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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 to 3) (*continued*)**

1. Mr. GUYER (Argentina) congratulated the Commission and its Rapporteur on the important work they had done. He said his delegation would support the proposal for the convening of an international conference (A/C.6/L.385). The International Law Commission, being a body of jurists acting in a personal capacity, could not be expected to draft conventions containing new legal institutions; that was a matter for government representatives. Furthermore, in the course of a codification of the law of the sea, innumerable scientific and economic factors had to be taken into account; those were matters to be dealt with by the experts who would attend the proposed conference.

2. There was undoubtedly a conflict of views between those who favoured the rights of the coastal State and those who adhered very strictly to the principle of the freedom of the seas. For that reason, his delegation supported the suggestion that operative paragraph 7 of the draft resolution should be amended so as to state that the International Law Commission's report (A/3159, chap. II) would be one of the elements to be taken into consideration by the proposed conference and not the sole basis of its work. It was essential that the views expressed in the Sixth Committee should also be taken into consideration by the conference. The problem of the breadth of the territorial sea and that of the conservation of marine resources had to be dealt with together; they were very closely linked and the conference should work out a general solution covering both. As pointed out by Mr. Padilla-Nervo during the eighth session of the International Law Commission (A/CN.4/SR.338, para. 8), the original intention of the Commission, in granting certain unilateral powers of conservation to the coastal State, had been to forestall excessive claims with respect to the territorial sea. But the system proposed by the Commission offered inadequate guarantees for many countries and would have to be amended in favour of the coastal State if

considerable extensions of the territorial sea were to be avoided.

3. The future conference would have to discard the myth of the three-mile rule, a rule which was of relatively modern origin and which had never been universally accepted. He briefly traced the history of the evolution of the three-mile rule in Europe. Until the eighteenth century, the European Mediterranean countries and the Netherlands had claimed that only the maritime area actually within the range of coastal batteries could be regarded as territorial sea. By contrast, the Scandinavian countries had claimed a continuous and uniform maritime belt, the breadth of which had varied with the times, extending on occasions as far as four leagues. Under pressure from the Netherlands, France, Spain, Great Britain and Russia, they had gradually reduced that breadth to one league. The Scandinavian system of a continuous belt had then gained general acceptance in Europe and later throughout the world, superseding the old system of separate maritime areas commanded by coastal batteries; the breadth of that belt, however, had never been uniformly agreed upon.

4. What Europe had accepted was the new juridical institution of the maritime belt; the three-mile limit, which was but one of the many possible limits that might apply, had never been universally recognized.

5. The proposed conference would have to bear in mind that the three-mile rule had never been accepted in any general international agreement and that the rules to be prepared by it would have to be applied in the twentieth century to the whole world. New countries, and even new continents, had recently entered the international scene, and views current in certain parts of the world in the nineteenth century would have to be brought up to date in order to satisfy the needs of the times.

6. A narrow territorial sea was suitable for the European countries by reason of their geographical position. The situation was quite different in other parts of the world such as on the west coast of South America, where a belt of 200 miles represented no more than 3 per cent of the total expanse of the Pacific Ocean.

7. The future conference should therefore consider regional solutions for the problem of the breadth of the territorial sea, instead of endeavouring to apply a uniform limit applicable to all countries. He cited the writings of the seventeenth century writer Fra Paolo Sarpi and of the modern Argentine jurist Storni in support of a regional solution.

8. With respect to the continental shelf, Argentine authors had maintained since 1916 that the resources of the superjacent waters were closely linked with the sea-bed and subsoil and could not be dissociated from them as the International Law Commission had proposed. Under Argentine legislation the epicontinental sea was subject to Argentine jurisdiction. The reason

for that was that the maritime resources contained in those waters and the shelf which those waters covered were regarded as a single entity. Fishing grounds were often situated on the fringes of the continental shelf, so that the coastal State was obliged to extend its jurisdiction up to that limit.

9. His delegation would not discuss the International Law Commission's report in detail, in view of the proposal that a conference be convened. Should, however, that proposal not be accepted, he reserved his delegation's right to submit its views on the articles proposed by the Commission.

10. Mr. ALVAREZ AYBAR (Dominican Republic) said that his delegation was one of the sponsors of the joint draft resolution (A/C.6/L.385) not only because it supported the calling of a conference of plenipotentiaries, as suggested by the International Law Commission, but also because the Dominican Republic had acted as host to the Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters".

11. That Conference, held at Ciudad Trujillo from 15 to 28 March 1956, had formulated a rule for ascertaining the limits of the continental shelf which the International Law Commission had expressly adopted in its report; that fact was confirmed in the commentary on article 67 (A/3159, p. 41). The resolution adopted by the Conference of Ciudad Trujillo also enumerated the points on which there was agreement among the American States and those on which no such agreement existed, so that the resolution was in effect a summary of the legal thinking of those States at the time. The Conference had recognized the need for co-operation in the conservation of the living resources of the high seas and in achieving the optimum yield, and had stressed the special interest of the coastal State in the productivity of the living resources of the high seas adjacent to its territorial sea. There had been no agreement, however, on the nature and scope of that special interest, on the breadth of the territorial sea or on the juridical régime of the waters covering submarine areas.

12. The Principles of Mexico City, contained in resolution XIII of the Third Meeting of the Inter-American Council of Jurists (A/CN.4/102, annex 1), having prepared the ground, the decisions of the Specialized Conference of Ciudad Trujillo constituted the latest authoritative statement of the Organization of American States, not only because of the results achieved by the Conference, or because it had been the more recent meeting, but also because the subject had received the scientific treatment recommended by the periodic Inter-American Conference, which was the organ competent to decide "the general action and policy of the Organization" (article 33 of the Charter of the Organization of American States).

13. He thought that perhaps future studies might approach article 55 from a broader view of method or procedure. Furthermore, the rights recognized in that article over the natural resources of submarine areas constituted an unequal distribution of resources which benefited States having suitable submarine areas.

14. With reference to the position of the Dominican Government, whose comments on the provisional articles prepared by the International Law Commission at its seventh session were reproduced in document A/CN.4/99, he said that the Commission's report

(A/3159) was being carefully studied. Accordingly, his Government reserved its right to state its views later, on the occasion of the conference of plenipotentiaries.

15. Finally, with reference to the time and place of the conference, he had no objection to the proposal that it should be held at Geneva in 1958, as the majority of delegations wished. Nor would he oppose the appointment of a preparatory committee to deal with technical and administrative questions.

16. Mr. BASOV (Byelorussian Soviet Socialist Republic) said that the Commission's report (A/3159) had certain commendable features—such as its recognition of the coastal State's sovereign rights in its territorial sea and the superjacent air space and in the sea-bed and subsoil, the provisions concerning the State's special interest in the living resources of the continental shelf, and the reaffirmation of the age-old principle of freedom of navigation on the high seas—and others less commendable, in fact unacceptable, such as the proposals concerning the breadth of the territorial sea, government ships used for commercial purposes, the definition of piracy and the compulsory jurisdiction of the International Court of Justice for the settlement of disputes relating to the continental shelf.

17. He would discuss more particularly the provisions of article 57, which laid down the procedure for the settlement of disputes relating to fishing on the high seas. The questions of the conservation of the living resources of the high seas and of the measures the coastal State could take to protect them affected the vital economic interests of States, and the International Law Commission should clearly have devised machinery for the settlement of disputes relating to such questions in conformity with the generally recognized principles set forth in Article 33 of the United Nations Charter. Instead, draft article 57 proposed a procedure which did not take sufficient account of the interest of States and which constituted an infringement of their sovereign rights. It was in fact open to precisely the same objections as the Commission's draft on arbitral procedure (A/2456, par. 57), which had been rightly criticized at the tenth session of the General Assembly and finally referred back to the Commission as violating the basic principle of arbitral procedure, namely the parties' willingness to refer the dispute to arbitrators of their choice. It had long been an accepted principle of the law relating to arbitration between States that no State could be compelled to submit to arbitration; the State's consent was an essential condition. The rule was consistent with the principle of the sovereign equality of States and was clearly incompatible with arbitration being imposed on one party at the request of the other.

18. The provisions of draft article 57 were therefore diametrically opposed to traditional arbitration practice. It laid down that, unless the parties agreed on another method of peaceful settlement, disputes could be submitted for arbitration at the request of any of the parties, irrespective of the others' wishes or legal rights and interests; that was a very dangerous approach, with in fact robbed the reference to other methods of peaceful settlement of all sense. In cases where the parties to the dispute fell into more than two opposing groups, the Commission also proposed (article 57, paragraph 3) that the members of the arbitral commission should be appointed by the Secre-

tary-General of the United Nations, after consultation with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations. That was directly contradictory to the established principle that the parties should have the right to appoint the members of the arbitral tribunal by common consent. In the Commission's draft, not only were the parties denied that right, they were not even to be consulted on the composition of the arbitral commission. Moreover, it was not clear from article 57, paragraph 3, whether representatives of the parties to the dispute could become members of the arbitral commission.

19. What the Commission was really proposing, therefore, was the establishment of an organ which would be primarily a kind of international court on fishing matters but in whose composition, unlike that of the International Court of Justice, States would have no say, not even to the extent of being able to withdraw arbitrators. And it was to such a court that the parties to the dispute could, under article 57, be summoned "at the request of any of the parties", in other words at the whim of any single State. For all those reasons his delegation could not accept the procedure proposed in article 57.

20. In general, he agreed with those who wanted the Commission's draft to be modified and supplemented in such a way that the provisions would be in full conformity with generally accepted principles of international law. Only thus could they meet the requirements of the United Nations Charter and contribute to the further strengthening of international co-operation.

21. Mr. WIKBORG (Norway) congratulated the Commission and its Rapporteur on the important, even decisive, progress they had made towards the codification and development of so controversial a branch of international law. Norway was vitally interested in the law of the sea, for economic as well as geographical reasons; its economic interests were to some extent conflicting, since its coastal fisheries would undoubtedly gain from an extension of Norway's territorial sea beyond the existing four-mile limit, whereas its merchant shipping fleet, the third largest in the world, naturally wished to preserve the freedom of the seas unimpaired. Moreover, although Norway had no continental shelf in the proper meaning of the term, there were vast areas of shallow waters from which the mainland was separated by a stretch of deep water near the coast; as was clear from paragraph (8) of the Commission's commentary to article 67, such areas were to be regarded as belonging to the continental shelf. Obviously, therefore, almost every one of the articles drafted by the International Law Commission was of vital concern to his country.

22. The Norwegian delegation as one of the sponsors of the joint draft resolution (A/C.6/L.385) agreed that the next stage should be an international conference of plenipotentiaries. No other body would be qualified to frame acceptable new rules of international law in a matter beset by such a clear conflict of interests. The authority of the conference would be strengthened by the presence of countries, such as Germany and Japan, not at the moment represented in United Nations bodies.

23. In his view the conference should have a completely free hand, both in the matter of its own organization and in the matter of the presentation of its results, whether in the form of a single convention

covering the entire field or of a number of conventions of limited scope, or simply in the form of statements, resolutions and recommendations. He was somewhat doubtful about the wisdom of establishing a preparatory committee. The main burden of preparatory work would in any case fall on the Secretariat, who should of course be authorized to seek expert assistance as necessary—including, possibly, that of the Commission itself. Careful preparation was certainly essential, and he agreed that the conference could not be held before the spring of 1958. If a preparatory committee were established, it should deal with purely procedural, administrative and perhaps technical questions. The Commission's report, together with Governments' comments on it, was the best possible basis for the conference's work. For practical reasons the conference should be held in Geneva.

24. As the Norwegian Government was still studying the Commission's report, he would not discuss it at length. Reference had been made to the International Court of Justice's judgement in the Fisheries case. That judgement had been important in that the Court had accepted the principles applied by the Norwegian Government in drawing straight baselines, but what further conclusions could be drawn from it was not a matter which he would now discuss. It did not seem likely that the proposed conference would reach agreement on a uniform breadth of the territorial sea, and it would probably have to rest content with a statement similar to that made in paragraph 3 of the Commission's draft article 3. It was not without value, however, to state clearly that the maximum limit was twelve miles. There was no foundation in international law for a greater breadth.

25. While he recognized that it was in the common interest of mankind that the coastal State should exercise certain rights and duties over the continental shelf, he felt the Commission had gone too far towards giving it a monopoly. The coastal State would always have an advantage over States in exploring and exploiting the resources of its continental shelf, since it alone could establish the necessary land installations. If no outward limit to the continental shelf was fixed, however, almost the entire sea-bed and subsoil of the oceans might, with the march of technical progress, become the property of the coastal States. Great caution was therefore necessary, and the Norwegian delegation felt that the continental shelf should extend to a depth of 200 metres at most. He shared the New Zealand representative's fears (494th meeting) that continuation of the current trend might eventually endanger the freedom of the seas.

26. In conclusion he said that articles 54 and 55 did not, in his delegation's view, apply to uninhabited coasts in the Arctic and Antarctic. The States which claimed sovereign rights to coastal areas in those regions should not therefore be entitled to enforce whaling and fishing regulations in adjacent areas of the seas.

27. Mr. NUGROHO (Indonesia) said that a solution of the problems pertaining to the law of the sea was of greater importance than ever before. Since the Second World War the subject had given rise to at least two serious legal disputes, and the prevailing uncertainties should be dispelled. The International Law Commission and its Rapporteur consequently deserved congratulations for their constructive work.

28. The Commission had not succeeded in solving every outstanding problem; in particular, the question

of the breadth of the territorial sea remained the object of keen controversy. Nevertheless, the Commission's report had clarified the issues on which disagreement subsisted and thus facilitated the work of any conference which might be called. Such a conference, however, should not only remove uncertainties in the law but also make a more positive contribution by devising appropriate machinery to deal with the technical, biological, economic and political aspects involved. For those reasons, his Government welcomed the Commission's suggestion that a conference of plenipotentiaries should be called and supported the substance of the joint draft resolution (A/C.6/L.385). The conference should meet as soon as practicable, though owing to the careful preparations needed it would probably not be able to meet before 1958. His delegation had no strong preference concerning the choice of the place where the conference was to be held.

29. Operative paragraph 4 of the joint draft resolution provided for the invitation of all Member States of the United Nations and States members of the specialized agencies. He considered, however, that the conference should be attended by representatives from as many States as possible and that some States which did not qualify under that paragraph nevertheless had a vital interest in the issues involved. The sponsors of the joint draft resolution could hardly have intended to exclude such States, which were in a position to make significant contributions. For those reasons, he proposed that operative paragraph 4 should be amended by the insertion, after the words "specialized agencies", of the phrase "and other States which may so desire".

30. With reference to the substance of the International Law Commission's report, he agreed that the law of the sea should be considered as one entity, the various parts of which were closely interdependent. The report would consequently serve as an excellent basis for discussion. Nevertheless, on certain parts of the report his Government wished to reserve its opinion. Those were, principally, the provisions regarding the territorial sea, the contiguous zone, the continental shelf, fishing, the conservation of living resources, the penal jurisdiction of coastal States in the territorial sea, and arbitration.

31. He supported the case for an extension of the breadth of the territorial sea beyond the three-mile limit. Those who had tried to brush those arguments aside had not been conspicuously successful. The United Kingdom representative had rightly recognized that there had always been a certain conflict between the rules governing the territorial sea and those applicable to the high seas (492nd meeting). He had then asserted, however, that whenever there was a conflict between a claim to an extension of the territorial sea and the principle of the freedom of the high seas the latter should prevail, because the territorial sea was of primary interest only to the coastal States concerned, while the rights enjoyed on the high seas were those of the whole international community. That argument was somewhat illogical, as the international community was composed of all States, including the coastal States, and an increasing number of coastal States seemed to be demanding an extension of the three-mile limit. Such a trend was indeed fully consistent with other developments in the law of the sea; the draft provisions regarding the continental shelf could also be said to conflict with the classical concepts of the freedom of the high seas.

32. It had also been argued that neither economic nor security considerations justified an extension. Those who took that view had said that it was paradoxical for sparsely-populated large countries to demand such an extension when densely-populated smaller countries advocated adherence to the three-mile rule. Those smaller countries were, however, highly industrialized nations, while the countries advocating an extension had to live largely on their natural resources. The latter consequently had good reason to worry about the conservation of their marine fauna and their rights over adjacent sea areas. So far as the question of security was concerned, he said it was true that a zone guaranteeing absolute security was now almost impossible to determine. The coastal States should nevertheless be given greater freedom of action, and consequently greater safety, than was possible under the three-mile rule.

33. It had also been stated that neither the rules governing the high seas nor the right to adopt a three-mile limit were disputed, and that the only subject of controversy was the legality of an extension of the territorial sea beyond three miles. According to that reasoning, the question of such extension could be left unresolved while the régime of the high seas was embodied in a convention. That conclusion, however, though ostensibly logical, overlooked the fact that a dispute regarding the extension of the breadth of the territorial sea beyond the three-mile limit automatically involved a dispute regarding an area which the advocates of that limit regarded as part of the high seas. There could consequently be no complete agreement regarding the high seas until the question of the territorial sea was settled.

34. His delegation wished to reserve its right to speak again, if necessary, at a later stage.

35. Mr. MIRAS (Turkey) said that the International Law Commission's draft was an outstanding contribution to the codification of international law. The Commission's work had been rendered exceptionally difficult by the changes which the law of the sea had undergone in the last half century, as a result of improved means of communication and new scientific discoveries. Moreover, that branch of international law was still relatively undeveloped, and many problems remained controversial. The Commission had consequently found it exceptionally hard to determine whether certain rules should be regarded as "codification" or as "progressive development" of international law. As it had rightly pointed out, however, that academic distinction could no longer be really maintained (A/3159, para. 26). In most cases, codification and development were inseparable.

36. The Commission had recommended the adoption of a convention or conventions and the calling of a diplomatic conference. That recommendation was perfectly logical, as a multilateral convention was the normal means of enacting international legislation. Moreover, the highly technical draft and the accompanying commentaries could never be fully examined by the Sixth Committee. Those provisions and comments had to be judged also from the technical, economic and political points of view, which could only be done with the help of technicians and experts. For those reasons, the Turkish delegation supported the joint draft resolution (A/C.6/L.385).

37. The Codification Conference of The Hague, 1930, although unsuccessful, had not been completely fruit-

less. Above all, its failure should serve as a lesson. Its mistakes would not be repeated if the next conference was determined, in advance, not to abandon all hope of substantial achievement when faced with disagreement on some questions. The conference should not lay undue stress on the most controversial points but rather seek satisfactory solutions of particular questions on which there was a large measure of agreement. The Commission's draft should be used as a working document.

38. The Turkish delegation agreed that Governments should be given ample time to prepare for the conference. Many of the notions contained in the Commission's draft were completely new and unfamiliar, and sufficient time should be allowed for the necessary study. Furthermore, the conference should be provided with all the necessary documents, including the relevant records of the International Law Commission. Lastly, the success of the proposed conference would largely depend on proper diplomatic preparation, without which even the most conscientious technical preparation would prove insufficient.

39. With reference to specific provisions of the draft, he said that the question of the breadth of the territorial sea, unsolved since the Middle Ages, still represented the greatest challenge. For the moment, his delegation would not comment on that question beyond pointing out that Turkey applied the three-mile rule.

40. Article 24, regarding the passage of warships, was of special importance to Turkey, which wished

to avoid any confusion between the statement it contained and the provisions of the 1936 Montreux Convention. The Turkish delegation felt, therefore, that paragraph (5) of the commentary on that article should be included as a second paragraph of the article itself. Furthermore, the draft should expressly state that its provisions did not affect the rights of States under existing conventions.

41. Article 26 failed to make any reference to internal seas. That defect was partly corrected in paragraph (2) of the relevant commentary, but the principal should be embodied in the article itself. The failure to define internal seas in the text and to state that the rules governing the high seas did not apply to internal seas might lead to confusion. The Commission had apparently felt that the expression "internal waters" also covered "internal seas". The Turkish delegation felt, however, that the concept of an "internal sea" was distinct and should be separately provided for. The Turkish Government attached great importance to that article, since Turkey had, as was well known, an internal sea, the Sea of Marmara.

42. The Turkish delegation considered that the draft provisions relating to straits and internal seas should be studied again.

43. It wished to reserve its right to speak on the other provisions of the draft, at a later stage.

The meeting rose at 12.45 p.m.