United Nations
GENERAL ASSEMBLY
ELEVENTH SESSION
Official Records

SIXTH COMMITTEE, 491st MEETING

Wednesday, 5 December 1956, at 3.25 p.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. CASTRO RIAL (Spain) said the International Law Commission's draft articles on the law of the sea (A/3159, chap. II) steered a middle course between the dangerously static concept of *lex lata* and the equally dangerous dynamic concept of *lex ferenda.*

2. Spain had joined the sponsors of the draft resolution on the convening of an international conference (A/C.6/L.385/Add.3); such a conference was essential because the General Assembly had no legislative powers and there were many aspects of the international law of the sea which stood in need of positive rules having the greatest possible degree of universality.

3. With regard to the breadth of the territorial sea, the majority of States had considered it desirable to lay down a fixed limit which was normally between three and six miles; Spain, like other Mediterranean States, applied a limit of six miles. Some States—and they were the exception—claimed between nine and twelve miles. All agreed, however, on the respect due to the principle of the freedom of the seas.

4. Spain's attitude of respect for the freedom of the seas derived from the universalist principles of Vitoria and the other founders of international law. His delegation noted with regret that, at a time when the colonialist and imperialistic ideas of the nineteenth century had been abandoned, claims were being made that in effect treated the high seas as a *res nullius* to be virtually colonized and subjected to the exercise of State sovereignty, to the detriment of the common enjoyment of its resources by all nations, including land-locked nations, which had an equal right to a reasonable enjoyment of those resources.

5. It was vitally important that the rules governing the delimitation of the territorial sea should not be subject to alteration by the unilateral action of States; it was not desirable that the breadth of the territorial sea should be made contingent upon the food requirements or the interest in fisheries of particular States, for if it were, the delimitation of the territorial sea would be governed by such vague considerations that the stability of the political frontiers of States would be impaired. Perhaps it was possible to arrive at a compromise satisfactory both to coastal States and to fishing States without introducing such elements of uncertainty.

6. The success of the whole idea of codifying the law of the sea would depend to a great extent on the way in which the question of the living resources of high seas was resolved. In that connexion, the Spanish delegation was much impressed with the idea of the special interest of the coastal State. At the same time it was appropriate that the general interest of the international community should be safeguarded. It had also to be borne in mind that certain States had been traditionally engaged in fishing on the high seas; Spain and Iceland, for example, were no less vitally interested in the conservation of the living resources of the high seas than was any particular coastal State.

7. In the modern world, the interdependence of States was such that the old theory of absolute sovereignty was yielding ground steadily. Consequently, there was an urgent need for dealing with the question of the living resources of the sea at the international level. He thought that the interests of coastal and of fishing States could be reconciled in such a manner as to exclude both the concept of absolute sovereignty and that of exclusive monopolies.

8. In connexion with the Commission's proposal for compulsory arbitration, his delegation reserved the right to propose amendments at a later stage. It was interesting to recall that in 1953 the Commission had proposed the setting up of an international authority to prescribe a system of regulation for the purpose of protecting fishery resources (A/2456, para. 94). Perhaps such a body could, in addition to its technical duties, deal with the settlement of disputes between States in the matter.

9. Spain reserved the right to submit its views to the proposed conference on the detailed provisions of the Commission's draft articles.

10. Mr. HSUEH (China) congratulated the International Law Commission on its outstanding achievement, and said that the draft articles represented as a whole a correct interpretation of the principles of the international law of the sea; the Commission had approached its task in an objective and progressive manner.

11. The Chinese delegation did not wish at that stage to discuss in detail the substance of the articles; the Commission's report was still being studied by the Chinese Government. His remarks would therefore be only of a preliminary character.

12. In drafting the articles relating to fishing (articles 49 to 60), the Commission had carefully weighed and taken into account the three main interests involved: the interest of the coastal State, the interest of the State whose nationals were engaged in fishing, and the general interest of the international community in the food supply of the sea. Article 57 on the settlement of disputes concerning fisheries was an interesting feature of the Commission's work.

13. The articles drafted by the Commission would not, of course, be readily acceptable by all States. Some points were controversial. The Chinese delegation, for example, disagreed with article 35 on penal jurisdiction in matters of collision on the high seas, which relied on the Brussels Convention of 1952 and discarded the more reasonable principle established by the Permanent Court of International Justice in the case of the *Lotus*.[1]

14. As to the slanderous remark concerning the Chinese Government made by the Bulgarian representative at the 490th meeting, he said that that statement was a monstrous distortion of facts and law, repeating what the Soviet representative had said. Therefore, he did not wish to reply.

15. With regard to the controversial subject of the breadth of the territorial sea, the Commission had laid down a maximum limit, although it had not been able to solve the question fully. The discussion in the Committee had already clarified the issue to some extent. If efforts were continued on that important subject, it might yet prove possible to solve a question that the Commission, being a purely juridical body, had not been in a position to solve.

16. The Chinese delegation did not agree with the Commission's opinion that the closing line of a bay should be limited to fifteen miles (article 7 and commentary). He recalled that in his part of the world there were no "historic bays" which could be claimed to be territorial regardless of their width. Perhaps the Commission's original suggestion (A/2934, pp. 17 and 18) that the closing line should be limited to twenty-five miles took account of a wider range of different interests.

17. In ordinary circumstances, the Chinese delegation would favour the adoption of international conventions by the General Assembly, which itself constituted a plenipotentiary conference. But in the case of the law of the sea, his delegation agreed that a special conference of plenipotentiaries could carry out the work more expeditiously.

18. His delegation would agree to the conference being held at any place such as Geneva, The Hague or New York, where the necessary facilities and services were available.

19. In view of the preparatory work needed for the conference, he agreed that it should not be convened before 1958. While the Chinese delegation looked with favour at the suggestion for the establishment of a preparatory commission, it felt, in that connexion, that discussion in the Sixth Committee was particularly useful, and it was desirable that, if possible, it should continue at the next session of the General Assembly. A selected list of the more controversial articles could be prepared for the purpose. That would be a good method of using the time available before the conference. It might also prove an effective way of carrying out diplomatic consultation on a wide basis.

20. Mr. TOLENTINO (Philippines) congratulated the Commission and its Special Rapporteur on the outstanding contribution they had made to the cause of peace and international understanding by submitting a report which marked a decided step towards the final formulation of the law of the sea. Like any other part of international law, the law of the sea could not be formulated by an external organ or body and imposed on sovereign States without their consent, but had to be based upon general acceptance by the community of nations; and despite the slow but steady development of maritime law, from the earliest times down to the 1930 Conference at The Hague, the task that had remained for the Commission had been herculean. Whatever reservations there might be about the wording or substance of some of its draft provisions, the Commission undoubtedly deserved general acclaim for the way in which it had carried out its task in strict accordance with its objective of promoting the progressive development and codification of international law.

21. The draft articles were divided into two parts, one relating to the territorial sea and one to the high seas. The distinction was fundamental. The territorial sea was subject to the exclusive sovereignty of the coastal State, and other States had no rights in it except as provided in international law or in treaties and conventions. The high seas, on the other hand, were open to all, not because they were *res nullius* or *res communis*, but by virtue of the principle that they were open to all nations for their use and enjoyment; no single State or group of States had any special rights in them except as recognized by international law or by treaties and conventions.

22. The freedom of the high seas had not alway been the rule. From the tenth to as late as the eight eenth century there had been no part of the seas sur rounding Europe over which the great maritime Power had not claimed, and in varying degrees exercised proprietary rights. Such preferential rights had firs been disputed sometime in the sixteenth century by th Spanish jurist Vitoria, and early in the seventeenth century Grotius had placed the principle of the freedom of the seas on an unassailable legal basis. The principle was now universally accepted, and had been restated in article 27 of the Commission's draft.

23. As the Commission's report and its commentaries on the draft articles showed, however, there were many questions relating to the freedom of the seas on which there was no unanimity of view, and with regard to which, therefore, there was no international law that could be codified. Yet some of those questions could form the subject of negotiations and agreements. For example, agreement was obviously desirable, in the interests of peace and friendly international relations, concerning the conditions to be fulfilled by a ship for the purpose of the grant of the nationality or of the right to fly the flag of a particular State (article 29). An international conference could also properly deal with the question of the "link" between State and ship, and with the question whether the United Nations, and possibly other international organizations as well, should also have the right to sail ships exclusively under their own flags. Similarly, in its commentary on article 33, the Commission itself suggested that it would

[1] See Publications of the Permanent Court of International Justice, *Collection of Judgments*, Series A, No. 10 (Leyden, A. W. Sijthoff, 1927).

be desirable for States to agree on the external signs by which the special character of ships used on commercial government service could be recognized. Agreement also seemed desirable on the "internationally accepted standards" which article 34 required States to observe in issuing regulations to ensure safety at sea. Finally, as article 48 itself recognized, it was essential that all States should co-operate in drawing up regulations with a view to preventing pollution of the seas or air space above them as a result of "experiments or activities with radioactive materials or other harmful agents". All those, not to speak of certain aspects of the articles on fisheries and the other living resources of the high seas, were questions which the Commission had left open; all of them could best be dealt with at an international conference such as was proposed.

24. Turning to the question of the territorial sea, he said that the reasons generally accepted as justifying the extension of a State's sovereignty over the territorial sea were: first, that its security required that it should have exclusive possession of its shores and should be able to protect its approaches; secondly, that for the purpose of furthering its commercial, fiscal and political interests, it must be able to supervise all ships entering, leaving or anchoring in its territorial sea; and thirdly, that the exclusive enjoyment of the resources of the territorial sea was necessary to its people's livelihood.

25. Notwithstanding general recognition of the State's sovereignty over the territorial sea, there had never been universal agreement as to its extent. Whereas some early treaties and learned authors had claimed that the extent of the territorial sea was the distance covered in two days' sailing or the range of the visual horizon, Grotius had taken as his criterion the principle of effective dominion, out of which had grown the concept summed up in Bynkershoek's well-known rule *ibi finitur terrae dominium ubi finitur armorum vis.* At that time, in the eighteenth century, the range of cannon-shot had been about three miles. In course of time the idea that the breadth of the territorial sea depended on the range of cannon-shot had become obsolete as a result of the constant technical progress in ordnance and ballistics. However, even after the cannon-shot principle had been discarded, several States had continued to recognize three miles as the only legitimate breadth of the territorial sea, although many others had claimed a greater breadth.

26. Such was the situation which had confronted the International Law Commission. The relevant comments submitted by Governments showed a wide diversity of opinion, which was reflected in the Commission itself. No fewer than six proposals had been put to the vote, but none of them had obtained the support of a majority. Finally, the Commission had adopted the text reproduced as article 3, in which it recognized that international practice was not uniform, and suggested that the question of the breadth of the territorial sea should be settled by an international conference, at the same time making it clear that in its view international law did not permit extension beyond twelve miles since that would impair the principle of the freedom of the high seas.

27. The question was of prime importance and by itself alone justified convening an international conference, at which it could be examined from every point of view. As a result of such examination, the conference might well find that the three-mile limit, which had derived from the cannon-shot principle, was now outmoded, impractical and even undesirable to many States. Now that the coastal State could exercise control over so much larger an area of the adjacent seas for purposes of its security, and now that it could validly claim to need so much more of their resources—to feed or support its larger population—the breadth of the territorial sea should clearly be increased to the utmost extent compatible with the principle of the freedom of the high seas. In the case of overlapping or conflicts because of the narrow stretch of sea between two States, mutually acceptable solutions should and could be found.

28. All such questions, along with other technical matters which the Commission had itself indicated in its report, could best be considered at an international conference of plenipotentiaries such as was proposed in the joint draft resolution (A/C.6/L.385).

29. He agreed with the United Kingdom representative that the conference should not be held before 1958 in order to give sufficient time for preparation. He also agreed with the representative of Israel that the draft resolution should indicate that the conference should not be convened until a specified number of States had expressed willingness to participate. His delegation would consider sympathetically any proposals on that point, as also with regard to the preparatory arrangements that should be made.

30. Mr. NOGUÉS (Paraguay) congratulated the International Law Commission and its Special Rapporteur on the skilful and diligent manner in which they had discharged their difficult task.

31. The Committee should not be surprised by the fact that the Paraguayan delegation, which represented a land-locked country, wished to join in the discussion on the draft articles concerning the law of the sea. Previous speakers had made it abundantly clear that the high seas were common property and juridically *sui generis.* The Romanian representative had rightly said that, under modern international law, the riches of the sea had to be placed at the service of mankind (489th meeting). At the same meeting that point had been elaborated by the representative of Ecuador, who had stressed that the reasonable limits of the territorial sea should be determined in the light of considerations of political and economic security.

32. All States, including those with no coast of their own, were entitled freely to engage in trade and to have access to the world's markets and to the raw materials necessary for their economic prosperity. Furthermore, as was especially true of the American States, the security of a land-locked country was inevitably connected with that of its maritime neighbours and depended primarily on the effective defence of the continent in which it was situated.

33. For those reasons, which clearly demonstrated that many aspects of the law of the sea were of vital economic and political importance to all States, it would be a pity if the proposed conference of plenipotentiaries were restricted to representatives of the maritime countries. The land-locked States, which were relatively few in number, were equally entitled to state their views, and the Paraguayan delegation hoped that they would be permitted to contribute to the success of the conference.

34. Mr. MELO LECAROS (Chile), speaking also on behalf of the delegations of Argentina, Ecuador, El Salvador, Mexico, Peru and Spain, said that the diplomatic conference would be greatly assisted in its task if the Secretariat could arrange for verbatim records of the current debate.

35. Mr. MOROZOV (Union of Soviet Socialist Republics) agreed.

36. Mr. LIANG (Secretary of the Committee) replied that, under the existing arrangement, which had originally been recommended by the Fifth Committee, only the First and Special Political Committees were entitled to verbatim records. The Secretary-General might consequently find it very difficult to comply with the Chilean representative's request.

37. Mr. MELO LECAROS (Chile), Mr. CASTAÑEDA (Mexico) and Mr. TREJOS (Costa Rica) suggested that by means of a careful scheduling of meetings, and perhaps through the use of mechanical recording equipment, it might be possible to arrange for the Committee's deliberations to be recorded verbatim.

38. Mr. LIANG (Secretary of the Committee) said that he would convey those suggestions to the Secretary-General.

The meeting rose at 4.45 p.m.

Printed in Canada A—77601—January 1957—2,050