United Nations
GENERAL ASSEMBLY
ELEVENTH SESSION
Official Records

SIXTH COMMITTEE, 498th MEETING

Friday, 14 December 1956, at 10.45 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. TREJOS (Costa Rica) joined in the tributes paid to the International Law Commission and its Special Rapporteur. The Commission's report represented a constructive step towards general agreement on many of the complex problems involved in the law of the sea.

2. Much of the discussion had revolved round the thorny problem of the breadth of the territorial sea. He would therefore begin with some observations on that point, in the hope of clearing up some of the confusion which arose every time the relevant Latin American regional agreements were mentioned. The States which had signed the Declaration of Santiago, 1952, or had subsequently adhered thereto, had at no time claimed, as had been repeatedly alleged, an extension of their territorial sea to a breadth of 200 miles. They had only claimed jurisdiction and sovereignty over such a belt for purposes of conservation and defence of the resources contained therein. The reason for that action was that the Governments concerned had become convinced that the continued abusive exploitation of those resources could lead to their extinction and seriously prejudice the economies of the coastal States. The prevailing confusion regarding the interpretation of the Declaration of Santiago was due to the uncompromising attitude of the advocates of the three-mile rule, which was but an anachronism in the twentieth century. States which criticized that rule were immediately accused by its supporters of trying to extend their territorial sea to a distance of 200 miles. In that connexion, he said the Government of Costa Rica was well aware of the fact that every claim to a special right involved acceptance of a corresponding special duty. Consequently, it had only claimed the right which it believed Costa Rica could exercise without neglecting the resulting obligations.

3. The sovereignty which Costa Rica felt entitled to exercise over the 200-mile belt was of a qualified nature and should never be confused with the absolute sovereignty that a State enjoyed over its territorial sea. The parties to the Declaration of Santiago claimed exclusive jurisdiction only in matters relating to conservation. That had also been the sole consideration behind the Principles of Mexico on the juridical régime of the sea (A/CN.4/102, annex 1) and the decisions of the Specialized Conference at Ciudad Trujillo in 1956, where the Peruvian representative had expressly stated that the fishing vessels of other States could freely engage in fishing in the reserved maritime zone provided that they respected the measures of conservation adopted by the coastal State. Costa Rica believed that, as far as the wealth of its adjacent waters was concerned, the coastal State should enjoy a privileged position. That was especially true in the case of smaller countries such as Costa Rica, which lacked ocean-going fishing fleets. Foreign vessels would never be excluded from the reserved maritime zone as long as they complied with the regulations which the coastal State deemed it appropriate to make.

4. The International Law Commission had rightly recognized the existence of new maritime areas, where States enjoyed certain sovereign rights which would have been deemed inadmissible under the classical concept of the high seas. Nevertheless, while welcoming that feature of the Commission's report, as well as its recognition of the special interest of the coastal State in the maintenance of the productivity of the living resources in the high seas adjacent to its territorial sea (article 54), the Costa Rican delegation could not accept all the provisions of the draft articles. Indeed, some of the restrictions imposed on the rights of the coastal State tended to make that "special interest" almost illusory. For the time being, he would only comment on some of the principal provisions.

5. The statement in article 54, paragraph 2, that a coastal State was entitled to take part on an equal footing in any system of research and regulation in the waters adjacent to its coast, even though its nationals did not carry on fishing there, could not be reconciled with article 52, paragraph 1. The latter provision required only those States whose nationals were actively engaged in fishing in the same area to enter into negotiations regarding measures of conservation. In certain circumstances, therefore, the coastal State's consent to such measures would not be required. Article 52 thus seemed to nullify the right recognized in the last phrase of article 54, paragraph 2. For that reason, and because of the other excessive restrictions imposed on the coastal State, his delegation found the sub-section on fishing unacceptable. To accept those provisions would be wholly inconsistent with the principles stated in the Declaration of Mexico City.

6. Even the statement that a coastal State was entitled to "take part" in any system of regulation in the waters adjacent to its territorial sea was quite inadequate. It did, however, constitute partial recognition of the validity of the claims advanced by the States which, in the interests of their economy, insisted on exercising jurisdiction and sovereignty in those waters. His delegation believed that as soon as those rights were fully recognized, agreement on the breadth of the territorial sea would follow immediately. There was no substance in the argument that the special jurisdiction of the coastal State over certain areas previously regarded as high seas was irreconcilable with the concept of the territorial sea. The two concepts could easily be reconciled if those who opposed the idea of a reserved maritime zone would accept the existence of an intermediate zone between the territorial sea and that part of the high seas in which all States enjoyed unrestricted freedom.

7. He would not, at that stage, discuss the desirable breadth of the territorial sea, as the unyielding attitudes of the advocates of the various solutions rendered all discussion on that point fruitless. Nor would he deal with the academic question whether the breadth of the territorial sea could be fixed by the coastal State, or whether it was a matter governed solely by international law.

8. A universally acceptable formula could only be devised if all States first accepted the existence of the intermediate zone. That point had already been admirably developed by the Chilean representative (496th meeting).

9. Finally, he wished to refer to the joint draft resolution (A/C.6/L.385). His delegation agreed that a conference of plenipotentiaries should be called, as it was the only possible means of achieving positive results. It had no special preferences regarding the place where the conference should be held, and felt that it should not be convened before 1958. States should be given sufficient time to study the Commission's report, especially as many of them were new Members of the United Nations who had had little opportunity to follow the Commission's work. Furthermore, the Secretariat should be given time to prepare the necessary documents.

10. The impossibility of reaching agreement on individual questions should not be permitted to prevent States from signing conventions on subjects which evoked no controversy. The errors of 1930 must not be repeated. The Commission itself had shown, in its report (A/3159, para. 30), that the lack of a uniform rule regarding the breadth of the territorial sea need not impede the elaboration of rules governing other matters.

11. Mr. EL-ERIAN (Egypt) congratulated the International Law Commission and its Rapporteur on their masterly report. The complexities of the law of the sea rendered the codification of the topic extremely difficult. The task involved not only juridical problems but also controversial political, economic, geographical, technical and biological questions. The single comprehensive document which the Commission had produced was thus especially welcome.

12. The Commission had made a commendable effort to reconcile the rights and the interests of the coastal State with those of the international community. The earlier reports had been re-examined and redrafted with due regard to the comments of Governments and observations made in the Sixth Committee. As far as the question of the territorial sea was concerned, the Commission had also sought the advice of technical experts, who had met at The Hague in April 1953. The Commission had thus discharged its delicate task in a most painstaking manner.

13. The final report on the law of the sea clearly showed that the Commission had been genuinely willing to accept different views and new ideas. The articles on the continental shelf and on fishing contained useful new notions and reflected a constructive approach to the problem. The entire document, in fact, represented a solid basis for future progress; he wholeheartedly agreed with the views expressed by the Polish representative (494th meeting, para. 12) regarding its historical importance.

14. He would not enter into the substance of the specific provisions, but would merely confine himself to some brief comments on questions which deserved special mention. Those comments would, of course, be of a preliminary character, as his Government had not yet been able to give the report adequate consideration.

15. With reference to the breadth of the territorial sea, his delegation noted with satisfaction that the Commission, although unable to reach a final solution of that most controversial issue, had adopted a practical approach. That could be seen from the provisions recognizing the coastal State's right to take the necessary measures for the conservation of the living resources of the high seas. The practical significance of those provisions had been further stressed by Mr. François in his introductory statement (A/C.6/L.387). He also welcomed the statement in article 3, paragraph 2, which implicitly, and in an extremely guarded manner, confirmed the right of the coastal State to extend its territorial sea up to twelve miles. A final solution of the problem of delimitation was being delayed by the attitude of certain States, which still adhered to the traditional three-mile rule and refused to recognize any extension of the territorial sea beyond that limit. They contended that the three-mile rule had been widely applied in the past and was still recognized by some important maritime States; consequently, in the absence of any other equally authoritative rule, it should be regarded as binding on all States. That argument ignored modern international practice; today, the States which fixed the breadth of their territorial sea at more than three miles outnumbered the supporters of the wholly obsolete three-mile rule. The prerequisite of any satisfactory solution, therefore, was general recognition of the fact that the three-mile rule was no longer adequate. The supporters of that rule contended that a rule of international law did not lose its binding character merely because it was not observed by a group of States, any more than a rule of municipal law lost its validity because some individuals chose to violate it. That argument failed to take into account the fundamental difference between the law of nations and municipal law: in the international community, States were both the subjects of the law and the law-makers. A rule of international law could therefore only be created or changed by their consent, whether expressed explicitly in a treaty or implicitly through the acceptance of an international custom.

16. The Egyptian delegation also had certain doubts concerning article 46, paragraph 1 (*b*), which gave warships the right, in certain specified maritime zones, to board a foreign merchant ship suspected of engaging in the slave trade. As the Commission indicated, that provision was based on the General Act of the Brussels Conference of 2 July 1890, although in fact it went further, since the Brussels Act restricted the right of visit to ships of less than 500 tons. But in any case conditions had changed radically since then, and it was to be noticed that no such provision of a discriminatory nature was to be found either in the Convention of Saint-Germain-en-Laye of 1919 or in the Slavery Convention signed at Geneva in 1926. Although a similar provision had been included in the draft convention considered by the Slavery Conference held at Geneva in 1956, it had encountered very strong opposition and had been omitted from the text finally approved (E/CONF.24/20). In its final form the relevant provision stated merely that the States parties should take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves, and to ensure that their ports, airports and coasts were not used for the conveyance of slaves, and that they should exchange all relevant information with a view to stamping out the slave trade. Some similar provision should be included in the codification of the law of the sea.

17. In principle his delegation supported the idea of a conference of plenipotentiaries and agreed that the ground should be carefully prepared for the conference. Any preparatory committee that might be set up should not, of course, duplicate the work of the International Law Commission but should explore, at the diplomatic level, the possibility of agreement on some of the controversial issues mentioned in debate.

18. Mr. GREENBAUM (United States of America) subscribed to the tributes paid to the Commission and its Rapporteur. The Commission's report afforded the General Assembly a challenging opportunity of fulfilling one of the fundamental tasks laid on the United Nations by its Charter, that of seeking solutions of international disputes or situations "in conformity with the principles of justice and international law". The best, and indeed the only effective way of using that opportunity was to convene an international conference of plenipotentiaries, as proposed in the joint draft resolution (A/C.6/L.385).

19. In those circumstances he would not comment in detail on all aspects of the Commission's report but would discuss briefly a few of the major points covered.

20. The draft article 3 adopted at the Commission's seventh session (A/2934, p. 16) had stated "that international law does not require States to recognize a breadth [of territorial sea] beyond three miles". The United States considered that that was the true legal situation, and indeed felt that it would be unrealistic, in the absence of general agreement upon a breadth of territorial waters in excess of three miles, to expect States which adhered to that traditional limit to recognize the unilateral claims of other States to a greater breadth. It could not agree that the three-mile rule was obsolete. While of course a law should not be retained just because it was ancient, there was a strong presumption that if a long-accepted rule of law persisted throughout the years, there were valid and sound reasons why it should have done so. Those who advocated a change in such a rule had the heavy burden of demonstrating that it had outlived its usefulness and could no longer be upheld, and also that the objectives they had in mind could not be attained in some other way. In the case in point, they had, in his delegation's view, done neither.

21. The United States delegation had been disturbed to hear other delegations affirm that the coastal State had the right to establish unilaterally, and according to its own conception of its own best interests, whatever breadth of territorial sea it desired. It was surely obvious that that view entailed the possibility of conflict with States which could not accept the coastal State's claim and would ultimately result in complete chaos and the disappearance of the freedom of the seas. In an age of improved means of transportation and communication, the freedom of the seas was more important than ever. Any proposals which resulted in restricting it would not represent progress but a retrogression to those past years when the high seas had been under the domination of particular States. The United States delegation sincerely believed that the doctrine of the freedom of the seas, under which the oceans were open to the ships of all nations and the strong nations were prevented from asserting their power to control the seas at the expense of the weak, was the principle fairest to all States, large and small. In support of his view he cited the judgement of the International Court of Justice in the Norwegian Fisheries case.

22. Reference had been made to the work of the Inter-American Council of Jurists, which had met in Mexico City early in 1956, and the Inter-American Specialized Conference, held at Ciudad Trujillo in March 1956. He pointed out, however, that the resolution adopted by the Inter-American Council of Jurists and containing the novel notion that each State was free to determine its territorial waters within "reasonable" limits (A/CN.4/102, annex 1) had been merely in the nature of a preparatory study, which had not been approved by the subsequent Conference. The Conference had simply recorded the fact that the participating States took different positions with regard to the breadth of the territorial sea, and had recommended that they continue to examine the matter diligently with a view to finding satisfactory solutions (A/CN.4/102/Add.1). That was the only official relevant statement of the Organization of American States, as the representatives of certain Latin American countries had correctly pointed out.

23. It had also been said that the sole objective of claims to excessive breadths of territorial sea was to control or conserve natural resources, and that freedom of navigation would not thereby be impaired, since under international law foreign vessels had the right of innocent passage through the territorial seas. There was, however, a considerable difference between freedom of navigation on the high seas and the right of innocent passage through the territorial sea. Once a ship entered a State's territorial sea, the exclusive jurisdiction of its flag State ceased and it became subject to the laws and regulations of the coastal State. The right of innocent passage was restricted and in certain circumstances—to be determined by the coastal State—could be suspended altogether.

24. The United States Government sympathized with the coastal States' desire to take measures to avoid

depletion of the fisheries in areas of the high seas adjoining their territorial sea, and acknowledged that special recognition should be given to their interest in the matter. For that reason it welcomed the Commission's proposals which offered a very real hope of an agreement satisfactory to most States, under which all legitimate interests would be taken into account. Its understanding was that the Commission's articles on fisheries were intended to ensure "conservation" of the living resources of the high seas—as that term was defined in article 50—in sea areas adjacent to the territorial sea as well as in the more off-shore areas. To the extent, then, that the Commission's articles achieved that aim—and subject to certain modifications, his Government believed that they did—they solved the conservation problem in a satisfactory manner without any need for extending the coastal State's sovereignty over any part of the high seas. Based though they were on the experience obtained in the operation of existing fishery conservation conventions, they were particularly promising in that they laid down certain more developed procedures designed to ensure effective implementation of their provisions.

25. If the purpose of certain claims to sovereignty over broad areas of the high seas was other than conservation, the Commission's draft articles on fisheries might, of course, fail to accomplish that other purpose.

26. Some at least of the objections which had been made to the Commission's proposals for compulsory arbitration were, he thought, based on a misunderstanding of the nature of the differences that were to be referred to arbitration and of the type of arbitration proposed. The Commission proposed that under certain specified conditions States should agree that their fishermen on the high seas should be subject to the regulatory conservation measures enacted by other States, which, under other specified conditions, would be authorized to take unilateral conservation action. States would certainly not be prepared to accept such new and in some cases drastic limitation on their rights unless they could be assured that the stipulated conditions in fact existed. To provide that assurance, the Commission proposed that when the existence of those conditions was questioned and other means of determining the facts failed, the question should be referred to an "arbitral commission" (article 57), which he thought should more properly be described as a fact-finding body. It did not preclude resort to other methods of peaceful settlement which might be agreed on by the parties to the dispute; in fact, the parties to the dispute would take part in the setting up of the "arbitral commission". Without such an arbitral procedure, States could not be expected to accept the proposed restriction on their sovereign rights. He would ask those who objected to the Commission's proposals in what other way it would be able to resolve possible disputes concerning the actual existence of the specified conditions for agreed or unilateral conservation measures.

27. Reference had been made to President Truman's Proclamation of 28 September 1945, which had declared that "the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States [are regarded] as appertaining to the United States, subject to its jurisdiction and control". The reasons for the declaration had been: first, that the effectiveness of measures to utilize or conserve the resources of the shelf was contingent upon co-operation and protection from the shore; secondly, that the continental shelf could be regarded as an extension of the coastal State's land-mass and thus naturally appurtenant to it; thirdly, that the resources in question frequently formed a seaward extension of a pool or deposit lying within the coastal State's territory; and fourthly, that security requirements compelled the coastal State to keep close watch over the offshore activities necessary for the utilization of such resources. The Proclamation had, however, stated explicitly that it in no way affected "the character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation". That Proclamation had been followed by a series of similar proclamations on the part of other States, but some of them had claimed not only the continental shelf but also the superjacent waters. In his Government's view, the coastal State could not appropriate areas of the high seas in connexion with what might otherwise be a legitimate claim to the continental shelf.

28. With reference to the International Law Commission's definition of piracy, he said the Committee had heard charges to the effect that the United States Navy had supported alleged acts of piracy in the China Seas. It had also been alleged that the United States Government had exercised coercion on some of the seamen from the seized ships who had come to the United States. Those charges were categorically denied; they had already received a full answer during the ninth session of the General Assembly, in 1954.[1] With regard to the charges of coercion, he wished to affirm that the United States Government had extended asylum to the men in question at their own request.

29. Although the United States Government was firmly convinced that any atomic tests for which it had been responsible had not infringed any rule of international law, it was its view that that question was a part of the general problem of disarmament, and should not be considered by the Sixth Committee.

30. Although the Committee's discussion had been long and thorough, the Commission's report (A/3159) had been in the hands of Governments for only a relatively short time and needed further study, especially by those States which had only recently been admitted to the United Nations and had therefore had even less time to prepare their positions on the problems involved. His delegation did not, however, favour the suggestion that a preparatory committee of government representatives should be set up to consider further the substance of the questions that would be dealt with at the proposed diplomatic conference, or even to assist the Secretary-General in his preparations for it. The Commission's report provided the best basis for the conference's deliberations; and the Secretary-General should be given the task of preparing the conference, in consultation with such experts as he considered advisable.

31. For practical reasons, he agreed that the conference could not be held before the spring of 1958. So far as the place was concerned, his delegation would gladly accept whatever decision was taken. It believed

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[1] *Official Records of the General Assembly, Ninth Session, Annexes*, agenda item 71.

t, if the States entered the conference with an open nd, the possibilities of success were encouraging.

Mr. BUDO (Albania) said that Albania, with its 0 kilometres of coastline on the Adriatic and Ionian as, attached great importance to the codification of e international law of the sea. As the International aw Commission's report on the subject had been re-ived by his Government only recently, he reserved e latter's right to submit observations thereon later. or the moment he would only make some general marks.

3. The Albanian delegation approved the Commis-on's articles 1 and 2, which recognized the sovereignty the coastal State over the territorial sea.

4. In line with that principle, the Commission should ave recognized the coastal State's competence to de-ermine the breadth of its territorial sea, in the light of the requirements of security as well as economic, geographical, historical and other factors.

5. The attempt of those States which favoured a readth of three miles to impose their views was inconsistent with the realities of the modern world. Already the Codification Conference of 1930 had in effect acknowledged the obsolete character of the hree-mile rule. The best proof of its obsolete charac-ter was that the majority of States had made provision for a wider territorial sea.

6. By a legislative decree of 4 September 1952, Albania had fixed the breadth of its territorial sea at ten miles; that breadth was necessary for the pur-poses of defence and the protection of the nation's economic interests.

7. Articles 57 to 59 of the Commission's draft, con-cerning arbitration procedure in the matter of fishery disputes, were unacceptable to the Albanian delega-tion. They were contrary to the principles of inter-national law governing arbitration, and even contrary to the Charter: they disregarded the sovereign equal-ity of States and the fundamental principle of inter-national law that the consent of the parties to a dis-pute was essential to resort to arbitration, as well as in respect of the choice of arbitrators and the defini-tion of their jurisdiction.

8. Similarly, his delegation objected to the provi-sions of article 73, because it was for a sovereign State to decide in each particular case whether it con-sented or not to submit to the International Court of Justice a dispute in which it was involved. Sover-eign States could not be required to commit them-selves in advance on that point.

9. His delegation considered that there were many important points in the report which required a fuller exchange of views between Governments.

10. Mr. CORVINGTON (Haiti) said the reference guide to the articles on the law of the sea (A/C.6/L.378) gave a clear picture of the monumental task accomplished over the years by the International Law Commission.

11. There had been considerable discussion concern-ing the functions of the Commission. That discussion had shown that there was need for a clearer definition of the expression "codification" and "progressive devel-opment" used in articles 1 and 15 of the Commission's statute. The central problem was what was the exact meaning of the expression "extensive State practice".

12. The Commission itself, in paragraph 26 of its report (A/3159), had recognized that the distinction between its two types of activities could hardly be maintained.

13. With regard to the question whether the Com-mission had certain legislative functions, it had been recognized by the Sixth Committee and the General Assembly in 1947, just as the League of Nations had recognized as early as 1925, that codification did not mean simply a restatement of existing law in an absolutely passive or static manner. The Commission was therefore called upon to fill any gaps and to amend and adapt existing rules to prevailing conditions.

14. With regard to the breadth of the territorial sea, a question which had been the main stumbling-block at the 1930 Codification Conference, the Commission had felt it prudent not to formulate any decision on that breadth between three and twelve miles.

15. In fact, the three-mile rule had been obsolete for some time. In 1894, the Institute of International Law had already proposed that the breadth of the territorial sea should be fixed at six miles. Since then, the failure of The Hague Conference in 1930, the Third Meeting of the Inter-American Council of Jurists in February 1956, and even the International Law Commission's report itself, showed that inter-national public opinion was definitely moving towards the adoption of a much wider breadth than three miles.

16. He next discussed the question of the wide con-servation area which certain States had claimed on the basis of their economic interest in the resources of the high seas. In that respect, article 54 of the Com-mission's draft recognized the special interest of the coastal State in the living resources of adjacent high seas, and article 55 accordingly made provision for the possibility of that coastal State adopting unilateral conservation measures.

17. Those two articles, which followed the pattern of President Truman's Proclamation of 28 September 1945, could constitute a basis of discussion with a view to working out an acceptable compromise solu-tion at the proposed conference.

18. He was not, however, very optimistic about the success of such a conference, for the statements made during the discussion had not revealed a sufficient spirit of compromise in connexion with the points in dispute, particularly the breadth of the territorial sea and compulsory arbitration.

19. The economic interests involved were important, but it was essential that, while defending their own interests, States should not underestimate the interests of others and the importance of international law in the maintenance of peace and justice.

20. The Haitian delegation strongly supported the proposal for the convening of an international con-ference, though it reserved the right to comment later on specific points of the joint draft resolution (A/C.6/L.385). The report of the Commission, together with the complete records of the current debate, would serve as basic documents for that conference. In spite of the various criticisms of the Commission's draft, it would not be wise for the Committee to try to revise any of its seventy-three articles: the text should be submitted to the conference as it stood.

21. Mr. BARNES (Liberia) said that Liberia, with a coastline of 350 miles, had at all times recognized

the three-mile limit for the territorial sea. Liberia respected the freedom of the high seas, and would support no concept which purported to subject large portions of those seas to the sovereignty of States.

52. His delegation believed that the best course was to convene an international conference of plenipotentiaries as soon as possible to deal with such controversial subjects as the breadth of the territorial sea. The divergence of views expressed on the latter subject by the various delegations was sufficient evidence that agreement thereon could not be reached in the General Assembly.

53. While his delegation did not wish to enter into a discussion of the substance of the International Law Commission's report, he would like to make an observation concerning article 29 dealing with the nationality of ships. That article recognized the right of each State to fix the conditions for the grant of its nationality, registration and flag. It contained, however, a provision to the effect that "for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship". The article did not define in any way the term "genuine link". In any case, the provision appeared to be an invasion of the rights of a State and of its sole competence to lay down the conditions on which ships might fly its flag. The relationship between a State and a ship was established when that State, in accordance with its laws, granted its flag to the ship; recognition by other States should follow, without requiring any accompanying guarantees of the existence of other links.

54. His delegation reserved its right to express its views more fully on the Commission's report at a later stage.

The meeting rose at 12.55 p.m.

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