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**Chairman: Mr. Francisco V. GARCIA AMADOR
(Cuba).**

AGENDA ITEM 64

**Draft articles on the continental shelf (A/2706
and Add.1-3, A/C.6/L.339, A/C.6/L.342) (*con-
tinued*)**

GENERAL DEBATE (*continued*)

1. Miss SOUTER (New Zealand) said that, as her delegation was one of the sponsors of the joint draft resolution (A/C.6/L.339), she wished to reply to a few points raised by representatives who felt unable to support that text.

2. The Norwegian representative had said (431st meeting) that prompt action on the question of the continental shelf would be in the interests of some States but not of others. New Zealand, whose isolated position made it unlikely that exploitation of its continental shelf would bring it into conflict with any other State, certainly was not prompted by any special interest in reiterating the belief of the sponsors of the joint draft resolution that the decision taken by the General Assembly at the eighth session (resolution 798 (VIII)), should be reversed. She noted in passing that, although the representative of Iceland had stated that it had been the consistent policy of the General Assembly not to consider any one aspect of the régime of the high seas and the territorial sea in isolation, it was only in 1953, when the International Law Commission had submitted its first final draft articles dealing with one of those subjects, that the General Assembly had had an opportunity to take that stand. The International Law Commission itself had dealt with the various aspects separately and had suggested that the General Assembly should follow the same course.

3. While it would be highly desirable for the General Assembly to have before it the Commission's drafts on all the related subjects before discussing any one of them, expediency counselled against so long a delay. The Chairman of the International Law Commission had stated in 1953 (A/C.6/L.324, paragraph 3) that, in his opinion, all the drafts would not be available before 1958 at the earliest. Indeed, under resolution 798 (VIII) the Commission would have to complete its work on such diversified matters as collisions and the slave trade before the General Assembly could consider the draft articles on the continental shelf. The Ecuadorian representative, linking the draft articles

only to the régime of the territorial sea, had said that a report on that subject would be available by 1956 (431st meeting). If Governments were prepared to discuss the continental shelf after receiving a report only on territorial waters, resolution 798 (VIII) would still have to be revised. Even the report on territorial waters might not be ready by 1956, since one of the points that remained to be decided was the breadth of the territorial sea, a very controversial issue of which an early settlement was perhaps unlikely.

4. The disagreement on that particular point should not, however, stand in the way of a discussion of the draft articles on the continental shelf (A/2456, paragraph 62). As the United Kingdom representative had observed (430th meeting), the rules governing the jurisdiction over the continental shelf did not depend on the definition of the width of territorial waters. Inside the territorial sea, the coastal State had complete rights of sovereignty over the sea bed. Where the continental shelf extended beyond the limits of the territorial sea, the coastal State would, under the rules relating to the continental shelf, acquire additional rights. It would make little difference at what distance from the coast jurisdiction over the sea bed ceased to be governed by the rules relating to the territorial sea and began to be governed by those relating to the continental shelf.

5. The divergence of views on the draft articles on the continental shelf, to which the Ecuadorian representative had drawn attention, merely emphasized the need to achieve agreement by discussing the draft articles without undue delay, in order to avoid possible international disputes. If, as suggested in the joint draft resolution, such a discussion were to take place in 1955, Governments would have every opportunity to study the text thoroughly; moreover, at its tenth session the General Assembly would be free to postpone the discussion once again if such a course should seem best.

6. She agreed with the Ecuadorian representative that the creation of new law should be governed by practical realities. A logical consequence of that idea was that the development of law should not lag too far behind new developments in international life. The emergence of modern techniques allowing men to exploit the resources of the sea bed had created new circumstances to which the old rules of international law could not adequately be applied, and her delegation hoped that the General Assembly would not needlessly delay the development of new rules.

7. Mr. CASTAÑEDA (Mexico) said that his delegation had voted for resolution 798 (VIII), the main purpose of which was to preserve the unity of the entire subject, and it saw no reason for changing its position now. The various aspects of the subject were so closely interrelated that it was not possible to study

any one aspect without prejudicing others, despite the statement to the contrary in the joint draft resolution (A/C.6/L.339). The sponsors of that text claimed that the International Law Commission would require a long time to complete its work on the entire subject (A/2706, paragraph 3), but that claim was based on a conjecture. If the Commission were to give the subject priority, it might in one or two sessions complete its work on the important problems of the régime of the high seas and the régime of territorial waters, although a few subsidiary questions might be left unresolved. Furthermore, the sponsors presupposed that, so far as the continental shelf was concerned, there was basic agreement on essential points. While it was generally agreed that coastal States had some rights to the sea bed, there was considerable disagreement over the extent of those rights. For example, by the terms of their Constitutions eight countries claimed sovereignty over epicontinental waters, while five others took the view that they had some preferential rights over them; that made at least thirteen countries that would oppose the solution proposed by the International Law Commission in the draft articles as prejudicial to their interests. It was clear, therefore, that any decision on the continental shelf was bound to prejudice decisions concerning related questions. Similar disagreement existed on what régime should apply to resources of the continental shelf other than mineral resources.

8. Because his delegation was anxious that the unity of the subject should be maintained, it had associated itself with several other delegations in presenting draft amendments (A/C.6/L.341) to the joint draft resolution (A/C.6/L.339). Those amendments, while ensuring that the subject would be considered in its entirety at the same time, added a constructive idea by asking the International Law Commission to give priority to that part of its work, thereby speeding up its completion, and provided for the inclusion of the item in the agenda of the eleventh session.

9. The draft resolution proposed by Iceland (A/C.6/L.342) was very close in spirit to those amendments; if the representative of Iceland agreed to introduce into his text the idea that the International Law Commission should give priority to the entire subject, there would be no substantive difference between the two. He hoped that in the course of the debate the representative of Iceland and the sponsors of the joint amendments would be able to reach agreement.

10. Mr. MAURTUA (Peru) said that any resolution adopted by an international organization necessarily represented the opinion of the majority of its members. A United Nations resolution also constituted a juridical act. The terms of such an instrument were binding on Member States. The decisions of the highest United Nations organs had to be regarded as fully authoritative and respected in the same manner as legislative provisions were followed by domestic courts.

11. Even if a General Assembly resolution purported to do more than interpret the provisions of the Charter or express the Assembly's opinion on a legal concept, the persuasive authority of such a decision deserved the fullest respect. Only if the essentially constructive nature of the General Assembly's recommendations was recognized could generally acceptable and concrete rules be evolved. Resolution 798 (VIII), which was a de-

cision of that very type, had expressed the General Assembly's views on the fundamental aspects of the International Law Commission's work in the field of maritime law. That work had not followed a strictly progressive course, as it had been dependent on the order of priorities established by the General Assembly on the complexity of the various facets of the subject matter, and on the provisions of the Commission's Statute. Some topics fell within the field of the progressive development of international law; others were suitable for codification. In some instances the Commission had attempted legislative drafting and the formulation of rules, while other matters did not lend themselves to such an approach. Those factors naturally tended to retard the Commission's work. It would consequently be wrong to place further obstacles in the Commission's path by failing to realize that certain maritime problems were so closely interrelated that a fragmentary approach was impossible.

12. That close affinity between various segments of the question had been recognized by resolution 798 (VIII). The Peruvian delegation believed that the terms of that resolution extended beyond the procedural sphere. The text stressed the juridical principle of the indivisibility of maritime problems. Any partial solution of those problems would intolerably prejudice any subsequent attempt to overcome the difficulties which remained outstanding. The work of codification of international law should not be undertaken piecemeal; such work was essentially progressive. It would be not only imprudent but harmful to exert pressure on the United Nations to establish rules that would subsequently prove unenforceable in practice. Rules should be developed from recognized custom, practice and experience. Instruments that failed to recognize that truth and were not a real expression of the wish of the international community would never be ratified or enforced.

13. The Peruvian delegation, fully conscious of the need to avoid any failure of United Nations machinery deplored postponement whenever it was used as a mere dilatory device. However, constructive postponement, designed to ensure lasting success, was a vastly different matter. The Ecuadorian representative had already pointed out how widely opinions differed on basic issues. The object of the joint draft amendments (A/C.6/L.341) was to remedy that situation by simple means. Any attempt to split up an indivisible problem would be a dangerous proposition. Difficulties could only be overcome if the manifold problems involved in the public international law of the seas were all discussed at the same time.

14. The failure of the Conference for the Codification of International Law of 1930 had allowed a state of anarchy to subsist in maritime matters. That unfortunate position should be remedied, subject to safeguards for the vital interests of any State. The United Nations should offer a guarantee that those who invoked the freedom of the seas as a pretext for wasteful and destructive exploitation of maritime wealth would be liable to penalties. Such exploitation was not only unlawful but a negation of the principle of the freedom of the seas. Certain traditional ideas would have to be revised in the light of the realities of modern international life.

15. For those reasons, the Peruvian delegation could not support the joint draft resolution (A/C.6/L.339).

The General Assembly had obviously intended the problems of the seas to be studied together, and the assumption that one segment could be considered separately, without prejudice to other related questions, was patently erroneous. The case against a piecemeal examination was strikingly supported by the fact that the International Law Commission had itself changed its original views on the delimitation of the boundaries of the continental shelf in the light of the proposals of the committee of experts on the delimitation of territorial waters (A/2456, paragraph 81).

16. In approaching the problem of codification and development of international law, the United Nations should endeavour to co-ordinate its own efforts at codification with regional efforts made in the American hemisphere. The regional solutions could provide valuable guidance to those seeking universal agreement. Only by studying every creative attempt to make laws could the United Nations evolve sets of rules which would command general respect.

17. Mr. ROBINSON (Israel) agreed that all questions of maritime law intertwined and should be discussed together. International maritime law was in a state of crisis, and there seemed to be a trend away from the concept of the *mare liberum* and towards *mare clausum*. The problem could not be solved hastily.

18. He noted, with reference to the amendment proposed in point 3 (c) of the joint draft amendment A/C.6/L.341, that the International Law Commission could be asked only to expedite its own work; it could not be asked to enable the General Assembly to consider the subject at its eleventh session since that would depend not only on the Commission itself, but also on the Governments that the Commission was required by its Statute to consult.

19. He wondered therefore whether the authors of the draft amendment would agree to have the passage beginning with the words "in time for" be replaced by the words "during its eighth session". Before adopting such a provision, the Committee might ask the members of the Commission who were present whether the Commission was in fact likely to complete its work by that time.

20. Mr. HSU (China) said that, although he sympathized with the opponents of the joint proposal (A/C.6/L.339), their arguments had failed to convince him. No valid objection of principle could be advanced against the reversal of an earlier General Assembly decision, particularly when the matter was one of procedure. Resolution 798 (VIII) had been adopted at the end of a session, when representatives had been easily influenced by an ostensibly logical belief. That logical appeal of resolution 798 (VIII) admittedly remained strong. As the International Law Commission was studying all the subjects pertaining to the seas, it certainly seemed logical that the question of the continental shelf should not be taken up until the remaining aspects of the law of the sea had been studied. Such logic, however, rested on the assumptions that the régime of the seas was normal and that the International Law Commission needed no help in its task. Those assumptions were unfortunately either erroneous or subject to serious qualification. The régime of the seas was not only abnormal but in a state of anarchy. Until about the beginning of the twentieth century the sea had been free, subject only to the

exercise of certain belligerent rights in time of war. With the development of means of navigation and progress in other fields the principle of the freedom of the seas had lost much of its force. The rules governing the exercise of belligerent rights had been revised. The freedom of the seas had been restricted by extensions of national jurisdiction; new zones had been created within which States took administrative and security measures. Moreover, claims had been made to sovereignty over the continental shelf, sometimes even its superjacent waters and air space. As a consequence, the freedom of the seas could now probably be enjoyed only in the ocean's nethermost abyss. Such a régime of the seas was hardly conducive to a leisurely study of the problem.

21. Secondly, while the International Law Commission had worked creditably in many directions, the value of its contribution to the régime of the seas was still uncertain. After examining a number of the problems involved, it had turned its attention to the continental shelf and had initially made certain proposals that, although not perfect, at least had not complicated matters. However, in its final draft, the Commission had recommended, as the article defining the nature of the rights of the coastal State, the text: "The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources" (A/2456, paragraph 62). As sovereignty implied ownership and not merely possession, "sovereign rights" were necessarily rights of ownership. Moreover, sovereignty having been admitted, it was practically useless to enumerate certain restrictions in the manner of draft articles 3 and 4. If sovereignty was recognized to extend over the shelf, it could not be denied with respect to the superjacent waters or air space. The Commission's recommendations would lead to a partition of areas of the high seas, and such a partition would be at least premature. The position was aggravated by the fact that the International Law Commission, having recommended sovereignty over the continental shelf, had failed to formulate a rule governing the breadth of the territorial sea, which was the pivotal question in the solution of many maritime problems.

22. For those reasons, the Chinese delegation hoped that the opponents of the joint proposal would modify their attitude. There were abundant reasons for discussing the continental shelf, or indeed any subject connected with the régime of the seas. Some States were perhaps motivated by a fear that the naval Powers would impose solutions on the rest of the international community. Yet nothing would be lost and much might be gained by discussions and exchanges of views. In any event it would be unreasonable for any particular State to oppose a debate or to insist on its indefinite postponement.

23. Mr. BENITES VINUEZA (Ecuador) congratulated the New Zealand representative on her clear and objective statement. She had pertinently referred to the statement of the Chairman of the International Law Commission that the Commission could not conclude its work until 1958. But that was no reason why the General Assembly should not urge the Commission to speed up its work in the hope of an earlier conclusion. It would not be vitally important if matters such as the slave trade were not finished by 1956, but it would greatly assist the General Assembly if the

Commission at least gave priority to the subjects referred to in resolution 798 (VIII).

24. The New Zealand representative had also implied that the régime of the territorial sea was not intimately connected with the continental shelf; she had suggested that a problem would arise only if the shelf extended beyond the territorial sea and that the question was therefore primarily related to the régime of the high seas. That reasoning overlooked the fact that no agreement had yet been reached as to the breadth of the territorial sea or as to the manner in which it should be measured. That was the primary question for the International Law Commission to decide before the problem of the continental shelf could be examined. In the past, the territorial sea had been measured empirically. In conformity with the teachings of Grotius, the breadth of territorial waters had been determined by the effective range of a seventeenth-century artillery piece. In the twentieth century such a rule was potentially obsolete.

25. The New Zealand representative had rightly pointed out that the divergence of views on the draft articles merely emphasized the need for discussion. The sponsors of the joint draft resolution (A/C.6/L.339) had unfortunately said something very different when they claimed that a wide measure of agreement in fact existed. Moreover, while it was true that a two-year interval should give Governments every opportunity to study the text, any discussion on the problem would tend to prejudge the as yet unanswered question of the breadth of the territorial sea.

26. The New Zealand representative had urged the Committee to follow a practical approach. He fully agreed with her since, as he had stated at the preceding meeting, the whole question of the continental shelf had arisen because it had become possible to exploit the resources of the continental shelf. Two United States experts on international law had, accordingly, urged that the United States should claim as wide an expanse of the continental shelf as possible since technological progress might open up new possibilities of exploiting resources of the shelf farther away from the coast. It was precisely because the situation was constantly changing that no rigid and absolute rules should be adopted.

27. The Chinese representative had rightly noted that the régime of the high seas had developed out of needs of navigation. The current trend of opinion towards *mare clausum* and away from *mare liberum*, to which the Israel representative had referred, was attributable to the fact that the techniques of extracting maritime resources had developed to such a point that, if their use was unchecked, the sea's resources might be exhausted.

28. Lastly, the Israel representative's objections to the amendment proposed in point 3 (c) of document A/C.6/L.341 was purely formal. General Assembly

resolution 798 (VIII) was based on two premises: first, that the unity of the subject should be maintained, and second, that no aspect of the subject should be discussed until the problem could be taken up as a whole. All that the authors of the joint draft amendment endeavoured to do was, while maintaining the unity of the subject, to urge the International Law Commission to accelerate its study of the subject so as to bring closer the date on which the General Assembly could examine it. He had no objection to consulting, in that connexion, the views of the members of the Commission present, as the Israel representative had suggested.

29. Lastly, his delegation fully agreed with the ideas of the draft resolution proposed by Iceland (A/C.6/L.342). The draft amendment (A/C.6/L.341) of which his delegation was one of the sponsors, had been submitted merely as a compromise to meet the views of representatives anxious for an early solution.

30. Mr. BRUNER (Yugoslavia) said that the issue of the continental shelf was closely interwoven with other questions and could be dealt with effectively only in conjunction with them. Isolated consideration of separate aspects would delay rather than expedite the final solution, and it would prejudge action on the remaining aspects of the problem. The position taken by the General Assembly in its resolution 798 (VIII) was the correct one, and it was in conformity with its earlier resolution 374 (IV).

31. Hence, while his delegation believed that every effort should be made to expedite work on the problem of the régime of the sea, and would support a constructive proposal to that effect, it could not vote in favour of the joint draft resolution (A/C.6/L.339).

32. Mr. COLLIARD (France) said that his delegation took a wholly objective view. In any discussion of the question of the continental shelf, a clear distinction should be made between the soil and sub-soil—which constituted the shelf proper—and the superjacent waters, which were part of the high seas. The International Law Commission had considered the matter and had decided that the superjacent waters should be treated in the same way as the air space above the shelf. He therefore could not support point 2 of the joint amendment (A/C.6/L.339), which seemed to prejudge the question of the superjacent waters.

33. Further, the question at the moment was a purely procedural one: When could the General Assembly expect to deal with the subject of maritime law as a whole? Even when it did, whatever resolution it adopted would only have the effect of a recommendation and would have to be supplemented by some binding instrument. For the time being, the Committee should confine itself to the procedural question without going into points of substance.

The meeting rose at 5.45 p.m.