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Chairman: Mr. Karel PETRŽELKA
(Czechoslovakia).

AGENDA ITEM 59

Question of amending article 2 of the Statute of the International Law Commission to increase the membership of the Commission (A/3141; A/C.6/L.380 and Add.1) (*continued*)

1. The CHAIRMAN said that most of the representatives who had spoken appeared to agree: first, that in view of the increase in the membership of the United Nations, the composition of the International Law Commission no longer fully satisfied the terms of article 8 of the Commission's Statute; and secondly, that in order to cure that defect it would be desirable not to lose the services of the Commission's existing members but to increase its membership. How many additional seats should be created and how they were to be distributed had, however, still to be decided.

2. Mr. HOLMBACK (Sweden) said that his delegation agreed with the Danish and Norwegian delegations that all the main forms of civilization and all the principal legal systems of the world could in theory be represented in a Commission numbering even less than the present fifteen. It would, however, vote in favour of an increase in the Commission's membership, since it would be sorry to lose the services of any of the Commission's members; it would moreover, be desirable for jurists from countries which had recently been admitted to the United Nations to participate in the Commission's work. As the representative of Afghanistan had said (482nd meeting, para. 3), due regard should be paid to geographical distribution.

3. He discussed the effects of increased membership on the Commission's work. At its first session, the Commission had selected fourteen topics for codification (A/925, para. 16). It had since then prepared extremely valuable drafts concerning four of the topics—arbitral procedure (A/2456, chap. II), nationality, including statelessness (A/2693, chap. II), the régime of the high seas and the régime of the territorial sea (A/3159, chap. II). None of these drafts, however, was yet recognized as part of international law. At that rate, therefore, it would take several decades before the Commission had prepared drafts on all the fourteen topics it had selected; and it would

take even longer before all those drafts had been examined by Governments, revised, and made part of international law by due constitutional process.

4. The question of expediting the Commission's work had first been broached in 1950 when the General Assembly had requested the Commission to review its Statute with the object of making recommendations accordingly (resolution 484 (V)). The Commission had recommended that it should be established on a full-time basis. However, the General Assembly had decided to take no action on that recommendation until further experience had been acquired (resolution 600 (VI)). Since then the Commission had indeed made every effort to expedite its work, but, as he had indicated, progress on the complex questions it dealt with was bound to be difficult and slow. An increase in the Commission's membership, however, offered new prospects. All the main forms of civilization and all the principal legal systems could in fact be represented in a body consisting of ten members, and he therefore suggested that in future the Commission should divide itself into two or even more sub-commissions, working independently or along parallel lines on different topics. The Commission's work was in any case mainly one of drafting, and experience in the United Nations had amply shown that a body composed of more than ten members was too large for such work.

5. Although there was also, in his view, much to be said in favour of placing some at least of the International Law Commission's members on a full-time basis, he would not enter into that question at the present time, as it was not directly relevant to the question of an increase in the Commission's membership.

6. Mr. GARCIA AMADOR (Cuba) said that, as one of the sponsors of the joint draft resolution (A/C.6/L.380), he felt that the Chairman had interpreted the general sense of the Committee correctly. It seemed moreover to be the general view, shared by his delegation, that one of the extra seats should go to a jurist from western Europe, another to a jurist from eastern Europe and three to jurists from Asia and Africa, as the number of Member States from all those regions had increased. In addition, in the light of an informal exchange of views, he thought it might be more conducive to better equilibrium in the Commission to increase its membership, as the representative of Portugal had suggested (482nd meeting, para. 8), not to twenty, but to twenty-one, the extra seat being reserved in rotation for a jurist from a Latin American country and a jurist from a country of the British Commonwealth.

7. Mr. LACHS (Poland) said that although the General Assembly had not agreed with all the International Law Commission's recommendations, it had always recognized the great value of its work. It would be regrettable if the Assembly lost the benefit

of the wisdom of any of the Commission's present members. Adequate representation of all the main forms of civilization and of all the principal legal systems was, however, a *sine qua non* for the Commission's successful work. Certain regions, rich in legal experience and tradition, were not able at the moment to make the contribution they should to the Commission's work. It had too long been commonly assumed that Europe was the sole source of all developments in international law. While Asia and Africa should be more adequately represented on the Commission, however, the representation of European countries could also with advantage be expanded. The countries having a socialist structure of society, for example, could make an important contribution to the Commission's work, and, since their membership in the United Nations had almost doubled, the proposal that the Commission should include one more jurist from an east European country seemed fully justified. In general he could support the proposal, discussed in informal conversations, that three of the additional seats should be reserved for Asian and African jurists, one for an east European, and one for a west European jurist. He also supported the proposal that the Commission's membership be increased to twenty-one, the extra seat being held in rotation by a jurist from a country of the British Commonwealth and a Latin American jurist. The manner in which the additional seats were to be distributed could not very well be the subject of a formal agreement, but the broad consensus of the delegations should be properly reflected in the Committee's report.

8. Mr. CASTREN (Finland) said that in principle he shared the views of the Danish, Norwegian and Swedish representatives that the International Law Commission was already large enough to ensure representation of the main forms of civilization and the principal legal systems. At the same time he recognized that, owing to the increase in the membership of the United Nations, the composition of the Commission was no longer entirely equitable; accordingly, he was prepared to support the proposal for an increase in the Commission's membership to twenty or twenty-one.

9. Mr. PINTO (France) said there appeared to be general agreement, on practical grounds, on the idea of an increase in the membership of the International Law Commission so that jurists from the new Member States could be elected. Among the latter Austria, Finland, Italy and Spain, for example, had made notable contributions to international law. The younger States, some of which—Cambodia, Laos, Morocco and Tunisia—had historical associations with France, also possessed jurists who were well qualified to serve on the International Law Commission.

10. It was, however, perhaps somewhat dangerous to lay down specific conditions governing the geographical distribution of the Commission's members. The Commission was essentially an expert body, the main task of which was to codify international law. That task required a profound knowledge of the subject, sound judgement, drafting ability, and a capacity for co-ordinating the codified rules into a coherent system. The number of jurists who satisfied such exacting requirements was not large.

11. The Committee had therefore to bear in mind that the members of the International Law Commission were chosen in a personal capacity, and primarily by

reason of their qualifications rather than on a purely geographical basis.

12. It was true that one of the Commission's functions was the progressive development of international law, an undertaking which had political implications. But new rules of international law could not enter into force unless they were accepted by States. Since the semi-legislative functions of the Commission were therefore ultimately subordinated to approval by the Governments, it was not essential in that connexion either that a system of geographical representation should be strictly adhered to.

13. Sir Gerald FITZMAURICE (United Kingdom) said that the International Law Commission, in its eight years of existence, had established for itself in the legal world a reputation second only to that of the International Court of Justice. Speaking as a comparatively recently elected member of the Commission, he could say that it owed its repute to the personal qualities and qualifications of those members of the International Law Commission who had served on it practically from its inception, rather than to any particular form of geographical distribution.

14. The primary consideration, in the election of members of the International Law Commission, had to be the personal merit of the candidates. The Commission was a scientific body. The progressive development of international law was not a legislative function. The Commission had to develop existing law, and that task, just as that of codification, could only be undertaken by jurists thoroughly versed in international law.

15. He pointed out in that connexion that the members of the Commission were often professional men who had to sacrifice as much as three months of every year to attend the Commission's meetings; in addition, all members of the Commission, and not merely those who acted as special rapporteurs, were obliged to do a great deal of work for the Commission between sessions. It was particularly regrettable, therefore, that the Fifth Committee should have adopted a recommendation which would adversely affect the financial position of the members of the International Law Commission (A/C.6/L.380/Add.1).

16. Proceeding, he said that the principle of geographical distribution could actually operate unfairly in the case of countries which did not belong to any recognizable geographical area; that was the case of certain Commonwealth members, Australia, for example.

17. While therefore agreeing with the distribution suggested for the five additional seats originally proposed, he welcomed the suggestion for a further seat to be filled in rotation either by a jurist from a Commonwealth country or by a Latin American jurist.

18. With regard to the effect of an increase of membership on the work of the International Law Commission, he said it was true that for much of the Commission's work, which was concerned with drafting, a small body was desirable. But again, a body of fifteen members was too small to permit the setting up of more than one drafting committee. The increased membership, while slowing down the discussions in the Commission, would have the advantage of making it possible to set up more sub-committees or drafting committees.

19. He was attracted by the suggestion that the Commission should split up into two sections working on different subjects simultaneously. Each subject would be dealt with by one of the sections at one session and by the full Commission at the following session. The sections could be so organized as to reflect the representation of the different legal systems on the full Commission. The International Law Commission might be asked to report on the suggestion.

20. Commenting on the form of the draft resolution (A/C.6/L.380), he said the preamble was too long. It seemed to imply that any increase in the membership of the United Nations should necessarily entail a corresponding increase in the membership of all United Nations bodies. Actually, there was at least one United Nations body in respect of which the consensus of the General Assembly was likely to be that the membership should not be altered in spite of the increased number of Member States. It was therefore desirable to leave the General Assembly free to decide in the case of each United Nations body whether an increase of membership was called for.

21. He therefore suggested that the preamble of the resolution should be reduced to a single paragraph stating simply that, in view of the present position regarding the membership of the United Nations, it was considered expedient to increase the number of members of the Commission.

22. Miss SOUTER (New Zealand) said that the primary consideration in the election of members of the International Law Commission should always be the welfare of the Commission itself. Only jurists of the highest calibre could maintain the standards of scholarship, clarity and wisdom for which the Commission was rightly renowned.

23. Some delegations had argued that the recent increase in the membership of the United Nations had rendered a corresponding increase in the membership of the Commission absolutely necessary. That view needed some qualification. The requirements of article 8 of the Commission's Statute could be adequately met by the election of fifteen members, and there was little risk of any legal system or form of civilization being denied its due representation. Nevertheless, although a body of lawyers was often more efficient with a small membership, the International Law Commission had some special features which could justify an increase. The mere fact that a special rapporteur had to be appointed for each topic was in itself an argument in favour of a larger membership. For those reasons, her delegation would support the proposal for the addition of five or six members. It also welcomed the idea, advanced by the Swedish representative, regarding two semi-independent sub-commissions, and the Cuban representative's suggestions on the distribution of the additional vacancies.

24. Mr. TABIBI (Afghanistan) said that the International Law Commission had consistently made outstanding contributions to the progressive development of international law. The Commission's present members represented the finest traditions of learning, and all additional members would have to be chosen with the greatest care if the standards were to be maintained. Technical competence was not, however, the only qualification for election. As article 8 of the Commission's Statute pointed out, the members also had to be representative of the different forms of civilization

and legal systems of the world. The existing composition of the Commission unfortunately did not meet that requirement. Some parts of the world with great cultural traditions and ancient legal systems were not adequately represented.

25. The amendment which he had verbally proposed at the 482nd meeting was meant to remedy that situation and to ensure compliance with the terms of General Assembly resolution 174 (II). He could not agree with the representative of El Salvador that such an amendment, which would require the General Assembly to fill the additional vacancies in conformity with the principle of geographical distribution, was inconsistent with article 8 of the Commission's Statute. In fact, article 8 merely amplified that principle. Nevertheless, if the suggestions of the representatives of the USSR (482nd meeting, para. 28) and Cuba (para. 6, above) were accepted and the Committee agreed that three of the additional seats should be given to countries of Asia and Africa, the Afghan delegation would not press its amendment. The condition on which that amendment had been withdrawn should be clearly stated in the Committee's report.

26. The Afghan delegation agreed with the Swedish representative that the Commission might consider whether a division into two or more sub-commissions might expedite its work. Similarly, the proposal regarding the sixth additional member was unexceptionable. Lastly, in its unfortunate decision on the question of the subsistence allowance, the Fifth Committee had evidently failed to attach due weight to the qualifications of the members of the International Law Commission. The matter would have to be raised again in the General Assembly.

27. Mr. ALVES MOREIRA (Portugal) said that the Portuguese delegation willingly admitted that an increase in the Commission's membership might prove helpful. It could not, however, accept the principle of geographical distribution as the basis for election. There was no strict analogy between assuring "representation of the main forms of civilization and the principal legal systems" and the principle of geographical distribution; geography was not always a reliable guide. For example, the Portuguese form of civilization and legal system were often admirably represented by Brazil, although the two countries were situated in different geographical regions. In the circumstances, the principle of geographical distribution might be convenient from the point of view of procedure, but its acceptance should not be regarded as establishing a precedent.

28. The Portuguese delegation shared the Cuban representative's views, and would formally propose that the Commission's membership should be increased to twenty-one members.

29. Mr. SCHILLER (Austria) said that the question of the proposed increase in the membership of the International Law Commission was an important one. The efficient functioning of all bodies dealing with the law of nations was a matter of universal concern.

30. The Austrian delegation agreed with the Danish delegation that, from a practical point of view, the size of the Commission should remain unchanged. A smaller body was usually more efficient than a larger one. Nevertheless, as had been impressively pointed out by the representative of Greece, there were many sound reasons for the proposed increase, the most

important being not political but scientific. Consequently, the Austrian delegation welcomed the suggestion that the Commission should consist of twenty-one members and that the distribution of the additional vacancies should be determined by agreement.

31. He added, with reference to the Swedish representative's suggestion regarding a possible change in the Commission's method of work, that the question was properly one on which the Commission itself should be consulted, as the United Kingdom representative had said.

32. Mr. EL-ERIAN (Egypt) said that the Egyptian delegation had always been impressed by the manner in which the International Law Commission discharged its duties. For that reason, it would support the joint draft resolution (A/C.6/L.380) which was intended to make the Commission more representative and so even more effective. The Polish representative had rightly spoken of the contribution which remote parts of the world had made to the development of the law of nations.

33. Furthermore, an increase was necessary for practical reasons. The Commission had to deal with many topics and its studies necessitated painstaking research. A larger membership would enable the Commission to proceed at an accelerated pace.

34. Lastly, the Egyptian delegation would support the USSR representative's suggestion regarding the distribution of the additional vacancies. If that sug-

gestion were agreed upon, the shortcomings of the existing situation, in which the African and Asian countries were not adequately represented, would be successfully remedied. The Committee's agreement on the question of distribution should be expressly mentioned in its report.

35. Mr. TOLENTINO (Philippines) referred to the view of some delegations that the principle of geographical distribution could not be the sole basis for the election of members. That argument was doubtless correct, in so far as it meant that articles 2 and 8 of the Commission's Statute could not be disregarded. Each member should be a person of recognized competence in international law, and representation of the main forms of civilization and of the principal legal systems of the world should be assured. Nevertheless, the Statute did not state that those were the only considerations which should be taken into account. The General Assembly could quite easily elect members of the Commission on a geographical basis without violating articles 2 and 8 of the Commission's Statute. That point was important, because the proposed distribution of the additional vacancies was based largely on geographical considerations. He hoped, therefore, that the intentions behind the joint draft resolution and the Portuguese amendment, both of which he supported, would be explained in the Committee's report.

The meeting rose at 12.55 p.m.