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CONTENTS

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. FERREIRA (Argentina) said that he was pleased to note that substantial progress had been made in the discussions, which had now crystallized into two distinct points of view. One viewpoint was that the present composition of the International Law Commission should be increased by four seats to be allocated exclusively to the African and Asian countries while preserving the 1956 agreement unchanged. The second view was that the 1956 agreement should be revised so as to provide for a complete redistribution of seats. Although far from being attached to any rigid mathematical formula, the Argentine delegation feared that it was impossible to find the happy mean. However, any enlargement of the International Law Commission must fulfil two basic requirements: it should be such as not to impair the efficiency of the Commission's work and it should not affect the essentially technical nature of that body. The latter requirement was of particular importance, for, if the Commission were to become an ideological battleground, it would be unable to accomplish its task. The search for universally applicable legal formulae required genuine international co-operation and an effort at adjustment between different legal systems. Obviously, in such a matter, no solution could be imposed and there was no reason to suppose that the International Law Commission would not continue to work in the spirit that had brought it such success in the past. Encouraged by that experience, the Argentine delegation took a cautious view towards any proposal that would substantially alter the present composition of the Commission.

2. Since Argentina keenly sympathized with the aspirations of the African and Asian States, it favoured the solution of according them four new seats on the Commission which seemed to be generally acceptable. However, it shared the apprehensions expressed by many other speakers that in some of the suggestions advanced due account had not been taken of the position of the Latin American countries. Latin American representation must be respected in any solution that might be arrived at. The progressive development of international law and its codification could only be accomplished in a spirit of sincere co-operation between representatives of various systems. Latin America's contribution to the development of such legal principles or institutions as the right of self-determination, conciliation or arbitration as a means of settling disputes, and many others, could not be overlooked. Latin America's claims for equitable representation were thus fully justified.

3. In conclusion, he fully endorsed the remarks made by the representative of Iraq at the 695th meeting and echoed his hope for a solution based on unanimous agreement.

4. Mr. DEDEI (Albania) considered that, despite some shortcomings, the International Law Commission had accomplished much useful work in the field of codification and had substantially assisted the development of international law. In the codification of international law, the wishes of all the peoples of the world must be respected; and accordingly, all legal systems and geographical areas must be represented in the Commission, as indeed article 8 of its Statute stipulated. Unfortunately, however, many areas of the world and many legal systems were still inadequately represented in the Commission, a fact which could not fail to have a negative effect on its work of codification. The composition of the Commission did not reflect the changes which had been wrought by the disintegration of the colonial system, nor the growth and increasing importance of the new legal systems. His delegation therefore agreed with many other delegations that the gentleman's agreement of 1956 was out-moded and did not conform to the facts of contemporary international life. The majority of African and Asian countries were replacing the inherited western legal systems, which had been developed to justify and support colonialist supremacy, with new laws strengthening national independence and encouraging co-operation between States on a basis of equality and mutual benefit. Furthermore, the sphere of activity and influence of the socialist legal system was widening daily; some of the progressive institutions of the socialist system were the source of new legislation in the anti-imperialist countries. Yet, despite the fact that the socialist legal system governed the life of one-third of the world's population, while the western systems functioned only in a limited sector, the socialist countries had less representation in the Commission than the western countries. That unjust situation was an infringement of article 8 of the Statute.

5. His delegation believed that a redistribution of the seats in the Commission would promote the progressive development of international law. But the proposed addition of two seats for Africa would clearly be insufficient to permit adequate representation of the African civilization and legal systems. The groups of the African, Asian and socialist countries should each have at least as many representatives in

the Commission as the western States. The delegations which opposed a redistribution of the seats were guided by political and ideological considerations and by the desire to protect their present dominant position in all international bodies. Only a revision of the 1956 gentleman's agreement, as proposed by the USSR delegation (689th meeting, para. 11), could correct the injustice in the existing composition of the Commission. Albania would therefore support the Czechoslovak proposal (690th meeting, para. 9) for the establishment of a working group to study the question of redistribution of seats.

6. Mr. ULLOA (Peru) thought that many of the difficulties now confronting the Committee derived from its earlier decision concerning the order of agenda items. The decision to discuss the present item before the items dealing with the report of the International Law Commission on the work of its thirteenth session and the Commission's future work in the field of the codification and progressive development of international law had been motivated by political expediency. Logic would have required the discussion of the composition of the Commission to take place only after consideration of the other two items relating to that body. Nevertheless, the fact that the Committee would have to propose to the General Assembly a solution of the problem posed by the vast increase in the United Nations membership showed the extent to which politics had entered into its discussions. It would be recalled that the Statute of the International Law Commission made no provision for any increase in the membership of the United Nations, as the Commission had been conceived from a functional and not a geographical standpoint. Thus, to be justified at all, any increase in the Commission's membership must be designed to ensure efficient functioning. Article 8 of the Statute required that the main forms of civilization and the principal legal systems of the world should be represented—not "all" forms of civilization and "all" legal systems. Moreover, since international law consisted primarily of public law, it was the principal systems of public law and not of private law that were implied; and since the differences between the legal systems were most apparent in private law and there was considerable uniformity in public law, only a few systems needed to be represented. The only absolute requirement concerning the membership in the International Law Commission related to individuals. There was no reason why the membership of the Commission should not be of the highest order, for, while political systems might vary from region to region, "civilizations" and "legal systems" were not geographical concepts. In short, there could be no dispute concerning the terms of the Statute.

7. The membership of the International Law Commission was already somewhat large for its task of studying technical problems. Experience showed that complex technical tasks, such as the drafting of civil codes, could not be entrusted to a large body, such as a full parliamentary assembly, but had to be considered in relatively small expert groups.

8. The fact remained, however, that there was an immediate need—arising out of political considerations—to increase or alter the membership of the International Law Commission in order to ensure adequate representation of certain groups of countries belonging to the United Nations. So as to avoid any decision that would conflict with the existing terms of the Commission's Statute, he would propose the adoption of the following draft resolution that would bring the Statute into harmony with present-day realities:

"The General Assembly,

"Considering it appropriate to adapt the Statute of the International Law Commission to satisfy the rights and general requirements of States Members of the United Nations,

"Decides to amend article 8 of the Statute of the International Law Commission to read:

" 'At the election, the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that, in the Commission as a whole, representation of the main forms of civilization and of the principal legal systems of the world should be assured, having regard to continental groupings and systems of public law.' "

9. Mr. TORRES GUZMAN (Bolivia) said that his delegation welcomed the emergence of the new African States and felt that they should be represented in the International Law Commission. At the same time, it agreed fully with the representatives of Argentina, Colombia, Mexico and other countries that any increase in the Commission's membership should not be at the expense of Latin America. He personally shared the view of the Canadian representative (691st meeting, para. 8) that it was wrong to deprive some groups of States of seats in order to give them to others and that, if there were an expansion in the Commission's membership, any redistribution of seats should be limited to the geographical areas represented by the new Members. That would serve to supplement, but otherwise leave unaffected, the gentleman's agreement of 1956. His delegation would therefore support the joint draft resolution (A/C.6/L.481 and Add.1) together with the oral amendment tentatively proposed by the United States representative (695th meeting, para. 21), namely, that the number of seats assigned to the African and Asian States should be increased from two to four. In conclusion, as the representative of a peace-loving country, he appealed to the Committee not to permit its debates to be influenced by the atmosphere of the cold war.

10. Mr. AMADO (Brazil), referring to his long association with the International Law Commission, recalled that he had been one of the several authors of the Commission's Statute in 1947. That had been a historic time, when all had believed firmly in the United Nations and had been dominated by a passion for international justice. He only needed to mention the names of such men as Hudson and Briggs of the United States, Brierly and Fitzmaurice of the United Kingdom, Scelle of France, Spiropoulos of Greece, Pal of India, García Amador of Cuba and Koretsky of the Ukrainian Soviet Socialist Republic. Although of widely different origins and temperaments, those eminent jurists had succeeded in reaching agreement on a large number of topics which had been referred to them by the General Assembly or which had been selected for study by the Commission itself. It was also true that they had failed to reach agreement on such subjects as the definition of aggression, the breadth of the territorial sea and arbitral procedure. In the latter case, the Latin American countries had found themselves aligned with the Soviet Union in opposition to the doctrine adhered to by France.

11. It was difficult to express the mobility of international life in rigid formulae; at its inaugural meeting, the Commission's first Chairman, Mr. Manley O. Hudson, had reminded the members that history was not static but in constant movement. 1/ Jurists should not be the slaves of the past, but should breathe the air of their own time. They should remember that international law was essentially not the work of professors but of politicians and diplomats. As had been so rightly observed, the codification of international law might be an exclusively legal task, but its development was certainly political in nature. For his part, however, he refused to draw a narrow line of demarcation between the political and legal fields; the two might be described as brothers who sometimes found themselves in disagreement but who always rejoined each other around the hearth of their common heritage in the human family.

12. Other delegations had mentioned some of the contributions which Latin American jurists had made to the development of international law; he wished to recall, in addition, the Santiago Conference of 1923 which had first recognized certain rights of women, the Havana Conference of 1928 which had produced not only the Bustamante Code but also rules on conciliation and arbitration far in advance of the rules enunciated at The Hague Conferences, and the Montevideo Conference of 1933 which had laid down the principle of non-intervention. The publications of a number of distinguished Latin American jurists had also been very influential. The Latin American legal system was well known to Soviet and other jurists and had affected other legal systems as well as international jurisprudence.

13. Although agreement among various groups was difficult to achieve in political bodies, the jurists in the International Law Commission had found a common position on most of the subjects brought before them. They had been able to reach agreement, because, as jurists, they took a long-term view of their work and saw the need for placing it on a solid foundation. All legal systems naturally sought, in the first place, to avoid uncertainty.

14. Undoubtedly, the International Law Commission's work would be most effective with a small membership. In the discussion of texts, fifteen persons would naturally spend less time than twenty-five. If the Commission were enlarged, it would have to establish sub-committees in order to accomplish its work; unfortunately, however, it would not be possible for all the civilizations and legal systems to be represented on the sub-committees and, inevitably, a large portion of the work would have to be dealt with in plenary meetings. Moreover, the time available to the Commission was very limited. On the other hand, his delegation acknowledged that the African States were entitled to take their proper place in United Nations bodies. He was also convinced that the Commission would derive great benefit from the presence of new African members. He shared the view of the Nigerian representative (692nd meeting, para. 22) that the absence of African publications in the field of international law did not imply a lack of competent and experienced jurists. In the early days of Brazilian independence, too, there had not been many Brazilian legal publications, but there had been many fine Brazilian experts in jurisprudence.

15. In conclusion, he said that Brazil would vote in favour of the enlargement of the Commission, on the understanding that the rights of the Latin American countries would not be sacrificed. His delegation would prefer, if possible, a solution which was acceptable to all members of the Committee.

The meeting rose at 12.35 p.m.

1/ Yearbook of the International Law Commission, 1949, summary records and documents of the first session including the report of the Commission to the General Assembly (United Nations publication, Sales No.: 57.V.1), 1st meeting, para. 16.

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