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*THIRTEENTH SESSION*
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SIXTH COMMITTEE 587th MEETING

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CONTENTS



**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) (continued)**

POINT OF ORDER RAISED BY THE REPRESENTATIVE OF THE UNION OF SOVIET SOCIALIST REPUBLICS (concluded)

1. The CHAIRMAN said that the representative of the Secretary-General wished to make a statement concerning the point of order raised by the representative of the Union of Soviet Socialist Republics at the 585th meeting, and referred to by the representative of Ecuador at the 586th meeting.

2. Mr. STAVROPOULOS (Legal Counsel) said that he had carefully examined the provisional summary record of the 583rd meeting to see whether there had been a lack of balance between the summaries of the various statements, and whether substantial points were missing from certain statements.

3. Although it was difficult to establish as a standard that the length of the summary should be proportional to the length of the statement of summarized, it was nevertheless an indication of how full the summary in the record should be. As the statements of the representatives of Iceland and Norway had lasted twenty-eight and twenty-seven minutes respectively, and had been given 108 and 127 lines in the summary record, while the statement by the USSR representative had lasted forty minutes and been given only forty-nine lines, the Soviet representative had a very good case. It must however, be borne in mind that some representatives spoke from prepared texts while others spoke extemporaneously. As a rule prepared statements were more concise than extemporaneous speeches and it was therefore inevitable that they should be summarized at relatively greater length.

4. The Secretariat had never claimed to be perfect. The General Assembly was entitled to the best services, and the Secretariat endeavoured to provide them, but mistakes might be made. In the present case, the mistakes made could fortunately be corrected. The representatives of the Soviet Union, Ecuador and Mexico had furnished the Secretariat with summaries of their statements for inclusion in the record of the 583rd meeting. He apologized to the delegations concerned, and assured them that a revised version of the summary record in question would be distributed shortly, and that he would see to it that there was no repetition of such incidents in the future.

5. He wished, however, to say that the fact that the summary of one statement was shorter than that of another statement of equal length should not lead to the conclusion that the Secretariat was acting with partiality. Partiality on the part of a member of the Secretariat could not be condoned. He was certain that Mr. Morozov, who had been taking part in the deliberations of the United Nations for so many years, did not really believe that the Secretariat had been wanting in impartiality. He wished to add, with respect to the summary record of the 583rd meeting, that nobody in the Secretariat was partial. Even if someone wanted to be partial, he had no means of being so.

6. In reply to a question by Mr. CORREA (Ecuador), Mr. STAVROPOULOS (Legal Counsel) said that a thirty-one minute statement by the Ecuadorian delegation had been summarized in eighty lines in the summary record of the 583rd meeting. That delegation had not, therefore, been treated as unfavourably as the Soviet delegation.

7. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he was satisfied with the statement by the representative of the Secretary-General. The distribution of a revised version of the record of the 583rd meeting would meet the practical purpose his delegation had had in mind in raising its point of order. Nevertheless, it was important that the Secretariat should take steps to prevent the recurrence of such incidents. Although the Legal Counsel had given the Committee no information in that connexion, he trusted that every effort would be made to devise arrangements that would safeguard the interests of all delegations in all cases.

8. With regard to the impartiality of the Secretariat, he said that the lack of objectivity in the summary record in question had been so obvious that it should have been noticed by the Secretariat itself, even in the absence of complaints by the delegations concerned. Since it had been established that the Secretary of the Committee had had no knowledge of the summary record before it was issued, the Soviet delegation would make no further efforts to determine who was responsible, and would merely take note of the assurances given by the Legal Counsel.

9. His delegation was aware of the difficulties of the interpreters and précis-writers, but considered that steps should be taken to ensure that the views of delegations on the important questions they were discussing were accurately reported.

10. Mr. AMADO (Brazil) asked the members of the Committee to be patient with the précis-writers, who had the difficult job of reporting the statements of representatives in conventional administrative language which destroyed the flavour of the original. He had more than once observed that some of his own speeches had been unrecognizable in the summary record of the meeting at which they had been delivered. The précis-writers might perhaps try to retain some of the phraseology used by speakers.

11. The CHAIRMAN invited the Committee to resume its general discussion of the question of convening a second conference on the law of the sea.

GENERAL DEBATE (continued)

12. Mr. ADAMIYAT (Iran) said that the delimitation of the territorial sea and of fishery limits was of fundamental importance in itself and on account of its direct bearing on the effectiveness of the entire system of international maritime law. The prevailing uncertainty in that matter was a source of friction and conflicts between States and should be dispelled as soon as possible. The two issues had been fully examined at the Geneva Conference; areas of agreement and disagreement had been defined, and the Conference had appeared to come nearer to an agreement on the extent of coastal jurisdiction than had ever been the case previously. It was therefore desirable and even necessary to convene a second conference as soon as practicable. If it appeared that real difficulties stood in the way of convening the conference in the early part of 1959, his delegation would be prepared to agree to July or August 1959, as suggested in the joint draft resolution (A/C.6/L.435).

13. The international implications of the delimitation of the territorial sea and the political and economic interests of the coastal States had made the question one of the most controversial in international law. The uncompromising attitude of many maritime Powers and their strict adherence to the idea of the three-mile limit had caused the failure of The Hague Conference when the delimitation of the territorial sea was concerned. The International Law Commission had also been unable to propose a genuine rule, and had simply stated that practice was not uniform and that, in its opinion, international law did not permit an extension of the territorial sea beyond twelve miles.1/ The Geneva Conference had also failed to reach a solution, because it had not directed all its efforts towards the progressive development of law, and had not given ample consideration to the exigencies of and the changes in contemporary international life.

14. International law should be seen in terms of social developments. The exigencies of modern life had tended to prevail over custom as a source of international law, a tendency that was exemplified in the decision of the International Court of Justice in the Fisheries Case between the United Kingdom and Norway.2/

15. The tendency to claim jurisdiction over wider areas of the sea was a natural consequence of the increasing dependence of coastal nations on the resources of the sea. The principle of freedom of the sea had been established against claims to sovereignty over the high seas. The concept of the territorial sea had always existed, but as a consequence of the universal need to increase the exploitation and conservation of the resources of the sea, the freedom of the sea had been subjected to further restrictions.

16. In his delegation's opinion, the three-mile limit was not an established principle of international law. At the opening of the Geneva Conference in the spring of 1958, hardly more than twenty out of seventy-three coastal States had adhered to the three-mile limit, and there were weighty arguments in favour of extending the breadth of the territorial sea and the fishery limits.

17. The success of future negotiations depended on the degree of appreciation of the exigencies and facts of contemporary international life. The right of States to extend their territorial sea up to twelve miles should be recognized. If negotiations failed over that crucial problem, uncertainties would remain and disputes would increase. His delegation earnestly hoped that future negotiations would be successful and would produce effective results of benefit to all.

18. Mr. THEARD (Haiti) said that his delegation had a completely open mind on the question, its sole concern being to safeguard the present and future interests of its country. In the case of Haiti, the question of the law of the sea was of special importance and indeed urgency.

19. Haiti was a small country whose economy had always been based on its agricultural products, such as coffee and cocoa, the international market for which was notoriously unstable. Moreover, rational agricultural development was possible only on the plains and plateaus, which represented only one-sixth of the national territory, the other five-sixths being occupied by mountains subject to continuous erosion. As the area of cultivable land was decreasing year by year and the population was rapidly increasing, Haiti should, because of the precariousness of its existing resources, for many years have been seeking in the sea the means of subsistence with which the land did not provide it. The Haitian delegation had therefore listened with great sympathy to the Icelandic representative's statement (583rd meeting), and shared his desire that the question of the delimitation of the territorial sea should be settled as soon as possible. The present problems of the Icelandic representative in a sense foreshadowed those with which Haiti might later be confronted. In the past, Haitian fisheries had been inadequate and the country had to import fisheries products. In recent years Haiti had, however, recognized the necessity of exploiting its territorial sea, and, in order to enable it to consider the possibilities of a fishing industry, the United Nations had recently sent an expert to Haiti, whose report had been definitely favourable. The Haitian Government was also following with interest the research on the possibility of using seaweed for human food. In order to exploit the resources of the sea, Haiti was prepared to draw on its modest resources and even to assume financial commitments, but it needed to know the exact limits of its territorial sea, namely, the sea that was exclusively its own. Whether the limit was six miles, nine miles or twelve miles, the most important thing was that other States should be prepared to respect it.

1/ See paragraphs 2 and 3 of the commentary to article 3 of the Commission's draft (A/3159, p. 12).

2/ I.C.J. Reports 1951, p. 116.

20. That approach might seem timid, but unilateral decisions were ineffective, at least in the case of small countries. Unilateral decisons established purely illusory rights which were violated not only by the great Powers but also by small neighbouring countries. Haiti shared the view of Iceland, which realized that a right over the sea was a right only to the extent that it was recognized by the majority of States, large and small, and placed its hopes in a second conference and in an international convention. The small States knew that only in terms of such a realistic right would it be possible to set up a regional police to ensure enforcement of the right without excessive cost to the individual States concerned.

21. The other delegations appeared to have recognized the need for a second conference, and had implicitly recognized that the question of rights over the sea was not a matter to be decided by the legislation of the individual States but should be the subject of international legislation.

22. Some delegations had suggested that a decision concerning the date of the next conference should be taken by the General Assembly at its fourteenth session. That was what was known in Haiti as "lighting two candles," one with a prayer that the conference on the law of the sea might be held and the other with a prayer that it would never take place. The Haitian delegation would be in favour of holding the conference in July or August 1959, as provided in the joint draft resolution. For financial reasons, it would prefer the conference to be held in New York.

23. Mr. CHAUMONT (France) wished to comment on certain points raised in the remarkable statement by the Romanian representative at the previous meeting. The Romanian representative had reached the paradoxical conclusion that a State could create a rule of law by unilateral action, and that the resulting legal situation was satisfactory. Those were the two fundamental points he proposed to examine. He would pass over the reference to the limits of French territorial waters; it was common knowledge that that limit was three miles and that the additional limits, fixed for administrative or other reasons, related to what was called the "contiguous zone" of the territorial sea and had no connexion with the question of fisheries.

24. Could a State in fact establish by unilateral action a rule of law which established an international juridical situation? The Romanian representative had cited the findings of the International Court of Justice in the Fisheries Case of 1951, in which the Court had held that the delimitation of sea areas had a purely "international aspect"; but that the delimitation could not be dependent "merely upon the will of the coastal State as expressed in its municipal law", and that although it was true that the act of delimitation was necessarily a unilateral act, because only the coastal State was competent to undertake it, the validity of the delimitation with regard to other States depended upon international law.3/ In the case in question the Court considered it had to "ascertain precisely" what the "alleged [by Norway] system of delimitation" consisted of, what was "its effect in law as against the United Kingdom, and whether it was applied...in a manner which conformed to international law",4/ and that "from the standpoint of international law" it was necessary "to consider whether the application of the Norwegian system" had encountered "any opposition from foreign States".5/ The Court had concluded that "the notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would...warrant Norway's enforcement of her system against the United Kingdom".6/ The International Court of Justice had therefore recognized that, although the delimitation plainly consisted of a unilateral action at the administrative level, that action was without general legal validity unless it had been accepted by other States. In so doing the Court had merely reaffirmed a general principle of international law.

25. In the opinion of the Romanian representative, a situation in which it was left to each State to delimit the extent of its territorial waters by unilateral action was satisfactory. The French representative considered that the result was an anarchical situation and legal uncertainty contrary to the exigencies of international life and commerce. In the case of the dispute between Iceland and the United Kingdom, for example, it was unacceptable that there should be no juridical means of deciding between the unilateral action of one State and the unilateral opposition of another. By demonstrating that every State had the right to regard its point of view as reasonable, the Romanian representative had underlined the need for an international conference which would establish a rule of law that would protect, by conciliating, the various interests at issue.

26. In that connexion his delegation wished to clear up a misunderstanding. It had at no time wished to impose on all States a uniform three-mile limit so far as the breadth of territorial waters was concerned. If the adoption of a flexible system was contemplated, under which the breadth of territorial waters would be different for different States or geographical regions, such a system must result from an international convention and not from the arbitrary decision of the individual States. It was not possible to wait until a generally-accepted custom evolved.

27. He was surprised that delegations which, like the Romanian and Soviet Union delegations, had pressed so strongly for the conclusion of a convention on diplomatic relations and immunities—a field in which a highly developed customary law existed and in which differences of opinion were small—were not even more keenly aware of the need for a convention on a question which involved real and undeniable interests, and in regard to which the degree of legal uncertainty was far greater; such a convention would be of particular importance to the progressive development of international law.

28. His delegation was gratified that the statements of the representatives of Iceland (583rd meeting) and Haiti had confirmed that it was certain of the small Powers most directly interested in the question that were pressing for a conference to draft a convention. In addition, as the Ghanaian representative had pointed out (584th meeting), many newly independent States were anxious that the limits of their territorial waters should be clearly defined.

3/ Ibid., p. 132.
4/ Ibid., p. 134.
5/ Ibid., p. 138.
6/ Ibid., p. 139.

29. Mr. MOROZOV (Union of Soviet Socialist Republics) said that, as no other speaker was on the list for the meeting, he would reply to some of the points raised by the French representative.

30. He regretted having to refer again to the dispute between Iceland and the United Kingdom, but the French representative had asked what grounds there were for a decision in favour of Iceland, whose waters were being invaded by the United Kingdom naval vessels. It was not the first time the French representative had alluded to the matter, and it was impossible to remain indifferent to statements which meant in effect that either there would be a conference or that the present situation would be resolved by force and that the victory would not go to the small countries. That approach was almost tantamount to a threat. The French and United Kingdom statements clearly showed that those countries regarded the invasion of Icelandic waters by British vessels as just, and considered that the same situation might arise in the case of other countries.

31. There were very good grounds for supporting Iceland against the United Kingdom. He would leave aside, for the moment, the question whether Iceland was justified in fixing the limits of its territorial waters as it had done. Even assuming that Iceland was in the wrong, what right had the United Kingdom to use force against the Icelandic coastguards by invading Icelandic waters? Such recourse to force was a manifest violation of the United Nations Charter. But Iceland did have, of course, the right to increase the limits of its territorial waters.

32. The existence of Icelandic territorial waters did not depend on their recognition by certain other States. A limit of from three to twelve miles had, moreover, been adopted by more than twenty-six States, a majority of maritime States, and that majority could not object to the adoption of the same rule by other States. There was therefore a minority of States which, in theory only, had adopted the three-mile limit, and wished to impose it by force on other countries.

33. In that connexion his delegation would have been interested to know on what grounds France justified the exercise by it of certain rights and activities beyond the three-mile limit. The French representative had neglected to explain that point, but why was that three-mile zone extended to six miles for purposes of security and to twenty kilometres for customs purposes?

34. The French representative had also asked why the USSR had pressed for the convening of a conference on diplomatic relations and immunities, but was now opposed to a conference on the law of the sea. The answer was simple: in the first case, the Governments were ready and had sufficient material to work on, whereas in the second there had been insufficient preparation. The USSR favoured the conclusion of an international convention, provided that there were grounds for believing that an agreement was possible. It was not enough to say that Governments were prepared to give proof of their goodwill; they must back that assertion by concrete proof. The USSR was prepared to discuss the calling of a conference if it could be convinced that new factors had emerged.

35. The argument that the small countries wanted another conference was based on purely formalistic logic. A conference without adequate preparation would be detrimental to the small countries. Obviously, a country in Iceland's position, faced with the problem of getting rid of the vessels which were invading its territorial waters, would be prepared to go to any lengths to defend its rights. That could not be regarded as proof of the desirability of holding a conference in 1959. Those States would naturally choose the lesser of the two evils, but that did not mean that they regarded the convening of a conference at the present time as an ideal solution. Some of the great Powers, instead of indicating what action they were prepared to take to oppose the invasion of the territorial waters of small States, were trying to prove the need for a second conference by claiming that it was the wish of the small countries, which was a mere sophism contradicted by the facts.

36. The French representative had said that his Government was prepared to accept a flexible system for determining the breadth of territorial waters. The solution proposed by the Soviet Union was highly flexible and took reasonable account of international usage. There were no grounds for denying the legal validity of the unilateral decisions of States, which were based on the sovereign right of each country to decide how it should protect its interests, provided that the interests of international navigation were not impaired. Some of the great maritime Powers were, in fact, merely seeking solely to protect their own economic interests. That was not true of the USSR, which respected the limits of the Icelandic fishing zones, although its own interests were involved. The USSR therefore appealed to the small States not to allow themselves to be deceived by vague promises.

37. The Soviet Government was in favour of a settlement of the problem, if there were new elements that could serve as a working basis; otherwise, action should be taken to bring about a rapprochement of the various points of view.

38. Mr. MONACO (Italy) said that he fully endorsed the French representative's conclusions and wished merely to make a theoretical observation. He wished to comment on certain points with regard to the perennial problem of the international effectiveness of an internal act determining the breadth of the territorial sea.

39. It was a generally accepted principle that the municipal legal system of a State was distinct from an international legal system. A rule derived from municipal law was not directly applicable in international law. It followed that a law, regulation or administrative act determining the breadth of the territorial sea was not enforceable against other States. That followed from a general principle which was also applicable in other matters. Thus Austria had proclaimed its neutrality by a municipal law, but the neutrality was valid only upon notification of the law by Austria to other States and by virtue of the position taken by other States with regard to that notification, which was a unilateral act of international law. An indefinite series of municipal acts determining the breadth of the territorial sea could not produce a new rule; the latter could only result from the behaviour of other States. If a foreign State respected the international situation established by a municipal law, it implicitly recognized it. If, however, the foreign State did not take that attitude, the municipal act could not have inter-

national effects because it was not addressed to subjects of international law. Unilateral claims could not be accorded the dignity of international rules without confusing the unilateral acts of municipal law with the unilateral acts of international law.

40. Mr. TUNCEL (Turkey) wished to reply to the observations of the Romanian representative at the 586th meeting. He had not quoted the operative part of the resolution adopted by the Geneva Conference on 27 April 1958 [7] because he had thought it more important to bring out the spirit which prevailed at the Conference. Moreover, the last preambular paragraph of that resolution read as follows:

> "Recognizing the desirability of making further efforts at an appropriate time to reach agreement on questions of the international law of the sea, which have been left unsettled".

The Governments had thus shown their desire to hold a second conference. In submitting the proposal that was later adopted, Mr. García Amador, the Cuban representative, had stated that the Conference should not close without recognizing the desirability of recommencing its efforts to reach agreement on the breadth of the territorial sea, and should thus be able to produce a real code of the sea. [8] In resolution 1105 (XI), the General Assembly invited the conference of plenipotentiaries to examine all aspects of the law of the sea. If Governments wished to be consistent, they should therefore convene a second conference to complete the codification of the law of the sea.

41. The second conference could base itself on the four principal proposals put forward at Geneva, including the Soviet proposal and the eight-Power proposal. For his own part he felt that the Canadian proposal was most likely to provide a solution. If the Soviet Union agreed to support it—which it could easily do if it agreed to separate the fisheries question from the question of the territorial sea—he was sure that the Canadian proposal would obtain a two-thirds majority.

42. Some delegations had stressed the need for a new approach, and the situation had in fact developed. The statement by the United Kingdom representative at the 584th meeting of the Committee offered a basis for compromise which should be taken into account. Several delegations which, at the Geneva Conference, had abstained during the vote on the resolution providing for a second conference had subsequently spoken in favour of convening it, while others, such as the Mexican delegation, which had voted in favour of the resolution, no longer seemed willing to take part in a second conference. A new situation had therefore arisen and it was necessary to proceed accordingly. A diplomatic conference was not a conference of experts, and should be guided by a spirit of conciliation and the desire to find compromise solutions.

43. He was confident that if the General Assembly decided to convene a second diplomatic conference, the conference would be successful and would be able to complete the codification of the law of the sea.

44. Mr. DOUC RASY (Cambodia) noted that the representative of the Soviet Union had accused France of using the language of force. He had listened carefully to Mr. Chaumont's speech in French, with the subtleties of which he was familiar, and had found nothing in it which could be described as the language of force. As the representative of a small country anxious to guard its rights, he would not have waited for Mr. Morozov to protest if one of the members of the Committee had taken the liberty of using the language of force. He asked the members of the Committee—whether they had listened to the representative of France in the original French or had followed the interpretation in English, Spanish or Russian—whether they had noticed the slightest threat in the speech.

45. The CHAIRMAN asked members of the Committee to confine their remarks to the item under discussion.

46. Mr. EVANS (United Kingdom) said that in view of the allegations that had been made in connexion with the regrettable dispute between the United Kingdom and Iceland, he felt obliged to repeat that the presence of ships of the Royal Navy on the high seas off the coast of Iceland was solely in order to protect British fisherman from illegal interference and arrest on the high seas and was fully in accordance with international law. The Royal Navy had been discharging its duties with the greatest prudence and restraint. Since the Icelandic Government had circulated a memorandum on the question of Icelandic fisheries, his delegation would shortly circulate a memorandum in reply.

47. Mr. GARCIA ROBLES (Mexico) drew the Turkish representative's attention to the fact that the Mexican delegation had voted in favour of the resolution adopted at Geneva on 27 April 1958 because of the last paragraph of the preamble which in its opinion was the essential provision in the resolution. His delegation had believed, and continued to believe, that it would be wise to make further efforts at an appropriate time to reach agreement on questions which had been left unsettled at Geneva. For the time being his delegation would not take a position for or against the convening of a second conference.

48. He also wished to point out that it was clear from the statement made by the Cuban delegation at the 767th plenary meeting of the General Assembly on 2 October 1958 and reaffirmed at the Committee's 584th meeting that the position of the Cuban delegation, as outlined at the twenty-first plenary meeting of the Geneva Conference (paragraph 8 of the summary record), [9] had not changed.

49. Mr. TUNCEL (Turkey) pointed out that the Cuban delegation, which had proposed at the twenty-first plenary meeting of the Conference that the General Assembly should examine at the fourteenth session the question of the advisability of convening a second conference, had amended its draft resolution during the same meeting by altering the words "fourteenth session, in 1959" to "thirteenth session, in 1958". [10]

50. The CHAIRMAN remarked that the Committee would have to dispose of the business on its agenda

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7/ 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.56, resolution VIII.

8/ Ibid., 21st plenary meeting, para. 8.

9/ Ibid.

10/ Ibid., para. 34.

more expeditiously. He proposed that the list of speakers should be closed immediately, and that it should be decided that, apart from exceptional cases, the right to reply should only be exercised after the speakers on the list had spoken.

51. Mr. MOROZOV (Union of Soviet Socialist Republics) fully supported the Chairman's second proposal, which would make for a more orderly discussion.

52. With regard to the first proposal, he felt that in view of the fact that several delegations were absent and that some others preferred to hear the views of a greater number of Member States before expressing an opinion, it would be better to close the list of speakers at the end of the meeting on 24 November.

53. The CHAIRMAN agreed to the suggestion and announced that the list of speakers would be closed at the end of the next meeting; representatives would be able to exercise their right of reply when all the speakers on the list had spoken.

The meeting rose at 1.15 p.m.

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