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Question of amending article 2 of the Statute of the International Law Commission to increase the membership of the Commission (*continued*) 19

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. Mr. LIMA (El Salvador) said that the debate had shown that an increase in the membership of the International Law Commission was not only necessary, in order to satisfy the requirements of article 8 of the Commission's Statute, but also desirable and feasible.

2. Many delegations had said that the additional vacancies proposed in the joint draft resolution (A/C.6/L.380) should be filled on a geographical basis. The Afghan representative had indeed proposed an amendment at the 482nd meeting which would have made such a geographical distribution obligatory. That amendment, which had since been withdrawn, would have been inconsistent with article 8 of the Commission's Statute, but the principle of geographical distribution could nevertheless serve as a general guide in the practical application of that article.

3. The delegation of El Salvador accepted both the Portuguese amendment, formally proposed at the 483rd meeting, which called for an increase in the Commission's membership from fifteen members to twenty-one, and the "gentlemen's agreement", outlined by the Cuban representative at the same meeting, concerning the distribution of the additional vacancies. He would stress, however, that the additional representation thus assured to the Latin American countries was the very least that they deserved.

4. Mr. ADAMIYAT (Iran) said that an increase in the Commission's membership was manifestly necessary. His delegation would consequently support the proposal for the creation of six additional vacancies and the agreement regarding the manner in which those vacancies should be filled. The latter should be explicitly mentioned in the Committee's report.

5. Mr. THORS (Iceland) supported the joint draft resolution and the Portuguese amendment. An increase in the Commission's membership was both reasonable and a natural corollary to the admission of many new Members to the United Nations. The countries of Africa and Asia, with their great historical traditions,

were certainly entitled to greater representation on the Commission. There were also compelling reasons for giving an additional seat both to western and to eastern Europe, and for allowing the remaining vacancy to be filled in rotation by a Latin American jurist and a jurist from a country of the British Commonwealth. The proposed increase in membership would thus do justice to every part of the world, and ensure that every question referred to the Commission was examined with the greatest thoroughness. Such thoroughness was more important than the more immediate advantages to be gained from a more streamlined body.

6. Mr. CARDIN (Canada) said that the Canadian delegation had never regarded an increase as essential for the purposes of article 8. It was nevertheless natural for nations whose legal systems were not represented on the Commission to desire greater opportunities of securing direct representation thereon. The Canadian delegation would therefore support the joint draft resolution.

7. During the debate on the geographical distribution of vacancies, the Canadian delegation had hoped that the role and the rights of the Commonwealth countries would be duly recognized. The Cuban and Polish representatives had indeed drawn attention to that point, by saying that the extra seat created by the Portuguese amendment should be reserved in rotation to a Commonwealth jurist and a Latin American jurist. That result was nevertheless somewhat disappointing to the older Commonwealth countries, namely, Canada, Australia, New Zealand and the Union of South Africa, which would now find it even more difficult to secure the election of one of their nationals.

8. Mr. ARENALES CATALAN (Guatemala) said that the problem of an increase in the Commission's membership and of equitable representation thereon had been discussed by the Latin American States for many months. While his delegation had been prepared at all times to support any constructive proposal, it had felt that the initiative should come from States, such as the African and Asian countries, which were most directly interested in such an increase. Initially, in fact, Guatemala had been included in error as a co-sponsor of the joint draft resolution. His delegation had nevertheless agreed to overlook the error for the sake of the unity of the Latin American group.

9. So far as the distribution of the additional vacancies was concerned, his delegation considered that the geographical principle should be approached with great caution. The paramount consideration in the distribution should always be equity. The suggestions made in debate, although designed to be fair to all parts of the world, in fact placed the Latin American States at some disadvantage. Representing a quarter of the membership of the United Nations, those States were entitled to five permanent seats on the enlarged International Law Commission. Under the proposed arrangement

gement, however, they would be restricted, for regular and prolonged periods, to four members. For that reason, the Guatemalan delegation reserved its position on the question of distribution.

10. Mr. BARNES (Liberia) said that the United Nations had greatly enhanced its prestige and influence by the admission of nineteen additional Members. That increase in membership should clearly be accompanied by a substantial increase in the membership of the International Law Commission so as to allow adequate representation of the main forms of civilization and the principal legal systems of the world. The question of an equitable distribution of seats was as important as that of the learning and competence of the individual members. For those reasons, the Liberian delegation would support the joint draft resolution and the Cuban representative's proposal regarding the distribution of vacancies.

11. Mr. ESCUDERO (Ecuador) said that the question of geographical distribution was not strictly relevant. In the election of members of the International Law Commission, the General Assembly was only required to apply the criteria set forth in articles 2 and 8 of the Commission's Statute. Geographical considerations could only play a secondary part.

12. The Ecuadorian delegation also rejected the thesis that the only factor to be considered was the academic standing of the various candidates. No part of the world had a monopoly of learning, and contributions to the development of international law could be made by every country. The uniform features of the law of nations should not obscure the diversity of the approach adopted to the subject by different States or groups of States. The composition of the Commission should reflect the variety of distinct legal systems, each of them adapted to the special conditions prevailing in a particular region.

13. Some delegations had contended that an increase in the Commission's membership might impair its efficiency. Speed was only one consideration, however; it was equally important that the composition of the Commission should reflect accurately that of the United Nations as a whole. The more efficient discharge of the Commission's functions could be ensured by other means, such as the division of the Commission into two or more sub-commissions.

14. The Ecuadorian delegation would support the Portuguese amendment, both because a membership of twenty-one reduced the possibility of an equal division of votes and because the six additional vacancies would give the General Assembly a greater opportunity for ensuring an equitable distribution. In that connexion, he agreed with the mode of distribution suggested by the Cuban representative. The additional representation which would thus be guaranteed, at regular intervals, to the Latin American States, constituted some recognition of the contribution which those States had made to the law of nations.

15. Sir Gerald FITZMAURICE (United Kingdom) thought there would be general agreement that, although certain Commonwealth countries did not fall within any of the recognized regional groupings, they could make a conspicuous contribution to the International Law Commission's work. He therefore welcomed the understanding that they should alternate with the Latin American countries in nominating one

member of the Commission. At the same time, it was disappointing, as the Canadian representative had said, that it had not been found possible to designate one full-time seat as reserved for a candidate of one of those countries. Even on the proposed basis, they would be seriously under-represented in the Commission by comparison with other groups of countries, in terms of their proportion of total United Nations membership: a Commonwealth country not a member of any of the recognized regional groups would, in fact, have approximately half as much chance of ever nominating a member of the Commission as, for example, a Latin American or an Asian country. If it was not now possible to increase the membership of the Commission to twenty-two, therefore, he hoped that the Committee would seriously consider the possibility of doing so in one or two years' time should occasion arise, as he believed it might.

16. Recalling the suggestion he had made at the 483rd meeting that the preamble to the joint draft resolution might be simplified, he proposed that, for the reasons he had then indicated, it should be replaced by the following text:

"The General Assembly,

"Having regard to the character of the present membership of the United Nations and to the duties and responsibilities of the International Law Commission,

"Considering that it is appropriate to increase the number of the members of the Commission,"

17. Mr. GREENBAUM (United States of America) expressed support for the joint draft resolution. Although an increase in the membership of the United Nations did not, in his delegation's view, of itself require an increase in the membership of the Commission, and although his delegation thought that the stipulations of article 8 of the Statute had been adequately satisfied by a fifteen-member Commission, there seemed good reason to hope that an enlarged Commission might be able to function more effectively; it would, for example, be in a position to improve the organization of its work in accordance with the suggestions made by the Swedish and United Kingdom representatives, to which he hoped the Commission, if enlarged, would pay very careful consideration.

18. The United States delegation did not support the view, however, that the Committee should accompany its decision with an agreement concerning the distribution of the additional seats. Under the Statute, the members of the Commission were not representatives of governments, but "persons of recognized competence in international law". He noted that geographic distribution was not one of the criteria for election mentioned by article 8 of the Statute. However, the United States delegation would welcome the opportunity, which enlargement would give, to vote in favour of additional qualified jurists from Asian and African countries, as it believed they could make a useful contribution to the Commission's work. It would also be glad to vote in favour of another jurist from an Anglo-Saxon country, for the same reason.

19. The United States would vote in favour of the Portuguese amendment. It also supported the United Kingdom amendment because it did not believe that an increase in the membership of the United Nations automatically required the enlargement of all United

Nations bodies. For example, the United States believed that no enlargement was warranted in the case of the International Court of Justice, where an increase in size would hamper it in its deliberations. However, since the Commission was not a judicial body, the United States would support the draft resolution for the reasons already stated.

20. Mr. PATHAK (India) said that he had, at the 482nd meeting, expressed support for the joint draft resolution on the understanding that the under-representation of the Asian and African countries would be righted. He therefore welcomed the proposal that three of the additional seats should be reserved for jurists from those countries, one each for jurists from eastern and western Europe and one alternately for a Latin American jurist and a jurist from a Commonwealth country. The Committee's understanding on that point should expressly be mentioned in the report to the General Assembly; jurists fulfilling the conditions laid down in article 2 of the Commission's Statute would certainly be found at all times in the countries in question.

21. Mr. BAILEY (Australia) supported the joint draft resolution for the reasons indicated by the United States and other representatives.

22. An increase in the Commission's membership would not only have certain financial implications (A/C.6/L.380/Add.1) but would also, unless the Commission changed its mode of work, tend to slow down and perhaps hamper the process of drafting agreed texts. And if the Commission did not reach agreement, but merely defined points of disagreement, it would not achieve fully what it had been set up to do. Those organizational matters, however, were primarily the responsibility of the Commission itself, though he hoped it would seriously consider the valuable suggestions which had been made in that connexion. Such practical considerations apart, an increase in the Commission's membership did seem desirable in order to enable it to carry out its duties in full accord with the explicit and implicit requirements of its Statute, and more particularly of article 8. Enlargement, by enabling the Commission to utilize more fully in its work the different approaches of the main forms of civilization and main legal systems, could undoubtedly assist both in the effective formulation of the existing law on particular topics and in securing the necessary support for influencing the development of future practice along sound lines.

23. He thanked the delegations which had referred to the contribution which the Commonwealth countries could make to the Commission's work. He welcomed the understanding which appeared to have been reached on that point, although he too regretted that the Commonwealth countries not included in any other recognized grouping were not to be given a full-time seat of their own.

24. He supported the substance of the amendment proposed by the United Kingdom representative, but suggested that the words "the character of the present membership of the United Nations" might more appropriately be replaced by some such phrase as "the present composition of the United Nation".

25. Speaking as Rapporteur, he said that, if it accepted the suggestion that an informal agreement by the Committee on the distribution of the additional seats should be embodied in its report, the Committee might

perhaps be thought by the General Assembly to have to some extent prejudiced the electoral body's freedom of choice. He hoped it might be considered sufficient if it was stated in the report that the Committee had discussed how compliance with the provisions of article 8 of the Commission's Statute could best be achieved within the framework of the Commission's proposed new membership and that the relevant discussions were recorded in the Committee's summary records.

26. The CHAIRMAN said that a decision taken by the Sixth Committee could in no way be regarded as binding on the General Assembly.

27. Mr. LETTS (Peru) said the sponsors of the joint draft resolution had naturally realized that an increase in the Commission's membership would give rise to certain practical difficulties, but had felt that those were far outweighed by the importance of ensuring adequate representation of the main forms of civilization and the principal legal systems of the world.

28. He had no objection to the Portuguese amendment or to the proposed distribution of the extra seats, but he still had some doubts about the wisdom of placing any decision on that point formally on record, since the question was somewhat different in substance from those normally dealt with by the Committee. Many countries would like the chance to nominate one of their jurists to the International Law Commission, and the understanding that, apart from the distribution of the new seats, the existing composition of the Commission should remain unchanged did not of course mean that all the present members would necessarily be re-elected, but only that the same number of members would be elected for each regional grouping.

29. He would abstain from voting on the United Kingdom amendment to the preamble and suggested instead, as a simpler solution, that the first and second paragraphs of the preamble should be deleted and the words "in these circumstances and" omitted from the third.

30. Mr. KNOX (Denmark) said he was grateful for the support some of his views had received, although he felt they were not fully shared by anyone. He recognized that there were good reasons for some increase in the Commission's membership, as that would give it added weight and authority; he also appreciated the desire of many of the new Member States, especially those from Africa and Asia, to take part in the Commission's work. Although it did not entirely allay his apprehensions, he welcomed the Swedish representative's suggestion that the Commission be divided into two and hoped it would be closely studied. As he did not want the membership of the Commission to be increased any more than other delegations thought essential, he welcomed the fact that the Latin American countries and the Commonwealth countries had accepted the suggestion that they should share one of the additional seats between them.

31. He supported the United Kingdom representative's amendment to the preamble, since that amendment also went some way towards meeting his fears. With the amendment, he would be prepared to vote for the joint draft resolution, in the interests of unanimity.

32. Mr. CASTAÑEDA (Mexico) supported the United Kingdom version of the preamble, which he

preferred to the Peruvian suggestion. It was necessary not to give the impression that there was a direct and automatic relationship between the number of Member States of the United Nations and the membership of the International Law Commission.

33. His delegation also supported the Portuguese amendment concerning the increase in the membership of the Commission, as well as the suggestion for the distribution of the six new seats, which had met with general agreement. That agreement could be mentioned in the Committee's report as an objective fact, but not as a decision or a recommendation: it was essential not to imply that the General Assembly's freedom of choice was being in any way impaired.

34. Mr. GLASER (Romania) said it was the duty of the Committee to include in its report a clear reference to its virtually unanimous decision in respect of geographical distribution.

35. The membership of the International Law Commission was being increased in order to remedy the defects of its existing composition, which was unjust to the countries of Asia and Africa.

36. The concept of geographical distribution was by no means foreign to the Statute of the Commission. Article 2, paragraph 2 of the Statute specified that the Commission could not include more than one national of any single State. It was therefore clear that the members of the Commission were chosen by reference not only to their competence but also to their nationality. Furthermore, article 8 introduced the idea of the representation of the main forms of civilization and of the principal legal systems of the world, and that could only be ensured by means of an equitable geographical distribution.

37. Mr. HOLMBACK (Sweden) supported the United Kingdom amendment to the preamble of the joint draft resolution. The third paragraph of the preamble as it stood suggested that the increase in the membership of the Commission was a logical consequence of the stipulations of article 8 of its Statute. In this respect he criticized the paragraph, but he supported the enlargement of the Commission because that would make it easier for a greater number of States, particularly among the new Member States, to co-operate in the work of the Commission.

38. Mr. NOGUES (Paraguay) said that the increased number of members would ensure a more equitable representation on the Commission for Asian, African and European countries with a long-standing legal

tradition and an ancient civilization which had recently become Members of the United Nations.

39. He supported the United Kingdom amendment, which improved the preamble of the joint draft resolution.

40. Mr. Abdul Mejid MAHMOUD (Iraq) said that the inclusion of an express statement in the Committee's report setting forth the agreement concerning the distribution of the six additional seats, involved no technical difficulties.

41. He supported the proposal for an increase in the membership of the International Law Commission, because he believed it would facilitate the work of the Commission. He agreed that every increase in the membership of the United Nations did not necessarily require a corresponding increase in the number of members of the International Law Commission.

42. He agreed in principle with the United Kingdom amendment to the preamble.

43. Mr. NUGROHO (Indonesia) said that, according to article 8 of the Statute of the International Law Commission, the members of that body were chosen not merely by reason of their qualifications but also as representing various legal systems. Western Europe and America were represented at the moment by a considerable number of eminent jurists who had a fairly homogeneous background and whose legal systems were not very diverse. Asia and Africa, however, included a large number of countries having very diverse civilizations and legal systems, and there were at present only three members from Asia and the Middle East in the Commission, a representation which was not sufficient.

44. The Indonesian delegation therefore supported the proposal for an increase in the membership of the Commission, on the understanding that the existing unbalanced representation would be corrected by the election of three new members drawn from the Asian and African States. His delegation was speaking impartially, for Indonesia had not nominated candidates for election to the Commission. His country needed all its available talent at home; besides, there were already numerous candidates from Asian and African countries.

45. While not sharing the United Kingdom representative's fear that perhaps a precedent was being established, he would nevertheless support the United Kingdom amendment in order to allay those fears and to maintain the unanimity of the Committee.

The meeting rose at 1 p.m.