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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)**

1. Mr. LIMA (El Salvador) recalled that in 1947 the General Assembly, at its second session (resolution 174 (II)), recognizing the need for giving effect to Article 13, paragraph 1, sub-paragraph a, of the Charter, had approved the Statute of the International Law Commission. Since that time there had been a considerable increase in the number of Member States of the United Nations. There was accordingly good reason for considering an increase in the membership of the principal organs of the United Nations, such as the Security Council, the Economic and Social Council and the International Court of Justice, and for the Assembly's decision to increase the number of its Vice-Presidents to eight. For the same reason, and because article 8 of the Statute of the International Law Commission provided 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, the membership of that organ should be increased. That was the purpose of the twenty-Power draft resolution (A/C.6/L.380).
2. Mr. DUTTA (Pakistan) wholeheartedly supported the draft resolution, for the reasons given by the representative of El Salvador.
3. Mr. TABIBI (Afghanistan) said that he would support the twenty-Power draft resolution, but he proposed that the words: "with due regard to geographical distribution" should be added at the end of the last paragraph of the preamble. If that principle was not respected, there would be no point in increasing the membership of the International Law Commission, because the main forms of civilization and the various legal systems of the world were already represented on it.
4. Mr. AZARA (Italy) said that his delegation would support the draft resolution, because the number of Member States of the United Nations had increased and the principle set forth in the second part of article 8 of the Statute of the International Law Commission should be respected.

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5. Mr. PATHAK (India) pointed out that the principle set forth in the second part of article 8 of the Statute of the International Law Commission was not at present respected. The fifteen members of the Commission comprised five nationals of the great Powers, four nationals of Latin American countries, three of western European countries, one from an eastern European country and two from Asian countries. Although the African and Asian countries accounted for one-third of the membership of the United Nations, Africa was not represented on the International Law Commission, and Asia, the home of several legal systems, was represented quite inadequately. At least three of the five new members by which it was proposed to increase the Commission should be from Africa and Asia.

6. His delegation would accordingly support the twenty-Power draft resolution, on the understanding that more adequate representation would be given to the African and Asian countries.

7. Mr. ALVES MOREIRA (Portugal) thought that the question of the composition of the International Law Commission should be considered from the purely technical rather than the political point of view. The primary concern should be to implement as effectively as possible the principle of the representation of the main forms of civilization and of the principal legal systems of the world. Hitherto a membership of fifteen had been sufficient to ensure respect for that principle. Since the admission to the United Nations of a large number of countries with their own forms of civilization and their own legal systems, it had become necessary to increase the membership of the Commission to ensure continued respect for the principle.

8. His delegation would accordingly support the twenty-Power draft resolution, but it suggested that the number should be raised to twenty-one rather than twenty, in order to avoid the possibility of tie votes.

9. Mr. GEBRE-EGZY (Ethiopia) agreed with the representative of Afghanistan. He thought that before voting on the draft resolution the delegations should be given an opportunity to come to an agreement on the nationality of the new members who might be appointed to the International Law Commission.

10. Mr. MATHUR (Nepal) thought that the membership of the International Law Commission should be increased, since many new Members had been admitted to the United Nations and the principle enunciated in article 8 of the Statute should be respected. He considered that the membership of the Commission should conform to the principle of geographical distribution, which was not clearly set forth in the Statute as it stood.

11. Mr. KNOX (Denmark) had some doubts regarding the soundness of the considerations set out in the preamble to the twenty-Power draft resolution.

12. The members of the International Law Commission were legal experts chosen for their personal qualifications; they did not represent their Governments. The argument that there had been an increase in the number of Members in the United Nations did not therefore seem valid in that connexion. With its present membership, the Commission had done good work; if the membership were increased, it might become more unwieldy. It was true that article 8 required that the main forms of civilization and the principal legal systems of the world should be represented on the International Law Commission, but in practice it was difficult to establish precisely the number of members the Commission should have in order to ensure respect for that principle. It would be possible, with good will, to conform to the principle without increasing the membership of the Commission. The principle of geographical distribution, which the representative of Afghanistan thought should be taken into consideration, was not mentioned in article 8.

13. His delegation, however, would give careful consideration to any further arguments that other delegations, particularly those of States which already had a national serving on the International Law Commission, might put forward in support of an increase in the membership of the Commission.

14. Mr. OSMAN (Sudan) said that he was in favour of increasing the membership of the International Law Commission and endorsed the Afghan and Indian representatives' comments on the distribution of the new seats.

15. Mr. SALAMANCA (Bolivia) said that he had consulted the other members of the International Law Commission concerning a possible amendment to article 2 of the Statute.

16. He thought that, in view of the increase in the number of Member States of the United Nations, there were grounds for increasing the membership of the International Law Commission. He admitted that there was some weight in the arguments put forward by the representative of Denmark, but he thought that they should yield precedence to the principle of maintaining a balanced representation of the various geographical regions and legal systems. The amendment of the Statute along the lines proposed by the twenty Powers would enable all groups to take part in the work of the International Law Commission. As that organ dealt with practical problems, it was important that it should know the views of experienced people, such as judges, professors and legal practitioners, from all parts of the world.

17. Mr. WIKBORG (Norway) recalled that the membership of the International Law Commission—fifteen—had not been established in relation to the membership of the United Nations, which had been fifty-eight at that time, but on the basis of the principle set forth in article 8 of the Statute; it had been felt that fifteen members were sufficient to represent the main forms of civilization and the principal legal systems of the world. In fact, no one had ever suggested that that objective had not been attained.

18. Admittedly in its present composition the International Law Commission included only nationals of States which had long been Members of the United Nations. There was no reason, however, why nationals of new Member States should not be given seats at

the next election. That could not be done without ousting present members of the Commission who had already proved their worth. In the desire to obviate that difficulty and to ensure the continuity of the Commission's work, while at the same time acceding to the legitimate claims of the new Member States, and although the number of fifteen was in itself satisfactory, he would vote in favour of an increase in the membership of the International Law Commission. He hoped that the Commission would find means of overcoming the practical difficulties that the change was liable to entail. With regard to the future, he was open to any suggestions, but wished to point out that the Afghan proposal on geographical distribution would necessarily entail an amendment of the Statute.

19. Mr. CASTRO RIAL (Spain) congratulated the Chairman, Vice-Chairman and Rapporteur on their election. He supported the draft resolution submitted by the Latin American States. The increase in the number of members of the International Law Commission was judicious and logical. The present composition was based upon a situation which had been changed by the admission of new Members to the United Nations. The legal systems and forms of civilization of those States, too, should be represented on the Commission. Furthermore, the new personalities that would be called upon to participate in the Commission's work would enhance the prestige of that body.

20. Mr. MAHMOUD (Iraq) wholeheartedly endorsed the considerations set out in the preamble of the twenty-Power draft resolution. He agreed with the representative of Afghanistan on the necessity of adopting the principle of geographical distribution, and agreed with the Indian delegation that the representation of the African-Asian countries on the Commission was plainly inadequate.

21. Mr. MORRISSEY (Ireland) congratulated the Chairman, Vice-Chairman and Rapporteur on their election. He acknowledged that some good arguments had been presented against the proposal that the membership of the International Law Commission should be increased: the excellent quality of the work performed so far; the fact that a body with few members was more manageable; the fact that during the proceedings that had preceded the establishment of the Commission a membership of nine, eleven, fourteen and fifteen had been contemplated in turn but never more than that. In support of the opposite thesis it had been pointed out that the addition of new talent would increase the Commission's authority, and that a body of twenty members was no less manageable than one of fifteen members. Above all—and, in his opinion, that was the decisive argument—the principle set forth in article 8 of the Statute of the International Law Commission called for an increase in the membership of the Commission. The Irish delegation would therefore support the twenty-Power draft resolution.

22. Mr. PEREZ MATOS (Venezuela) congratulated the officers of the Committee on their election. He was one of the co-sponsors of the twenty-Power draft resolution because he considered that there was every justification for an increase in the membership of the International Law Commission, for the reasons that had already been given, particularly those of the representative of El Salvador. The principle of representation of the main forms of civilization and of

the principal legal systems of the world should be scrupulously applied.

23. Mr. LIMA (El Salvador) pointed out that the Afghan amendment to the twenty-Power draft resolution would entail the amendment of article 8 of the Statute of the International Law Commission, to which the draft resolution made reference.

24. Mr. TOLENTINO (Philippines) warmly congratulated the Chairman, Vice-Chairman and Rapporteur, with whose wide legal knowledge he was acquainted. He was sure that the discussions of the Sixth Committee would be conducted with all the requisite wisdom, tact and competence.

25. The International Law Commission was a living body, which had been entrusted with the task of developing international law and must grow with that law. The substantial volume of work it had already accomplished militated in favour of the draft resolution (A/C.6/L.380). If the membership of the International Law Commission were increased by five, that would be a logical consequence of the increase in the membership of the United Nations and would afford an excellent opportunity for a better distribution of the seats on the Commission. It was to be hoped that the Committee could vote on the draft resolution without delay, for the Assembly would shortly be electing the new members of the International Law Commission.

26. Mr. MOROZOV (Union of Soviet Socialist Republics) thought there was ground for some hesitation and some apprehension in approaching the question. During the past eight years the International Law Commission had established certain practices and traditions, and several representatives had expressed the opinion that any undue increase in its membership might make the Commission unwieldy and impair its efficiency. On the other hand, some thirty delegations had already supported the principle of an increase in the membership of the Commission, adducing arguments that were, on the whole, valid. If the Commission were more representative, its work would have greater value and would greatly contribute to the progress of the codification of international law. There was no ignoring the fact in the Sixth Committee and in the United Nations there was a majority in favour of increasing the membership of the International Law Commission.

27. Before the twenty-Power draft resolution could be adopted there were certain preliminary questions, arising from the proposal itself, to be settled. He had been much impressed by the statements of the representatives of Afghanistan, India, Iran, Sudan and other countries who had felt that the composition of the International Law Commission was not satisfactory.

28. In order to settle the practical question of the representation of the various legal systems, bearing in mind the necessity of fair geographical distribution, he made the following suggestion: if the membership of the Commission were increased from fifteen to twenty, the present distribution of the fifteen existing seats would be retained and of the five new seats three would go to Asia and Africa, one to eastern Europe—the term “eastern Europe” being used in its strict sense—and one to western Europe. The new distribution of seats could be mentioned in a paragraph of the Sixth Committee's report to the General Assembly.

29. Mr. EL-ARD (Syria) warmly congratulated the Chairman, the Vice-Chairman and the Rapporteur. He supported the draft resolution, subject to the application of the principle of geographical distribution as the USSR representative had requested.

30. Mr. SPIROPOULOS (Greece) paid a tribute to the Latin American countries which had sponsored the draft resolution before the Committee. He pointed out that the question of increasing the membership of the International Law Commission should be considered not only from the political, but also from the scientific, point of view.

31. If the sole concern of the International Law Commission was existing law, the membership of fifteen might suffice. It should not be forgotten, however, that it was also the Commission's function to lay the groundwork for the creation of international law and to promote its progressive development, adopting new rules where necessary. In the report covering the work of its eighth session (A/3159, para. 26) the Commission pointed out that the distinction established in the Statute between those two activities—the codification and the progressive development of international law—could hardly be maintained. While it was true that law could be created only by States, the Commission drew up proposals which served as a guide in the creation of new rules of international law. Although the Commission's work was merely preparatory, since its conclusions had subsequently to be accepted by States in the form of conventions, it spoke for the international community in the matter of codification. Hence it was essential that the principal legal systems of the world should be duly represented on it. The codification of international law was not a task that could be entrusted to a single person; but neither could it be entrusted to a body comprising only one representative of each of the five main groups. In Latin America, as also in Europe, there were differences among the various States regarding, for example, the extent of the territorial sea. If the Commission was to define existing law, it must be so organized as to give a true reflection of general opinion. Article 23 of the Commission's statute provided, *inter alia*, that the Commission could ask the General Assembly to take note of a report. Such a report would not be merely an academic work; it would have an effect on existing law and its interpretation. As the Special Rapporteur had pointed out, once the text defining treaty law was established it would not have to be approved; it would be supported by the authority of the International Law Commission. That text would at the same time play an important role in the progressive development of international law, for it would to a certain extent lay down the rules for future law. The Commission would not be able to reflect general opinion unless the international community and the principal legal systems of the world were adequately represented on it. As some countries would always be represented on the Commission, it was necessary to increase the number of members, in order to give other countries an opportunity of serving on it in turn.

32. Before voting on the draft resolution before it, the Sixth Committee should, as the Soviet Union representative had said, determine the distribution of the new seats. It might be difficult, however, to mention that matter in its report to the General Assembly. An understanding among the delegations might suffice;

in the course of the general debate they could come to an agreement on the exact number of new seats and their distribution.

33. Mr. HSUEH (China) referred to the initiative which the Chinese delegation had taken at Dumbarton Oaks and San Francisco in introducing into the Charter what was now Article 13, paragraph 1, and the part it had played in the drafting of the Statute of the International Law Commission. He paid a tribute to the members of the Commission, who had made a particularly valuable contribution to the development of international law. While he would hesitate to say that the main forms of civilization and the principal legal systems of the world had hitherto been inadequately represented, the United Nations, with its increased membership, could now afford to provide the Commission with additional members.

34. He thought that the work of the Commission mainly lay in the field of research and study, and that, for that reason, an increase in its membership would not affect its efficiency but would instead help its work as the Commission would have the advantage of the collaboration of additional experts. His delegation would therefore support the twenty-Power draft resolution.

35. Mr. AMADO (Brazil) said that his delegation was among the sponsors of the draft resolution now before the Sixth Committee. It was obvious that the membership of the International Law Commission should be increased. The collaboration of additional experts could only enhance the Commission's prestige

and enable it to pursue its work under even more favourable conditions. The decision to increase the membership would have far-reaching effects from the intellectual and moral points of view.

36. He saw no useful purpose in the Afghan amendment. Article 8 of the Commission's Statute, in referring to the representation of the main forms of civilization and of the principal legal systems of the world, implicitly provided for the observance of the principle of geographical representation, and the General Assembly would certainly take that principle fully into account.

37. If the Soviet Union proposal were adopted, Europe would be represented on the International Law Commission by nine members instead of seven, and Asia and Africa by six instead of three. The American representation, however, would remain unchanged. It was essential to know whether the Sixth Committee would agree to the proposed distribution or whether any changes would have to be considered.

38. His delegation saw no reason why the Sixth Committee should not include its recommendations on that subject in its report to the General Assembly.

39. Mr. ABOU-TALEB (Yemen) was happy to associate himself with the representatives who had already congratulated the officers of the Committee on their election. He would support the twenty-Power draft resolution and the Afghan amendment.

The meeting rose at 1 p.m.