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**Chairman: Mr. Karel PETRŽELKA**  
(Czechoslovakia).

*In the absence of the Chairman, Mr. Castañeda (Mexico), Vice-Chairman, took the Chair.*

**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; A/C.6/L.384) (*concluded*)**

1. Mr. ALVAREZ AYBAR (Dominican Republic) paid tribute to the excellent work done by the International Law Commission with its membership of fifteen; the increased membership would doubtless strengthen the Commission, particularly as several of the new members would represent the forms of civilization and legal systems of Member States recently admitted to the United Nations. A certain degree of geographical distribution was essential for the purpose of satisfying the stipulations of article 8 of the Commission's Statute.

2. He supported the Cuban suggestion made at the 483rd meeting concerning the distribution of the six new seats. It was desirable that the Committee's report should state expressly that the suggestion had won general acceptance.

3. He added that he also supported the United Kingdom amendment (A/C.6/L.384).

4. Mr. CANAL RIVAS (Colombia) said that the Cuban suggestion for the distribution of the new seats was in conformity with the spirit of article 8 of the Commission's Statute.

5. It was important that the agreement on the suggested distribution should be specifically referred to in the documents of the Sixth Committee, although it was an informal agreement of the same type as the "gentlemen's agreement" adopted in London in 1945 concerning the representation of the various regional groups on the Councils and organs of the United Nations.

6. His delegation had no objection to the United Kingdom amendment.

7. Mr. OSMAN (Sudan) said his delegation was not interested for its own sake in the manner of distribution of the seats on the International Law Commission. He did not consider it a matter of vital importance whether one group of States was represented by a larger or a smaller number of members on the Commission.

8. He would vote in favour of the draft resolution before the Committee (A/C.6/L.380) because there were good reasons for increasing the membership of the International Law Commission. The Committee was satisfied that the continents of Asia and Africa had various legal systems and forms of civilization which were worthy of greater representation on the Commission, and that the latter should therefore be enlarged. The Committee was also satisfied that there were, in the new Asian and African Member States, able and competent jurists whose co-operation would be valuable to the Commission.

9. Finally, he supported the Cuban suggestion concerning the distribution of the new seats.

10. Mr. HSUEH (China) said that, although his delegation was satisfied that the main forms of civilization and the principal legal systems of the world were already adequately represented on the Commission, it nevertheless favoured the increase in the latter's membership because, now that the United Nations had seventy-nine Member States, it could afford to expand the Commission.

11. Another reason for supporting the increase lay in the special nature of the work of the International Law Commission. His delegation's vote on the enlargement of the Commission did not, therefore, affect its views on membership of other organs of the United Nations.

12. For those reasons, he welcomed the United Kingdom wording for the preamble (A/C.6/L.384).

13. Mr. CORVINGTON (Haiti) supported the Cuban suggestion concerning the distribution of the six new seats. He pointed out that the additional seat (in alternate elections) for a Latin American member was not, as had been implied, a premium to the Latin American States but rather the recognition of the important roles of the twenty Member States in question in the Organization.

14. The suggestion made by Sweden at the 483rd meeting that the Commission should work in future in two divisions, was an excellent one and should be considered.

15. He expressed support for the United Kingdom amendment to the preamble.

16. Mr. JUDETH (Cambodia) noted with pleasure the virtually unanimous support for the increase in

the membership of the International Law Commission and for the distribution of the new seats in a manner which conformed with the spirit of article 8 of the Commission's Statute.

17. Mr. DE THIER (Belgium) said that at first his delegation had taken the view that the increase in the membership of the United Nations did not necessarily require an increase in the membership of the International Law Commission. The arguments put forward in the course of the debate had, however, convinced him that the Commission's work would be helped by the increased membership, as the Commission had a heavy agenda. Besides, an increase would make it possible for jurists from the Member States recently admitted to the United Nations to participate in the work of the Commission.

18. He supported the United Kingdom representative's amendment to the preamble, for the reasons stated by that representative.

*Mr. Petrželka (Czechoslovakia) took the Chair.*

19. Mr. TOLENTINO (Philippines) supported the Cuban suggestion concerning the distribution of the six new seats on the International Law Commission.

20. He agreed with the considerations underlying the United Kingdom amendment (A/C.6/L.384), which rightly placed primary emphasis on the duties and responsibilities of the Commission. He proposed, however, that the second paragraph of the United Kingdom text should be amended to read:

*"Considering that, for the purpose of maintaining in the Commission an adequate representation of the main forms of civilization and of the principal legal systems of the world, it is appropriate to increase the number of members of the Commission;"*

21. That amendment would restore the reference, contained in the joint draft resolution (A/C.6/L.380), to the terms of article 8 of the Commission's Statute, which constituted the reason for the increase in its membership.

22. He fully understood the United Kingdom representative's desire to avoid creating the impression that the increase in the membership of the United Nations constituted the only reason for increasing the membership of the International Law Commission. He also fully understood the desire not to suggest that it was a valid precedent applicable in the case of the membership of other United Nations bodies. But he felt that the text he proposed raised no difficulty in those two respects.

23. Mr. MOROZOV (Union of Soviet Socialist Republics) welcomed the fact that the Committee was on the point of agreement. An increase in the International Law Commission's membership was clearly necessary as a means of ensuring the representation of all legal systems. The USSR delegation would therefore support the creation of six additional vacancies and their distribution in the manner originally suggested by the Cuban representative at the 483rd meeting. The earlier misunderstanding regarding some alleged inconsistency between the principle of geographical distribution and the terms of article 8 of the Commission's Statute had now fortunately been removed.

24. The USSR delegation agreed in principle with the considerations underlying the United Kingdom amendment. It was not an automatic consequence of an increase in the membership of the United Nations that the membership of all its organs should be increased proportionately. The Philippine representative had nevertheless rightly pointed out that the last paragraph of the preamble to the joint draft resolution contained certain desirable features. The USSR delegation would consequently vote in favour of the United Kingdom amendment on the understanding that the Philippine amendment was also accepted.

25. Sir Gerald FITZMAURICE (United Kingdom) regretted that he would be unable to support the Philippine amendment. The retention of the third paragraph of the original preamble would be inconsistent with the ideas which he had previously expressed. His amendment had not been prompted solely by the belief that an increase in the parent body did not automatically justify an increase in all its organs. He had also wanted to avoid the express repetition of the wording of article 8 of the Commission's Statute. The same wording appeared in Article 9 of the Statute of the International Court of Justice, and its use in the draft resolution under discussion might be misconstrued as implying that the Committee was also recommending an increase in the membership of the Court. Many delegations felt that the considerations applying to the Court and to the Commission were not always the same.

26. Mr. DUTTA (Pakistan) said that he would support the Philippine amendment to the United Kingdom amendment. The question of the membership of the International Court of Justice was wholly distinct. If that question ever came up for discussion, it would be judged solely on its own merits.

27. Mr. MOROZOV (Union of Soviet Socialist Republics) suggested that the Philippine amendment might be more acceptable if the word "maintaining" were replaced by "securing".

28. Mr. TOLENTINO (Philippines) welcomed the suggestion.

29. The CHAIRMAN recalled the earlier misgivings of some delegations regarding a reference in the Committee's report to the agreement concerning the distribution of the additional vacancies. Previous agreements regarding the election of members or officers of United Nations bodies were a constant practice in the Organization. Such a binding gentlemen's agreement did not violate the freedom of the elections. The agreement was concluded between the delegations which in fact were the electors. Experience showed that the practice had good results. It was therefore quite in order that the report should confirm the Committee's satisfaction with the allocation of the present fifteen seats on the Commission and refer to the agreement that the additional six vacancies should be distributed in the manner suggested by the Cuban representative. The first holder of the sixth additional seat would be a Latin American jurist. After five years, his place would be taken by a jurist from a Commonwealth country which did not belong within any other distinct geographical area.

30. The Chairman put to the vote the Portuguese proposal that the word "twenty" in both operative

paragraphs of the joint draft resolution (A/C.6/L.380) should be amended to read "twenty-one".

*The proposal was adopted unanimously.*

31. The CHAIRMAN put to the vote the United Kingdom amendment (A/C.6/L.384) to the preamble of the joint draft resolution.

*The first paragraph was adopted by 60 votes to none with 6 abstentions.*

*The second paragraph was adopted by 51 votes to none with 13 abstentions.*

32. Sir Gerald FITZMAURICE (United Kingdom), speaking on a point of order, said that the Committee's approval of the second paragraph of the United Kingdom amendment rendered any vote on the Philippine amendment unnecessary. The primary purpose of the short second paragraph of the United Kingdom amendment had been to omit any reference to the words which the Philippine representative had sought to reintroduce.

33. Mr. TOLENTINO (Philippines) said that the Philippine amendment should still be put to the vote. The words contained in the second paragraph of the United Kingdom amendment also appeared in the Philippine amendment. The latter could consequently be regarded as a mere supplement and not as a radically different proposal.

34. After a brief discussion in which Mr. GLASER (Romania), Mr. PINTO (France), Mr. RADUILSKI (Bulgaria), Mr. AZARA (Italy), Mr. HANSA MAN SINGH (Nepal), Mr. EL KOHEN (Morocco) and Mr. NUGROHO (Indonesia) took part, Mr. HAMDANI (Pakistan) suggested that the Chairman should put to the vote the part of the Philippine amendment not covered by the United Kingdom amendment.

35. Sir Gerald FITZMAURICE (United Kingdom) and Mr. TOLENTINO (Philippines) agreed to that suggestion.

36. The CHAIRMAN put to the vote the phrase in the Philippine amendment "for the purpose of securing in the Commission an adequate representation of the main forms of civilization and of the principal legal systems of the world", to be inserted after the words "Considering that" in the second paragraph of the preamble of the joint draft resolution, as amended.

*The phrase was adopted by 38 votes to 17, with 15 abstentions.*

37. The CHAIRMAN called for a vote on the operative part of the joint draft resolution, as amended.

*The operative part of the joint draft resolution, as amended, was adopted by 67 votes to none, with 2 abstentions.*

38. The CHAIRMAN put to the vote the joint draft resolution (A/C.6/L.380) as a whole, as amended.

*The joint draft resolution as a whole, as amended, was adopted by 68 votes to none, with 1 abstention.*

39. Mr. PATHAK (India) said he had voted in favour of the operative part of the joint draft resolution, but had abstained from voting on the first paragraph of the United Kingdom amendment to the preamble because the original text of the preamble fol-

lowed the terms of article 8 of the Commission's Statute more closely, and brought out more prominently and explicitly what were in his delegation's view the two valid and inter-related reasons for increasing the Commission's membership, namely, the new situation resulting from the increase in the membership of the United Nations and the present under-representation in the Commission of the different civilizations and legal systems of Asia and Africa.

40. Mr. LIMA (El Salvador) said that he had voted in favour of the United Kingdom amendment because it was more concise and avoided any implication that an increase in the membership of the United Nations automatically entitled an increase in the membership of United Nations bodies. His vote should not be interpreted as meaning that his delegation had changed its mind about any of the considerations cited in the original text of the preamble.

41. Mr. AYCINENA SALAZAR (Guatemala) said that he had abstained in the vote on the joint draft resolution because, as would appear from the summary records, the Committee had reached an understanding on a number of points with which his delegation was not in agreement.

#### AGENDA ITEM 53

#### Report of the International Law Commission on the work of its eighth session (*continued*):

#### (a) Final report on the régime of the high seas, the régime of the territorial sea and related problems (A/3159; A/C.6/L.378, A/C.6/L.385)

42. The CHAIRMAN drew attention to the report of the International Law Commission covering the work of its eighth session (A/3159), which contained the fruit of more than six years' painstaking work on the law of the sea. Governments had had ample opportunity to comment on the Commission's successive drafts, and the Commission had also been able to draw on the rich practical experience of the two decades which had elapsed since the Conference for the Codification of International Law held at The Hague in 1930. The failure of that Conference should not, therefore, be taken as a portent signifying that the real difficulties which were inherent in the problem were still insuperable.

43. On behalf of the Committee he welcomed Mr. François, the Commission's Special Rapporteur on the law of the sea who had also been Rapporteur of the Second Committee of the 1930 Conference. He invited Mr. François to introduce the Commission's report.

*Mr. François, Special Rapporteur of the International Law Commission, took a seat at the Committee table.*

44. Mr. FRANÇOIS<sup>1</sup> said that although the Commission had originally intended to confine itself to codifying a few selected parts of the law of the sea, it had realized in the course of its deliberations that the various parts were so closely interwoven that a study of the topic as a whole was desirable. With

<sup>1</sup> The full text of Mr. François' statement was subsequently circulated as document A/C.6/L.387.

respect to matters which required expert technical knowledge or were already being considered by other United Nations organs, however, it had simply laid down certain guiding principles. Certain matters (piracy, for example) had received much fuller treatment than others, a circumstance which explained what might seem to be an uneven distribution of emphasis in the draft articles contained in the report (A/3159, chap. II). The draft articles were in fact only a first step towards the codification of the law of the sea.

45. The next step, in the Commission's view, should be to submit them to an international conference of plenipotentiaries, similar to the 1930 Conference, which would be better qualified to consider the problems involved from all points of view—geographical, technical, biological, economic and political, as well as legal—and to embody points of agreement in one or more international conventions or other instruments. For though the various branches of the law of the sea were so intimately interdependent that their separate treatment was well-nigh impossible, there were several on which agreement could and should be reached even if agreement on others was unattainable. The Commission shared the now general view that the 1930 Conference had been wrong in allowing the failure to reach agreement on the delimitation of the territorial sea to stop it from embodying in a convention those points on which agreement had been reached.

46. Of the two most controversial issues, one was still the delimitation of the territorial sea, the other being the related but more recent problem of the law governing the continental shelf. There was no easy legal way of resolving the clear conflict of interests between those States which for economic and even perhaps political reasons wanted a wide territorial sea and those which were more interested in preserving the freedom of the sea, not so much for purposes of navigation—where the right of innocent passage offered them an adequate safeguard—as for purposes of fishing. Yet although the coastal State was entitled to exclude all foreign fishermen from its territorial sea, the International Law Commission had become convinced that the claims to far-reaching extensions of the territorial sea were motivated less by the coastal States' desire to increase the area in which their nationals already enjoyed exclusive fishing rights than by their anxiety to prevent over-fishing in the adjacent waters. It therefore felt that it could help to inhibit the tendency towards extending the territorial sea by allowing the coastal State to take the measures necessary for the conservation of fisheries in the adjacent waters, subject to recourse to a fully satisfactory arbitral procedure in the event of disputes with other interested States. And that was the purpose of articles 50 to 59 of its draft articles.

47. With regard to the delimitations of the territorial sea, he stressed that it was not true to say either that the Commission had taken no stand on that matter or that it had accepted any breadth up to twelve miles as consistent with international law. Its draft article 3 recognized that "international practice is not uniform as regards the delimitation of the territorial sea". Paragraph 2 of the same article stated that "international law does not permit an extension of the territorial sea beyond twelve miles". In that way a maximum limit was clearly laid down, but that did not mean that an extension up to twelve miles was necessarily consistent with international law. Indeed, in article 3, paragraph 3, the Commission stated explicitly that it had taken no decision as to the breadth of the territorial sea between three and twelve miles; it had merely expressed the view that within those limits the breadth of the territorial sea should be fixed by an international conference, which would be able to take economic and geographic factors into account and might, if necessary, agree on different breadths for different areas of the sea.

48. The delimitation of the territorial sea was also affected by the question of the continental shelf; for unless coastal States were allowed to exploit the sub-soil of the submarine areas outside their territorial sea, they would be tempted to extend its limits. The Commission therefore recognized (article 68) the coastal State's sovereign right to explore and exploit the natural resources of its continental shelf. At the same time, it protected the other States' superjacent waters and the air space above those waters by laying down that their status was not affected by the coastal State's rights over the continental shelf (article 69).

49. In the definition of "continental shelf" which it had finally adopted (article 67), the Commission had departed to some extent from the geological concept of the term, because of the differing ways in which it was used by scientists, and also because the existence of a continental shelf in the geological sense might be questioned in regard to submarine areas where the depth of the sea would nevertheless permit the exploitation of the sub-soil in the same way as if there were a continental shelf. For similar reasons the Commission had refrained from defining the continental shelf in terms of distance from the coast. In fact, the only reliable test seemed to be whether the resources of the sub-soil were capable of being exploited.

50. He was at the Committee's disposal for any further information or explanations it desired concerning the draft articles, over and above the comments contained in the report itself (A/3159, pp. 12 *et seq.*)

The meeting rose at 1 p.m.