External Affairs
Supplementary Paper

No. 61/12 ENLARGEMENT OF THE INTERNATIONAL LAW COMMISSION

Statement of Mr. Cadieux, Canadian Representative on the 6th Committee of the United Nations General Assembly, on October 6, 1961.

Introductory Remarks

As this is the first occasion on which I have had the privilege to address the 6th Committee at the outset, I would like, on behalf of my delegation and myself, to offer sincere congratulations to you, Mr. Chairman, on your election as Chairman of this Committee. Similarly, I would like to offer sincere congratulations to Professor Mustafa Kamil Yasseen on his election as Vice-Chairman, and to Dr. Endre Ustor on his election as rapporteur. Already the discussion which has taken place suggests, Mr. Chairman, that plenty of challenges lie ahead which will test the skill of the newly-elected officers of this Committee, but my delegation has full confidence that these challenges will be fully met and successfully overcome.

On behalf of the Canadian delegation, we would also like to extend a warm welcome to Sierra Leone, the United Nations' newest member, Canada looking on the admission of Sierra Leone to the United Nations with particular pride and pleasure, having regard to the close Commonwealth ties existing between the two countries.

History of the "Gentlemen's Agreement"

We have listened with great interest to the learned discussion that has taken place throughout the past two meetings on the enlargement of the International Law Commission item. While a variety of views have been expressed, there seems to be general agreement on one matter, namely that further expansion of the Commission is required to take into account that the membership of the United Nations has been increased by 21 states, with 19 of these states being African states, since 1956.

By Resolution 1103 (XI), dated 18 December 1956, the General Assembly increased the membership from 15, being the number at which the Commission was originally established in 1947, to 21 members, to ensure that the great number of states which had joined the United Nations since that time would be adequately represented on the Commission without prejudice to the status quo existing at that time.

During the discussion that took place in the 6th Committee prior to the adoption of General Assembly Resolution 1103 referred to above, delegations reached what is known as the "Gentlemen's Agreement" with regard to the allocation

of seats on the Commission. It seems important, Mr. Chairman, that the substance of this agreement should be placed on the record again at this time. It provides that six additional seats being added to the Commission should be allocated as follows:

3 seats to nationals from African and Asian members of the United Nations:

1 seat to a national from Western Europe;

1 seat to a national from Eastern Europe; and

1 seat, in alternation, to a national from Latin America and a national from a British Commonwealth country not otherwise included in any recognized regional group.

The "Gentlemen's Agreement" also provided that the distribution as between different forms of civilization and legal systems would be maintained in respect of the then existing 15 seats.

Adding the 1956 "Gentlemen's Agreement" to the arrangement which previously existed, the following overall agreement was evolved concerning the allocation of the 21 seats on the International Law Commission as a result of the increase that took place in 1956:

Five seats were to be held by nations of the permanent members of the Security Council;

Five seats were to be held by nations of Asian and African states;

Two seats to be held by nationals of Eastern European states;

Four and one-half seats to be held by nationals of Latin American states;

One-half seat to be held by a national from the British Commonwealth countries not otherwise included in any recognized regional grouping;

Four seats were to be held by nations of Western European states.

Alternatives Open

In dealing with this problem it is clearly necessary to find answers to the following questions:-

1. Should there be an overall reallocation of seats without expansion?

2. Should there be an overall reallocation of seats with expansion?

3. If not, should there be an expansion with the reallocation being limited by the number of seats comprising expansion?

Reallocation without Expansion

As regards the first question concerning whether there could be a reallocation without expansion, it seems clear that this could be done in such a manner as not to fall short of the requirements of Article 8 of the Statute of the International Law Commission.

It will be recalled that this Article provides that the persons to be elected should individually possess the qualifications required and that in the Commission as a whole a representation of the main forms of civilization and of the principal legal systems of the world should be assured.

However, in order to bring about reallocation without expansion so as to ensure that the 21 new members of the United Nations are represented on the Commission, it would be necessary to deprive other groups of states of a percentage of the seats allocated to them under the 1956 "Gentlemen's Agreement". This in turn would present the Commission with the mountainous problem of deciding what yardstick should be used in taking away seats already allocated to other groups of states for reallocation to the candidates of the new members. Each group of states would wish to maintain that its allocation should not be disturbed. Clearly in these circumstances if an attempt were made to have a reallocation of seats without expansion the result would probably be a complete deadlock. It seems, therefore, that it may simply not be feasible to contemplate a reallocation without expansion and that this course is not open to us in the circumstances.

General Reallocation with Expansion

The question next arises as to whether it would be feasible to have a general reallocation with an expansion. While there seems to be general agreement that an expansion is required, it is the view of the Canadian delegation that a general reallocation would not be practicable however wise it might seem to be in theory.

In support of a general reallocation with expansion the view has been expressed that the overall agreement reached in 1956 was an unsatisfactory one and that a compelling need exists to scrap the 1956 agreement and start again. If there were factors which could be brought forward to show that the 1956 overall agreement was now entirely out of date, and therefore required remodelling, there would then be considerable point to the argument that a new overall agreement should now be drawn up. However, the only relevant development that has taken place since 1956 is that 21 new states, including 19 African states, have joined the United Nations. This development in no way unhinges the basis of the 1956 overall arrangement, it can and should, in the opinion of the Canadian delegation, be dealt with on a separate basis.

If the 1956 agreement is considered carefully, it is difficult to see how an overall reallocation in the context of an expansion would be advisable. Representatives of the Afro-Asian group have stated that there is need for a reallocation because, in their view, their group is under-represented. Similarly claims are being made that the Eastern European group is under-represented. However, who is to judge as to the validity of these claims or as to the validity of similar claims that other groups of states would be well justified to advance were it decided to introduce an overall reallocation of seats even in the context of an expansion?

Reallocation coupled with expansion involves other difficulties. The most likely of these would be that the Commission would have to be increased to such a degree as to make it no longer able to function efficiently as a technical legal group. It could be reduced to a forum in which various political groups would be mechanically putting forward rigid formal positions. In that case, all hope of communication on an individual basis between experts which constituted the original purpose of setting up the Commission would be lost.

The suggestion has been made that there should be a reallocation on the basis of political groupings. However such an approach is contrary to the objects and aims for which the Commission was created.

The 6th Committee has a great responsibility to ensure that the original purpose of the Commission is not defeated. Members of the Commission were conceived not so much as representatives of their states but rather as individual experts in the field of international law in general and in particular in the field of international law and domestic law as applied in the region represented by the expert.

Also the expert by virtue of these qualifications is expected not only to be able to interpret international law or domestic law in so far as applied in his geographical region, but also to express views which take into account general principles of international law and the view of his colleagues concerning international law or domestic law as applied in other geographical areas. This means that, in the selection of members to serve on the Commission, great emphasis must be placed on the provision in Article 8 of the Statute of the International Law Commission that "at the election the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required". Also the tendency should be resisted of implementing in too wooden a fashion the provision in Article 8 that "in the Commission as a whole representation of the main forms of civilization and of the principal legal system of the world should be assured". An implementation of this kind would occur if there were insistence on arbitrarily allotting seats to a very specific geographical area without regard being had to the qualifications of the individual concerned.

The International Law Commission is primarily a group of experts and neither Article 8 nor any other article of the Statute should be interpreted in such a way as to destroy this all-important concept.

Many of my colleagues have discussed in one form or another the nature of the relationship existing between law and politics. Of course they are closely linked and yet the mistake must not be made of confusing one for the other.

Obviously the role of the International Law Commission is not to attempt to participate primarily in making political decisions or in dealing with political problems. However, bearing in mind the close relationship existing between law and politics, the Commission will necessarily have to take political factors into account in its work. But the role of the Commission should be focused largely on the formulation of international rules through the use of well-developed legal techniques, have as its objective the promotion of the progressive development of international law and its codification and not directly the settlement of political issues.

I am unable to agree that the work of the International Law Commission consists of struggles involving one area against another and that the outcome is determined by the number of votes assigned to each area. Regional considerations and ideological differences must be given their proper weight, but the rule of law is, I would hope, something else and something more than the mathematical expression of a geographical allocation of votes or of political compromises.

Having regard to the essentially legal role which the International Law Commission must play, it will clearly be inappropriate and contrary to the spirit and the letter of the Statute of the Commission to attempt to give the allocation of seats in the Commission political emphasis which it has been suggested such allocations should have.

Expansion with Reallocation limited to Geographical Areas Represented by New Members.

The second alternative, expansion associated with reallocation, is not impossible as a theoretical course but it does seem to involve great practical difficulties and dangers for the future work of the Commission and for the successful outcome of our deliberations.

We are therefore led to examine a third possibility, expansion without reallocation, except in so far as it relates to the new region represented, i.e., the 21 new member states.

It is the view of the Canadian delegation that this alternative represents a fair compromise in regard to the two related problems of expansion and allocation and that it deserves support, representing as it does the resolution which has been co-sponsored by Cameroun, Colombia, India, Japan, Liberia, Nigeria, Sweden and the U.S.A.

On the problem of expansion, this proposal calls for a modest increase which takes into account the larger membership of the organization and yet is not likely to affect the nature of the Commission or alter its expert character.

On the problem of allocation, the proposed resolution has it is true the effect of leaving the 1956 overall allocation of seats untouched. Its sole purpose is to increase the membership of the Commission by two seats designed to cover the geographical area represented by the new African states.

Ambassador Plimpton, the distinguished U.S.A. representative, in proposing this resolution pointed out that what was being considered was not a general enlargement of the Commission but rather a specific enlargement limited to the one geographical region not presently represented on the Commission, namely, the central and southern region of the African continent.

The impression has been gained from some of the discussion that the two new seats being proposed are intended to represent the whole geographical region of Africa which is, of course, not the case at all. The other portions of Africa were considered to be represented under the overall agreement reached in 1956.

It can be said therefore that the third alternative we are considering involves an element of reallocation in that it adds two seats to the number of seats assigned to Africa and Asia in 1956.

The advantage in this approach is that, following the precedent adopted in 1956, it supplements rather than supersedes an arrangement already in existence and it avoids the danger of attempting a new general reallocation which could involve the Committee in lengthy and controversial discussions, not to mention the difficulties we have outlined above which may be in store for the International Law Commission itself.

For these reasons, of the three possible courses open to us, the Canadian delegation feels that the more reasonable one is that suggested in the draft resolution which is now before us. Canada therefore proposes to vote for the eight power resolution contained in document A/C 6/L 481.

This is not to argue that the 1956 solution was ideal and that the modification now suggested will make it perfect in every respect. I put it to you that such a solution may commend itself to you, in the end, as the best available in the circumstances.

Proposed Working Group

There is one more question concerning which the Canadian delegation would like to comment. The suggestion has been made that this complex matter should be referred for consideration to a small working-group on which all points of view would be represented. The Canadian delegation considers that the formation of such a working group would only be required were it considered necessary to undertake a complete reallocation of the seats on the Commission. For the reasons already expressed, the Canadian delegation feels that an attempt at such a reallocation could be most unwise. The Commission has been provided with a better solution to the problem which does not require reference being made to a working group. This is the solution provided, of course, by the proposed eight-power resolution.

Conclusion

One final point, Mr. Chairman. We are as anxious as any country around this table to provide all countries and all groups of countries with opportunities to participate in the work of the International Law Commission. Our comments and suggestions have been made with this essential point in mind.