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## CONTENTS

	Page
Agenda item 59:	
Question of convening a second United Nations conference on the law of the sea (continued)	
General debate (continued) . . . . .	211

**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, A/C.6/L.440, A/C.6/L.441) (continued)**

## GENERAL DEBATE (continued)

1. Mr. ANDERSEN (Iceland) noted that, since his last statement (583rd meeting), a number of amendments had been submitted to the joint draft resolution (A/C.6/L.435), so that the Sixth Committee could now choose between two possible approaches: to entrust the task of examining the two major questions which the Geneva Conference had not been able to resolve to a conference which would be held in July or August, or to examine those questions itself in September, which would be at about the same time. His delegation preferred the second approach, since it felt that the Committee was fully qualified to undertake the assignment. The Geneva Conference had cleared up a great many highly technical problems. As had been pointed out, the two questions still to be settled—the breadth of the territorial sea and fishery limits—had political aspects the fundamental importance of which could scarcely be minimized. Under the circumstances, the Sixth Committee and the General Assembly were more likely to resolve those questions than a special conference, particularly if the conference was to be attended only by experts. His delegation therefore supported in principle the approach recommended in the seven-Power amendments (A/C.6/L.440).

2. Some representatives had argued that the conference proposed in the joint draft resolution would carry its work to a conclusion, whereas, if the amendments were adopted, the Sixth Committee would possibly, or even probably, confine itself to recommending the calling of a conference in, say, 1960. However, the Mexican representative had dispelled any possible doubts on that score when he had submitted the amendments (589th meeting). In considering the two alternative approaches, the main point was whether an acceptable solution could be found, for unless that were assured, the conference would serve no purpose. At first sight, the same observation applied to the Committee, but the latter was more likely to succeed and, if it should unfortunately be unable to reach an agreement on the substance of the question, new efforts could be planned immediately. His delegation wanted

to rule out that possibility, however, so long as there was a chance of reaching agreement on the substance. For that reason it would vote for the seven-Power amendments. It would do so in the hope that the Committee would make every effort to reach an agreement on the substance in 1959.

3. If his delegation had thought that a conference would be more likely to succeed, it would have decided to vote for the joint draft resolution in its original form; an early solution was a matter of great urgency, as was evidenced by the unfortunate dispute between Iceland and the United Kingdom and the presence of British ships within the twelve-mile limit legally established by Iceland. His delegation was most appreciative of the understanding which many delegations had shown of the Icelandic point of view. It could not subscribe to the opinion expressed by the United Kingdom representative (587th meeting, para. 46) that British warships had acted with the utmost restraint in carrying out their duties, which consisted in preventing Icelandic patrol vessels from arresting British trawlers that were illegally in Iceland's limits. On a recent occasion, an Icelandic patrol vessel had been on the point of arresting a British trawler which was two-and-a-half miles off the coast—in other words, well within the so-called three-mile limit. Disregarding the patrol vessel's warnings, the trawler had broken away. The patrol vessel had given chase under the right of hot pursuit, and the trawler had finally halted about three-and-a-half miles off the coast. At that point, a British warship had appeared and had informed the Icelandic patrol vessel that it would be sunk if it attempted to take the trawler into custody. That was the most flagrant example, but many other incidents could be cited. Since 1 September 1958, there had been some 200 cases in which British trawlers had been protected against arrest in Icelandic waters.

4. The situation was obviously very dangerous; he had pointed out that fact in order to show that the problems left in abeyance at Geneva should be resolved with the utmost speed. His delegation would therefore vote for the seven-Power amendments (A/C.6/L.440), which offered a better prospect of reaching a solution.

5. The CHAIRMAN said that, despite the decision taken at the 587th meeting, he would, by way of an exception, grant the United Kingdom representative permission to exercise his right of reply without waiting for the end of the general debate. The Icelandic representative's reference to a specific incident constituted a special case, and the United Kingdom representative was therefore entitled to state his views immediately.

6. Mr. EVANS (United Kingdom) said that the incident in question was at present under investigation through diplomatic channels. While not wishing to anticipate the terms of his Government's reply, he wanted to make it clear that, on the basis of the information already in his Government's possession, his delegation

emphatically did not accept the Icelandic representative's version of the incident as correct.

7. Mr. TAMMES (Netherlands) thought that the legal situation with respect to the breadth of the territorial sea had been correctly stated by the International Law Commission in article 3 of its draft on the law of the sea and in the commentary to that article (A/3159, pp.12 and 13), and that the Commission's observations remained valid because the Geneva Conference had not taken a decision on the question. In its commentary the Commission had summarized the proposals which it had rejected, all of which would have permitted each coastal State to fix the breadth of its territorial sea beyond three nautical miles. The Commission had "declined to question the right of other States not to recognize an extension of the territorial sea beyond the three-mile limit" (*ibid.*, p. 13). Thus a State which had not recognized such an extension was still in full possession beyond the three-mile limit of the four freedoms stated in article 2 of the Convention on the High Seas<sup>1/</sup> adopted at Geneva.

8. The Netherlands delegation considered that the view taken by the Commission after considerable discussion was a true reflection of existing law. New customary international law developed slowly and had to overcome a certain inertia. The Commission had said, in paragraph 1 of article 3 of its draft, that international practice was not uniform as regards the delimitation of the territorial sea; and in paragraph 3 it had noted, on the one hand, that many States had fixed a breadth greater than three miles and, on the other hand, that many States did not recognize such a breadth when that of their own territorial sea was less. There was no evidence of any new international customary rule according to which extensions of the territorial sea beyond the three-mile limit had to be recognized by other States. In fact, under Article 38 of the Statute of the International Court of Justice, evidence of a general practice accepted as law was required for international custom to become binding.

9. During the debate, much had been said regarding the meaning of certain *dicta* of the Court. But the Court was very conservative in accepting customary rules of international law if there was no general and uniform practice.

10. The position of the Netherlands with regard to the breadth of the territorial sea was well known, if only because that view had a long history closely connected with the names of jurists whose work had become part of the common inheritance of mankind. At the present stage of the process of creating a new law of the sea, the Netherlands delegation accordingly preferred to rely on the statements and practices of representative international organs rather than to engage in a further exchange of unilateral national views. In one respect, however, it wished to attach its own interpretation to the statements of the International Law Commission on the breadth of the territorial sea. While the Commission, in paragraph 2 of article 3 of its draft, considered "that international law does not permit an extension of the territorial sea beyond twelve miles", it went on to say, in paragraph 4 of the commentary

to that article, that: "The extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized by the Commission as a breach of international law". Although the Commission had not said so explicitly, that distinction meant that extensions beyond twelve miles ought not to be recognized if the community interest of the world as a whole was weighed, at its full value, against the sum of the narrower interests of coastal States.

11. Once the great principle of the freedom of the high seas was safe, there was room for adjustments through a process of reciprocal recognition and collective negotiation for which a conference of plenipotentiaries was the proved instrument. The Netherlands was again prepared to play its part, as it had done at the first Conference on the Law of the Sea, by actively supporting a compromise which would have caused it to incur, among other losses, a serious economic loss, particularly in the matter of fisheries on which important groups of its population depended for their livelihood. The view of the International Law Commission was contained in paragraph 4 of article 3 of its draft, which read: "The Commission considers that the breadth of the territorial sea should be fixed by an international conference". That advice was indeed wise and still fully valid. Even in the early days of the League of Nations, when the new legislative technique of decision-making by the international organization had been acclaimed with enthusiasm, certain particularly delicate problems had had to be referred to a diplomatic conference. That traditional method was still valid. The Netherlands delegation would therefore vote in favour of the joint draft resolution (A/C.6/L.435).

12. Mr. PATHAK (India) said that the language of the resolution adopted on 27 April 1958<sup>2/</sup> by the Geneva Conference was quite clear and that the Conference had referred the question of the advisability of holding a second conference to the General Assembly for decision. The General Assembly alone was competent to take that decision because, after it had been seized of the question by a report of the International Law Commission, it had placed the matter before the Conference by Assembly resolution 1105 (XI). It could now either settle the outstanding questions itself or refer them to another conference.

13. The first question that arose was why the Geneva Conference, after having succeeded in preparing four conventions and a protocol and adopting nine resolutions, had failed to settle certain aspects of a number of questions related to the law of the sea. There had been no lack of goodwill on the part of the participants and a healthy spirit of compromise had been evident throughout the proceedings. For its part, the Secretariat had prepared the Conference with the utmost care. The summary records of the proceedings showed that the failure to settle the question of the breadth of the territorial sea could not be attributed to lack of time or to inadequate consideration. There was nothing to indicate that an agreement could have been reached if the Conference had lasted a little longer.

14. The controversy on the breadth of the territorial sea was not new. In spite of a protracted period of preparatory work, The Hague Codification Conference of 1930 had not achieved any result. Moreover, when

<sup>1/</sup> 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.53.

<sup>2/</sup> *Ibid.*, document A/CONF.13/L.56, resolution VIII.

the International Law Commission had started to prepare the draft articles at its seventh session, it had been unable to take any decision on the breadth of the territorial sea within a limit of twelve miles. Hence there was apparently something inherently complex in the very nature of the problem that had defied a solution so far. In the view of the Indian delegation, the Geneva Conference had failed not only because of the complexity of the subject but also because the partisans of the three-mile limit had persisted in its defence with tenacity, although it had been clearly proved to be untenable. As a result, the gulf between the two positions had not been bridged.

15. A number of delegations had asked whether new developments conducive to a rapprochement had occurred since the end of the Geneva Conference. The Indian delegation noted with regret that no satisfactory reply had been given to that question. The three-mile rule was still being advocated even in the Sixth Committee, and no proposal acceptable to the majority of the nations had been offered.

16. All Governments asserted their attachment to the cause of peace and their desire to achieve a settlement of problems the importance of which they all recognized. The task was immense and difficult but that did not detract from the necessity of its fulfilment. The question was whether it was advisable to hold a second conference for that purpose.

17. In a recently published article,<sup>3/</sup> Mr. Arthur H. Dean, chairman of the United States delegation to the Geneva Conference, had said that the desire of the United States to maintain a relatively narrow territorial sea had not been based merely on the fact that the three-mile limit had long been recognized in international law, but also on compelling military and commercial considerations. He had added that to reduce the area of the high seas by transforming important waters into territorial seas, closed to free navigation, would decrease the security of the United States and increase the risk of surprise attack. That statement, which required no comment, emphasized the importance of the problem. When a legal problem tended to become complicated by other non-juridical considerations, it was incumbent upon jurists to determine the question on a strictly juridical basis.

18. He quoted a passage from the statement which he had made during the eleventh session at the 492nd meeting of the Sixth Committee, and recalled that his delegation had at that time advocated as a solution authorizing all States to fix the extent of their territorial sea for themselves, up to twelve miles, according to their own needs, their economic interests, from the point of view of food in particular, and their security requirements. It had adopted the same attitude when, together with the Mexican delegation, it had introduced a proposal<sup>4/</sup> to the Geneva Conference. That attitude was strictly in accord with international law. As the International Law Commission had recognized in its draft article 3 and the accompanying com-

mentary (A/3159, pp. 12 and 13), international practice was not uniform as regards the limitation of the territorial sea and international law did not permit an extension of the territorial sea beyond twelve miles. States which were in favour of the three-mile limit were perfectly free to fix that as the extent of their territorial sea, if they thought that their security and other interests were best served thereby, but because it was not a general rule of international law, that limit could not be imposed on other States, which must retain the prerogative of determining the limits of their territorial sea according to their own needs.

19. It was the inherent right of every State to protect its sovereignty and to make suitable provisions for safeguarding the existence of its people. It was in the exercise of that right that the great maritime Powers had originally fixed the limits of their territorial sea, which thus became part of their territory. It was necessary, for defending sovereignty, to claim rights to the territorial sea because otherwise the shores would have remained undefended. The right to declare a part of the sea off the shores of a State as territorial sea, recognized in international law, carried with it the right to determine its extent, and the coastal State alone could judge the needs and requirements of its situation. When conditions changed, the coastal State should be able to change the extent of its territorial sea, or otherwise the right itself became illusory.

20. In its judgement on the Fisheries case<sup>5/</sup> between the United Kingdom and Norway, the International Court of Justice had declared that the validity with regard to other States of the unilateral act of delimitation of sea areas depended upon international law.<sup>6/</sup> That meant merely that, when the coastal State determined the extent of its territorial sea, it must respect international law; it could not mean that there could be no delimitation by unilateral declaration of the coastal State. That interpretation was confirmed by another passage from the judgement in which the Court, emphasizing the close dependence of the territorial sea upon the land domain, said that it was the land which conferred upon the coastal State a right to the waters off its coasts, and that such a State must be allowed latitude to adapt its delimitation to practical needs and local requirements.<sup>7/</sup> It was true that in the Fisheries case, the ultimate question at issue was not the question of the width of the territorial sea, but the drawing up of the base-line. Nevertheless, the Indian delegation believed that the principle laid down in that passage also applied to the question of the width of the territorial waters within the limit of twelve miles, according to practical needs and local requirements. That was current international practice and that was the international law to which the unilateral act of delimitation must conform in order to be valid for other States. When a coastal State made a declaration determining the extent of its territorial sea, in accordance with international law as just described, protests made by States against that declaration were invalid and should not be recognized. In other words, it was those protests and not the declarations of the coastal State which were against international law.

21. Too much emphasis on the freedom of the high seas would be of no avail because the principles of

<sup>3/</sup> Arthur H. Dean, "Freedom of the Seas" in Foreign Affairs, October 1958, vol. 37, No. 1 (New York, Council on Foreign Relations, Inc.), pp. 83 ff.

<sup>4/</sup> United Nations Conference on the Law of the Sea, Official Records, Volume III: First Committee (United Nations publication, Sales No.: 58.V.4, Vol. III), annexes, document A/CONF.13/C.1/L.79.

<sup>5/</sup> I.C.J. Reports 1951, p. 116.

<sup>6/</sup> Ibid., p. 132.

<sup>7/</sup> Ibid., p. 133.



international law stated above struck a correct balance between the special rights of the coastal States and the general rights of the international community, which included the coastal States. The international community was under the obligation to preserve and protect the special rights of the coastal States, and those special rights of the coastal States were superior to the general rights of the international community on the high seas and must be given priority.

22. The conclusion from the foregoing was that discretion to determine the extent of the territorial sea according to practical needs and local requirements was a rule of customary international law. Even if that had not been the case, the progressive development of international law would justify the adoption of such a rule in the interests of world peace and harmony. Moreover, such a rule would be consonant with justice: nothing could be more unjust than to proclaim the three-mile rule and to leave the growing populations of the under-developed countries which were not able to protect their shores almost at starvation level. It would also be in line with the development of international law in other branches, particularly the law relating to the continental shelf over which rights had been recognized in order to safeguard the special interests of the coastal State. Lastly, the rule would also be consonant with elementary considerations of humanity, which were even more exacting in peace than in war.

23. Since 1930, two international conferences and the International Law Commission had sought vainly to solve the question of the breadth of the territorial sea. It was time for the General Assembly to take upon itself the task of finding a solution which would be acceptable to all States. As the representative of Iceland had pointed out, the Sixth Committee was the most suitable body for that purpose. Experience showed that, in its thirteen years of existence, the United Nations had succeeded in solving difficult problems, in an atmosphere of independence based upon the equal sovereignty of States. Non-member States would also be parties to a conference; their contributions would be in the records of the conference and could be put to good use. Moreover, there were 600 million people in the world who were not represented at the United Nations and on whom the decisions of the General Assembly were not binding. As far as Member States were concerned, neither the place in which the gathering would be held nor the name of the gathering mattered. What mattered was that there should be an agreement between States.

24. The issue at stake was vital to those countries which had no large navies and whose food problems were acute. Their only protection lay in the rule of law. Great care should therefore be taken to avoid a repetition of the first Conference. If a conference were held in August 1959, there was reason to fear that some States would find it difficult to be represented satisfactorily, to say nothing of the question of expense, which was obviously a subject of concern to the smaller and to the under-developed countries. For all those reasons, his delegation believed that the matter should be studied by the Sixth Committee. If necessary, the delegations could always request the opinion of technical advisers to be sent by their Governments.

25. His delegation also wished to say that it attached great importance to the work of the Geneva Conference

and wished to compliment the Secretariat for the preparatory work it had done to facilitate the task of the delegations. It considered that the question of the breadth of the territorial sea was the very foundation of the Convention on the Territorial Sea and the Contiguous Zone,<sup>8/</sup> which could be applied only when an exact definition of its subject-matter was possible, that is, when there was no longer any uncertainty about the limits of the territorial sea and the contiguous zone.

26. After careful consideration of the matter, his delegation had arrived at the conclusion that in the present circumstances there was a serious danger that the Conference proposed in the joint draft resolution might end in failure. Only thorough preparatory work and diplomatic negotiations could lessen differences of opinion and make an agreement possible. For that reason his delegation, together with other delegations, had submitted amendments (A/C.6/L.440) proposing that the question of procedure should be included in the agenda of the fourteenth session of the General Assembly for examination as a priority matter; as soon as the Sixth Committee had expressed its views, the substance of the question should be considered either by the Committee during that same session, or by a conference to be called as soon as possible. The important thing was to arrive at an agreement on the substance of the matter also; that was the meaning of paragraph 3 of the new operative part of the resolution, as of the other amendments. The few months separating the current session from the fourteenth session should increase the chances of success.

27. His delegation urged the Committee to support the amendment submitted, and reserved the right to speak again if it considered it necessary.

28. Mr. CHAMANDI (Yemen) said that his delegation had welcomed the results achieved by the Geneva Conference and congratulated the participants on the spirit of co-operation and compromise they had shown. It regretted however that it had been impossible to reach an agreement on the breadth of the territorial sea or on certain complex questions regarding fishing and the conservation of the living resources of the high seas, which were very important and which could not be left unsettled. Rules of law had to be established on the subject for they were the only means to avoid chaos and continual conflicts threatening world peace. His delegation would therefore support any proposal for further consideration of the questions left unsettled at the Geneva Conference.

29. The Sixth Committee had a choice between two solutions: a decision to convene an international conference to consider the questions left unsettled, as proposed by the joint draft resolution or a decision to include the question of procedure in the agenda of the fourteenth session of the General Assembly, as proposed by the seven-Power amendments. For the reasons given in the first part of the amendments and because it considered that it was the duty of the General Assembly to make such a decision, his delegation would support the second solution. If the Committee decided however to call a second international conference, too early a date should not be set. Otherwise, the Govern-

<sup>8/</sup> 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.52.

ments would not have time to consider the decisions taken at the first Conference with regard to the other matters, and to come to a decision on those questions left unsettled.

30. He thought that the question of the breadth of the territorial sea should not give rise to any violent controversies. Although there were not yet any specific provisions in international law on that subject, it was the current practice of many States—under an agreement of a semi-international character—to extend the limit of territorial waters beyond three miles, up to a maximum breadth of twelve miles, which was rarely exceeded. In view of the present controversies,

however, it had become essential to codify the existing rules on the subject and to define the rights of States exactly. Recognition must also be given to the right of countries which were dependent upon fishing for their livelihood to extend their territorial sea up to a limit of twelve miles at least.

31. His delegation was convinced that those responsible for an equitable solution of those questions would show the same spirit of co-operation and compromise which had enabled the Geneva Conference to reach an agreement on other matters.

The meeting rose at 4.50 p.m.