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Chairman: Mr. Jorge CASTAÑEDA (Mexico).

AGENDA ITEM 59

Question of convening a second United Nations conference on the law of the sea (A/3831; A/C.6/L.435, A/C.6/L.438) (continued)

GENERAL DEBATE (continued)

1. Sir Kenneth BAILEY (Australia) said that the delegation of Australia had arrived at the following conclusions; it was advisable to hold a second conference on the law of the sea for further consideration of questions left unsettled at the first conference, held at Geneva; the second conference should be held as early as consistent with adequate preparation—in July or August 1959; the States invited to the Geneva Conference should be invited also to the second conference; and finally, the second conference should deal both with the breadth of the territorial sea and with fishery limits, which were left unsettled at the Geneva Conference.

2. The Australian delegation would endeavour to avoid any discussion of questions of substance because in its view it was neither necessary nor advisable to formulate at that stage the propositions that it would put forward or be prepared to accept at the conference itself. On the other hand, his delegation felt that it could reach a decision on the advisability of a conference without waiting to know what new concessions others might offer. Australia's own position had been shown on the record to have much flexibility. If other delegations proved to be equally flexible and equally willing to reach an agreement, his delegation had great hopes that the proposed conference would succeed. Agreed solutions had been reached at Geneva; a similar agreement on the questions left unsettled was neither impossible nor even improbable.

3. For many reasons it was very important to settle the questions of the breadth of the territorial sea and of fishery limits.

4. First, the settlement of those questions would make a vital contribution to the codification and progressive development of the law of the sea, in accordance with Article 13 of the Charter, and complete the work begun at the first Conference.

5. Second, the absence of an agreed solution of those two questions might jeopardize the success of what had already been accomplished at Geneva. For example, a

State's readiness to assume the obligations resulting from the Convention on the Territorial Sea and the Contiguous Zone, for instance with regard to the right of passage, might well depend on the breadth of the territorial sea. A State could feel, as the Saudi Arabian representative had said in the course of the general debate in the Assembly (766th plenary meeting), that without an agreed breadth for the territorial sea the whole Convention existed in a kind of vacuum. That was also Iceland's position in relation to the Convention on Fishing and Conservation of the Living Resources of the High Seas. If that was the position of many States, the coming into force of those Conventions could well be delayed until the question of the breadth of the territorial sea was settled.

6. Third, the absence of agreement on the breadth of the territorial sea and on fishery limits not only made international disputes more likely, but greatly increased the difficulty of settling them. As the Geneva Conference had shown, there were different views not only on what the law should be but also on the nature of the existing law. The resulting conflicts could lead to anarchy in coastal waters. The Australian delegation endorsed the view expressed by the International Law Commission in 1956 (A/3159, para. 28) that the breadth of the territorial sea should be fixed by convention. As the International Court of Justice had stated in 1951 in the *Fisheries Case* between the United Kingdom and Norway:

"The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law." 1/

It had been held sometimes that each State was entitled to fix the limits of its own territorial sea within a maximum of twelve miles, and that other States were bound to treat such a unilateral delimitation as valid. The International Court of Justice had in fact said precisely the opposite in its 1951 judgement.

7. It was thus clearly advisable to make a further attempt to settle by conference the questions left unsolved at Geneva, and to make that attempt as early as practicable lest the position should deteriorate further in the meantime.

8. The Australian delegation could not support the suggestion by the representative of Iceland (583rd meeting, para. 8) that the Sixth Committee should itself attempt to fix both the breadth of the territorial sea and the limits of the respective fishery rights of coastal and other States. The agenda made no provision

1/ I.C.J. Reports 1951, p. 132.

for such a discussion, and few delegations had the necessary experts for the purpose. In addition, the matters to be decided were political rather than legal, and more suitable for a conference of plenipotentiaries than for consideration by one of the seven Main Committees of the General Assembly.

9. On practical grounds alone, and with much regret, the Australian delegation was also unable to support the suggestion made at the previous meeting by the delegations of Norway, Denmark and Canada that the second conference should be held in February 1959. The Australian delegation had itself contemplated that date when it had proposed, together with the delegations of Canada, Ceylon and Ghana, that the Geneva Conference should not be brought definitively to an end when the premises ceased to be available for further sittings in Geneva but should be reconvened after the conclusion of the thirteenth session of the General Assembly, "for the purpose of further considering the breadth of the territorial sea and the extent of the fishing rights which should pertain to the coastal States in the contiguous zone".^{2/} The Australian delegation found itself forced with regret to the conclusion that February 1959 was too early a date for the successful holding of a second conference.

10. The date of a second conference was a matter not of calculation but of judgement. There were many factors to be weighed and imponderables to be taken into account. The Australian delegation considered that to prepare the Conference suitably so as to have good prospects of success, it should not be held earlier than the middle of 1959, namely, July or August 1959. Some Governments could perhaps be ready earlier; others might not. Celerity was no doubt important, but it was even more important to lay the foundations of success effectively beforehand. A second United Nations conference on the law of the sea should not be allowed to fail through lack of time for effective preliminary work. What was required was not only further discussion between participating States but further consultation, within the individual States, of persons likely to be affected by any new convention such as seamen, airline operators, in-shore fishermen and distant-waters fishermen.

11. With regard to the question whether the period between the General Assembly and July or August 1959 would be sufficient to prepare the conference, the delegation of Australia was inclined to believe it would be sufficient if a proper sense of urgency were maintained among the invited States. In fact, the area of actual agreement at the Geneva Conference had been larger than was sometimes supposed. One proposal received the support of an absolute majority and the area of potential agreement was much larger. What had been really lacking at the Geneva Conference was not the possibility of adjusting differences between the delegations but simply the possibility of continuing the discussion in the only premises available. The record of the Geneva Conference itself afforded grounds for encouragement. The Australian delegation accordingly felt, like the Norwegian delegation, that there was no reason for abandoning the attempt to secure a general

agreement on both the breadth of the territorial sea and fishing limits. The Australian delegation would prefer New York as the venue for a second conference, but could support Geneva if a majority favoured the latter city.

12. The views of the Australian delegation were reflected in the joint draft resolution (A/C.6/L.435), of which it was one of the co-sponsors and which it hoped the Committee would approve.

13. Miss PERERA (Cuba) recalled that the head of the Cuban delegation, Mr. Núñez Portuondo, had stated on 2 October 1958 before the General Assembly (767th plenary meeting) that, although his delegation had originally proposed that the General Assembly should study at its fourteenth session the advisability of convening a second conference on the law of the sea,^{3/} it would not oppose the decision which the Assembly might take at its thirteenth session. There was, however, a danger of failure unless sufficient time was allowed between the two conferences to enable Governments to give careful consideration to the problems involved, and such a failure might have unfortunate repercussions on public opinion.

14. Her delegation's opinion on that matter had not changed. It was hardly conceivable that a second conference, convened so soon after the first one, would be more successful in reaching agreement on the very points which had given rise to so much controversy during the Geneva Conference. Her delegation, however, while disclaiming any responsibility, would support the majority view if the Committee deemed it advisable to set the date for convening the second conference.

15. On the other hand, she would, for financial reasons, vote against any draft resolution proposing that the conference should be held elsewhere than in New York.

16. Her delegation reserved the right to state its final position after having heard the views of the Member States chiefly concerned.

17. Mr. DZIRASA (Ghana) said that his country, as a young sovereign coastal State, attached particular importance to the definition of fishing rights and the limits of territorial waters. During the Geneva Conference, Ghana had been one of the four authors of the draft resolution recommending that consideration of those questions should be deferred to a second conference. The Ghanaian delegation still thought that that conference should be reconvened as soon as possible, in March, April or May, and emphasized that the two important questions which had been left pending should be considered separately.

18. It requested that the conference should completely rule out the idea of "historic rights", which might justify the granting of fishing privileges to certain States. That would be seriously prejudicial to the under-developed countries which had not had the same opportunity as the more advanced countries to acquire such "historic rights".

19. His delegation hoped that all the participating States would fully co-operate to make that second conference achieve the desired ends.

^{2/} United Nations Conference on the Law of the Sea, Official records, Volume II: Plenary meetings (United Nations publication, Sales No.: 58.V.4, Vol. II) annexes, document A/CONF.13/L.49.

^{3/} *Ibid.*, document A/CONF.13/L.25.

20. Mr. EVANS (United Kingdom) observed that the only questions before the Committee were the need for a second conference on the law of the sea, which he did not think would be denied, and when and where it should be held. The Committee was not called upon to consider solutions of the substantive questions which had been left unsettled by the Geneva Conference.

21. A second conference was necessary to complete the remarkable work accomplished by the Geneva Conference and render it fully effective: forty-nine States had already ratified one or more of the four conventions which had been opened for signature, and it was to be hoped that those conventions would in due course be widely ratified and brought into force.

22. Unfortunately, it had proved impossible to reach agreement on the fundamental questions of the breadth of the territorial sea and fishery limits, and the Conference had therefore decided, by an overwhelming majority, that a second conference should be called to consider those two questions, which were important not only in themselves but because the effectiveness of the agreements already concluded depended on their settlement.

23. At the Geneva Conference his Government had shown its willingness to adopt new rules regarding the breadth of territorial waters and fishery limits on a conventional basis, and had offered important concessions in an effort to find agreement. Since, however, no agreement was reached at Geneva to change the existing rule of international law, it remained the view of his Government that the breadth of the territorial sea of States was generally limited to three miles, and that a coastal State did not enjoy exclusive fishing rights outside its territorial sea. Other States maintained that the breadth of territorial waters and the extent of fishery limits could be determined by a unilateral decision. In the view of his Government there was no legal foundation for that doctrine. The divergence of views over the interpretation or existence of international law led to disputes. Those disputes were not merely of a technical nature; they affected friendly relations between States, international trade, the economy of States, and the livelihood of many human beings. The dispute between Iceland and the United Kingdom, which was a matter of deep regret for the United Kingdom Government and which the latter had offered to bring before the International Court of Justice, was symptomatic of a malady of world-wide concern.

24. It was, therefore, important and urgent that rules governing the breadth of the territorial sea and fishery limits should receive international acceptance; those were not questions for the coastal States to settle unilaterally. His delegation thought that a second conference should be called as soon as possible. It associated itself with the remarks which the Minister of

Foreign Affairs of Norway had made before the General Assembly on 30 September 1958 (765th plenary meeting) with respect to the part which international conferences could play in the progressive development and codification of international law, as shown by the results achieved at the Geneva Conference.

25. Although, for the time being, his Government adhered to the three-mile rule, it fully recognized that such new rules as might be accepted by a future conference might differ from current interpretations of international law, but that possibility was accepted as being necessary to avoid a state of anarchy on the high seas. His Government was, therefore, prepared to adopt a reasonably flexible position at a future conference, provided that other Governments did likewise, in a similar spirit of good will.

26. He did not think that the General Assembly itself should be entrusted with the task of seeking a solution, as some had suggested, since a conference on the matters at issue involved a complexity of technical, biological, economic and political aspects which could best be handled at a conference attended by technical experts.

27. With respect to the date on which the next conference should be called, the United Kingdom Government had reached the conclusion that, having regard, on the one hand, to the need for preparation and, on the other hand, to the work that had already been done and to the urgency of the matter, that conference should meet in July or August 1959.

28. There were five reasons for believing that that conference would be a success: first, other Governments shared the wish of the United Kingdom to promote international law and order; secondly, there was a general realization by Governments that a settlement of the questions of the breadth of territorial waters and fishery limits was urgently necessary; thirdly, the Geneva Conference had demonstrated a common will to achieve a settlement of those matters; fourthly, it had come very near to success; and fifthly, there was a right to expect that other Governments were prepared, like the United Kingdom, to adopt a reasonably flexible position on those questions. The ingredients of success were present; it was a question of acting soon enough to take advantage of them.

29. Lastly, his delegation recommended that the Committee should adopt the joint draft resolution (A/C.6/L.435), of which it was a co-sponsor. The place of the conference had been left open; the United Kingdom delegation would prefer Geneva, but would agree to the conference being held in New York if the Committee so desired.

The meeting rose at 11.50 a.m.