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CONTENTS

Agenda item 58:

Page

Question of initiating a study of the juridical régime of historic waters, including historic bays (continued)

Consideration of the draft resolution 235

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) (continued)

CONSIDERATION OF THE DRAFT RESOLUTION (A/C.6/L.466)

1. Mr. CHOWDHURY (Pakistan) said that the first United Nations Conference on the Law of the Sea¹ and the General Assembly at its thirteenth session, by its resolution 1306 (XIII), had clearly indicated that in their opinion the juridical régime of historic waters deserved more careful study. They had been unable to undertake that study themselves for lack of time, and the question had been referred to the current session of the General Assembly. It was now the Sixth Committee's responsibility to make the necessary arrangements for that study and for formulation of the principles applicable in the matter so that, as in the other fields of international law whose codification had already been decided upon, States might know precisely what their rights and obligations were.

2. The statements made by the Saudi Arabian representative concerning the Gulf of Aqaba (643rd and 644th meetings) were very important and should at the proper time be given the most careful attention by the body concerned with the question.

3. His delegation would state its views on the Greek and Mexican draft resolution (A/C.6/L.466) when it had been introduced by its sponsors.

4. Mr. COCKE (United States of America) pointed out that the question was solely one of initiating a study of the juridical régime of historic waters, including historic bays. He thanked the delegations which had refrained from dealing with the substance of the matter or had confined themselves to a brief statement; that was, at the present stage, the only way to avoid a long, useless debate. Inthus refraining from giving their opinion on the substance of the matter or from refuting arguments to which they did not subscribe, neither those delegations nor the United States delegation had waived the positions of their Governments in the matter.

5. His delegation would vote in favour of the draft resolution because the decision it embodied was, in the United States view, the most judicious. The use of the term "juridical régime" clearly indicated that the International Law Commission would not be required to study the case of specific geographic zones but simply to draw up general rules which Member States would themselves apply to a particular zone. It was also best to allow the Commission itself to decide when it would undertake that study.

6. Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation would vote in favour of the draft resolution, as it took into account the arguments put forward in favour of a study of the juridical régime of historic waters.

7. Mr. Benjamin COHEN (Chile) and Mr. CHIKARASHI (Japan) requested that their countries be included in the list of sponsors of the draft resolution (A/C.6/L.466).

8. Mr. ROSENNE (Israel) reaffirmed the reservation his delegation had already stated at the United Nations Conference on the law of the Sea² and in the Sixth Committee (598th meeting, para. 6) during the thirteenth session of the General Assembly, namely, that his Government remained unconvinced that there was in fact such a single and unified concept as historic waters or historic bays or that the matter could be subjected to a single legal régime.

9. Mr. CASTAÑEDA (Mexico) said that he had already stated his delegation's point of view. He therefore saw no need to speak at greater length in introducing the very simple draft resolution of which his country was a co-sponsor (A/C.6/L.466).

10. He wished simply to point out that the fact that the International Law Commission was being given responsibility for undertaking the study of the juridical régime of historic waters did not mean that Governments could not also be invited to submit their observations on the question. Moreover, there was no reason why the International Law Commission itself should not adopt that procedure.

11. Mr. DE LA GUARDIA (Argentina) said that he would vote for the draft resolution, since the procedure of requesting the International Law Commission to undertake a study of the question was not only in conformity with the precedents but was also the best solution, as Governments would have difficulty in submitting observations unless they were first in possession of a specific text. The Secretariat's memorandum on historic bays³ proposed no specific solution and dealt only briefly with the subject of historic waters other than historic bays.

²/Ibid., Volume III: First Committee (Territorial Sea and Contiguous Zone) (United Nations publication, Sales No.: 58.V.4, Vol.III), 12th meeting, para. 30.

³/Ibid., Volume I: Preparatory Documents (United Nations publication, Sales No.: 58.V.4, Vol.I), document A/CONF.13/L.

¹/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.56, resolution VII.

12. It was regrettable, however, that the General Assembly had not adopted a resolution to that effect at its thirteenth session instead of merely postponing the question until the fourteenth session.

13. Mr. AZEHARIE (Indonesia) recalled that the Sixth Committee, at its thirteenth session, had postponed consideration of agenda item 58 for lack of the time and documentation necessary to do useful work on the subject. Although there had been little change in the situation with regard to documentation, it was clearly incumbent upon the General Assembly to decide at its current session what action it proposed to take on the request addressed to it by the first United Nations Conference on the Law of the Sea.

14. In view of the wording of the item, his delegation had no intention of discussing its substance. That in no way implied that it did not consider the subject important; the contrary was the case. The first United Nations Conference on the Law of the Sea had not resolved certain problems, in particular the problem of the width of the territorial sea and contiguous fishing zones, and that of the definition of the base lines in the case of certain archipelagos, like the Philippines or Indonesia. His delegation hoped that the second Conference would enable those problems to be solved.

15. The problem of historic waters was not perhaps as urgent as the questions just referred to. Nevertheless, the statements by the representatives of Saudi Arabia and Panama showed clearly enough how complex the problem was and how dangerous it would be to keep it pending any longer. Convinced that codification was necessary in that field, his delegation believed the time had come to begin a study of the régime of historic waters, and thought that the body most competent to undertake that study was the International Law Commission. However, in order not to overload the Commission's programme of work it would seem advisable to avoid fixing a time limit or giving priority to the completion of that task. A final decision could only be taken on the basis of the Commission's first report.

16. In the light of those considerations, his delegation would gladly support the proposal originally put forward by the Mexican delegation, which was now embodied in the draft resolution.

17. Mr. SPERDUTI (Italy) said that it was important at the present stage of the work to decide exactly what course was to be taken, and not to engage in premature or pointless controversy. The claims put forward by certain countries with regard to particular maritime areas were obviously outside the scope of the discussion; his delegation had no intention of expressing an opinion on the justice of those claims and reserved its position on them. That being so, he wished to emphasize that the problem of the juridical régime of historic waters was extremely complex. It had so far not been possible to establish a general rule of international law defining the criteria in accordance with which certain maritime areas took on the character of historic waters or, in other words, indicating how a *de facto* situation became a *de jure* situation. Very serious difficulties were involved in clarifying the principles governing that transformation. For that, a number of questions must be answered. Was the concept of prescription admissi-

ble in international law, in the absence of any precise indication of its possible duration? Did factors such as the requirements of national defence and logistics have a juridical character or did the problem involve only *de facto* situations in the light of which the international community recognized or did not recognize the claims of a particular State? What, in general, were the juridical effects in international law, of the acquiescence or inaction of certain States with respect to the claims of other States? If prescription did not really exist in international law, could rights acquired by a State as a result of its *de facto* position and the acquiescence of other States be considered as sanctioned by international custom? Was it not necessary in that connexion to distinguish between general and abstract custom and the solutions hallowed by practice in specific cases? All those questions must be carefully studied and elucidated if a thorough study of the juridical régime of historic waters was to be undertaken.

18. It was unnecessary to point out that jurists, when they approached the problem of historic waters, had in mind primarily bays and gulfs, since it was chiefly over those that States attempted to make good their claims. But that limited perspective had certain drawbacks. The International Court of Justice too had stated that "by 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title".^{4/} He could not concede that in general historic waters could be assimilated to interior waters, for the latter fell exclusively under the sovereignty of the riparian State, whereas it was quite conceivable that the exclusive rights exercised by a State over certain waters termed historic—in particular fishing rights—might be limited in character and involve no consequences with regard to sovereignty. There were also cases where States had claimed fishing rights in the territorial waters of other States on historical grounds.

19. His only motive in drawing the Committee's attention to those difficulties had been to show the need to proceed cautiously and without excessive haste in the matter and, for the time being, to do no more than decide which body was to be given responsibility for studying the régime of historic waters. His delegation's own view was that that body should be the International Law Commission; his delegation was prepared to support any draft resolution to that effect.

20. Mr. BARNES (Liberia) considered that the International Law Commission was the body best qualified to undertake a study of the juridical régime of historic waters, including historic bays. His delegation wished to join in sponsoring the draft resolution.

21. Mr. ZEPOS (Greece) said that his delegation had associated itself with the Mexican delegation in submitting the draft resolution (A/C.6/L.466) because it was generally agreed that the Sixth Committee was not ready to examine the substance of the question of the régime of historic waters and that the question should be referred to the International Law Commission. He was happy to see that other delegations wished to be included among the sponsors of the draft. He hoped that the International Law Commission

^{4/}Fisheries case, Judgement of December 18th, 1951: I.C.J. Reports 1951, p. 130.

would take account in its work of the opinions expressed in the Sixth Committee.

He would speak on the substance of the question at the appropriate time.

22. Mr. ALONSO LIMA (Guatemala) said that his delegation intended to support the draft resolution.

The meeting rose at 11.50 a.m.