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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) (*continued*)

1. The CHAIRMAN invited general debate on the draft articles relating to the law of the sea submitted by the Commission (A/3159, chap. II).

2. Mr. GARCIA AMADOR (Cuba) said that the International Law Commission's final report on the law of the sea was the fruit of more than seven years' intense, painstaking and unremitting work.

3. The Commission's work was now complete, and he took the opportunity of paying a special tribute to Mr. François, Special Rapporteur, without whom it could not have been brought to a successful conclusion.

4. His delegation viewed the draft articles submitted by the Commission in the light of the profound transformation that had occurred in the law of the sea, more particularly with regard to the conservation and utilization of the natural resources of the sea, as a result of the extraordinary progress made in exploring and exploiting such resources. The coastal State's special interest in the resources of the sea had been heightened in consequence of recent technical advances, and was now recognized in international law alongside the other States' general interest in the freedom of the seas. The draft articles correctly reflected the modern conception of the laws of the sea.

5. He would not enter into the substance of the Commission's report, but would draw particular attention to the recommendations made in paragraph 28 concerning the convening of an international conference of plenipotentiaries, and to the opinion expressed in paragraph 29.

6. A fundamental unity characterized the law of the sea, as the General Assembly itself had recognized in resolutions 798 (VIII) and 899 (IX). The unity did not rest solely on the physical and legal connexion between the various maritime areas; it also reflected the very evident interdependence of the various aspects of maritime problems—legal, scientific, economic and so on.

7. That basic unity of the whole subject was well illustrated by the influence which the delimitation of the breadth of the territorial sea would have on other problems of the international law of the sea. For example, the juridical problems relating to the sea-bed and sub-soil of the continental shelf and other submarine areas arose only in so far as the superjacent waters were not part of the territorial sea. The sovereignty of the coastal State over the sea-bed and subsoil of the territorial sea was not disputed.

8. Likewise, the problem of the coastal State's special interest in the conservation of natural resources, and hence its right to adopt conservation measures, only arose in so far as that interest and those measures impinged on the high sea.

9. Not only were the various aspects of the international law of the sea closely interrelated, but the juridical problems connected with them were closely bound up with scientific, economic and social considerations. With regard to the scientific aspect, he pointed out that the submarine areas to which articles 67 to 73 of the International Law Commission's draft related were more extensive than those corresponding to the geological concept of the continental shelf. The Commission had adopted that course because certain countries, Chile being one, were actually exploiting submarine areas which were not part of the continental shelf in the geological sense.

10. Other scientific problems arose also in connexion with the Commission's draft articles. Inasmuch as the rules applicable to the sea-bed of the continental shelf differed markedly from the law relating to the epicontinental sea, it was necessary to determine, by reference to biological data, whether certain marine species were to be considered as pertaining to the sea-bed or to the superjacent waters.

11. Again, the economic aspect was decisive in the matter of fisheries conservation. The International Technical Conference on the Conservation of the Living Resources of the Sea, held at Rome in April and May 1955, had, mainly on economic grounds, recognized the coastal State's special interest in conservation. That special interest had to be reconciled with the general interest of the international community. Following the Rome Conference, the International Law Commission had recognized the coastal State's right to order fisheries conservation measures in the high seas adjacent to its territorial waters. That was a remarkable innovation; the Conference of The Hague, 1930, had dealt with the problem of the contiguous zone purely from the point of view of the fiscal and similar authorities; it was only later that the legislation of certain States had begun to acknowledge the need for fisheries conservation beyond the territorial sea. In view of that international practice, it was neces-

sary to set up an international system which would recognize both the special interest of the coastal State and the general interest of the international community. It should be noted that in the matter of conservation the coastal State had a right, not a duty. The position was quite different with regard to the territorial sea: the coastal State had not only rights but also obligations in its territorial sea.

12. If all those interrelated problems were to be dealt with satisfactorily, not only the legal, but also the scientific, economic and social points of view had to be studied, an undertaking for which only a special international conference was competent. The States should preferably be represented at such a conference by mixed delegations of jurists, biologists and economists; that had been the case at the 1956 Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters", held at Ciudad Trujillo to consider the same subject.

13. The Cuban delegation therefore supported the proposal for a conference contained in the twenty-Power draft resolution (A/C.6/L.385 and Add.1).

14. The fact that a conference was expected to be convened did not exclude a full discussion of substance by the Committee. Such a discussion would constitute the most valuable contribution which could be made to the work of the future conference.

15. Mr. TAMMES (Netherlands), after congratulating the International Law Commission and its experienced Special Rapporteur on their unique achievement, said that there were nevertheless certain natural limits to what the Commission could do. Although, by virtue of its Statute, it was expected, to some extent, to go beyond existing generally accepted rules of international law, there were certain matters on which the practices, the positions and the interests of States were so diverse that a small body of experts could not take the responsibility of stating what the law should be.

16. In its draft article on the breadth of the territorial sea, for example, the Commission had confined itself to describing the existing legal situation. In its commentary on article 3 the Commission noted on the one hand "that the right to fix the limit of the territorial sea at three miles was not disputed" and on the other it "came out clearly against claims to extend the territorial sea to a breadth which, in its view, jeopardizes ... the freedom of the high seas" (A/3159, pp. 12 and 13). As to a breadth between three and twelve miles, the Commission recognized that many States had fixed a breadth greater than three miles, but that many other States did not recognize such a breadth when that of their own territorial sea was less.

17. In his delegation's view, that was an accurate description of the existing situation. It accordingly believed that in so far as certain territorial claims were not based on a generally recognized rule of international law such as the three-mile rule or the principle of the freedom of the seas (or in a few particular cases, on historic rights), they could not be made valid *erga omnes*, but had in each case to be recognized by the voluntary act of one or more States. That belief was, he thought, consistent with Article 38, paragraph 1 b, of the Statute of the International Court of Justice, which provided that in adjudicating disputes the Court should apply "international custom, as evidence of a general practice accepted as law".

18. As the International Law Commission had rightly noted, international practice was far from uniform in the matter of the breadth of the territorial sea, and the majority of the Commission had accordingly been unwilling to ask the Court "to undertake the settlement of disputes on a subject regarding which the international community had not yet succeeded in formulating a rule of law" (commentary on article 3). In other words, the Commission had not wished to delegate an essentially legislative function to a judicial organ, but had instead preferred to have recourse to the traditional method of international legislation—a conference of plenipotentiaries. Moreover, in order to give effect to its draft articles as a whole, the Commission had recommended that one or more conventions should be concluded (A/3159, para. 28). The Netherlands delegation fully supported that recommendation, and hoped that the proposed conference would be held as soon as possible and would result in checking the tendency towards unilateral legislation relating to the régime of the high seas and the territorial sea. The Commission's report would be a valuable basis of discussion for the prospective conference. In the meantime, his Government would prefer to withhold detailed comments on substance until it had studied the report thoroughly.

19. Mr. LETTS (Peru) expressed agreement in principle with the recommendations concerning a conference made in paragraph 28 of the International Law Commission's report (A/3159).

20. His Government considered that the conference would have to endeavour to solve the problems of the international law of the sea as a whole, though he added that acceptance of that view was not a condition of his Government's participation in the conference. That idea was in line with the interdependence of the various sections of the law of the sea, recognized in paragraph 29 of the Commission's report. Paragraph 30 of the report was inconsistent with paragraph 29, in that it suggested the possibility of conventions dealing only with certain points on which agreement might be reached.

21. His delegation also had doubts concerning the terms of article 3, paragraph 4, of the Commission's draft; it was not clear whether the conference referred to in that clause was identical with the conference recommended in paragraph 28 of the report.

22. With regard to paragraph 32 of the Commission's report, which stated that "the draft regulates the law of the sea in time of peace only", his delegation considered that any convention concerning the international law of the sea had to acknowledge the supremacy, at all times and in all cases, of the provisions of the United Nations Charter.

23. He hoped that in the choice of the place for the conference, considerations of financial conditions and travel would be borne in mind, so that all Members of the United Nations would be able to participate.

24. Peru, in concert with its neighbours, Chile and Ecuador, had adopted measures to extend its sovereignty over the sea with the sole and exclusive purpose of conserving the natural resources. The measures in question did not imply an extension of the territorial sea to 200 miles, as had been inaccurately suggested by critics of those measures.

25. The fact that the distance of some 200 miles covered the approximate zone influenced by the Humboldt current had chiefly accounted for Peru's action. The maritime area in question was exceptionally rich in plankton, with the result that fish stocks were abundant. The abundance of fish had in turn attracted large numbers of aquatic birds, which produced the valuable guano deposits of Peru. That particular stretch of sea constituted an indispensable source of food and other products, and for that reason its biological balance must not be upset.

26. In recent years technological methods had been introduced into fishing and whaling that might, if used indiscriminately, threaten the depletion of the natural resources on which the population of Peru relied for its food, directly and indirectly. It was not the intention of Peru to differentiate between nationals and aliens in the matter of conservation; the object of the Peruvian conservation measures was to prevent depletion by anyone.

27. In 1952, Peru, Chile and Ecuador had signed the Santiago Declaration, proclaiming a common maritime policy based on the need of guaranteeing to their peoples the necessary means of subsistence through the conservation of natural resources and the regulation of their exploitation. The juridical justification for the Declaration had been the inadequacy of the obsolete three-mile rule to meet such need. Even the critics of the Declaration, who contended that the three-mile rule was an inviolable principle of the law of nations, could not alter the fact that the rule was now of historical interest only. That fact had been recognized by the vast majority of American States at the Third Meeting of the Inter-American Council of Jurists held at Mexico City in 1956 when resolution XIII on the principles governing the régime of the sea was adopted.

28. The exclusive jurisdiction which the coastal State enjoyed over the "maritime zone" mentioned in the Santiago Declaration did not entail a right to prohibit the reasonable exploitation of the protected resources by nationals of other States. The Governments of Peru, Chile and Ecuador had indeed expressly stated that they had no intention of prejudicing the legitimate interests of other States, as long as the regulations designed to safeguard the marine fauna were duly observed. All that they wished to prevent was indiscriminate and excessive fishing, as such abuse of the living resources could cause irreparable damage.

29. In those circumstances, it was surprising that the purely defensive attitude of the signatories to the Santiago Declaration was being strongly criticized and misrepresented as an aggressive violation of the rights of other nations. The critics contended that measures of conservation could not be binding on foreign shipping outside a narrow belt of territorial sea. The principle of the freedom of the high seas was being used as a pretext for denying to the coastal State any possibility of conserving its vital resources to meet the needs of its population. By admitting the "interest" of the coastal States in measures of conservation, the International Law Commission had recognized the validity of the claims made by those States. The Commission had unfortunately refused to draw the inevitable juridical conclusions from that premise.

30. The relevant parts of the International Law Commission's report seemed to be based on the assumption that any restriction on high-sea fishing would be wholly inconsistent with the freedom of the high seas. The principle of the freedom of the seas, however, derived from the right of States freely to communicate with each other. Any suggestion that such a right also entitled the beneficiaries to indulge in uncontrolled fishing was consequently somewhat illogical. Formerly, the international community had been primarily concerned with the freedom of navigation and commerce. Fishing had been of little international importance, except in a few disputed areas. The modern international community was, however, also most interested in protecting resources necessary for survival.

31. The draft articles prepared by the International Law Commission provided that, outside the territorial sea, the coastal State could only order measures of conservation if it had obtained the prior agreement of every State whose nationals would be required to observe the measures. Such a condition, which would in effect require the coastal State to conclude agreements with every other State in the world, was clearly inadmissible. The Commission had adopted an extreme position, favouring the most powerful and wealthy maritime nations with the largest and best-equipped fishing fleets. Absolute freedom of fishing would only be justified if the riches of the sea were inexhaustible. Yet it had long been an established fact that they were not inexhaustible. The Commission had recognized that fact, but had nevertheless left the door open for those who desired to exploit the resources of the sea solely for their immediate profit.

32. Certain articles of the draft could be cited as characteristic of the Commission's approach. After stating in article 27 that freedom of the high seas comprised freedom of fishing, article 49 of the draft referred not to "freedom of fishing" but to the "right ... to engage in fishing" subject only to treaty obligations and the provisions concerning conservation. Article 51, after logically stating that a State whose nationals were engaged in fishing in any area of the high seas should adopt measures for regulating and controlling fishing activities in that area, contained the proviso that such a State could only take those steps if nationals of other States were not engaged in fishing in the same zone.

33. Even more serious, however, were the provisions of articles 54 and 55. Article 54 recognized that a coastal State had a "special interest" in the productivity of the high seas adjacent to its territorial sea, and that it was entitled to take part in any system of research and regulation in that area. The coastal State would nevertheless only be entitled to take unilateral measures of conservation, under article 55, if negotiations with the other States "concerned" had not led to an agreement within a "reasonable" period of time. The terminology used was in itself dangerously vague and lent itself to subjective interpretation; yet the conditions set forth in article 55 (*a*) were even more dangerous. The first condition, which required scientific evidence of an urgent need for measures of conservation, went beyond the problem of decrease in yield and introduced the highly subjective notion of "urgency". The second requirement overlooked the fact that scientists were even more prone to disagree than statesmen or jurists. Finally, the stipulation that there would be no discrimination against foreign fishermen seemed to imply that the coastal State should acquiesce in

the decrease in its sources of livelihood, in order that foreign fishing undertakings should not suffer an economic loss.

34. For those reasons, the draft articles seemed unsatisfactory and prejudicial to the legitimate interests of the coastal State. The question of conservation would require the closest examination by the diplomatic conference which had been proposed. The American States had already expressed their opinion on that subject. Their views could be found in the declaration of Mexico City on the principles governing the régime of the sea.[1] That declaration was a statement of the law prevailing in the Americas. Its validity had been confirmed at the subsequent conference at Ciudad Trujillo.

35. The International Law Commission, composed of renowned authorities, had been deeply influenced by the classical school of international law which divided the sea into clear-cut areas, each with its own characteristics. The Commission had apparently been unwilling to move with the times. The aspirations of new States and the development of international law in step with the constant advance of scientific and social progress had not been fully appreciated. The Peruvian delegation hoped that the proposed diplomatic conference would recognize those new influences and contribute to the formulation of a body of rules designed to meet modern conditions.

36. Mr. AZARA (Italy) congratulated the Commission on the excellent work it had accomplished in the face of serious and complex difficulties. In particular he commended the Commission for its use of an analytical method, dealing with each question separately. For, if satisfactory solutions could be found for such special questions as the conservation of fisheries and, more generally, of the living resources of the sea or the suppression of smuggling, there was good reason to hope that the thorny question of the breadth of the territorial sea would be brought that much nearer to settlement. Yet, sooner or later there had to be a synthesis, and the solutions which had been found for specific questions had to be brought within the compass of a single harmonious system. As its Special Rapporteur had indicated, however, the International Law Commission had completed its part of the work. The task of synthesizing the interdependent parts of the law of the sea could best be performed by a conference of plenipotentiaries such as was proposed in the joint draft resolution (A/C.6/L.385), which his delegation would be pleased to support. The Italian delegation hoped that the proposed conference could be convened as soon as possible, although it realized that the success of the conference depended on careful preparation.

37. Without going into the substance of the matter, the Italian delegation wished to stress the supreme importance of certain principles underlying international maritime law, especially the principle of the freedom of the seas under which the sea was regarded as *res communis omnium*. At the same time, the coastal State had certain indisputable legitimate interests which must be safeguarded. In order to find an equitable formula which would give proper satisfaction both to coastal States and to the international community, various considerations of a technical nature had to be taken into account. The proposed conference would therefore be assuming a complex and difficult undertaking, but he hoped and believed that it might succeed in making a notable contribution to the cause of peace and good international relations.

The meeting rose at 12.50 p.m.

[1] Resolution XIII of the Third Meeting of the Inter-American Council of Jurists (A/CN.4/102, annex I, C).

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