United Nations
GENERAL ASSEMBLY
ELEVENTH SESSION
Official Records

SIXTH COMMITTEE, 490th MEETING
Wednesday, 5 December 1956, at 10.50 a.m.
New York

CONTENTS

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. CASTAÑEDA (Mexico) paid a tribute to the International Law Commission and its Special Rapporteur, who had succeeded in framing a real draft code on the law of the sea representing a compromise between the traditional concepts and the need for ensuring the progressive development of international law. Without being revolutionary, the Commission's draft contained new elements. For example, it recognized the special interest of the coastal State and its right to take unilateral action on the high seas, which in the classical view of the freedom of the seas, would have been inconceivable. The draft constituted a sound basis on which Governments could work.

2. Article 3, concerning the breadth of the territorial sea, was an improvement on the text suggested the preceding year, which had virtually reaffirmed the three-mile rule. Nevertheless, the Commission should not have confined itself to stating that "many States" had fixed a breadth greater than three miles and that "many States" dit not recognize such a breadth. In fact, the first group represented three-quarters of the total number of States. Contrary to the Commission's belief, therefore, there was an established legal rule: every State had the right to fix the breadth of its territorial sea between a minimum and a maximum. Mr. Amado had presented a proposal to that effect at the Commission's seventh session (A/CN.4/SR.309), but it had unfortunately been rejected by a majority vote. Similarly, the Inter-American Council of Jurists had adopted a resolution recognizing that each State was competent to establish its territorial waters within reasonable limits (A/CN.4/102, annex I). The only way of arriving at a workable solution of the question was to regard it from a regional viewpoint; in that way geographical, economic, geological and biological factors could be taken into account. Any attempt to find a uniform solution for the entire world would be futile. There had always been differences between the practices followed in different parts of the world.

3. An international conference would require careful preparation; the practice and intentions of Governments should be ascertained, perhaps by means of a questionnaire.

4. Article 5, regarding straight baselines, seemed generally satisfactory, but the Commission would doubtless have given a more correct interpretation of the decision of the International Court of Justice[1] on which that article was based if it had conceded that economic interests peculiar to a region and evidenced by long usage, justified the drawing of a baseline independent of the low-water mark just as much as the other reasons stated. Some doubts could also be entertained regarding paragraph 3 of article 5, and possibly other points as well.

5. Article 7, dealing with bays, was open to more serious criticisms. The figure of fifteen miles fixed as the maximum width of the mouth was arbitrary and contrary to the opinion of the International Court of Justice. The Court, for the purpose of considering whether a marine area was a bay, did not fix any figure as the maximum width of the mouth but relied on purely geographical criteria. Furthermore, the Court had recognized as bays some indentations whose width at the mouth was well in excess of the fifteen miles arbitrarily fixed by the Commission.

6. He found it difficult to understand why the Commission had departed thus far from rules which the Court regarded as the law in force. The Commission explained that geographical criteria lacked legal precision. That, however, was no reason for attempting to overrule existing law. Moreover, the excellent definition adopted by the Commission in article 7, paragraph 1, was fully sufficient for determining whether an indentation of the coast constituted a bay or not, and the additional numerical criterion was unnecessary.

7. The rules concerning innocent passage, piracy, the right of visit, pollution of the high seas, and the right of hot pursuit, could, on the whole, be regarded as satisfactory.

8. He felt some misgivings regarding article 29, concerning the nationality of ships. The nationality of a ship could not be defined in terms of its flag, which was no more than a sign of its nationality. Either States should be given the right to fix the conditions for the grant of their nationality to ships, at their discretion in which their decisions in the matter would be binding on everybody; or else those conditions should be fixed by international law, as the Commission had wished to do the preceding year in its draft

[1] *Fisheries Case. Judgment of December 18, 1951: I.C.J. Reports, 1951*, p. 116.

article 5 (A/2934, p. 4). A provision which entitled one State to do something and all other States to disregard it would merely invite disputes.

9. As to the vital problem of fishing, the primary requirement was sincerity. If the intention really was to vest in the coastal State a new right, entitling it effectively to safeguard the resources in the vicinity of its shores, the problem of the breadth of the territorial sea would be all but solved. On the other hand, if the intention was only to give something which appeared to be such a right but failed to satisfy the legitimate needs of the coastal States, especially small States, the protection of maritime resources could only be ensured by a substantial extension of the territorial sea.

10. All the provisions concerning the conservation of the living resources of the high seas revolved round recognition of the coastal States' special interest. Despite the resistance of countries possessing powerful fishing fleets, it had finally been conceded that the coastal State enjoyed a privileged position and had the right, in certain circumstances, to adopt unilateral measures of conservation along its coast. Of all the principles approved by the Commission, that one was the most revolutionary, and its impact on the future development of the law of the sea would probably be greatest. Nevertheless, the restrictions imposed on the exercise of that right rendered it virtually nugatory, especially as far as the small States were concerned. The Commission had clearly been mistaken in providing for compulsory arbitration, which the majority of countries opposed. The fate of a body of substantive provisions should not be prejudiced by the juxtaposition of rules which were purely procedural and controversial. A possible solution, as Mr. Padilla Nervo had proposed, might be to decide that in the event of a dispute the parties should resort to the peaceful means specified in Article 33 of the Charter. The additional stipulations that the measures of conservation must be urgently needed, and that prior negotiations must have been held with the other States concerned, left the right of the coastal State without any practical value.

11. The other provisions of the chapter dealing with fishing were open to the criticisms expressed by the Peruvian representative at the 486th meeting.

12. A maximum distance of twelve miles for the contiguous zone was unjustified. Many States had established greater distances for some of the purposes implicit in the idea of the contiguous zone.

13. The provisions concerning the continental shelf were in many respects welcome and constituted a sound basis for further work. The Commission had been right, in indicating the limits of the continental shelf, not to limit itself to the geological criterion but to stress also the economic factor (the possibility of exploiting natural resources).

14. By contrast, the reference to sovereign rights over the seabed and sub-soil for the purpose of exploring and exploiting its natural resources invited misinterpretation. In fact, a coastal State which engaged in no exploration or exploitation whatsoever would still exercise sovereignty over the continental shelf and could therefore forbid any exploitation thereof by other States. The text should clearly state that the rights of the coastal State over the continental shelf were not dependent on occupation and that they were exclusive, in that other States could not explore or exploit the continental shelf without the consent of the coastal State.

15. The Mexican delegation approved, in principle, the proposal that a conference should be called to examine the various aspects of the law of the sea. It was nevertheless premature to speak of an international conference, as it was first necessary to ascertain whether a sufficient number of countries were prepared to accept the International Law Commission's conclusions. Those conclusions should be fully discussed, and Governments should be given the opportunity to comment on the various chapters of the report. In any event, Governments should be consulted before the Assembly decided to call a conference, which could only succeed if it was carefully prepared.

16. In view of the nature of the questions involved, with their many important political implications, a sound course would be to establish a preparatory commission which could negotiate with Governments with a view to securing clarification of their position on specific questions. Where necessary, States could indicate what changes they wished to see made in the International Law Commission's draft. The preparatory commission would also consider the methods which the proposed conference should follow, especially regarding the highly delicate question of voting.

17. If other delegations supported that suggestion, he would present formal proposals for the establishment of a preparatory commission. He reserved his right to speak again on the draft resolution that was before the Committee (A/C.6/L.385 and Add.1 to 3).

18. Mr. ADAMIYAT (Iran) congratulated the International Law Commission and its Special Rapporteur on the remarkable results they had achieved. As the Sixth Committee did not intend to examine the report in detail, he would confine himself to some general remarks.

19. State practice afforded recognition of the doctrine of the continental shelf, which had grown out of the needs of the international community; traditional doctrines had evolved in the light of changed conditions. The International Law Commission had been well advised to use the term "continental shelf" in its legal connotation and not in its original geological sense. That term did not refer exclusively to continents; it also covered the submarine areas contiguous to islands. The Commission's proposal for delimitation of the continental shelf represented a significant progress. The Commission had defined the continental shelf as embracing the seabed and sub-soil of submarine areas where the depth of the superjacent waters admitted of the exploitation of the natural resources. As had been pointed out by Mr. García Amador, Chairman of the Commission, certain States were already exploiting such submarine areas (486th meeting).

20. Article 68 of the draft provided that the coastal State exercised over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources. The Institute of International Law, at its 1894 Conference, had stated that the coastal State did not have a proprietary right but rather a right of sovereignty over the territorial sea. The difference between the right of sovereignty and sovereign rights was that the latter were limited. The

conclusion to be drawn from article 68 was therefore that sovereignty was henceforth relative. The change was perhaps of little practical significance because it was difficult to imagine a coastal State exercising its sovereign rights over the continental shelf for any purpose other than that of exploring or exploiting the natural resources of the seabed and its sub-soil.

21. Moreover, the requirement of effective occupation as a prerequisite to the acquisition of sovereignty in traditional international law was in no way applicable to the continental shelf. In other words, the fact that the coastal State did not exploit the continental shelf did not affect its exclusive rights over that shelf. The laws of the coastal State concerning the legal status of its resources applied therefore *ipso facto* to the continental shelf. If a country enacted a law nationalizing its natural resources, then that law, unless it made provision to the contrary, automatically applied to the country's continental shelf.

22. The question of the delimitation of the continental shelf adjacent to the territories of two adjacent States or States whose coasts were opposite each other was also very important. In that respect, the Commission had decided that the boundary was the median line, as was the case with the territorial sea. That rule was inadequate and did not solve all the questions which arose in practice. A rule would have to be laid down to deal with the case of installations erected or wells drilled near the boundary of the continental shelf of two States. It was true that rules of that kind could not be drafted solely by jurists. A conference could therefore be very useful in that connexion.

23. He reserved the right of the Iranian Government to submit observations concerning draft article 73 when the subject it dealt with came to be examined in greater detail.

24. With regard to the breadth of the territorial sea, it was patent that the formula proposed by the Commission represented neither the codification of the existing practice nor the development of international law. It was appropriate to acknowledge that the practice was not uniform, but article 3 was not sufficiently precise; it did not give a clear picture of the position taken by the various members of the international community. Certain long-standing rules were out of date. Moreover, the existence of a rule limiting the breadth of the territorial sea to three miles depended on the acceptance of that limit by the other States. The three-mile doctrine, although widely applied, had never been universally accepted. There were many reasons, particularly the need to safeguard the coastal State's exclusive fishing rights, which warranted the extension of the territorial sea beyond three miles. It was not a valid argument to say that such an extension would impair the principle of the freedom of the high seas, for the very existence of the territorial sea constituted a departure from that principle. It might therefore be preferable to try to solve the problem by means of local or regional agreements which took specific situations into account. The question could be examined by the conference which it was proposed to convene.

25. He reserved the right to speak later on the draft resolution (A/C.6/L.385 and Add.1 to 3) that was before the Committee.

26. Mr. DE THIER (Belgium) congratulated the International Law Commission and its Special Rapporteur on the remarkable work they had accomplished with a view to codification of the law of the sea. The Commission had been in a position to formulate the rules which should govern the law of the sea in time of peace.

27. Agreement had admittedly not been reached on all points. For example, the Commission had been obliged to recognize that international practice was not uniform as regards the delimitation of the territorial sea. The statements made by several representatives during the current debate in the Sixth Committee showed that that divergence of views persisted.

28. The Belgian delegation regarded the questions which remained unsolved as far too technical to be examined by the General Assembly; the conclusions of the Commission should be submitted to a conference of plenipotentiaries attended by experts. That conference would be in a better position to transform the text prepared by the International Law Commission into a final document. It was to be hoped that the conference would be convened as soon as possible, in order to ensure that the Commission's draft was not wasted. Many practical considerations made it desirable that the conference should be held at Geneva.

29. The Belgian delegation did not intend at that stage to make any comment on the substance of the questions covered by the International Law Commission's report.

30. Mr. RADUILSKI (Bulgaria) said that the International Law Commission had performed its task in a remarkable manner; it had succeeded in codifying, in accordance with the provisions of article 15 of its Statute, an important part of existing law, with due respect for the principle of the sovereignty of the State over its territorial sea and that of the freedom of the high seas.

31. For the time being, the Bulgarian Government reserved its position, as it had not been able to study every aspect of the Commission's conclusions. He wished, however, to express his approval of article 1, paragraph 1, and article 2, which specifically recognized the sovereignty of the coastal State over its territorial sea, as well as article 27 on the freedom of the high seas, and articles 32 and 33 concerning the immunity of warships and other Government ships. The Bulgarian delegation was, in principle, in agreement with the Commission's conclusions concerning the utilization of the living resources of the high seas and the right of the coastal State to adopt conservation measures.

32. Other rules proposed by the Commission were not, however, wholly acceptable and failed to satisfy current needs. Since the three-mile rule was not universally accepted, an attempt should have been made to find some area of agreement and to reconcile the divergent points of view. While proclaiming the principle of the freedom of the high seas, it was necessary to acknowledge the coastal State's right to fix the breadth of its territorial sea in accordance with the configuration of its coastline, its security requirements and its economic interests, provided always that the rights and interests of other States were respected. That would doubtless result in a diversity of rules concerning the breadth of the territorial sea, but that diversity already existed in practice and the

Commission was not the body to eliminate it. It would be preferable if that diversity were in some manner acknowledged by international law. United Nations organs should continue to examine that question, as its solution would remove the cause of many disputes involving the rights of coastal States.

33. Article 17, paragraph 3, provided that the coastal State could suspend temporarily in definite areas of its territorial sea the exercise of the right of passage. That provision was insufficient, because all States had the right, even in time of peace, to prohibit the passage of ships in certain parts of their territorial sea near military ports and installations. Such a prohibition was permanent, and article 17 should have made provision for it.

34. In its present form, article 22 was unacceptable. In its commentary, the Commission had indicated that it had followed the rules of the Brussels Convention of 1926 relating to the immunity of State-owned vessels, although those rules were out of date and needed revision in the light of present circumstances. Government ships could not be treated in the same way as privately-owned ships, and a special system of privileges and immunities should be established for them.

35. The Bulgarian delegation also had reservations on draft articles 39, 40 and 41. The Commission had retained the traditional definition of piracy, without paying heed to the way in which the concept had evolved along the lines indicated in the instruments drawn up at the 1922 Washington Conference on the Limitation of Naval Armament, and in the 1937 Nyon Agreement to which Bulgaria was party. Nowadays it was no longer private persons who engaged in piracy. If the principle that was adopted was to be applicable to the current state of international relations, the concept of piracy would have to be broadened. He quoted two extracts from Lauterpacht's edition of Oppenheim's *International Law*. In the first it was suggested that the notion of piracy should cover all ruthless acts of lawlessness on the high seas, by whomsoever committed. In the second it was stated that vessels of unrecognized belligerents interfering with ships of third States could be treated as piratical, and that when such attacks showed criminal ruthlessness resulting in loss of life, their captains could be subjected to the drastic penalties reserved for pirates.

36. The Nyon Agreement of 1937 had laid down that attacks on merchant ships not belonging to one of the parties to the Spanish Civil War were acts of piracy. As the Franco rebels had been the only ones to possess submarines and as they had carried out such attacks, the provisions of the Agreement had been applicable to them.

37. It also followed that the actions of Chiang Kai-shek's partisans, during recent years, in seizing and searching ships plying the China Sea must be regarded as acts of piracy. In view of the existence of a lawful Government in the People's Republic of China, the acts in question were piratical, in the modern sense of the term. Those who continued to recognize Chiang Kai-shek's Government as the lawful Government of China could not be allowed to seek to justify such acts by asserting that a blockade had been declared. In a civil war, neither the lawful Government nor the insurgents could establish a blockade or curtail the freedom of foreign vessels to navigate on the high seas. As there was no international war in China, the Chiang Kai-shek forces which interfered with freedom of navigation were guilty of piracy.

38. The humanitarian trend of contemporary international law should also be taken into account and the concept of piracy extended to cover all cases of unlawful attack on foreign merchant ships that were accompanied by acts of senseless ruthlessness.

39. Only by broadening the concept of piracy in that way would it be possible to guarantee the freedom of navigation on the high seas to which President Wilson had made reference in his message to the United States Congress on 22 January 1917.

40. The Bulgarian delegation was also opposed to draft articles 57 to 59, and 73, in which the Commission had not codified the rules in force but established new rules, which departed from classical doctrine. Articles 57 to 59 disregarded the fundamental principles of arbitration. They did not make the validity of the proceedings subject to agreement being reached between the parties concerning the selection of arbitrators, their jurisdiction, the applicable law and the procedure that was to be followed. The articles in question thus ran counter to the principle of State sovereignty. Article 73 was not in accordance with the provisions of Article 36 of the Statute of the International Court of Justice.

41. Without making any formal proposal, he suggested that certain United Nations organs might review the draft and modify it so as to make it acceptable to as many States as possible.

42. Mr. ALFONSIN (Uruguay) said that his first thought had been that the only body which could usefully study the International Law Commission's draft was a special conference that would be open to a larger number of States and would use a larger number of documents, in particular texts of a regional nature relating to the law of the sea, leaving the Sixth Committee as its main task that of preparing for the conference. That was why Uruguay had joined with other States in submitting the draft resolution contained in document A/C.6/L.385. However, as other delegations had expressed their views on the main points in the Commission's draft, the delegation of Uruguay would do likewise.

43. Generally speaking, the principles on which the draft was based were acceptable, although it was not possible to approve the entire text without certain qualifications relating either to form or to the way in which certain problems had been solved. That reservation in no way reflected on the merits of the Commission and its learned Special Rapporteur, Mr. François.

44. The coastal State's sovereignty over its territorial sea, as proclaimed in the draft, was fundamental. The adoption of international rules concerning the territorial sea did not necessarily entail adoption of a uniform breadth of sea for all countries. In order to reconcile the widely divergent opinions that had been expressed in the matter, recourse might be had to a system under which the breadth varied from one ocean or sea to the other. His remarks would relate only to the territorial sea off the South American coast on the Atlantic Ocean.

45. The Government of Uruguay continued to believe that the three-mile rule was obsolete. There might

perhaps be a rule that the breadth of the territorial sea should always exceed three miles. Any such rule, however, would be of no help in fixing the breadth of the territorial sea, since it only laid down a minimum.

46. At certain inter-American conferences, the Government of Uruguay had spoken in favour of a breadth substantially in excess of three miles, but still more or less within the limits laid down by the International Law Commission. In any event it preferred a multilateral agreement conferring formal rights and obligations to unilateral measures, which were sources of conflicts and controversy. If the conclusion of such an agreement should be unreasonably delayed, however, it would be unable to wait any longer and would have to decide for itself what breadth to adopt.

47. With regard to the high seas, he said his Government had not yet had time to study all the repercussions that adoption of the rules proposed by the International Law Commission might have on the treaties to which Uruguay was party. Certain of those rules were inconsistent with the Montevideo Treaties of 1889 and 1940; others would affect a number of the Brussels Conventions relating to maritime law.

48. The rules governing the nationality of ships should be clearer and more specific. According to the draft, ships had the nationality of the State whose flag they were entitled to fly, on condition that there was a "genuine" link between the State and the ship (article 29). However, the International Law Commission had not specified what it meant by "genuine", with the result that a ship's right to a particular nationality was likely to prove difficult to establish.

49. As regards the continental shelf, the delegation of Uruguay welcomed the fact that the International Law Commission had followed the example of the special inter-American conference held in 1956 in proposing to recognize the coastal State's right to go beyond the 200-metre limit for as far as the depth of the superjacent waters made exploitation of the natural resources possible. It also supported the proposal to recognize the coastal State's exclusive sovereignty over the continental shelf for the purpose of exploring and exploiting its natural resources. Nobody would henceforth be able to invoke against that exclusive right acquired privileges other than those acquired with the consent of the coastal State. In general, his delegation approved the way in which the Commission had settled the conflict between the coastal State's sovereignty over the continental shelf and the principle of the freedom of the seas.

50. As far as fishing and the conservation of the living resources of the sea were concerned, the main question that arose was how to reconcile other States' freedom to fish with the coastal State's right to protect the living resources in that part of the high seas adjacent to its coasts. It was difficult to strike a perfect balance between the two; but on doing so would largely depend the success of any convention. Moreover, in between those two conflicting interests lay the common interest of all nations in deriving the maximum benefit from the living resources of the high seas. Despite the Commission's praiseworthy efforts, it did not seem to have struck exactly the balance that was required.

51. Referring to draft articles 57 and 73, he said that, as the views expressed by his delegation during the discussions on arbitral procedure had shown, Uruguay had always been in favour of automatic arbitration at the request of either party, and had always recommended that the International Court of Justice should be empowered to hear unilaterally submitted applications.

52. He felt that the best way of allowing all opinions to be expressed and of reconciling all the interests involved would be to convene an international conference, the success of which would, in his view, mainly depend on the care with which it was prepared.

53. Mr. CASTRO RIAL (Spain) protested against the Bulgarian representative's slanderous attack on the Spanish Government and his interpretation of the juridical theories of Oppenheim and Lauterpacht.

The meeting rose at 1 p.m.

Printed in Canada

A—77601—January 1957—2,050