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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. The CHAIRMAN invited the members of the Committee to consider the joint draft resolution and announced that India had associated itself with its sponsors (A/C.6/L.481 and Add.1).

2. Mr. ZEPOS (Greece) pointed out that enlargement of the International Law Commission was not being suggested on account of any deficiencies in the working of that body. On the contrary, the sponsors of the proposal had pointed out that the International Law Commission, even with its present membership of twenty-one, was well in excess of the ideal size for a body whose function was the study and drafting of complex legal instruments. Thus, the only reason for enlarging the membership was that the nineteen new independent States from central and southern Africa, which had joined the United Nations, were not represented on the Commission. The draft resolution was thus simply designed to enable a large group of States to give the Commission the benefit of their contribution. At the 689th meeting, the representative of the Soviet Union had raised quite another question: that of redistributing the seats in the Commission on the grounds that its present composition was not fair to the socialist countries. The delegation of Greece considered that that general question had very little to do with the proposal under discussion. If any injustice in the distribution of seats existed, it must have existed before the introduction of the present proposal and it could hardly be remedied by a decision taken in connexion with the draft resolution. To raise the issue at the present juncture would only make it more difficult to satisfy the just claims of States from central and southern Africa. Greece, for its part, was fully prepared to support the draft resolution.

3. Mr. EVANS (United Kingdom) said that his delegation welcomed the initiative taken by the United States in proposing the item for inclusion in the agenda (A/4805). The United Kingdom agreed that the increase in membership of the United Nations since 1956 made it appropriate to consider enlarging the International Law Commission. There were, of course, arguments against any further enlargement of the Commission, and he recalled that, in 1947, when the membership had been established at fifteen,

many delegations had considered that an even smaller body would have been more effective and sufficiently representative. Although circumstances had changed since then, the basic principles which had guided the Committee in 1947 remained valid. While it was, of course, important that the Commission should represent the main forms of civilization and the principal legal systems of the world, the creation of too large a body would, in his delegation's view, be liable to impede its work. The maintenance of the Commission's high reputation and standard of work depended more than anything else on the quality and not on the number of its members. The preparatory work of drawing up legal instruments could be accomplished more efficiently in a small body than in a large one, and it was for that reason that the Commission had originally been established as a body of limited membership rather than as a sort of legislature, to which all Member States could appoint representatives. The Commission, being a body of experts rather than of Government representatives, did not require such a large membership.

4. The representative of the Soviet Union had argued in favour of a completely new distribution of seats based largely on political factors, whereby Eastern Europe would be given a higher proportion of seats, in relation to the total number of States, than any other region. Political considerations, however, had never been a factor in determining the composition of the Commission and it would be unfortunate if such considerations were now permitted to be injected into that body and its work. The adjustments made in 1956 had been very carefully worked out and represented a prudent balance of all the factors to be taken into consideration, including the United Nations membership at that time. The records of the discussion in the Sixth Committee showed that, in 1956, Mr. Morozov had welcomed the agreement and supported it (485th meeting, para. 23). At that time, he appeared to have thought it fair and satisfactory to all, including the States of Eastern Europe. No territories had achieved independence and no new forms of civilization or new legal systems had been permitted to develop in that region since then. The only relevant major change in the situation since 1956 had been the emergence and admission to the United Nations of twenty-one new Member States from other parts of the world, nineteen of whom were African. Thus, no change in the size of the Commission or in the distribution of seats was called for except as necessary to accommodate the new African States. The United Kingdom believed that the proposed addition of two seats for that purpose would be beneficial not only because of the contribution which legal experts from those States could make to the Commission's work but also because it would help to promote the interest and understanding of the African countries themselves in the Commission's work. For those reasons, his delegation would support the draft resolution.

5. Mr. PECHOTA (Czechoslovakia) remarked that the profound changes which had taken place in the composition of the international community made it urgently necessary to reassess and adjust the political and legal institutions responsible for the development of peaceful relations between States. Moreover, the sphere of application of international law had considerably widened in recent times. The fact that the creation of international law was a process of harmonizing the sovereign wishes of all members of the international community meant that States with different political, social or constitutional systems must participate equally in that process. The International Law Commission had played an important role in the activities of the United Nations and its importance would no doubt increase in the future. However, while the Czechoslovak delegation appreciated the contribution made by the Commission in the attainment of the goals set forth in the Charter, it could not fail to be aware of the many deficiencies in its activities. The main shortcoming was the Commission's failure, due to its present composition, adequately to reflect the realities of the world situation. Even the adjustments made in 1956 had failed to meet the short-term needs evident at that time. There was a lesson to be learned from that experience: all further changes must be considered in the light of developments taking place in the international community and all decisive factors must be taken into account.

6. The proposal expounded by the United States delegation hardly seemed adequate to the Committee's present task. A mere mechanical increase in the membership of the Commission was not enough; the key to the solution lay in a just redistribution of the seats on the basis of equitable representation of the main political, social and legal systems of the world. To guarantee the effectiveness of the Commission's work, therefore, everything should be done to ensure that it achieved the representative character required by its Statute. Only thus could it contribute substantially to the progressive development of international law.

7. Clearly, the present composition of the Commission did not adequately reflect the importance of the African, Asian and socialist countries. Although the continents of Africa and Asia comprised almost half the membership of the United Nations, they only represented a third of the membership of the Commission. Those countries had substantially enriched the development of international law. Moreover, as the significance and influence of the African States would be increasing with their further progress and national development, Czechoslovakia could not agree that two representatives from that continent in the Commission would be adequate. Besides, the socialist countries, whose efforts were aimed at furthering the cause of peace and peaceful coexistence, were represented on the Commission by an entirely insufficient number of members. If the Commission's composition were accurately to reflect the true political and legal systems, the number of seats reserved to the socialist countries should be substantially increased. The task of codification and the progressive development of international law were unthinkable without equitable co-operation of countries with different social systems. That task—which should promote the development of friendly relations among nations—was inseparable from the cause of peace and peaceful coexistence.

8. The composition of the International Law Commission could not be considered in isolation from the question of the Commission's working methods, which would possibly have to be revised if the body were enlarged. If it should no longer prove possible to carry out the work of codification at plenary meetings, consideration might be given to the possibility of establishing sub-committees, on which, again, the principal legal systems should be duly represented. That was a further compelling reason for a new and more equitable distribution of seats in the Commission.

9. Since the accomplishment of the important tasks assigned to the Commission by the General Assembly would largely depend on how the Committee solved the question now under consideration, it might be advisable to establish a small working group to exchange views and suggest possible solutions.

10. Since the Czechoslovak delegation considered the enlargement of the Commission a complementary measure which might assist towards a solution of the problem of equitable representation, it refrained from making any suggestions concerning the number of seats by which the Commission might be increased. However, it reserved its right to comment further on the question at a later stage.

11. Mr. VAN DALSEN (South Africa) said that his delegation had supported increased African representation in other United Nations bodies and intended to do so again in the case of the International Law Commission. It considered that the proposed increase in membership would be quite adequate, since it met with the needs of the African countries, recognized the need to prevent the Commission from becoming an unwieldy body and also took account of the fact that only two candidates from the area in question had been nominated for the forthcoming election.

12. Mr. E. K. DADZIE (Ghana) expressed his delegation's appreciation to the United States for its initiative, which could not have come at a more opportune time, since the United Nations currently faced the important task of reconstructing the membership of the various bodies responsible for putting its ideals into practice. Inevitably, the results achieved by the Sixth Committee in its discussion of the present item would have far-reaching consequences. The view of the world held by statesmen today was vastly different from that held in 1945. Undoubtedly, the greatest contributing factor to that change had been the emergence of African States. The African countries had only been covered in the Charter by Chapters XI, XII and XIII and certainly those who had drafted that instrument had had no thought of Africa when determining the membership of United Nations bodies. Member States could not permit such an unbalanced concept to subsist.

13. With regard to the representation of Africa on the International Law Commission, Ghana had considered entering a candidate for the forthcoming elections, but, upon reflection, had decided to withhold its candidature to leave room for other African nations. When the Commission had been established in 1947, only four African countries had been Members of the United Nations. It was therefore small wonder that, at that time, no Africans had been included in the Commission's membership. By 1956, at the time of the gentleman's agreement, the number of African Members in the United Nations had grown by four. Since then the number had risen to twenty-

seven. And as there was good reason to suppose that there would be still further increases in African membership, any decision taken in respect to African representation in United Nations bodies should be far-sighted. Few seemed to be aware of the rich heritage of culture that the African nations had derived from the great African empires of the past. However, when the African continent took its place in the International Law Commission, its contribution to the progress of that body's work would bear testimony to its claim to adequate representation.

14. Ghana could not agree that the proposed increase of two seats in the Commission would be satisfactory, since it was based on the assumption that there was now a definite number of seats allocated to the African group. Secondly, such an increase must necessarily be a very temporary measure, for it failed to allow for any future increase in African membership in the United Nations. Nor could Ghana entirely agree with the suggestions made by the representative of the Soviet Union. Instead, his delegation considered that a membership of twenty-five would provide the best solution. He would propose that, of those twenty-five seats, six should be allotted to Western Europe and North America, six to the Asian countries, four to Africa, five to Eastern Europe and four to Latin America. Naturally, such an arrangement would annul the gentleman's agreement of 1956, but there was no reason why States like Ghana should be forever bound by an agreement to which they had not been a party. The representative of the United Kingdom had said that it was not representatives of Governments but experts that were needed. But the principle of geographical representation had to be respected and, in submitting its suggestion, Ghana was motivated only by a desire to ensure the representation of the major legal systems of the world. Accordingly, his delegation proposed that the word "twenty-three" in operative paragraph 1 of the draft resolution should be amended to read "twenty-five".

15. Mr. ATTOLICO (Italy) said that the nineteen new African States which had been admitted to the United Nations should also be given an opportunity to participate in the work of the International Law Commission. His delegation would, therefore, support the draft resolution, which constituted the most practical corrective measure which the General Assembly could take at the present time to ensure more equitable distribution in the Commission's membership. At the same time, he agreed with those speakers who had argued that the enlargement of the Commission should not be allowed to interfere with the smooth performance of its work. In conclusion, he strongly supported the view expressed by the Colombian representative at the 689th meeting that the Committee, in reaching its decision, should not be guided by political considerations; any decision respecting the Commission's membership that was based on political considerations would be in direct violation of the spirit of its Statute.

16. Mr. PESSOU (Dahomey) also shared the view expressed by the Colombian representative at the preceding meeting that any enlargement of the International Law Commission should not be based on political considerations. The Committee, however, was now confronted with two theses, that of the United States delegation, as expressed in the draft resolution, and that of the USSR. While it was impossible to deny the justice of the United States position that two additional seats should be given to the new African

States, the Soviet representative had presented a very closely reasoned argument tending to show that that measure alone would not ensure the adequate representation on the Commission of the principal legal systems of the world. For its part, his delegation was prepared to vote for any text which proved acceptable to the majority.

17. Mr. MATINE-DAFTARY (Iran) said that, as a fervent supporter of the cause of African independence, his delegation welcomed the initiative taken by the United States in sponsoring the draft resolution before the Committee. That proposal, however, constituted only a partial solution of the problem, which concerned the equitable distribution of the Commission's membership as a whole. As a member of the Commission, he himself had often witnessed the situation in which a minority of Asian members had been defeated, but not convinced, by a majority of representatives of what might be termed the western school of international law. That school had been developed in the nineteenth century by Western colonial Powers for their own benefit and no longer met the needs of the present day. Under its Statute, the object of the Commission was to promote the progressive development of international law and its codification; the reference to "progressive development" clearly implied that international law was not to be confined to the legal systems of Western Europe but was to be universal in scope. The United States representative had said that international law was not and should not be a static system of law but that its doctrines should always be in a state of evolution. At the 689th meeting, the representative of Thailand had drawn the Committee's attention to the fact that Asia, the cradle of great religions and civilizations and the home of more than half the world's population, was quite inadequately represented in the Commission. In his own opinion, therefore, provision should be made for at least eight members from Asian countries, in addition to the two new seats proposed for the African States, thus bringing the total membership of the Commission to twenty-five.

18. Mr. KIKHIA (Libya) expressed his country's appreciation of the initiative taken by the United States to ensure Africa more equitable representation in the International Law Commission. It was particularly important that the African States should be given appropriate representation in the Commission at the present time, when international law must become the basic instrument for maintaining international peace and furthering the progress of all mankind. As new States which had attained independence after an intense struggle against colonialism, they would undoubtedly have much to contribute to the development of international law.

19. At the previous meeting, the representative of the USSR had raised an important question which deserved the careful attention of the Committee: he had argued that the essence of the problem lay, not in the size of the Commission, but in the principles on which its composition was based, and that the Committee should therefore seek to reach agreement first on a redistribution of seats, without reference to the number of members. The issue raised by the Soviet representative was likely to require lengthy consideration, for there were two differing interpretations of articles 2 and 8 of the Commission's Statute establishing the criteria for elections to the Commission. On the one hand, it was argued that the provisions of the Statute had been intended only to

ensure representation of the main forms of civilization and the principal legal systems of the world, and that the extent of representation need not be related to the size and political influence of such systems. According to the other interpretation, the political influence and size of the various groups represented on the Commission must be taken into consideration in the distribution of the seats thereon. In his delegation's view, the Statute in fact followed a middle course: on the one side, it stressed the personal competence of the members of the Commission and, on the other, it took into account the political, ideological and ethnic division of the world by calling for the representation of the main forms of civilization and the principal legal systems and by stipulating that no two members of the Commission should be nationals of the same State.

20. His delegation certainly considered that, whether or not the size of the Commission was increased, it was essential to ensure proper representation for Africa. It was not very enthusiastic, however, about increasing the Commission's membership simply because it wanted to maintain the Commission as an effective working body. Lastly, his delegation urged the Committee to undertake a thorough discussion of the question raised by the USSR representative, because it was a matter which must be dealt with sooner or later.

21. Mr. AMMOUN (Lebanon) wished to thank the United States delegation which had proposed the question of the enlargement of the International Law Commission for inclusion in the agenda. The doubling of United Nations membership obviously required an increase in the size of the principal organs of that Organization. Such an increase would have to await an amendment to the Charter, however, and, in the meantime, the Organization had an opportunity to set a good example by giving the new Member States full representation on the International Law Commission. The increase in membership proposed in the joint draft resolution was, however, clearly inadequate, not only from the viewpoint of the equitable representation of all States Members of the United Nations but also from that of representation of the various legal systems of the world. His delegation did not see how the present Commission, even with the addition of two members as proposed in the draft resolution, could include representatives of all the legal systems of the world. Bearing in mind the many differences in systems among the countries belonging to the continental European legal tradition, for instance, it was not surprising that even greater diversity existed in the Asian and African legal systems, which had not felt the unifying influence of the Roman Empire. Accordingly, Africa and Asia had more need of broader representation in the Commission than the other continents. In any event, the addition of a mere two seats would not solve the problem.

22. International law, which was constantly developing, had made great progress in recent times through the acceptance of the principle of self-determination of peoples. Those new States, which, in the very process of gaining their independence, had created new principles of international law, must take part in the elaboration of the international legal order and, while politics should not enter into the consideration of the problem, it could not be denied that politics had had a decisive effect on the development of contemporary international law; he hoped that international law

would, in turn, influence the development of political rules.

23. In conclusion, his delegation favoured an adequate increase in the membership of the International Law Commission and accordingly supported the proposals put forward by the Soviet Union and Ghana. Lebanon would prefer to have the membership of the Commission increased to at least twenty-five.

24. Mr. USTOR (Hungary) said that, as the time for election of the members of the International Law Commission approached, the Committee would naturally wish to re-evaluate the justness of the Commission's composition in the light of the requirements set out in articles 2 and 8 of the Statute. In re-examining the composition of the Commission, the Committee had to take into consideration the great changes which had occurred in the international community since 1956, and in particular the number of new States that had won a place in the sun. The new States must be accorded representation in the Commission on a basis of perfect and full equality; proper representation of those States was particularly important because of the close relation which the codification and development of international law bore to the maintenance of international peace. Only a complete reconsideration of the distribution of seats in the Commission would ensure the new States their due and satisfy the reasonable and rightful claims to greater representation which, in his view, could be advanced by the countries of Asia, Africa and Eastern Europe alike. He could not agree with the Greek representative that the issue of the distribution of seats in the Commission was unrelated to the draft resolution before the Committee.

25. In 1956, a gentleman's agreement on the composition of the Commission had been concluded when the membership of the United Nations amounted to some seventy-five countries; and he fully sympathized with the view expressed by the Ghanaian representative that the conclusion of a fresh agreement between the 100 States now represented in the Committee was imperative. Although it was possible to agree on the enlargement of the Commission and then to redistribute the seats, it would be wiser, in his view, first to reach agreement on the distribution of the seats and then to decide whether enlargement was necessary and, if so, to what extent.

26. Mr. MOROZOV (Union of Soviet Socialist Republics), replying first to the Greek representative, wished to stress that his main objective in bringing the question of redistribution before the Committee was to ensure proper representation for the Asian and African States. If the United States delegation assumed that the gentleman's agreement of 1956 should not be altered except for the proposed addition of two seats—and he was not clear as to its view on that point—then the Asian and African States would have eight seats in the Commission. The Soviet delegation, on the contrary, believed that the Asian and African States should be represented by not less than ten members. The injustice inherent in the fact that the socialist or Eastern European countries were also inadequately represented in the Commission should, of course, be corrected at the same time.

27. Turning next to the statement by the United Kingdom representative, he said that the Soviet Union delegation had not "welcomed" the gentleman's agreement of 1956, as the records of that period would confirm. In 1956, the Soviet delegation had urged an

increase in the number of seats assigned to Eastern Europe, but it had not objected to the final agreement which, after all, had marked an improvement over the previous composition of the Commission, in which 50 per cent of the seats had been occupied by the United States and Western European countries.

28. His delegation would support the Czechoslovak proposal that the Committee should establish a small, representative working group to seek agreement on the distribution of seats. If a spirit of compromise prevailed, the working group might be able to reach an agreement which, while not fully satisfying all delegations, would be acceptable to all. The alternative of putting the issue to the vote should, in his view, be a last resort. The Soviet delegation would prefer to reach an agreement with other members concerning the principles on which a new distribution of seats should be based, and it urged the sponsors of the draft resolution and other delegations to join it in seeking such an arrangement.

29. Mr. KERLEY (United States of America) wished to emphasize the vital importance which his delegation attached to keeping the Commission small, so that it might deal effectively with complex legal texts. Replying to the statement just made by the representative of the USSR, he asked why the United States should be prepared to enter into a new gentleman's agreement when the Soviet Union appeared so ready to depart from the old one.

30. Mr. ATIDEPE (Togo) said that his delegation was unable to determine what criteria had been used in establishing the present allocation of seats in the Commission. He suggested that the Committee first define the criteria which should govern the distribution of seats and only then decide on the proper size for the Commission. To those speakers who had urged that the Commission be kept free from political influence, he would reply that, in his view, law and politics were in practice inseparable.

The meeting rose at 1 p.m.