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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. AZZUZ (Libya) wished to associate himself in the well-deserved tribute paid by other representatives to the International Law Commission and its Special Rapporteur.

2. The Libyan Government had not had an opportunity to study the Commission's report (A/3159) in detail, and therefore reserved its right to speak on it at a later stage if necessary. For the time being, the Libyan delegation would confine itself to stating its position on the joint draft resolution (A/C.6/L.385) which was designed to implement the recommendation made by the Commission in paragraph 28 of its report.

3. The Commission's draft was a first step towards codification of the law of the sea and the solution of problems which might create misunderstandings and conflicts if left unsettled. The solutions suggested by the Commission on each of the aspects of the law of the sea might not be acceptable to all States. However, there was no reason for not going forward. The Libyan delegation acknowledged that the régime of the law of the sea must be studied from all angles, technical, political and juridical. It was prepared, in principle, to support the convening of a conference of plenipotentiaries to bring the work undertaken by the International Law Commission to a successful conclusion.

4. To improve the conference's chances of success, all the States concerned should be invited, whether they were Members of the United Nations or not. The Secretariat was perfectly capable of performing the administrative work involved in preparing the conference. It was to be hoped that the conference would meet at an early date and would succeed in reconciling the opposing interests of various States.

5. Mr. TABIBI (Afghanistan) joined in the tribute paid to the International Law Commission and its Special Rapporteur. He also wished to congratulate the Secretariat for the research it had done on the subject.

6. In so complex an issue as the law of the sea, all points of view had to be taken into account. The Commission's draft (A/3159, chap. II) and the commentaries thereon would constitute a most valuable basis of discussion for the proposed conference. As many other delegations had pointed out, the conference should deal with all aspects of the law of the sea, which were closely related to one another. Moreover, separate conventions should be drawn up. On certain matters, such as delimitation of the territorial sea and the continental shelf, it would be more difficult to come to an agreement. The success of the conference would be assured if it succeeded in solving the problem of the breadth of the territorial sea. With the exception of article 3, the other twenty-five articles of Part I could be adopted after careful study because they dealt with existing law. The conference might encounter certain difficulties with respect to the continental shelf, however, since the International Law Commission had established new rules on that subject.

7. The fact that nearly all delegations were in favour of convening the conference augured well for its success. A failure would be a serious matter, because it would mean another failure following that of the 1930 Conference, and, as the representative of Israel had pointed out (488th meeting, para. 37), it might cast doubt on the validity of certain rules which had long been sanctioned by customary law. Moreover, if the conference should fail, the International Law Commission might subsequently confine itself to working out drafts without asking that they should be embodied in international conventions.

8. The conference should be carefully prepared. Its findings would carry more weight if all the States concerned were invited to attend.

9. No convention would be complete—indeed, it would be valueless—unless it guaranteed the rights of States which had no sea coast. No State, whether it was a maritime State or not, could survive without an outlet to the sea. No country was self-sufficient; maritime communications were indispensable to all States. The right of innocent passage had been recognized for centuries and the Treaty of Versailles, like other bilateral agreements in force, had established the rights of States which had no sea coast. It was generally accepted in law that no country could claim absolute sovereignty over historic sea lanes utilized by countries which had no sea coast. Consequently, the proposed conference should consider the rights recognized to such countries respecting their access to the sea. Accordingly, the joint draft resolution (A/C.6/L.385) should be amended so as to instruct the conference to reaffirm those established rights. The Afghan delegation, together with other delegations representing coun-

tries which had no sea coast, would submit an amendment to that effect.

10. Mr. SALAMANCA (Bolivia) associated himself in the well-deserved tribute paid by other delegations to the Special Rapporteur.

11. It was clear from the discussion that there were three questions likely to present special difficulties: the breadth of the territorial sea, the creation of some arbitration machinery for settling problems arising from the conservation of the living resources of the sea, and the continental shelf. Owing to the many aspects of those questions and to the conflict of interests involved, it was very difficult to resolve them by law alone. The International Law Commission had made no rule fixing the breadth of the territorial sea. While it was true that one-fourth of the maritime States accepted the three-mile limit, it should be noted that all the other maritime States allowed limits of four, six, twelve or even 200 miles. The States fixing the breadth of their territorial sea at three miles did not recognize the rules adopted by the other States. That was why the Commission had decided in favour of convening a conference of plenipotentiaries to settle that question and related problems.

12. The representative of Mexico had very rightly pointed out (490th meeting, para. 2) that the solution should be based on realistic needs and should take account of the diversity of geographical, economic, geological and biological factors. The question of the conservation of the living resources of the sea was still bound up with that of the breadth of the territorial sea. At its seventh session, the International Law Commission had drawn up a series of articles designed to safeguard the special rights of coastal States (A/2934, chap. II, annex). All States recognized the importance of conserving the living resources of the sea in the interest of the international community, but their views differed on the application of that principle. No final conclusions regarding the Commission's draft could be drawn from the statements made during the discussion. Mr. García Amador, Chairman of the Commission, had said that the proposed rules were fully warranted because the matter of conservation was not exclusively within the jurisdiction of any State (486th meeting, para. 11).

13. If States could agree on the rules at the proposed conference, one of the most difficult problems would be solved, and the way might be opened for other solutions as well. The problem of the breadth of the territorial sea would no longer be insoluble. Mr. François had pointed out, however, that the application of the rules would create difficulties and would require time (487th meeting, para. 2). The Commission had tried to draw up general directives and to indicate the principles which would guarantee the rights of every State.

14. The representative of France had made pertinent remarks about article 29 (493rd meeting, para. 19). Some members of the International Law Commission had opposed the use of the words "genuine link". If the principle of freedom of navigation was accepted, and it was borne in mind that laws on registration of ships were not uniform, that "genuine link" was devoid of any legal validity. Ships might seek to be registered in foreign countries because their own national laws imposed unduly severe conditions or burdens on them.

15. One problem had not been dealt with by the Commission: the rights to the sea of States which had no sea coast. Those rights, and the related right of free passage over land, were as important as the rights of coastal States or the right of innocent passage. In the General Assembly, the head of the Bolivian delegation had stated that the right of free passage should apply without restrictions in the territorial sea, in channels open to trade and in the approaches to countries with no sea coast (601st plenary meeting). That right, established in treaties, should be reaffirmed by the conference. Bolivia, together with other land-locked countries, would submit an amendment to the joint draft resolution (A/C.6/L.385) to that effect.

16. Several delegations had supported the creation of a preparatory committee for the proposed conference. Others had suggested that a preliminary questionnaire should be sent to Governments. That might be a useful procedure, but there was a danger that Governments might adopt a rigid position which was not in keeping with the spirit of compromise essential to the success of the conference.

17. The Bolivian delegation reserved the right to speak again at a later stage on the joint draft resolution.

18. Mr. GEBRE-EGZY (Ethiopia) joined in the tribute paid to the International Law Commission and hoped that the results of its work would be embodied in one or more international conventions.

19. Owing to its complexity, the régime of the sea should be studied not only by jurists, but by a great many experts. The Ethiopian delegation reserved the right to state its position at a later stage on the draft prepared by the Commission and on the statements made during the discussion in the Sixth Committee.

20. The conference would be successful only if States accepted the Commission's draft as a working basis, which meant a full understanding of all the articles and of the principles underlying them. Such a study required time. In the light of those considerations, the Ethiopian delegation would present its views on the joint draft resolutions (A/C.6/L.385).

21. Mr. EL ARD (Syria) recalled that the Syrian delegation had already stated its position in the Commission. It too wished to congratulate the International Law Commission and its Special Rapporteur.

22. The proposed conference should examine not only the legal aspects, but the technical, biological, economic and political aspects of the law of the sea.

23. Mr. MATHUR (Nepal) had pleasure in associating himself with the tributes paid to the Commission and its Special Rapporteur; they had done excellent work. He also thanked the Secretariat for its valuable assistance.

24. His delegation reserved the right to state its position at a later stage. It would prefer, for the time being, not to revert to various questions considered during the general debate, in particular, those connected with the three-mile rule, the jurisdiction of the International Court of Justice with regard to the settlement of disputes, or the articles concerning the continental shelf. He was entirely in favour of convening a conference of plenipotentiaries in 1958 to consider the different aspects of the law of the sea.

25. He agreed with the Afghan and Bolivian delegations that it was important to guarantee the rights of land-locked States. That was a question on which there could be no disagreement. Free transit by land was guaranteed by many bilateral agreements, and also by the Treaty of Versailles. The proposed conference should reaffirm the rights of States without a sea coast and, in particular, the right of innocent passage.

26. Mr. GARCIA AMADOR (Cuba) stressed how useful the statements made in the Sixth Committee would be to the conference of plenipotentiaries. The Latin American republics had made an important contribution to such aspects of international law as the principle of non-intervention, the prohibition of territorial conquest, and the responsibility of States for damage to the persons or property of aliens (equality of nationals and aliens, prohibition of distraint for public debts, definition and limitation of the State's responsibility in the event of internal disturbances and civil strife and other reasonable restrictions to the right of diplomatic protection).

27. The concepts of the different Latin American republics were less uniform in the case of the law of the sea than of the other points he had mentioned. Speaking of some recent trends and attitudes, several Latin American representatives had used the expression "the law in force in America" and had mentioned the "Latin American viewpoint", which they had compared with the "Scandinavian solution" and the "Mediterranean viewpoint". Such expressions seemed to be rather too definite. At all events, his delegation did not intend to give the Committee, the records of whose debates would be transmitted to the conference of plenipotentiaries, an interpretation of the inter-American agreements which had been mentioned in the course of the debate. In his opinion, it was much more important to set forth, fully and objectively, the various facts and points of view, if the Conference was to be able to form an opinion and arrive at wise and conciliatory solutions.

28. At its first session, held at Rio de Janeiro in 1950, the Inter-American Council of Jurists, a technical body of the Organization of American States, had decided to include the question of the territorial sea and related problems in its work on the development and codification of international law. At its second session, held at Buenos Aires in 1953, its consideration of the question had been based on a draft drawn up by its permanent committee, the Inter-American Juridical Committee. It had decided to refer the question back to the Committee for further study. It had nevertheless issued a statement to the effect that, because of the development of the technical means for the exploration and exploitation of the resources of the continental shelf and the territorial seas, the right of coastal States to protect, conserve and utilize those resources was recognized by international law.

29. The question was also considered at the Tenth Inter-American Conference at Caracas, in 1954. That Conference had emphasized the importance to the American States of authoritative statements or national laws proclaiming the coastal State's sovereignty, jurisdiction, control or right to exploit or supervise the continental shelf, the sea and its natural resources up to a certain distance from its coast. The Conference had added that, both in their own interest and in that of the American continent and the international community, the coastal States attached the utmost importance to the adoption of legal, administrative and technical measures concerning the conservation and proper utilization of such resources. It had also decided to convene an inter-American specialized conference to consider, in the light of modern scientific knowledge, the whole question of the legal and economic régime applying to the continental shelf, the sea and its resources.

30. The Inter-American Council of Jurists had met at Mexico City before the Specialized Conference and had adopted the Principles of Mexico on the Juridical Régime of the Sea (A/CN.4/102, annex 1), which had already been mentioned by several representatives. Those "principles" were to be transmitted to the Specialized Conference, with the records of the Council's debates.

31. The Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters" had met at Ciudad Trujillo in 1956. Some representatives had said that, at that Conference, the American States, animated by a spirit of continental solidarity, had agreed to take decisions only on points on which there was unanimity. They had added that the "Mexico principles" still expressed the legal thinking of the continent. Solidarity was, of course, the rule in inter-American relations and conferences, but he wondered how it could be applied in the case of divergent and sometimes diametrically opposed viewpoints. As to the principle of unanimity, it was no longer part of the inter-American regional system. There was another explanation for what had happened at Ciudad Trujillo, as was clear from the resolution adopted by the Conference. After considering the different problems according to the method of work laid down at Caracas, the Conference had indicated the points on which there was agreement and those on which there was still some disagreement. The Conference had recommended that the Latin American States should continue to study the contested points with a view to finding appropriate solutions (A/CN.4/102/Add.1).

32. That was how the question now stood. It was still true that, with regard to some questions and some principles of the new international law of the sea, it was possible to speak of the "Latin-American formula" or of "continental law". For instance, with regard to the conservation of the living resources of the sea, the Latin American countries had defended, first at Caracas and then at Rome, the principle of the coastal State's special interest in the conservation of the natural resources adjacent to its coasts. It was they who asked that the Rome Conference recognize also the coastal State's right to take certain unilateral protective measures under certain safeguards. Similarly, the American countries at the Ciudad Trujillo Conference had proposed the adoption of a formula establishing equal rights over the continental shelf and the other under-sea areas for all the coastal States.

33. As early as the first Inter-American Conference held at Washington in 1889-1890, Cuba had actively pressed all proposals likely to ensure the recognition and protection of the special interests of the coastal States, whenever such proposals had not implied any disregard of the legitimate interests of other States in the high seas and the utilization and protection of its resources.

34. He supported the Commission's draft, which reconciled the different interests involved.

35. The proposed régime for the continental shelf, for instance, safeguarded the special interests of the coastal State, to which it conceded exclusive rights for the purpose of exploring and exploiting its natural resources, without affecting the legal status of high seas of the superjacent waters.

36. The same balance was to be noted in the provisions concerning the conservation of the living resources of the sea. The coastal State was authorized to act unilaterally in certain cases, but that right could be exercised only for the purpose of conserving natural resources.

37. The provisions concerning arbitration had been unjustly criticized. Their purpose was not to provide for a general arbitration procedure but for a system directed to a special and clearly defined purpose. Furthermore, disputes concerning living resources did not lie within the jurisdiction of the coastal State alone. In such cases the régime of the high seas was involved, and if the coastal State enjoyed unlimited rights it might drive the other States from the high seas.

38. Turning to the breadth of the territorial sea, he agreed with the representatives of Chile (496th meeting) and Costa Rica (498th meeting) that the problem was decreasing in importance as a result of the recognition of the coastal State's right to ensure the protection and conservation of the living resources of the sea. The conference of plenipotentiaries would have to bear in mind that the solution of the problem of conserving those resources would mean, in effect, the solution of the problem.

39. Mr. BAILEY (Australia) drew attention to article 26 of the draft of the International Law Commission and stressed that it was very difficult to draw the line, where any given article was concerned, between the codification and the progressive development of international law.

40. Whereas article 73 and the closing part of article 67, for example, were obvious innovations, the articles dealing with the continental shelf could not all be so readily classified. Some of them were clearly the outcome of the progressive development of law. That was true of the section on the continental shelf as a whole. Nevertheless, where the resources of the continental shelf were concerned, the United Kingdom representative had been right in pointing out (492nd meeting) that existing law already recognized that the coastal State had certain rights.

41. In the proclamation of September 1953, Australia had asserted its rights under existing law to the resources of the continental shelf. In the preamble of the proclamation, it was stated that international law recognized as appertaining to the coastal State sovereign rights over the surface and subsoil of the continental shelf for the purpose of exploring and exploiting their natural resources. Those rights were the subject of the proclamation, which also contained a subsidiary declaration to the effect that no provision of the proclamation prevented the régime of the high seas from applying to waters lying outside the territorial waters.

42. Mr. PEREZ MATOS (Venezuela) said, in reply to the Colombian representative (497th meeting, para. 12), that the draft of the International Law Commission (A/3159, chap. II), and in particular articles 14 and 72, showed that there were other ways of delimitation than the median line and the principle of equidistance. In considering that those methods were not the best, his delegation was not taking an extreme view. Venezuela had always based its foreign policy on the rules of international law. Venezuelan legislation on the territorial sea, the continental shelf and the protection of fishing and air space was founded on internationally recognized legal principles and could be applied in its entirety without violating the right of anyone.

43. Mr. PATHAK (India) stated, in reply to the Portuguese representative (494th meeting, para. 25), that in setting the breadth of its territorial sea at six miles India had followed the example of many countries and could be accused neither of imperialism nor of a breach of international law. Indeed, under international law it was entitled to make its territorial sea even wider. India had a very long coastline, the territory under Portuguese control was small, and India had applied the six-mile limit to the entire coastline, and not merely to the region adjacent to that territory.

44. Mr. ALVES MOREIRA (Portugal) replied that he had criticized India not for setting a six-mile limit, but for enclosing the waters of other countries, which in his view was contrary to international law, or, at the very least, constituted the application of an entirely new rule, raising a new problem in international law. Perhaps because of its very newness, the problem had not been covered in the Commission's report, but it would have to be discussed at the conference of plenipotentiaries.

45. Portugal, a peace-loving country, wanted to have friendly relations with all its neighbours and was always ready to negotiate and to take measures to protect their interests. The Portuguese fishermen in India had exercised their rights for centuries without any trouble. Lately, however, Portugal had been the victim of certain acts and it insisted that the freedom of the seas should be respected.

46. Mr. PATHAK (India), speaking on a point of order, said he considered that the Portuguese representative's remarks were out of order, and that the question he had raised was irrelevant. Whenever the Sixth Committee examined a political question, it did so jointly with a political committee.

47. The CHAIRMAN remarked that the Sixth Committee dealt with questions which involved politics, but appealed to speakers to moderate their statements.

48. Mr. CANAL RIVAS (Colombia) noted with satisfaction that, as the Venezuelan representative's clarification indicated, Venezuela's position was clear, just and fair, just as the solution offered by the Commission's draft (articles 14 and 72) was fair and just in delimiting by equidistant median lines the adjacent or neighbouring sea areas between two or more States. Other solutions might be advisable under certain circumstances, but only provided that they were not detrimental to the interests of any State.

49. Sir Gerald FITZMAURICE (United Kingdom) said he had not been convinced by the arguments against the three-mile rule. It had been observed that it was the sovereign right of each State to determine the breadth of its territorial sea; but, by definition, a State's sovereign rights were the rights it exercised

over what was, in fact, its territory and the belt of sea assimilated to its territory. They could therefore not be invoked when it came to defining the breadth of the territorial sea, for the very question was whether the country concerned had any sovereign rights over the area claimed. Attempts to restrict the freedom of coastal States—by asking them not to interfere with freedom of navigation, to respect international law, etc.—simply begged the question, for no one could say at what point the claim that a belt of water was a territorial sea began to interfere with freedom of navigation or to infringe international law. Formulae which were so vague were worthless. As regards the argument that most States had agreed to reject the three-mile rule, it applied equally to proposals for every other breadth. Countries could not be allowed to determine the breadth of their territorial sea as they chose, and therefore the traditional three-mile rule should be regarded as still valid.

50. While his delegation had every sympathy with coastal States which asked for the recognition of certain special rights over their adjacent seas, it shared the view of other delegations that it should be possible to solve the problem without extending the territorial sea.

51. The fact that foreign companies fishing along a country's coast did so for profit was irrelevant, as the country's nationals also sold their catch. If foreigners were forbidden to fish, in most cases the fish would simply not be caught and the world's population would be deprived of a needed food supply. A country like Japan, for instance, depended to a great extent on fishing on the high seas for its subsistence. The question at issue was not the profit to capitalists but the feeding of an entire people, including the lowest income groups. Some representatives implied that fishing along the coasts of other countries invariably meant the extermination of living resources. Such assertions were exaggerated, to say the least. Where it could be proved that the exploitation of marine resources exceeded reasonable limits and threatened the means of subsistence of the coastal population, the establishment of a system to protect the coastal State was legitimate. His delegation felt that an objective and scientific study should be made to determine when fishing or exploitation of marine resources was excessive and prejudicial to the population of coastal States. It should be possible to reconcile the interests of all countries and ensure the best distribution of an important source of food.

52. As regards compulsory arbitration, the United States representative had stated the problem very clearly (498th meeting, para. 26). The intention was to submit to arbitration not all questions without exception, but only certain specific questions—the right of fishing and the right of the coastal State to regulate fishing. That was an entirely new right, which showed how drastically the once unlimited rights based on the principle of freedom of the seas had been reduced. Persons who lived by fishing and who had always freely exercised the right to fish on the high seas would not allow their Governments to restrict their rights without adequate guarantees. If rights were accorded to the coastal State, it was not fair not to allow those who were enjoying the right of fishing to defend their interests before an arbitral tribunal. The countries concerned could agree among themselves on the procedure to be followed, but a remedy must always be available.

53. Mr. LIANG (Secretary of the Committee) drew the Committee's attention to operative paragraph 3 of the joint draft resolution (A/C.6/L.385), in which the date and place of the conference had been left blank. It was very important for the sponsors to agree on them as soon as possible, and it would be even better if the Committee itself were to take a decision, if only a tentative one, on those points, so that the Secretariat could estimate the financial implications and submit estimates of expenditure to the Committee by the middle of the following week. Unless that was done, the adoption of the draft resolution might be delayed.

54. Several delegations had said that the Secretariat might help in preparing the conference; he would comment on that point at a later stage.

55. Mr. SPIROPOULOS (Greece) felt that it would save time to submit amendments to the draft resolution. With reference to the place of the conference of plenipotentiaries, many delegations had already spoken in favour of Geneva, while the beginning of 1958 had been mentioned as the time.

56. The CHAIRMAN agreed with Mr. Spiropoulos and asked interested delegations to submit amendments proposing the date and place of the conference.

The meeting rose at 5.30 p.m.

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