 and the most significant development since then had been the admission of newly independent African States. New Zealand would therefore prefer to regard the 1956 agreement as the foundation upon which to build without impairing the Commission's efficiency and would unreservedly support the draft resolution.

23. Mr. BRESSON (Upper Volta) observed that the question under consideration was not, in principle, exclusively a Sixth Committee problem. Clearly, the admission of some twenty new Member States would necessarily raise the general problem of reconsidering the question of representation on all United Nations bodies. It was those considerations that had led the sponsors of the draft resolution to propose an increase in the membership of the International Law Commission from twenty-one to twenty-three and to allocate the two new seats to the African nations which had provided the largest quota of the new Member States. The representative of the Soviet Union had submitted (689th meeting, para. 13), with unquestionable logic, that the present distribution was no longer adequate and had called for a new distribution on an equitable geographical basis. The representative of Ghana had suggested (690th meeting, para. 14) that the membership should be raised to twenty-five and that the seats should be redistributed accordingly.

24. Two facts plainly emerged from the trend of the discussions. First, there seemed to be general agree-

ment on the need for increased representation of the new Member States in all bodies of the United Nations and, in particular, in the International Law Commission. Second, all seemed to share the view that the efficiency of the Commission, which was essentially a technical body, did not depend on the size of its membership and also that that body had nothing to gain from being invested with a political character. Furthermore, it was generally acknowledged that it was necessary to find a middle course which would reflect the views of the majority of the Committee.

25. It was unfortunate that the Statute of the International Law Commission required the names of candidates to be submitted by the first of June of the year in which an election was held. Although he found the proposed increase in membership somewhat timid, he would be prepared to support it for the present year. However, he would suggest that the question should be reviewed during the coming year with a view to allocating at least one extra seat to the French-speaking African nations, which constituted the largest group of the new Member States.

26. Mr. AMOR (Morocco) recalled that his Government had always done much to help the African countries to achieve independence and to secure admission to the United Nations. Seats for African members in the International Law Commission should not, in his opinion, be limited to two; places should also be reserved for those African countries which would attain independence in the future. Only by adding Asian and African members to the composition of the Commission would it be possible to ensure the progressive development of international law and its codification. As the representative of Iran had said (690th meeting, para. 17), up to the twentieth century, international law had been based on western doctrines; from now on, however, it must become universal in scope.

27. In conclusion, he said that, although the so-called gentleman's agreement of 1956 was not perfect, the Moroccan delegation was prepared for the time being to refrain from questioning it; however, its sole motive in doing so was to avoid further delay in admitting the new African Member States to the International Law Commission by reopening a debate which, in 1956, had been long and arduous. The problem of the enlargement of the International Law Commission was perhaps political and technical; but for the Africans it was also psychological in so far as they should not have to wait any longer before occupying the places which legitimately were theirs in all organs of the United Nations.

28. Mr. LIU Chieh (China) said that, in recent years, with the increase in United Nations membership, there had been insistent demands that the various organs of the United Nations should be enlarged to permit a wider participation in its activities. The International Law Commission had been among the first organs—if not actually the first—to increase its membership to reflect the changing conditions. As far back as 1956, the number of seats in the Commission had been increased from fifteen to twenty-one. The time had now come for the Committee to consider once again the question of further enlarging the Commission. In the view of his delegation, the proposal introduced by the United States representative was both timely and practical, particularly since the additional seats were intended specifically for candidates from the central and southern parts of Africa. Much emphasis had been laid on the changing circumstances in the international order. It was necessary, however, to bear in mind that, while the structure of the United Nations might have changed as a result of increased membership, the basic objectives and requirements of the International Law Commission had not changed and should not be changed to any considerable extent.

29. As a member of Sub-Committee 2 of the Sixth Committee charged with an examination of the methods of determining the composition of the International Law Commission in 1947, he was only too well aware of the difficulties involved in the distribution of seats in a compact body designed primarily for juridical study and the formulation of legal drafts. While the principle of geographical distribution was important in all international organisms, the paramount consideration in the case of the Commission was to secure adequate representation of the main forms of civilization and of the principal legal systems of the world in a working group of recognized competence. Unlike other United Nations organs, the Commission was not a political body which had to reflect the opinions of Governments in matters of a transitory nature. In his opinion, once the different civilizations and legal systems of the world were represented, the geographical factor would have been equitably resolved at the same time. If there had been any deficiency from the point of view of geographical distribution in the Commission, that situation had been largely remedied by the reorganization of 1956. Since that time, only one new circumstances had arisen which called for the immediate consideration of further enlargement of the Commission: the emergence of nineteen new African States. His delegation considered it entirely reasonable that two new seats should be assigned to the African States, but since the question of geographical representation had already been thoroughly discussed in 1956, it thought that it would be futile to consider a redistribution of seats only five years after the last reorganization.

30. Mr. PERERA (Ceylon) said that the case for the enlargement of the Commission had already been concisely stated by the United States representative. His delegation agreed in principle to that enlargement, but was uncertain as to the exact number of seats which should be added; obviously, that question could not be decided on the basis of a mere arithmetical calculation. The criteria to be followed in admitting members were clearly laid down in General Assembly resolution 174 (II) and articles 2 and 8 of the Commission's Statute, which provided that the Commission should be composed of persons of recognized competence in international law and that it should represent as a whole the main forms of civilization and of the principal legal systems of the world.

31. In the discussions of 1956, which had led to the so-called gentleman's agreement, the United States and United Kingdom representatives had argued that recognized competence in international law on the part of the candidate should be the primary criterion. The new States of Asia and Africa, however, might not consider themselves bound by the 1956 agreement. He did not propose to engage in special pleading on behalf of any particular geographical area. It was his delegation's view that the problem should be discussed not in terms of geographical areas but rather in terms of legal systems and of what those systems had contributed to international law. The New Zealand

representative had argued that the greatest contribution to international law had been made by the classical systems of Western Europe, so that the countries of that area were entitled to a proportionately larger number of seats. It should be borne in mind, however, that, since 1917, a vast contribution to international law had been made by the socialist countries; mention should also be made of the work accomplished since 1955 by the Asian-African Legal Consultative Committee, as well as of the valuable, specific contributions made by the Latin American countries.

32. International law was the common law of all mankind and should not be confined to any one area. The task of the International Law Commission, as a United Nations body, was to be vitally responsive to what was happening in the world and to give concrete expression, in terms of jurisprudence, to changing concepts. In the opinion of his delegation, that purpose would not be served merely by adding two new members to the Commission; any enlargement of the Commission should be accompanied by a redistribution of seats, on a just and equitable basis, in the light of changing world events. Alternatively, States from areas which were already over-represented in the Commission might voluntarily relinquish their own seats and give them to the new States of Asia and Africa. The problem was certainly a most complex one and, in view of the statements made by the representatives of the USSR and Czechoslovakia, called for much further thought. The Upper Volta representative had even suggested that another year should be allowed for further consideration of its full implications. In his own view, the best course would be to adopt the suggestion of the representative of Czechoslovakia and to set up a small working party in which preliminary discussions could be held on a more informal basis.

The meeting rose at 1 p.m

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