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Chairman: Mr. Alberto HERRARTE (Guatemala).

AGENDA ITEM 58

Question of initiating a study of the juridical régime of historic waters, including historic bays (A/4161, A/C.6/L.466 and Add.1) (concluded)

CONSIDERATION OF THE DRAFT RESOLUTION (A/C.6/L.466 AND ADD.1) (concluded)

1. Mr. YASSEEN (Iraq) recalled that the question of the juridical régime of historic waters had been placed on the agenda of the thirteenth session of the General Assembly, but had been deferred for lack of time. In view of the time already lost, therefore, the Saudi Arabian representative was to be commended for having shown the Committee the proper road to take. Some representatives had contended that the Committee should not enter into the substance of the question; but the Iraqi delegation failed to see how it could be decided whether a study was needed without first knowing the scope of the problems which might arise. Unfortunately, time was again short, and he would accordingly confine himself to a few general remarks and to some observations on the draft resolution (A/C.6/L.466 and Add.1).

2. There could be no doubt that certain waters were historic in character and that the riparian States enjoyed a historic title over them. Support for that view could be found both in the decisions of international tribunals and in the opinions of learned authors. The International Court of Justice, for example, had dwelt on the matter at length in the *Fisheries case between the United Kingdom and Norway*.^{1/} The principle that certain waters, by virtue of historical circumstances, enjoyed a special juridical status had already been recognized earlier by the Central American Court of Justice, in the *Gulf of Fonseca case*. Juridical doctrine was even more explicit on the point, as could be seen from the relevant comments of Gidel, who had stressed that the mere existence of such a category of historic bays, the

special nature of which nobody contested, was in itself sufficient to show that there was a special set of rules of international law applicable thereto.

3. The existence of historic waters subject to a special régime was thus recognized by positive international law. The nature of that régime accordingly deserved careful study, particularly as differences of opinion on the matter were apt to strain relations between States, as had been fully demonstrated by the representatives of Pakistan, Peru and Indonesia. The details of the régime might perhaps vary, depending on special geographic and economic factors, but systematic study should nevertheless reveal a sufficient body of common rules to offer a basis for codification. The Iraqi delegation felt that a study of that was greatly needed, and would accordingly support the draft resolution.

4. Mr. ANDERSEN (Iceland) said that during the discussions on the law of the sea the Icelandic delegation had on several occasions drawn the Committee's attention to the fact that Iceland's fishery limits had for centuries been very extensive. In the seventeenth, eighteenth and part of the nineteenth centuries the limits had been four leagues, the league being at first the equivalent of eight miles, later of six and finally of four. During the latter part of the nineteenth century a four-mile limit had apparently been practised, despite the existing legislation, because of foreign pressure, but all the bays had been closed to foreign fishing. Serious damage had subsequently been caused by the Convention of 1901 between Great Britain and Denmark, which had provided for a fishery limit of three miles; but that agreement had been terminated by Iceland in 1951. Since that time the Icelandic Government had authorized more extensive limits, the current limits standing at twelve miles from the base lines.

5. His Government would, of course, while the proposed study was in progress, provide the appropriate body with detailed information on Iceland's legislative history in the matter. Under the terms of the draft resolution before the Committee, the body in question would be the International Law Commission. The Commission would necessarily ask for comments from Governments, which would provide an opportunity for the submission of full information. His delegation would accordingly support the draft resolution.

6. Mr. DOUC RASY (Cambodia) said he wished merely to ask a few questions relating to the subject-matter of the proposed study. He was deliberately adopting that interrogative approach, because he did not wish the Committee to infer that his delegation was adopting any specific position.

7. In the first place, the term "historic waters" had never been precisely defined. That was understandable, as the subject had never been studied as a whole; but as an approximate definition he would suggest "waters over which history had conferred certain rights".

^{1/} *Fisheries case*, Judgment of December 18th, 1951: I.C.J. Reports 1951, p. 116.

That definition, however, immediately raised certain questions. The first, of course, was what was meant, in the context, by history. It was clearly impossible to go back to the dawn of time; and in any event, as Einstein had observed, the flow of time was meaningless without the events which punctuated it. What then were the relevant events? Some had spoken of usage; but it had never been specified whether usage meant the exploitation of the resources of the sea, national defence or some other activity. Moreover, unlike land, on which usage left an indelible imprint, water retained no evidence of past acts of dominion; evidence of usage was thus difficult to find.

8. The next point which would at some time have to be determined was the exact nature of the right which history conferred. Was it a right of ownership, as known in private law? If so, it should be remembered that a right of ownership was conditioned by the thing to which it related. Copyright, or the title to the goodwill of a business, for example, was not the same as the ownership of a tangible object with defined contours. Nevertheless, the decision of the Central American Court of Justice regarding the Gulf of Fonseca seemed to suggest that a right of ownership over historic waters could only be acquired through the effective control of the State. Moreover, cases of historic waters bounded by several riparian States raised the question whether that right could be held in common. If the answer was in the affirmative, should that common ownership be regulated by universally applicable rules, or should the juridical régime of the given body of historic waters be left entirely to the discretion of the joint owners? And again, what would be the procedure in the event of a dispute between them?

9. The third main question to determine was who were the beneficiaries of a historic right. Were they all the riparian States, regardless of the circumstances in which their title had been acquired, or should some distinction be drawn between "riparian States with good title" and riparian States with bad title or no title? That question might present special difficulties, for the various notions involved would give rise to long and delicate controversy.

10. In the circumstances, the Cambodian delegation believed that to refer the question for study to the International Law Commission would be the most satisfactory solution. It had been argued that such a decision would be insufficient and that the Commission should also be given a time limit and instructed to follow a special procedure. Those who held that view had to prove, however, (1) that the juridical régime of historic waters was a matter so distinct from the law of the sea as a whole that its study called for a wholly different procedure; (2) that the matter was too urgent to be simply referred to the International Law Commission, and that the existing situation was liable to disturb relations between States; and (3) that the existing claims of States over historic waters were particularly likely to be settled by a statement of general principles drawn up by the Commission. In the absence of such proof, the Cambodian delegation would support the draft resolution.

11. Mr. SHIELDS (Ireland) said that his delegation would vote for the draft resolution, and would reserve its position on the substance of the matter. The question was not one of urgency, and since the

International Law Commission already had a heavy agenda, it was wise to leave it to the discretion of that body to determine when the study should be initiated.

12. Mr. JOURY (Jordan) said that his delegation attached great importance to the subject of the juridical régime of historic waters, including historic bays, and would therefore vote for the draft resolution. He wished to state that his delegation was in complete agreement with the comprehensive and able analysis of the question which had been presented by the representative of Saudi Arabia at the 643rd and 644th meetings.

13. Mr. RAO (India) recalled that the United Nations Conference on the Law of the Sea had adopted a resolution, jointly sponsored by India and Panama, requesting the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays, and to communicate the results of such a study to all States Members of the United Nations.^{2/} His delegation was still convinced that the subject merited intensive study, and would therefore vote in favour of the draft resolution. It would speak on the substance of the matter at a more appropriate time.

14. Mr. MATSUDAIRA (Japan) said that at the thirteenth session of the General Assembly his delegation had taken the position that a study of the juridical régime of historic waters should be initiated within a reasonable time, with special emphasis on the definition of historic bays. He firmly believed that the most suitable organ to perform that complicated and responsible task was the International Law Commission, whose competence and capabilities had been demonstrated beyond any doubt by its excellent work in drafting the articles on the law of the sea. His delegation felt that even the mere initiation of a study by the International Law Commission would not only help to prevent any attempt to take advantage of the confusion existing with regard to the question of historic waters but would also contribute to the orderly development of international law. In that connexion, it wished to draw the Committee's attention to the amendment to article 7, paragraph 4, of the International Law Commission's draft which had been submitted by his delegation at the United Nations Conference on the Law of the Sea.^{3/} That amendment had been designed to clarify the term "historic bays", which article 7 of the draft had failed to define.

15. His delegation, accordingly, would be glad to support the draft resolution.

16. Mr. SIMPSON (United Kingdom) said that at the 644th meeting his delegation had reserved its position with respect to substantive questions concerning historic waters. He wished to make it clear that that reservation had been of a general nature, and that the fact that his delegation had not made any further comments did not mean that it admitted any claims which had been referred to subsequently.

17. Mr. CHAYET (France) said that although his delegation doubted the necessity of initiating a study

^{2/} United Nations Conference on the Law of the Sea, *Official Records*, Volume III: First Committee (Territorial Sea and Contiguous Zone) (United Nations publication, Sales No.: 58.V.4, Vol. III), annexes, document A/CONF.13/C.1/L.158/Rev.1.

^{3/} Ibid., document A/CONF.13/C.1/L.104.

of the juridical régime of historic waters, including historic bays, it would vote for the draft resolution out of deference to the majority view. Since the present item was of a purely procedural nature, his delegation would not go into the substance of the question; but its silence should not be interpreted as implying approval of any special claims which had been raised in the course of the discussion.

18. Mr. ILLUECA (Panama) said that for the reasons which he had already explained, his delegation would vote for the draft resolution. That text was fully in conformity with the draft resolution of India and Panama which had been adopted at the Conference on the Law of the Sea, and he hoped that the Committee would support it. He also hoped that the International Law Commission would give careful attention to the problem at the earliest possible date so that the Committee would soon be able to consider the results of its work.

19. U MAUNG MAUNG (Burma), Mr. CHOWDHURY (Pakistan) and Mr. DADZIE (Ghana) said that their delegations would support the draft resolution.

20. The CHAIRMAN put the draft resolution contained in document A/C.6/L.466 and Add.1 to the vote.

The draft resolution was adopted unanimously.

Point of order raised by the representative of Peru

21. Mr. MAURTUA (Peru) said that his delegation had for long felt that the distribution of work of a juridical nature in the United Nations was not entirely satisfactory, and was not such as to ensure the maintenance of the highest juridical standards. For example, juridical questions were sometimes discussed by other Committees in which strictly technical considerations might be overshadowed by political and sometimes even purely emotional factors. Thus, the preparation of certain instruments such as the draft International Covenants on Human Rights had from the outset been entrusted to the Third Committee; but such instruments involved points of law, and where difficulties arose they should at least be referred to the Sixth Committee for advice. While he fully recognized the fitness of the Third Committee to prepare the draft Covenants, he none the less believed that if the highest standards were to be maintained, technical legal matters should be treated by specialists in the subjects concerned. Indeed, that was the reason why the Sixth Committee had been established. The drafting of the human rights covenants involved serious responsibilities, for if sound instruments were not adopted, States would make large numbers of reservations.

22. The Peruvian delegation wished also to draw attention to certain aspects of the rules of procedure of the General Assembly with regard to voting. Delegations could cast affirmative or negative votes, or could abstain. There was a very considerable difference between abstaining and not voting, for an abstention was an expression of opinion, whereas failure to vote amounted to a refusal to take part in the work of international co-operation, and created a situation for which the rules of procedure of the General Assembly made no provision. The Peruvian delegation believed it to be its duty to draw the Committee's attention to that problem, so that the whole question of voting procedure could be reviewed.

23. Mr. CACHO ZABALZA (Spain) agreed with the Peruvian representative that juridical matters should be discussed by the Sixth Committee. In point of fact, members of the Sixth Committee had been obliged to attend meetings of the Third Committee in order to assist the regular representatives during the discussion of legal points in that Committee.

24. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he could not agree with the criticisms which had been voiced of the Third Committee. Such criticisms should be made in the Third Committee itself, so that those concerned could defend themselves and explain their own views. Moreover, if a member of the Sixth Committee believed any other Committee to be discussing a point on which he had special competence, he had but to attend the meetings of the Committee concerned.

25. Mr. AMADO (Brazil) said that he would not favour any step likely to overburden the Sixth Committee with work. Clearly, there were questions dealt with in other Committees which impinged on the Sixth Committee's competence; but to overload the Sixth Committee's agenda might lead to confusion and disturb the smooth working of its proceedings.

Completion of the Committee's work

26. Mr. PERERA (Ceylon), speaking on behalf of the delegations of the Asian and African countries; Mr. GAMBOA (Philippines), Mr. Maxwell COHEN (Canada), speaking on behalf of the delegations of the British Commonwealth countries, Mr. CHOWDHURY (Pakistan), Mr. CACHO ZABALZA (Spain), Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on behalf of the delegations of the socialist countries, Mr. AMADO (Brazil), speaking on behalf of the delegations of the Latin American countries, Mr. SHIELDS (Ireland), Mr. CHAYET (France), speaking on behalf of the delegations of the countries of Western Europe, including Scandinavia, and Mr. COCKE (United States of America) complimented the Chairman for the able and courteous manner in which he had conducted the Committee's debates. Under his impartial and tactful guidance the Committee had been able to complete its agenda fruitfully and efficiently. They also congratulated the two Vice-Chairmen and the Rapporteur, who had ably assisted the Chairman in conducting the work of the Committee, and they thanked the Legal Counsel, the Secretary of the Committee and other members of the Secretariat, both visible and behind the scenes, who had helped the Committee in its work.

27. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic), Rapporteur, associated himself with the tributes paid to the Chairman and the two Vice-Chairmen, and thanked the members of the Secretariat, in particular those who had assisted him in preparing the report. He also thanked the members of the Committee for their courteous words.

28. Mr. BATTAGLINI (Italy), speaking on behalf of the Vice-Chairman, who was unavoidably absent, also associated himself with the compliments paid to the Chairman and the Rapporteur and with the thanks offered to the members of the Secretariat. He thanked the members of the Committee for the kind words they had addressed to the two members of his delegation who had served as Vice-Chairman during the session.

29. The CHAIRMAN said that he had been deeply moved by the tributes of the members of the Committee. His task as Chairman had been rendered easier by the high standards maintained throughout the proceedings and by the spirit of co-operation and mutual understanding which had been displayed by all members of the Committee.

30. He thanked the Vice-Chairmen, the Rapporteur and the Secretariat for the able manner in which they had assisted the Committee and himself.

The meeting rose at 5.45 p.m.