



CONTENTS

| | <i>Page</i> |
|---|-------------|
| Report of the International Law Commission on the work of its fifth session (<i>continued</i>)..... | 153 |

Chairman: Mr. Juliusz KATZ-SUCHY (Poland).

Report of the International Law Commission on the work of its fifth session (A/2456, A/C.6/L.311, A/C.6/L.314, A/C.6/L.318, A/C.6/L.319) (*continued*)

[Item 53]*

Chapter III: Régime of the high seas (*continued*)

GENERAL DEBATE (*concluded*)

1. The CHAIRMAN drew attention to the observations by the Chairman of the International Law Commission (A/C.6/L.324) concerning chapter III of the Commission's report (A/2456), which had been circulated as a document because the Chairman of the Commission had been unable to attend the Committee's meetings sufficiently long to make his observations in person.
2. Mr. MACNAUGHTON (Canada) said that while his delegation would have preferred to examine jointly all the interrelated aspects of the régime of the high seas, it appreciated the excellent work done by the Commission on some of the topics in the relatively short time at its disposal. The draft articles, once approved, would constitute a major contribution to the development of international law.
3. As regards the question of the continental shelf, in view of the conflicting claims—some precise and others vague—made by States concerning their jurisdiction over their continental shelves, his delegation welcomed the Commission's efforts to draft a uniform code that might be universally accepted. Nevertheless, since the Commission's report had been circulated at a very late date, governments had not had time to study the full implication of the draft articles on the subject.
4. He therefore felt that the Commission's recommendation—as contained in paragraph 91 of its report—that the General Assembly should adopt the draft was premature.
5. The Commission's decision not to include a separate article relating to sedentary fisheries might give rise to confusion. Indeed, the words "sovereign rights" as contained in article 2 of the draft articles on the continental shelf, which had an accepted legal meaning, could hardly be reconciled with the view expressed

in paragraph 71 of the report that the exclusive rights of the coastal State could not be exercised "in a manner inconsistent with existing rights of nationals of other States with regard to sedentary fisheries." While the established rights of individuals should be protected under international law, there was no reason why sovereign rights in respect of sedentary fisheries should be more restricted than in the case of other natural resources.

6. Further, article 6 as drafted might be interpreted to mean that the exploitation of sedentary fisheries must not interfere unduly with other forms of fishing. Such a rule would be distinctly illogical.

7. His delegation felt, for practical considerations, that the topic of sedentary fisheries should be examined further in the light of those observations.

8. In defining the limits of the continental shelf in article 1, the Commission had abandoned its previous criterion of exploitability in favour of the arbitrary figure of 200 metres. There was serious doubt whether the advantages of certainty outweighed those of a more flexible formula, particularly in view of the growing possibilities of exploitation provided by technical and scientific advances.

9. The draft articles on fisheries were of great interest to all maritime countries which, like his own, depended on fisheries to a large extent for their food and livelihood. In that connexion, there might be serious opposition to a far-reaching set of rules drafted by a body on which governments were not represented. While governments had been given the opportunity to express their views on the subject, the fact of the matter was that some of the most important fishing countries in the world, which had considerable experience in the regulation of the high seas fisheries by international conventions, had not yet submitted their comments.

10. In the light of its own experience in regulating a few fisheries by bilateral agreement, his country fully appreciated the immensity of the problem of the establishment and operation of an international authority for many species of fish in many parts of the world. Canada was a party to various bilateral conventions, adopted after long and technical negotiations, and designed to prevent excessive exploitation of fishing grounds. Under the proposed draft articles, if a third State did not wish to adhere to those conventions, it could take the matter up with the new proposed international authority. As a result, the fruit of years of negotiation between parties would be destroyed, and the entire matter taken out of the hands of existing commissions and transferred to a new international authority.

11. The Canadian Government could not accept any articles with such far-reaching implications without further consideration of the question in consultation with the other States concerned.

* Indicates the item number on the agenda of the General Assembly.

12. Two of the draft articles were also objectionable in that they were more restrictive than existing practice. For example, the implication of article 1 seemed to be that a State could not regulate fishing activities of its nationals except to the extent necessary to prevent waste or extermination. Likewise, article 2 might prevent a country from regulating fishing activities in areas in which its nationals alone were fishing.

13. In view of those and other problems, the Canadian delegation believed that it would be safer to progress gradually, and that before an international supervisory body such as that provided for in article 3 was established the experience of the existing international fisheries commissions should be observed further.

14. For those reasons his delegation could not accept the International Law Commission's recommendation (para. 91) that the General Assembly should adopt the draft articles by a resolution, and believed that governments should be given a further opportunity for study and comment.

15. His delegation also reserved its position on the recommendation for entering into consultation with the Food and Agriculture Organization. Any international instrument of great practical importance, such as one relating to fisheries, could not be effective unless it was accepted by the largest possible number of countries.

16. While there was much to be said for the Iceland delegation's view, expressed in its draft resolution (A/C.6/L.314), that final decision on individual aspects of the régime of the high seas should be deferred until the Commission had completed its work on the entire question of the high seas, his delegation realized that some countries were anxious that the United Nations should approve drafts on subjects in which they had a direct interest. Accordingly, it had joined several other delegations in sponsoring the joint draft resolution (A/C.6/L.318), which proposed that action on the articles dealing with the continental shelf and fisheries should be postponed until the tenth, rather than the ninth session, first, because the agenda of the ninth session was already heavy, secondly, in order to give governments more time to study the drafts, and lastly, in the hope that by then the Commission might have completed its work on the other aspects of the régime of the high seas.

17. He could not support the Panamanian draft resolution (A/C.6/L.319) which he considered unrealistic, or the United States amendment (A/C.6/L.325) to the joint draft resolution.

18. Mr. ANDERSEN (Iceland) said that his delegation's draft resolution (A/C.6/L.314) was self-explanatory. Until the International Law Commission had had time to study all aspects of the régime of the high seas and of the régime of territorial waters, no aspect of either should be considered by the General Assembly.

19. Chapter III of the Commission's report contained suggestions regarding the continental shelf and fisheries, the underlying object in both cases being the protection of natural resources. But whereas the Commission recognized the vital interests of the coastal State in connexion with the subsoil and sea-bed of the continental shelf, and accordingly drafted the articles so as to allow that State to exclude nationals of other States from exploiting the mineral and other resources—including sedentary fisheries—of the shelf, it did

not give that State the same power to control and protect the natural resources of the superjacent waters, which included bottom and other non-sedentary fisheries. The distinction seemed unreasonable.

20. The position of Iceland had been described in the communication from the Ministry of Foreign Affairs reproduced in the Commission's report (A/2456, annex II, 8). In that communication the Ministry had shown that the people of Iceland depended for their very survival on the fishing banks and spawning grounds on the continental shelf surrounding the island, and that the Government was consequently bound to take unilaterally any necessary legislative action to preserve them. It had pointed out that Iceland had at least as great a right to her fisheries as other States had to the oil in their continental shelves. And it had remarked that in its opinion each coastal State should be permitted to determine, within a reasonable distance from its coasts, what measures were required for the protection of its coastal fisheries, taking into account economic, geographical, biological and other relevant considerations. Those still remained the views of his Government. It could not subscribe to the view that Iceland should be entitled to protect the natural resources in the bottom of Iceland's continental shelf, which might very well be non-existent, but not the continental shelf fishing grounds that were vital to the country.

21. The Commission's interpretation of the expression "natural resources"—in article 2 of the draft articles relating to the continental shelf—as meaning only mineral resources and sedentary fisheries ought, therefore, to be reconsidered. Many other types of fishing were as local in character as the so-called sedentary fisheries, because they depended on stationary stocks that were entirely local in their lives and habits and consequently equally exposed to destruction. Trawling, for example, could so greatly alter the condition of the bottom as entirely to destroy possibilities for spawning and growth. Moreover, even migratory fish stocks were completely dependent upon the local spawning grounds on the continental shelf. That Iceland's position in that connexion was not unique was shown, for example, by the legislation of many Latin-American countries. The International Court of Justice itself had emphasized that geographical conditions and the economic and other interests of the coastal population had to be taken into account in any solution of the type of legal problems under discussion. What the situation called for, therefore, was not the drafting of formalistic rules, but a mechanism which would make adequate allowance for the different interests of the various nations involved.

22. It still remained uncertain to what specific areas the draft articles applied, since the term "territorial sea" had not been defined: the continental shelf was described as being outside the area of the territorial sea, while the fisheries articles applied to the "high seas", a term which again depended on a definition of the territorial sea. Since the attitude States would adopt to the fisheries articles would very largely depend on the decision taken regarding the width of the territorial sea, it was necessary for the question of the high seas to be considered together with that of the territorial sea.

23. In addition, his delegation could not bind itself to the provisions of article 3 of the fisheries draft articles before it knew what the composition of the pro-

posed international body would be, its authority, the extent of the regulations it might prescribe and the majority necessary for their adoption. It would of course make a great deal of difference to many States whether this system were to apply beyond three miles, four miles, twelve miles or a greater distance from the coast. The Commission had not as yet committed itself on that point.

24. Furthermore, the fact that the fisheries articles were to apply to the high seas, or the sea outside territorial waters, seemed to imply that there was to be no contiguous zone for fisheries jurisdiction, which was a matter that would have to be decided after the contiguous zones themselves had been dealt with, or at least concurrently with them.

25. The General Assembly had decided at its fourth session (resolution 374 (IV)) that the régime of the high seas and the régime of the territorial sea were closely related and should therefore be studied simultaneously, a view which his delegation had at that time urged in the Sixth Committee, pointing out that the Commission would not advance matters by defining the high seas in terms of territorial waters unless it studied the two together. His delegation still considered it impossible to pick out isolated elements and reach separate decisions upon them; to do so would obviously tie the Commission's hands when it came to discuss the régime of the territorial sea and the contiguous zone.

26. The United Kingdom representative had objected, at the 389th meeting, to Iceland's draft resolution on the grounds that study of the other problems involved would take too long, and that the problems were so complicated that the General Assembly could not deal with them all together. The United Kingdom delegation had made the same objections in the Sixth Committee and in the General Assembly at the fourth session in connexion with the inclusion of the topic of the territorial sea, in addition to that of the high seas, on the Commission's list of priorities, and its representative had been outvoted in both bodies. The only thing that had happened since then was that the Commission had done a good deal of work on the subject of territorial waters and was therefore better fitted to deal with it.

27. His delegation would be prepared to vote for the joint draft resolution (A/C.6/L.318), provided that its own draft resolution (A/C.6/L.314) were also adopted, and on the understanding that the joint draft resolution would not prejudice the issue of the territorial waters and contiguous zones. The fact that the joint draft resolution merely referred the drafts to governments for study was not in itself sufficient indication of its non-prejudicial character, because the implication would be that these matters could be treated on an isolated basis. Adoption of the two draft resolutions would mean that governments would study the proposals already submitted, and the Commission would complete its study of the entire field, concurrently.

28. His delegation's draft resolution did not mention a date for the completion of the Commission's work, because it thought that the Commission ought to decide that itself. The Commission might perhaps complete its draft for the entire field in two years, in time to consider the comments which would then be due from governments. Complex as the problems involved were, they were not for the most part particularly con-

troversial. The vital ones were the extent of the territorial sea, and whether or not there should be a contiguous zone for fisheries jurisdiction; both of those questions would have to be settled before a decision could be taken on the draft articles at present before the Committee.

29. Mr. LOUTFI (Egypt) said that he had little to add to the explanations of the joint draft resolution (A/C.6/L.318) given by some of its other sponsors.

30. It was plain that the draft articles on the continental shelf required further study. While it was true that the International Law Commission had received comments from governments on the subject, it had made important changes in the draft articles in the light of those comments, as indicated in paragraph 63 of its report (A/2456), so that governments would again have to give them careful consideration. Moreover, as the United Kingdom representative had pointed out (389th meeting), it was necessary to define the limits of the territorial sea before proceeding to define those of the continental shelf. Lastly, the Committee's debate on arbitral procedure clearly indicated that article 8 of the draft articles on the continental shelf, which dealt with arbitration, would require a close examination.

31. The draft articles on fisheries deserved similar treatment.

32. Consequently, as proposed in the joint draft resolution, consideration of those questions should be postponed until the tenth session of the General Assembly.

33. While he sympathized with the intentions of the Iceland and Panamanian draft resolutions (A/C.6/L.314, A/C.6/L.319), both touched on the substance of the question, which his delegation was not prepared to enter into at the current session.

34. Mr. RIVERA REYES (Panama) introduced a revised version of his draft resolution (A/C.6/L.319/Rev.1).

35. The principal changes were that he had eliminated the preamble, substituting a purely factual reference to the International Law Commission's report, deleted the word "all" before the words "the drafts" in the operative part, and changed the words "ninth session" in that part to "tenth session". The revised draft resolution clearly applied only to the drafts included in the International Law Commission's report under discussion, and allowed one more year for consideration of those drafts by the Commission and by governments. It was a purely procedural resolution and he hoped that the Committee would find no difficulty in adopting it.

36. He recalled that, although the Panamanian draft resolution had been circulated last of the three proposals before the Committee, it had actually been submitted first, having been read out at the 382nd meeting, held on 9 November. He therefore felt that it should be the first of the three texts to be put to the vote.

37. The CHAIRMAN remarked that the question of priority would be settled when the Committee reached the voting stage.

38. Mr. AMADO (Brazil) said that, while he did not oppose postponement of discussion on the substance of the draft articles on the continental shelf and those on fisheries, he could ill conceive that the solution of the problem of the continental shelf should be made contingent on that of the question of territorial waters.

The latter question was so complicated, and so many divergent views on it were held by States, that a solution could not be expected in the foreseeable future. Thus, the Hague Conference for the Codification of International Law, held in 1930, had been able to agree on a number of problems, save that of the extent of territorial waters. Varying limits had been proposed, ranging from three to twelve miles, and each had its firm partisans.

39. The problem of the continental shelf, on the other hand, could be solved much more readily, as evidenced by the fact that jurists representing all the different legal systems had been able, in the International Law Commission, to agree on the draft articles on the continental shelf, and that even those who had criticized article 8 from a practical point of view had voted for the draft as a whole. Some objections to the draft articles had been raised in the Committee, and he had no doubt that the draft could be improved. It would be a grave mistake, however, to link the question to the highly controversial problem of territorial waters, the eventual solution to which undoubtedly lay through prior regulation of the question of the contiguous zone.

40. He therefore opposed the Iceland draft resolution (A/C.6/L.314) and would vote in favour of the joint draft resolution (A/C.6/L.318) and the United States amendment to it (A/C.6/L.325), which would make it possible to solve the problem of the continental shelf within a reasonable time.

41. Mr. SPIROPOULOS (Greece) associated himself with the Brazilian representative's remarks. While the Iceland draft resolution was based on a correct principle—that it was logical to examine all the aspects of a problem simultaneously—in the particular case under consideration it would be preferable to consider the question of the continental shelf separately from that of the territorial sea. The latter was a subject for codification; the continental shelf, on the other hand, was an entirely new subject which fell rather under the head of progressive development of international law. Any texts which might be adopted concerning it should therefore not be made dependent on the prior codification of international law on the territorial sea. The extent of the territorial sea was a much debated issue, and he felt that it would be wiser for the International Law Commission to take no decision on it, as any decision was bound to meet with objection on the part of some States. Moreover, such a decision would in no way affect the status of the continental shelf.

42. He therefore supported the joint draft resolution (A/C.6/L.318), which would make it possible for the Committee to deal separately with the problem of the continental shelf.

43. Mr. MAURTUA (Peru) suggested that perhaps it might be advisable to discuss the two questions jointly, in order to avoid possible future conflict between the conception of sovereignty over the entire continental shelf, as expressed in the declarations of some States, and any future regulations of the régime of the high seas.

44. Mr. SPIROPOULOS (Greece) replied that, in his view, the claims of some States to sovereignty over the continental shelf had nothing to do with the status of the territorial sea, and consequently the two questions could be considered independently of each other.

45. Mr. PETREN (Sweden) stated that his delegation shared the Iceland delegation's view on the desirability of considering the two questions together, and would therefore vote for the Iceland draft resolution (A/C.6/L.314).

46. Mr. DERINSU (Turkey) said that the two topics on which the International Law Commission recommended action by the General Assembly dealt with important questions and required careful study.

47. The definition of the continental shelf, given in article 1 of the draft articles, stipulated, first, that the shelf must be outside the area of the territorial sea, and secondly, that it should run to a depth of not more than two hundred metres. There was no universally accepted rule of international law limiting the width of territorial waters. Although in practice the width varied between three and twelve miles, there was a growing tendency on the part of States to extend the limit of their territorial waters. The second condition of the definition would only encourage that tendency, necessitating a generally accepted limitation of the width of territorial waters. While the depth of two hundred metres seemed to be in accordance with existing possibilities of exploitation, continuing technical advances might soon permit exploitation at greater depths. Moreover, the steepness of submarine slopes from the coast line varied greatly. Consequently, the proposed definition would permit a State with the necessary technical means to exploit natural resources on the limits of the territorial waters of another State at any point where the depth was less than two hundred metres. As a result, aliens might be able to share the coastal resources often existing in the non-submerged contiguous land and projecting into the submarine area of a coastal State. Apart from damaging the economic interests of the coastal State concerned, such exploitation, by virtue of its proximity to the coast, might prove a threat to that State's security.

48. For those reasons his delegation could not accept the Commission's definition and felt that the draft articles should be referred back to the Commission for further study.

49. In its efforts to work out a different definition, the Commission should bear in mind the following considerations. First, in small and narrow seas, the boundaries of the continental shelf passed through the middle of the sea separating two States with facing coast lines. Secondly, in the case of States bordering on the large seas such as oceans, while it would be impracticable, unnecessary and contrary to the principle of the freedom of the seas to draw the dividing line through mid-ocean, such States might be allowed a continental shelf extending one or two hundred miles from their coast.

50. The expression "reasonable distance" as applying to the safety zones referred to in article 6, paragraph 2, was rather vague. It would be better to fix a precise distance, as some members of the Commission had suggested, which might vary in accordance with the criteria to be accepted for the definition of the continental shelf.

51. Lastly, his delegation supported the provision, in article 8, concerning the submission of disputes to arbitration, but felt that in view of the newness of the subject matter the principles to be considered and applied in such arbitration should be specified in the draft.

52. Mr. LOBODYCZ (Poland) said that the International Law Commission had disregarded the terms of General Assembly resolution 374 (IV) by studying the régime of the high seas separately from the régime of the territorial waters, and the Committee ought not therefore to study the draft articles before it. The fact that they only dealt with certain subdivisions even of the régime of the high seas made them still less suitable for the Committee's consideration. The task of the International Law Commission was to prepare practical measures to regularize certain aspects of international relations, and not merely to engage in abstract studies of unrelated problems. Accordingly the Committee should not consider the draft articles in isolation from the whole problem of the high seas and the related question of territorial waters.

53. He did not propose to discuss the objections which his delegation had to the draft articles on fisheries and to article 8 of the draft articles on the continental shelf, but pointed out that the Committee could hardly take a decision on article 7 of the latter, which referred to "the base lines from which the width of the territorial sea of each country is measured", before the question of the territorial sea had been dealt with. Nor was it desirable for the Committee to discuss the article on the contiguous zone at the moment, for the Commission had made no recommendation regarding that article and had evidently regarded it as unripe for a decision by the Committee.

54. Mr. TAMMES (Netherlands), without going into the substance of chapter III, said that, judging from the International Law Commission's experience with the topics under consideration, the Commission would probably require several more years to complete its work on the remaining aspects of the régime of the high seas. It would therefore be impractical to wait until the entire subject of the high seas had been fully dealt with, especially as the General Assembly would not be able to dispose of it in a single session.

55. For that reason, he could not support the Iceland draft resolution (A/C.6/L.314), which would delay action on matters in urgent need of regulation.

56. He supported the joint draft resolution (A/C.6/L.318), which was in line with the Commission's opinion that the continental shelf could be dealt with separately from territorial waters—territorial waters were only three to twelve miles wide, while the continental shelf extended over hundreds of miles—but the question of fisheries should be examined at the same time as the continental shelf. As the Commission's Chairman had pointed out in his observations (A/C.6/L.324, para. 8), the connexion between fisheries and the contiguous zone, on the other hand, was not so close as to rule out the discussion of fisheries in general until the problem of the contiguous zone had been settled.

57. While doubting the advisability of postponing the discussion of sections II and III of chapter III of the Commission's report until the tenth session, his delegation accepted the last paragraph of the joint draft resolution in deference to the wishes of other delegations and in view of the importance of the problems involved, although it would prefer the amendment submitted by the United States (A/C.6/L.325).

58. The revised Panamanian draft resolution (A/C.6/L.319/Rev.1), which came close to the joint draft resolution, no longer met with the objections to which the original had been open.

59. Mr. AIKMAN (New Zealand) said that, while his delegation understood the Iceland representative's point of view, it believed that the questions of the continental shelf and fisheries should be discussed by the General Assembly as soon as possible, and consequently he supported the joint draft resolution (A/C.6/L.318), which would nevertheless give governments ample time to study the Commission's report further.

60. He could not accept the United States amendment (A/C.6/L.325) to the joint draft resolution, as he did not think that the question of the continental shelf should be taken up in isolation from the other problems of the high seas. Moreover, inclusion of the subject in the agenda of the ninth session would not give governments sufficient time for study.

The meeting rose at 12.55 p.m.