



Friday, 30 November 1956,  
 at 11 a.m.

**New York**

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**Chairman: Mr. Karel PETRŽELKA**  
 (Czechoslovakia).

**AGENDA ITEM 53**

**Report of the International Law Commission on the work of its eighth session (*continued*):**

**(a) Final report on the régime of the high seas, the régime of the territorial sea and related problems (A/3159; A/C.6/L.378, A/C.6/L.385 and Add.1 and 2) (*continued*)**

1. Mr. FRANÇOIS (Special Rapporteur) thanked the various speakers who had expressed appreciation for his work and that of the International Law Commission.

2. In reply to a question raised by the Peruvian representative at the 486th meeting he said that the conference referred to in article 3, paragraph 4, was identical with that referred to in paragraph 28 of the Commission's report (A/3159). In paragraph 29 of the report the Commission expressed the opinion that the conference should deal with the various parts of the law of the sea, which naturally included the problem of the breadth of the territorial sea.

3. In reply to the Peruvian representative's question concerning paragraph 32 of the report, he said that the problem of the laws of war was an extremely complex one. The traditional rules of the international law of war were in need of a reappraisal in the light of the problems created by the new methods of warfare. The International Committee of the Red Cross and the Institute of International Law were carrying out studies in that direction.

4. The International Law Commission had so far preferred to limit its task to the rules applicable in time of peace. Accordingly, when preparing its draft code of offences against the peace and security of mankind, it had not considered it practicable to draw up an exhaustive enumeration of acts which constituted violations of the laws of war (A/1858, p. 13).

5. The codification of the law of the sea in time of peace was in itself a formidable undertaking, and he considered it advisable for the time being not to touch on the infinitely more complex law of the sea in time of war.

6. He was glad to note from the Peruvian representative's statement that Peru's claim to 200 miles did not refer to the territorial sea.

7. While he did not wish to reply in detail to the Peruvian representative's statement, he stressed that he could not agree to the view that the freedom of the seas had not always included fishing rights as well as freedom of navigation. Grotius' concept of the freedom of the seas had been applied from the outset to contest claims to exclusive fishing rights.

8. Mr. SPIROPOULOS (Greece) congratulated the International Law Commission and its Special Rapporteur on the admirable work done by them.

9. Speaking both as representative of Greece and as a member of the Commission, he pointed out that, in accordance with its Statute, the Commission could have suggested that the General Assembly should merely take note of the draft articles concerning the law of the sea or, alternatively, that the Governments should take the initiative in convening an international conference. Instead, the Commission had considered it desirable that the General Assembly itself should convene a conference. The reasons were set forth in the Commission's report and, in particular, in paragraphs 26 and 27.

10. Greece was one of the sponsors of the joint resolution (A/C.6/L.385). In view of the large merchant fleet flying the Greek flag, his country had an evident interest in the codification of the law of the sea.

11. If the conference succeeded even partially, it would mark a very important step in the development of international law. The significance of the conference to be convened could be compared to that of the Conferences held at The Hague in 1899 and 1907. If the conference failed, the International Law Commission would have to consider whether in the future it should not limit itself to drafting texts, without requesting that they take the form of international conventions.

12. The Commission's report contained articles which constituted both codification and development of international law. Certain parts, and particularly articles 1 to 25 concerning the territorial sea, constituted purely a codification of the existing principles of international law, with the single exception of article 3 on the breadth of the territorial sea itself.

13. The position was different with regard to the articles on the high seas. On the one hand there were the articles on the freedom of the high seas, navigation, matters of collision, the right of hot pursuit, the right to fish and the right to lay submarine cables and pipelines, which were essentially a codification. Article 66 on the contiguous zone likewise codified an existing practice, and the Greek delegation would support the text of that provision as drafted by the Commission.

14. On the other hand, certain of the draft articles constituted new rules of international law. While perhaps only semi-legislative, the articles in question certainly belonged to the realm of progressive development of international law. Foremost among them were those dealing with the continental shelf. It was remarkable that the Commission, which had failed to reach agreement on the breadth of the territorial sea, a question amply discussed in literature, should have succeeded in working out a formula for the delimitation of the continental shelf. Under article 67, the coastal State's right extended to all submarine areas up to a depth of 200 metres. Beyond that point, such rights would also apply wherever the depth of the superjacent waters admitted of the exploitation of the natural resources.

15. As yet, it had not become possible to exploit submarine areas beyond a depth of 60 or 70 metres. The Commission had felt that nevertheless the rights of the coastal State should be exercisable up to the 200-metre line. Furthermore, in view of the rapid progress of techniques, the Commission had also thought it necessary to make provision for the possibility that submarine areas at greater depth might in future become exploitable.

16. There had been much discussion in the Commission whether the coastal State exercised actual sovereignty over the continental shelf. In the 1951 draft relating to the continental shelf (A/1858, p. 18) it had been proposed that the coastal State's rights should be limited to control and jurisdiction. On his proposal, however, the Commission had substituted the term "sovereign rights" for "control and jurisdiction" (A/3159, article 68). The reason was that a State could only exercise sovereign rights. Therefore, the term was correctly applied to those rights exercised for the purpose of exploring and exploiting the natural resources of the continental shelf.

17. As the representative of a small State, which did not have the means at the disposal of the great Powers for the exploration and exploitation of the continental shelf, he had devoted much thought to the problem of the continental shelf. He had arrived at the conclusion that States could not be prevented from exploiting the resources of the continental shelf extending into the high seas off their coasts. Since 1945, a very large number of States had enacted measures in that connexion, and the only practicable course for the International Law Commission had been to adopt regulations on the subject in order to avoid abuses by those States which were in the position to commit them.

18. The Greek delegation considered that the Commission's articles on the continental shelf contained useful new ideas and constituted a constructive approach to the problem. He hoped they would prove acceptable to the great majority of States.

19. The Greek delegation reserved its position with regard to the details of the provisions, a matter on which his Government's views would be submitted to the proposed conference.

20. Another part of the report which established new rules of international law was the sub-section dealing with fishing. That part was of vital importance, as it dealt not with theory but with the practical aspects of the problems to which high sea fishing gave rise. The right of States freely to engage in fishing on the high seas was generally recognized, but the articles sought to regulate the manner in which that

right was exercised. Thus, article 51, which at first sight seemed merely to confirm an existing rule, in fact contained a striking innovation: the State concerned would be under an express duty to regulate and control fishing for the purpose of safeguarding living resources. Article 52 also imposed a new obligation, in that it required all States engaged in fishing in a particular area of the high seas to enter into negotiations with a view to reaching agreement on the necessary measures of conservation. Subsequent articles were designed to facilitate the settlement of disputes. All those provisions represented a notable and welcome development in the law of nations.

21. The one problem which the International Law Commission had failed to resolve was the problem of the breadth of the territorial sea. The lack of uniformity in national legislations was most unfortunate and an inevitable cause of friction. The Commission had done everything in its power to find some formula which might receive general approval. The Special Rapporteur had suggested several solutions. In his first report (A/CN.4/17) he had proposed that the breadth of the territorial sea should be not more than six nautical miles. After that compromise proposal had failed to gain sufficient support, he had suggested, in his second report (A/CN.4/42), a maximum of twelve miles. Finally, in his third report (A/CN.4/51), after considering the views expressed by Governments, he had reverted to the classical three-mile rule, but had also proposed that States might be permitted to extend their territorial sea to a breadth of twelve miles, on the understanding that in the area between the three-mile and the twelve-mile limits the coastal State could only take measures for the conservation of marine fauna. All those suggestions, however, as well as others considered by the Commission, had been rejected as unlikely to receive sufficient support. In those circumstances, it was legitimate to doubt whether the Commission should even have considered the question. Any firm proposal would inevitably have encountered opposition from almost every quarter.

22. The question now was whether a conference of plenipotentiaries would necessarily be more successful than the Commission. The Greek delegation, viewing the matter realistically, saw little grounds for optimism. Many States still adhered to the three-mile rule, some favoured six miles and others insisted on a twelve-mile limit. There had even been some talk of a 200-mile limit, although the Peruvian representative, in his statement at the 486th meeting, had explained that the signatories to the Santiago Declaration (1952) had never envisaged such an extension of their territorial waters, and were only interested in the conservation of living resources. International practice was constantly undergoing changes, and circumstances sometimes compelled States to take measures which they found distasteful. For example, the Greek Government was perfectly prepared to waive its present six-mile limit and to accept a universal three-mile rule; nevertheless, if neighbouring States extended their territorial sea to a breadth of twelve miles, Greece would have no choice but to follow suit. Such unsettled conditions, which prevailed almost everywhere, would inevitably make it exceedingly difficult for the conference to arrive at a satisfactory answer.

23. Nevertheless, the problem of the limits of the territorial sea was only one of many pertaining to the law of the sea. The States participating in the

conference must not repeat the errors of 1930, when disagreement on the breadth of territorial waters had been permitted to nullify all of the constructive work which had already been accomplished. The primary duty of the participants in the conference proposed in the joint draft resolution (A/C.6/L.385) would be to devise a convention containing provisions on all questions regarding which there was general agreement. Even if an isolated question remained unresolved, such a convention would constitute a vital milestone in the development of the law of the sea.

24. Sir Gerald FITZMAURICE (United Kingdom) said that he did not at the moment wish to comment on the substance of the Commission's report but primarily to explain why his delegation had joined in sponsoring the draft resolution (A/C.6/L.385). He took the opportunity, however, of congratulating Mr. Spiropoulos and Mr. García Amador, the Commission's able Chairman during the two sessions principally devoted to the law of the sea, as well as Mr. François, the Commission's Special Rapporteur, on his invaluable contribution to its work, and his most illuminating introductory statement (485th meeting). He particularly welcomed the light Mr. François had thrown on two points in the Commission's report which were a potential, and indeed an actual, source of misunderstanding: the Commission's intentions in article 3, dealing with the breadth of the territorial sea, and the stipulation that the coastal State's rights in the continental shelf did not confer any exclusive right over the superjacent waters.

25. By his able statement at the 486th meeting, the Peruvian representative had undoubtedly given the Committee a better understanding of the Peruvian viewpoint. The considerations he had advanced, however, were mainly considerations of policy rather than of law, and in that way his statement had clearly shown why it was desirable to refer the whole matter to an international conference, which could take all the aspects into account. From the purely legal point of view, Sir Gerald said that he had some difficulty in accepting certain of the Peruvian representative's arguments, in particular the contention that extensions of the territorial sea were required for the purpose of exercising, not sovereignty but only certain rights. Such a contention was not in accordance with the existing law governing the territorial sea. International law recognized the full sovereignty of the coastal State within its territorial sea, but gave it no rights at all outside that sea. As was clearly stated in the Commission's draft article 27, the high seas were open to all nations and no State could validly purport to subject any part of them to its sovereignty. From a more general angle there was perhaps much to be said in favour of the Peruvian viewpoint, although in his opinion all Peru's legitimate requirements could be satisfied under the Commission's draft articles. For the draft articles to become law, however, they had to be incorporated in a convention or some other appropriate instrument.

26. In his comments on the draft articles, the Peruvian representative had perhaps not been quite fair. In particular, he had accused the Commission of timidity. The Commission, however, was a body of jurists acting in their personal capacity, responsible for the codification and, within certain limits, the progressive development of international law, and it was no part

of its task to undertake legislative functions. It was proper that it should adopt a fairly conservative standpoint. In its draft articles on the law of the sea, the Commission had nonetheless gone a long way towards breaking new ground, for example, in the draft articles relating to the continental shelf and the contiguous zone, where what was admittedly the well-established practice of States had never previously received official recognition in a legal text, and also with regard to hot pursuit, which the Commission had been the first to make applicable to aircraft as well as ships; and, as the Greek representative had already stressed, the articles on the conservation of fisheries were a complete innovation.

27. The United Kingdom Government attached great importance to the elaboration of a code of maritime law, not only because of the subject's intrinsic importance but also because the prevailing uncertainty of law and practice was a fertile source of disputes. Some means should be found of composing the substantial differences in the attitudes of States. There seemed to be only two possible procedures, either that of trying to resolve those differences in the Sixth Committee or else that of referring them to an international conference. The latter course was preferable for four main reasons. In the first place, Governments had not yet had time to consider the Commission's final proposals. Secondly, the Sixth Committee was not technically equipped to deal with the problem. Some aspects of it were definitely non-judicial and some even of the juridical aspects were so specialized as to require expert knowledge; such was the case of the articles on the conservation of fisheries and on the nationality of ships. Thirdly, there were a number of countries which were not yet Members of the United Nations but had a vital interest in maritime law and it seemed highly desirable as well as only fair that they should be enabled to take part in preparing the final text. Finally, there were certain purely practical considerations which argued against entrusting the Committee with the task of drafting a convention on the law of the sea. The General Assembly did not normally make much use of drafting and other sub-committees and commissions, and it had taken the Committee almost an entire session to draft the much shorter Convention on the Prevention and Punishment of the Crime of Genocide. Moreover, most representatives on the Committee also acted as legal advisers to their delegations and so would not be able to devote their entire time to the task of drafting a convention, as they would at a conference.

28. If such a conference was to be held, it was obviously desirable that it should be held as soon as possible, but sufficient time should be allowed for very careful and thorough preparation, including perhaps the creation of special preparatory machinery. His delegation did not therefore think it feasible to hold the conference before 1958. It had no very firm views concerning the place where it should be held except that, for various reasons, it would probably be better not to hold it in New York; apart from that, the main consideration to be borne in mind seemed to be the necessity of accommodating and servicing what would be a very large conference, which would probably split up into a number of committees and sub-committees.

The meeting rose at 1 p.m.