

# United Nations GENERAL ASSEMBLY

FOURTEENTH SESSION  
Official Records



SIXTH COMMITTEE, 643rd  
MEETING

Monday, 30 November 1959,  
at 3.20 p.m.

NEW YORK

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**Chairman:** Mr. Alberto HERRARTE (Guatemala).

## AGENDA ITEM 57

Question of the publication of a United Nations juridical  
yearbook (A/4151, A/C.6/L.462, A/C.6/L.465) (*concluded*)

1. Mr. DADZIE (Ghana) said that if his delegation was unable to accept without comment the proposals formulated at the thirteenth session by the informal working group,<sup>1/</sup> it was not because of any lack of appreciation. Before authorizing the proposed publication, however, delegations had to be convinced that it would serve the precise purpose laid down by the General Assembly. The function which the yearbook was expected to fulfil was clearly indicated in the Secretary-General's report (A/4151, para. 18); and it was also stated in paragraph 20 of the same report that the publication had been recommended by the International Law Commission as part of the programme for making the evidence of customary international law more readily available, a plan which had subsequently been broadened to cover also the law of the United Nations and international law in general.

2. Taking all those factors into account, his delegation was of the opinion that the publication of a United Nations juridical yearbook was essential, in order to give future generations the means of assessing the work done by the United Nations over the years in furthering the development of international law. However, special care would have to be taken to avoid the inclusion of unsuitable material. In that connexion, his delegation had carefully studied the suggestions made by the various bodies mentioned in the Secretary-General's report. The proposals of the informal working group covered practically all the points raised by other bodies, and accordingly offered the most suitable basis of discussion. So far as part IV was concerned, a bibliography should no doubt be included, but particular stress should be laid in it on juridical publications having reference to the United Nations and the specialized agencies, as suggested by the Institute of International Law.<sup>2/</sup> So far as parts II

and III were concerned, his delegation fully agreed with the working group. Part I, on the other hand, raised great difficulties, for articles by private individuals and reports of learned bodies, even if restricted to those relating to subjects of special interest to the International Law Commission, the Sixth Committee, the Office of Legal Affairs and the International Court of Justice, could result in serious juridical controversy at the international level; and such controversy, arising from differences in ideological and political backgrounds, might have gravely adverse effects on international law. The suggestion made by the Cuban representative (641st meeting) that only articles expressing the point of view of States should be included seemed attractive, but in practice it would be difficult to determine whether a particular article or report represented a private opinion or a national position. Moreover, material originating from some eighty-two different sources, and written in a variety of languages, might prove very difficult to handle. Nor would those difficulties be in any way reduced if the Canadian representative's proposal regarding abstracts (641st meeting) were accepted. A yearbook should, by definition, be an annual compendium offering quick and easy reference—a process which would not be assisted by the inclusion of private articles or abstracts.

3. In the circumstances, his delegation welcomed the draft resolution (A/C.6/L.462), which seemed to represent an acceptable compromise. It believed, however, that greater regard should be had to the eventual users of the yearbook, and had accordingly submitted an amendment (A/C.6/L.464). While the Ghanaian delegation had no desire to delay the publication of the yearbook, it felt that when it came to consider how to improve the model envisaged in the draft resolution the Committee should be in a position to weigh the views of the ultimate beneficiaries.

4. Mr. PERERA (Ceylon) thought that the representative of Ghana and the sponsors of the draft resolution shared a common aim. The third preambular paragraph did in fact refer to the various potential users of the yearbook, and the representative of Ghana could be certain that the instructions which Governments would give their representatives at the fifteenth session would duly reflect the views of all interested parties. Moreover, Governments and learned societies might prefer to withhold their views until the Secretary-General had prepared his report. He therefore hoped that the representative of Ghana would withdraw his amendment.

5. The Chilean amendment (A/C.6/L.463) was of a somewhat different character. The very essence of the draft resolution was the belief that the preparation of a yearbook had already been sufficiently encouraged, as evidenced by numerous General Assembly resolutions on the subject, and that the time had come to take a decision. The Chilean amendment, which

<sup>1/</sup> Official Records of the General Assembly, Thirteenth Session, Annexes, agenda item 56, document A/C.6/L.428.

<sup>2/</sup> Ibid., Seventh Session, Annexes, agenda item 55, document A/2170, annex II.

concentrated solely on encouragement, would thus strike at the very roots of the draft resolution and tend to nullify it.

6. Mr. CACHO ZABALZA (Spain) welcomed the fact that the majority of delegations had opposed the inclusion in the yearbook of private material. The Spanish delegation had always believed that the inclusion of such articles and reports would detract from the publication's value as a work of reference and would transform it into a doctrinal review and a source of political controversy. The true purpose of the yearbook might be better served by republishing in it certain classic texts on international law, as suggested by the Ecuadorian representative at the preceding meeting; but that function already seemed adequately fulfilled by several authoritative reviews, one of the best of which, containing many opinions of both European and American jurists, was fittingly published in Spain.

7. The Chilean amendment seemed somewhat redundant, as the documents included in the yearbook would inevitably relate to matters of international law of interest to the United Nations. The amendment submitted by Ghana also seemed unnecessary, and might indeed hinder a truly objective approach to the proposed task. Accordingly, the Spanish delegation would vote for the draft resolution as it stood.

8. Mr. Maxwell COHEN (Canada) said that his delegation, believing as it did both in the general idea of the yearbook and in the advisability of beginning with a model, supported the draft resolution in principle. He had to agree with much that had been said by the representative of Ghana, but he hoped that that representative would agree to his amendment being regarded more as a suggestion for the guidance of the Secretariat than as a proposed insertion in the text of the draft resolution itself. The purpose of the amendment would be fully achieved if the Secretariat duly took into account the various views expressed in the debate.

9. The Chilean amendment was apparently designed to broaden the scope of the draft resolution by introducing the notion of international law as a whole. It might be difficult, however, to produce a strictly United Nations publication on so comprehensive a basis. The field envisaged in the amendment was already adequately covered by many other reviews and activities.

10. In his earlier references to bibliographies (641st meeting), he had tried to show the vast amount of work being done in the preparation of such material, especially by the Ford Foundation and the Harvard Law School. The material produced by those institutions should perhaps be examined, with a view to ascertaining whether the bibliographical section of the yearbook might not be made one of its most important features. Such a project might prove perfectly feasible, provided that the bibliography was limited to juridical publications relating to the United Nations.

11. The question of abstracts was admittedly somewhat complex but experience seemed to suggest that juridical material often lent itself to compression. The principal difficulties might centre more on practical matters such as additional staff. The analysis of UNESCO's costs in the preparation of abstracts of scientific publications might perhaps be of some value.

12. In conclusion, he wished to place on record the Canadian delegation's astonishment at the superficial

manner in which serious legal problems were dealt with in some other Committees. When such matters arose, the Sixth Committee should always be called upon to make at least some contribution.

13. Mr. SALAMANCA (Bolivia) said that he would vote for the draft resolution as it stood. The amendment submitted by Ghana seemed to overlook the difficulties experienced by both the International Law Commission and the General Assembly in obtaining the comments of Governments; even when serious problems were involved, Member States were often reluctant to state their positions in writing. The Chilean amendment might raise even greater difficulties, for it could be interpreted as suggesting that the yearbook should include only documents already accepted as statements of the law of nations; whereas the function of the United Nations was to promote new international law by suggesting the study of new topics, such as the régime of international waterways. The text of operative paragraph 1 proposed in the draft resolution thus seemed much more pertinent than the Chilean amendment.

14. In conclusion, he expressed doubt as to the feasibility of including abstracts. The fact that UNESCO had published abstracts of scientific documents was hardly relevant, for the structure of a legal text was always more vulnerable than that of any other.

15. Mr. Benjamín COHEN (Chile) said that the purpose of the Chilean amendment (A/C.6/L.463) was merely to improve the logic of the draft resolution. As it stood, the latter implied a final decision in its first operative paragraph and an experimental procedure, on which that final decision should logically depend, in its second. Since it was impossible to take a final decision on something still unknown, he urged the Committee to accept the more general wording of the operative paragraph 1 proposed in the Chilean amendment. As to the reference in the amendment to documentary material on international law, he had merely tried to stress that the yearbook should not include any material, however interesting, which was already covered by existing publications.

16. In conclusion, he asked the Secretariat whether, having regard to the Secretary-General's note on financial implications (A/C.6/L.465), the implementation of the draft resolution would in fact involve additional expenditure.

17. Mr. DADZIE (Ghana) said that his delegation had not for one moment wished to delay the publication of the yearbook any further, and it welcomed the support voiced by the representatives of Ceylon and Canada for the principle reflected in its amendment. He had merely thought that an early request for all relevant opinions might help to speed a satisfactory solution. He would accordingly agree that the Ghanaian amendment (A/C.6/L.464) should merely serve as guidance for the Secretariat and would not press for it to be put to the vote.

18. Mr. SANDBERG (Assistant Secretary of the Committee, replying to the question asked by the representative of Chile, said that the adoption of the draft resolution (A/C.6/L.462) would have no financial implications for 1960. The draft resolution requested the Secretary-General to submit a detailed outline, not the complete text, of a yearbook, a task which could be absorbed by the Secretariat without any additional expense.

19. Mr. GAMBOA (Philippines) said that in view of the arguments which had been advanced against part I of the yearbook as proposed in the working group's report, he was glad that the draft resolution referred only to "documentary materials", and not to articles written by private individuals. He also welcomed the statement by the representative of the Secretary-General that the costs of implementing the draft resolution could probably be reduced considerably from the figures given in the Secretary-General's report (A/4151).

20. His delegation believed that there was considerable merit in the Chilean amendment (A/C.6/L.463), since it seemed somewhat illogical that the General Assembly should first decide to publish a juridical yearbook, as provided in operative paragraph 1 of the draft resolution, and then request the Secretary-General in operative paragraph 2 of the resolution to submit a report on the question. The Committee should not prejudge the matter, but should study the Secretary-General's report before finally deciding on the publication of the yearbook. His delegation would, therefore, vote for the draft resolution with the Chilean amendment.

21. Mr. CHOWDHURY (Pakistan) said that operative paragraph 1 of the draft resolution, which referred to "documentary materials of a legal character", appeared to exclude articles written by private individuals, and therefore coincided with the views of his delegation. The Chilean amendment, however, would leave things as they had stood for the past ten years; his delegation could not support that draft and hoped that its sponsor would follow the example of conciliation set by Ghana and withdraw it. He for one saw nothing inconsistent in operative paragraphs 1 and 2 of the draft resolution, and would vote for that draft resolution.

22. Mr. AMADO (Brazil) said that he could understand the view of the Chilean representative that the juridical yearbook should not include matters which were not closely connected with the work of the United Nations. He also appreciated the Bolivian representative's view that there were documents of internal legislation which were of interest to the United Nations and which should therefore be included in the yearbook. In any event, his delegation felt that the Committee should wait until the Secretary-General had submitted his report, with its detailed outline of the proposed yearbook, before taking any final decision on publication.

23. Mr. MAURTUA (Peru) said that the essential purpose of the Chilean amendment (A/C.6/L.463) seemed to be to bring operative paragraph 1 of the draft resolution into closer harmony with operative paragraphs 2 and 3. Since operative paragraph 1 was a declaration of principle, whereas operative paragraphs 2 and 3 dealt with questions of procedure, the purpose of the Chilean amendment might be met by replacing the word "Decides" in operative paragraph 1 by "Declares".

24. Mr. DOUC RASY (Cambodia) wished to associate his delegation with the views expressed by the representative of Brazil.

25. Mr. ESCOBAR (Colombia) said that since operative paragraph 1 of the draft resolution obviously depended on operative paragraph 2, agreement might be reached on the resolution by deleting operative paragraph 1. The Committee could then wait until the Secretary-

General had submitted his report at the fifteenth session before taking a final decision on the publication of the yearbook.

26. The CHAIRMAN put the Chilean amendment (A/C.6/L.463) to the vote.

*The Chilean amendment was rejected by 38 votes to 5, with 20 abstentions.*

27. The CHAIRMAN put the draft resolution (A/C.6/L.462) to the vote.

*At the request of the Colombian representative, a separate vote was taken on operative paragraph 1 of the draft resolution.*

*Operative paragraph 1 was adopted by 59 votes to 1, with 4 abstentions.*

*The remainder of the draft resolution was adopted by 62 votes to none, with 2 abstentions.*

28. Mr. ASRAT (Ethiopia) and Mr. NISOT (Belgium) explained that they had voted for the draft resolution on the understanding that operative paragraph 1 was purely of a tentative nature and that the final publication of the juridical yearbook would depend on the Secretary-General's report.

## AGENDA ITEM 58

Question of initiating a study of the juridical régime of historic waters, including historic bays (A/4161)

### GENERAL DEBATE

29. Mr. SHUKAIRY (Saudi Arabia), reviewing the origin and nature of historic waters, said that the concept of historic waters was but one stage in man's conquest of his surroundings and his subjugation of land and water to ensure his survival. With the rise of organized communities and, later, with the emergence of States, man had found it necessary to extend his dominion from land to sea. Naturally, maritime areas that happened to be nearer, more serviceable and more receptive to his demands had been the first objects of possession and domination. It was in that context that a special relationship had been established between a State and its inland waters.

30. For a body of water to be historic its origin did not have to be ancient, but it had to have a history of long standing. In his region, the Gulf of Aqaba had existed as an Arab mare clausum for at least thirteen centuries. Perhaps that Gulf, with Saudi Arabia, the United Arab Republic and Jordan as its only bordering States, was one of the oldest, if not the oldest, body of historic waters which still fell within the exclusive jurisdiction of a single people.

31. In speaking of man's domination, however, a distinction had to be drawn between the high seas and other bodies of water either within or adjacent to the territory of a State. Unlike historic waters, the high seas were incapable of being occupied; accordingly, ownership of them to the exclusion of other States was not conceivable. Claims to dominion over the high seas which had existed in earlier centuries had all been abandoned or defeated under the impact of the advance of human relations and the progress of communications; and today, freedom of navigation and indeed the international status of the high seas were generally recognized. Yet, from the beginning, historic waters had been neither included in that conflict nor



affected by its results. Historic waters were in a different category; they had a direct relation to the mainland and its people whose history they shared. Whereas the high seas by their very nature resisted occupation and domination, historic waters, with their relatively small size, were formed by nature to be an ideal object of possession. Examples of such historic waters were Chesapeake Bay in the United States, the Gulf of Aqaba in the region of the Arab States, the River Plate estuary in Argentina, and Investigator Strait in Australia. Historic waters had never been part of the high seas. The main point of distinction was that in the case of historic waters ownership vested in the State, whereas in the case of the high seas ownership was indivisible and vested in the whole family of nations.

32. Some jurists had expressed doubts as to the origin of the concept of historic waters, and had asserted that they were an exception to the rule of international law. Westlake, for example, contended that the sovereignty now enjoyed over the littoral sea of certain gulfs was the remnant of vast claims which had been made to sovereignty over the open sea. Similarly, Balladore Pallieri had argued that present maritime sovereignty was a pale remnant of the ancient claim to sovereignty over the high seas. But to describe historic waters in that way was to tear them from their real context and to uproot a legal institution from the very soil in which it had grown. As Bourquin had emphasized, the waters in respect of which an historic title is claimed are not waters which the coastal State has appropriated at a more or less recent date, but waters which have always formed part of its territory and which never have been a portion of the high seas. And in the well-known Fisheries case of 1951 between Norway and the United Kingdom, Norway had contended, *inter alia*, that historic waters did not constitute a part of the high seas. Although there had been lively controversy over every facet of the question of marine supremacy, none of the various schools of thought had ever challenged the concept of historic waters or questioned its or, in its juridical régime or its place in international relations. In a brilliant argument on that aspect of the problem, Baldoni had arrived at the conclusion that at that time when the rule of the freedom of the seas was asserting itself, the bays of Cancale, Chaleurs, Chesapeake, Conception, Delaware, Fonseca and Miramichi were already under the effective permanent sovereignty of the coastal States.

33. He proposed to deal next with the definition of historic waters. Such a definition, however, was no easy task. The subject of historic waters had been by-passed in most international law textbooks; and the same applied to the various draft international codes on the law of the sea. In the codes drafted by non-governmental institutions since the nineteenth century, as in those prepared under the auspices of the League of Nations and the United Nations, only passing references were made to historic waters: for example, article 7, paragraph 4, of the International Law Commission's draft articles on the law of the sea stated that "the foregoing provisions shall not apply to so-called 'historic' bays" (A/3159, para. 33).

34. The first codified definition had probably been that proposed by the American Institute of International Law in its project on the territorial sea submitted in 1933 to the seventh International Conference of American States; in article XI it had described historic

waters as "those over which the coastal State or States, or their constituents, have traditionally exercised and maintained their sovereign ownership...". And at the Conference on the Codification of International Law held at The Hague in 1930 the United States delegation had submitted the following definition: "Waters, whether called bays, sounds, straits, or by some other name, which have been under the jurisdiction of the coastal state as part of its interior waters are deemed to continue a part thereof...". Leading tribunals, too, had attempted to define historic waters. In particular, the International Court of Justice, in its 1951 decision in the Fisheries case between the United Kingdom and Norway, had said: "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."<sup>3/</sup>

35. Although that definition was most persuasive, and indeed authoritative, his delegation felt that an all-inclusive definition of historic waters was still lacking. It believed that such a definition should contain certain elements included in that put forward in the 1933 project of the American Institute of International Law, particularly the idea that sovereignty over historic waters was exercised by "the coastal... States" [in the plural]. Some authorities had argued that to be historic an area of water must belong to a single State, and, as a corollary, that a bay surrounded by more than one State was not historic, nor could its waters be recognized as inland waters. His delegation felt that there was no justification for the single-State theory. No rule of international law could be quoted to show that the concept of ownership was restricted to a single State; on the contrary, common sense and logic dictated that what was lawful for one State was lawful for a group of States. Moreover, neither the nature nor the origin of the concept of historic waters was inconsistent with aggregate possession. Whatever the basis for the title to historic waters might be—size, configuration, vital interest, national defence or actual exploitation, the considerations applicable to a single State applied with equal force and validity to a group of States. The decisive criterion in respect of historic waters was the nature of the claim, not the number of the claimants.

36. That position was strongly supported in international jurisprudence, precedent and State practice. Fauchille and Twiss, who could be taken as representative of continental jurisprudence, held that a bay could belong to the category of historic waters even though it was surrounded by more than one State. As to the jurisprudence of the Western Hemisphere, he cited Hyde's strong statement and the "Meléndez Doctrine" regarding the joint ownership of historic waters. And the Harvard Law School, in its 1929 report on territorial waters, had stressed that "The power of two or more States should not be smaller than the power of one State in this respect..."<sup>4/</sup>.

37. The weight of State practice and of judicial decisions was equally strong in support of that position. Thus, by the Treaty of 1846 between Great Britain and the United States of America for the settlement of the Oregon boundary, the Strait of Juan de Fuca had been

<sup>3/</sup> Fisheries case, Judgment of December 18th, 1951: I.C.J. Reports 1951, p. 130.

<sup>4/</sup> Harvard Law School, *Research in International Law*, III, *Law of Territorial Waters*, Supplement to *The American Journal of International Law*, vol. 23 (1929), p. 274.

declared to be under the jurisdiction of the United States and Canada, with its waters to be treated as inland waters not subject to the right of innocent passage. Moreover, in the Fisheries case of 1910 between the United States and the United Kingdom, the Permanent Court of Arbitration had recorded the fact that the two States had assumed ownership over waters in the Fuca Straits at distances from the shore as great as seventeen miles. Similarly, the Gulf of Fonseca, surrounded by El Salvador, Honduras and Nicaragua, had been declared by the Central American Court of Justice to be "an historic bay possessed of the characteristics of a closed sea". Significantly, the Court had also recognized that the transfer of dominion over the Gulf from Spain to the Federal Republic of Central America and then to the three States he had mentioned had not changed its character as an historic bay.

38. The Gulf of Aqaba was very similar to the Gulf of Fonseca. The States at present bordering Aqaba were Saudi Arabia, the United Arab Republic and Jordan; in previous years Aqaba had been under exclusively Arab dominion or, it might be said, under a common predecessor. He had omitted Israel from the list of bordering States for legal rather than political reasons. First, the States in the area did not recognize Israel, as was their unchallengeable right in international law. Secondly, Israel's foothold on the Aqaba Gulf was based on armistice agreements which had vested no sovereignty whatsoever. Accordingly, Israel had no lawful standing in Aqaba, and passage through the Gulf and Strait of Aqaba to Israel was not lawful.

39. He wished to stress that neither the size of the body of water nor the width of the bay or gulf was a significant element in the definition of historic waters. If size were made part of the definition, scores of

existing historic bays and straits would cease to exist. The Hudson Bay and Hudson Strait in Canada, the Sea of Azov, the Kara Sea, the Laptev Sea, the East Siberian Sea and the Chukchi Sea in the USSR, the Moray Firth in the United Kingdom, the Vestfjord in Norway, the Gulf of Gabès in Tunisia and the San Jorge Gulf in Argentina were all of considerable size and width.

40. Turning to the question of the legal status of historic waters and the law by which they were governed, he said that in the past looseness and inaccuracy of terminology had caused confusion. But now that the International Law Commission had classified maritime waters as "high seas", the "territorial sea" and "internal waters", there could be no doubt that historic waters should in future be considered internal waters. In support of the view that historic waters were internal waters not subject to the right of innocent passage, he cited the opinions of Hurst, Gidel, Chrétien, Cavarne, Higgins and Colombos, the provisions of certain draft conventions, the decisions of various national courts and the practice of certain States. All authority, doctrine and practice led irresistibly to the conclusion that historic waters were internal waters, and that no right of innocent passage could be exercised in respect of such waters.

41. He cited an article in the American Journal of International Law (Supplement, April 1929) to support the contention that the Gulf of Aqaba constituted internal waters, that its status as such had existed before the existence of Israel, and that the Strait of Tiran which led to the Gulf was not an international waterway.

The meeting rose at 6.5 p.m.