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CONTENTS

Chairman: Mr. Jorge CASTAÑEDA (Mexico).

AGENDA ITEM 59

Question of convening a second United Nations conference on the law of the sea (A/3831; A/C.6/L.435, A/C.6/L.438) (continued)

GENERAL DEBATE (continued)

1. Mr. MONACO (Italy) said that the question before the Committee was important and that many of the representatives present had participated in the United Nations Conference on the Law of the Sea, held at Geneva, which had succeeded in drawing up four conventions dealing with very complex subjects. Those results, however, had only been obtained in some cases after lively discussions. There remained a gap in the structure of the four conventions and in particular the first, which dealt with the territorial sea and the contiguous zone, a gap which could well weaken those conventions and hamper their application, namely the absence of a delimitation of the breadth of the territorial sea. Great efforts had been made at Geneva to remedy that very serious gap and the Conference had been very close to success; its work deserved to be carried on.

2. Certain arguments had been put forward against calling a new conference. It had been suggested that it was illusory to hope to establish a uniform rule for the breadth of the territorial sea when all attempts to do so had failed so far: The Hague Conference of 1930; the attempts of the International Law Commission which, after many years of work, had had to be content with a formula—in article 3 of the final draft (A/3159, para. 33)—which did not dispose of the question; lastly, the Geneva attempt. It had been said that it was impossible to find a solution acceptable to the necessary majority of States and that, in the circumstances, it was preferable to abandon definitely the plan to hold a second conference on the law of the sea. That kind of reasoning led to unacceptable conclusions.

3. The gap in the first convention adopted at the Geneva Conference[1] and the lack of a precise rule of international law on the question did not mean that no legislation existed. In the absence of treaty rules on the subject, States had been obliged to adopt measures under municipal law. Accordingly, it had first to be considered whether the question was a matter for international law and also whether municipal law could make up for the absence of a precise rule of international law. The answer to the first question depended on the character of the right of the costal State over the territorial sea. Without affirming necessarily that it was jus in rem, it must be admitted that it was in every case a right of an international character, because it was subject to a number of limitations made by international law and accepted after centuries old practice. Such a right could be governed exclusively by national law only if it had no international incidence, but this was denied by international practice and unanimity of doctrine. Article 1 of the first Geneva Convention proclaimed the international character of the right of the coastal State over the territorial sea. That rule, which was also contained in the draft convention prepared by The Hague Conference, had been adopted by the Geneva Conference without difficulty. The breadth of the territorial sea therefore came under international law, whether for the purpose of recording a pre-existing customary rule or of arriving at a general agreement on the rule.

4. Court practice and doctrine were very clear on the question whether unilateral measures adopted by States under municipal law to delimit the territorial sea could have a direct effect in the eyes of international law. The International Court of Justice, in the Fisheries Case between the United Kingdom and Norway, had held that "The delimitation of sea areas has always an international aspect" and that "the validity of the delimitation with regard to other States depends upon international law".[2] Professor Gidel had said[3] that the extension of its territorial sea by a State beyond the customary limit would, in the absence of recognition by other States, remain purely a measure of national law and hence would constitute a mere fact in the eyes of international law. "Sorensen had gone much further and had said that

> "Unilateral acts purporting to submit areas of the high seas to the exclusive jurisdiction of the coastal state must, in general, be considered incompatible with the principles of international law, and a country whose rights are violated by such measures is entitled to take protective action."[4]

1/ Convention on the Territorial Sea and the Contiguous Zone. United Nations Conference on the Law of the Sea, Official records, Volume II: Plenary meetings (United Nations publication, Sales No.: 58.V.4, Vol.II), document A/CONF.13/L.52.

2/ I.C.J. Reports, 1951, p.132.

3/ Gilbert Gidel, le droit international public de la mer, vol.III, La mer territoriale et la zone contiguë (Paris, Librairie du Recueil Sirey, 1934).

4/ Max Sörensen, Law of the Sea (International Conciliation No. 520, November 1958; New York, Carnegie Endowment for International Peace), p. 252.

Professor Waldock and Professor Gros could also be quoted.

5. Those remarks led to the conclusion that, although the breadth of the territorial sea was not at present regulated by international law, its delimitation should be effected by international agreement, since measures of national law were no substitute for a rule of international law. If it were admitted that there existed a rule of international law enabling States to determine the extent of their territorial sea, that could only mean that such action was not in itself unlawful, but it would not dispose of the crucial question of the efficacy of an act of national legislation in the eyes of international law.

6. The question of the limits of exclusive fishing rights was not regulated by international law for the very simple reason that it concerned the right to fish beyond the limits of the territorial sea. The exclusive fishing rights in the territorial sea of a coastal State were based on sovereignty, and it was therefore obviously impossible to invoke sovereignty as the basis of an alleged exclusive right of the coastal State to fish in a zone situated beyond the territorial sea. The notion of the contiguous zone had been invoked, but it had been rightly pointed out by Professor Gidel that the contiguous zone did not exist in the matter of fisheries and that, in any case, a contiguous zone could not be established by unilateral decision of the coastal State. 5/

7. Reference had been made to President Truman's Proclamation of 28 September 1945, which had conferred upon the United States Government the power to establish exclusive fishing zones in certain areas of the high seas contiguous to the coasts of the United States. Certain States of Latin America had asserted at Santiago in 1952, by the tripartite Declaration on the Maritime Zone, their sovereignty and exclusive fishing rights in the seas opposite their coasts up to a distance of 200 nautical miles, and several Agreements had been signed at Lima in December 1954 in order to give effect to that Declaration. The Colombian jurist Yepes had said that the Truman Proclamation and the South American instruments were an expression of the same trend to reserve the resources of the sea for the exclusive benefit of the coastal inhabitants. That analogy did not seem altogether exact, for the Truman Proclamation was based on the pressing need for conservation and protection of fishery resources. There could be no doubt, however, that, as Professor Yepes had himself recognized, the South American instruments constituted a serious departure from the traditional principles of classical international law.

8. The recent attitude of the Icelandic Government showed the urgency of determining by international conference the question of the limits of the fishery rights of the coastal States. The Icelandic Government had stated 6/ that it had for a long time participated in the work of the United Nations in seeking a solution to the question of coastal jurisdiction, but that that work had been unsuccessful; in the absence of an international solution Iceland had been obliged to adopt measures of municipal law. The need to hold a conference was also justified by the resolution adopted on 26 April 1958 by the United Nations Conference on the Law of the Sea 7/ concerning the situation of countries whose peoples were overwhelmingly dependent upon coastal fisheries for their livelihood or economic development.

9. Lastly, there was an argument of a formal character: the resolution adopted on 27 April 1958 by the Geneva Conference. 8/ Since all the States represented in the Sixth Committee, with one exception, had been also represented at Geneva, it could asserted that the majority had already pronounced in favour of a new conference.

10. The question to be decided was of a practical character: to fix a uniform breadth for the territorial sea. The new conference would therefore have a very clear and limited purpose; it would not in any way affect the results obtained at Geneva. It was probable that some States had not signed the four Geneva Conventions because of the two gaps already mentioned.

11. In view of those considerations, the Italian delegation had joined with other delegations in sponsoring the joint draft resolution (A/C.6/L.435) for the prompt calling of a new conference. The preamble clearly set forth the two issues which remained unsettled, and stated that an agreement on those two vital issues would contribute substantially to the lessening of international tensions and to the preservation of world order and peace. That wording of the preamble served to stress the importance of the object of a new conference. The initiative taken by the sponsors of the joint draft resolution was therefore in keeping with the principles of the Charter. There again, a step forward must be made in order to obtain in a vital matter the certainty of the law, without which the search for certainty in material life would be in vain.

12. Mr. CHAUMONT (France) wished to stress the importance which his delegation attached to the question under discussion, and to recall the position taken by France, as well as to explain its participation in the joint draft resolution. After pointing out that on 30 October 1958 France had signed the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas and the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, adopted by the Geneva Conference, he congratulated all those who had taken part in that conference, which had been a great success and had, within a period of two months, resulted in the drafting of four conventions, one protocol and nine resolutions. He also complimented the Secretariat on its work.

13. His delegation considered that a second conference on the law of the sea would be justified for two different reasons: it did not wish that any interests and rules of positive law outside of international co-operation resulting from a convention should be sacrificed, and it held that such co-operation was both necessary and possible.

14. As a maritime Power possessing numerous sea coasts and important off-shore fisheries in which entire provinces were engaged, France had a practical interest in the question. It was not possible to reduce

5/ Gidel, op. cit., p. 468.

6/ See memorandum entitled "The Icelandic Fishery Question", circulated by the Icelandic Government.

7/ United Nations Conference on the Law of the Sea, Official records, Volume II: Plenary meetings (United Nations publication, Sales No.: 58.V.4, Vol.II), document A/CONF.13/L.56, resolution VI.

8/ Ibid., resolution VIII.

that question to one of opposition between great and small Powers, as some had done, for a small Power might have a large merchant marine and a great Power might prohibit fishing in the vicinity of its coasts, as was the case with the Soviet Union, which claimed a territorial sea of twelve miles.

15. France attached special importance to the pre-eminence of international law in those matters. The conventional procedure made it possible to safeguard the authority of international law without ignoring the need for its development. The French Government continued to adhere to the three-mile rule, and he referred to the statements which Mr. Gros had made at Geneva on 7 March [9] and 8 April 1958. [10] In the Sixth Committee, the representative of Ecuador had said (583rd meeting, para. 45) that that rule had been abandoned, but it must be pointed out that a unilateral renunciation did not mean that a rule ceased to be part of positive law. As Mr. Ago, the representative of Italy, had said on 18 April 1958 at Geneva: "the high seas... were the common heritage of all". [11] The purpose of that principle, which had been laid down by Grotius, was to protect commercial interests against military interests. The territorial sea was, accordingly, a safety zone determined by the requirements of the land. Any extension of that zone to the high seas, therefore, constituted a territorial annexation of the high seas, if it was the result of a unilateral declaration and not of an international convention or of custom.

16. The USSR representative had stated in the Sixth Committee (583rd meeting, para. 60) that the territorial sea could be delimited unilaterally, but that such delimitation should give due regard to geographic, historical and other factors. One was led to inquire who was the judge of those factors, for if it was the State, then arbitrariness would be the result. The twelve-mile rule recognized by the USSR was not recognized by all the costal States of the Baltic Sea, and in 1949, for example, the Swedish Government had protested vigorously on that account. The representative of the USSR had said that both the three-mile and the six-mile rule should be rejected, since the latter would offer the same defects and call for the same criticisms. In that case, then the same applied to the twelve, twenty-four or two-hundred mile rule; no rule was binding unless it had been established by positive international law. It was, therefore, necessary to know whether the predominant principle was still the freedom of the seas, and whether it was still admitted that international law was the result of conventions and customs and not of unilateral declarations.

17. As a result of the decision of the International Court of Justice of 18 December 1951 in the Fisheries Case between the United Kingdom and Norway, any extension of the territorial sea was only valid if it was recognized. It was, therefore, necessary to harmonize the undeniable principle of the freedom of the seas with the undisputed special interests of coastal States. Although certain situations described by the representatives of Iceland and Denmark at the 583rd meeting of the Sixth Committee could be fully understood, neither the extent of the territorial sea nor the exclusive or privileged jurisdiction of the coastal State in respect of fisheries could be determined unilaterally. It was necessary to consider the practical consequence of adopting any rule. The adoption of the twelve-mile rule, for example, would reduce the extent of the high seas by 3 million square miles (or approximately the area of the United States) and almost all straits would become territorial waters. It was, therefore, necessary to reach a compromise which would take both special and general interests into account. A middle course could be found only by using one method, that of conciliation, and by approaching the task in one spirit, the spirit of conciliation.

18. The French delegation had shown that attitude at Geneva by accepting the compromise proposed by the United States of America. [12] Mr. Gros had pointed out that by so doing France was sacrificing certain interests which amounted to as much as 14 per cent of the interests of the French fisheries. Some of those interests, however, were those of workers whose difficult living conditions were a matter of common knowledge. There was, therefore, no reason at all for being ashamed of the three-mile rule, which was supported by many distinguished precedents; it was rather a question of contributing to the progressive development of international law with respect to a subject which had to follow the course taken by international life. He referred to the statements which had been made at Geneva by Mr. Ago on 18 April 1958, [13] by Mr. Gros on 19 April, [14] and by Sir Gerald Fitzmaurice on 27 April, [15] as well as to the statement made by the United Kingdom representative at the 584th meeting of the Sixth Committee, according to which the former law would remain unchanged unless efforts at conciliation resulted in the drafting of a special agreement. Acceptance of the compromise in no way constituted renunciation of the three-mile rule of positive law.

19. He then showed that a second conference on the law of the sea was both necessary and possible and thus answered the statements which had been made at the 583rd meeting by the representative of Ecuador, who had felt that no new element existed which could justify calling such a conference, and by the representative of Mexico, who had asked what such new elements might be. The representatives of Australia and the United Kingdom had already replied at the 584th meeting. Certain new elements had been brought forth by the first conference itself. The representative of Ecuador had said that if the first conference had thought it possible to solve the question it would have adjourned with a view to a resumption later. He recalled that resolution VIII, adopted on 27 April 1958, had followed a proposal by the Cuban delegation to the effect that the Conference could not sit indefinitely and could not be reconvened without the consent of the General Assembly. Moreover, that resolution only echoed the idea which had been expressed in article 3 paragraph 4, of the International Law Commission's draft (A/3159, para. 33). The Conference was, therefore, perfectly capable of continuing its work on the breadth of the territorial sea and the limits of the fishing zones. Precedents and experience showed that it was better to convene a new conference than to en-

9/ Ibid., Volume III: First Committee (United Nations publication, Sales No.: 58.V.4, Vol.III), 8th meeting, para.21.
10/ Ibid., 37th meeting, para.18.
11/ Ibid., 54th meeting, para.13.
12/ Ibid., 55th meeting, and annexes, document A/CONF.13/C.1/L.159/Rev.1.
13/ Ibid., 54th meeting.
14/ Ibid., 54th meeting.
15/ Ibid., Volume II: Plenary meetings (United Nations publication, Sales No.: 58.V.4, Vol.II), 21st plenary meeting.

trust the task of considering those questions to the Sixth Committee, as the representative of Iceland had proposed (583rd meeting, para. 8), particularly because of the composition of the delegations, the participation of other States, and the fact that the intention was to continue the first conference.

20. In reply to those who alleged that the second conference would fail in the same respects that the first conference had failed, he pointed out that the first conference had considered maritime questions as a whole, whereas the second would have a limited purpose and would concentrate its efforts. France had not been the only State to give proof of a spirit of conciliation, and it should not be forgotten that the United States proposal had received the largest number of votes, even if it had not quite received a two-thirds majority. Progress had become evident during the first conference which gave reason to hope for a similar result in the second, as the representative of Ceylon had observed on 27 April 1958,16/ when he had spoken of a movement towards increasing understanding.

21. He pointed to the existence of some new elements, in particular the signing of the conventions drafted at Geneva, the final ratification of which might be jeopardized. Secondly, international tensions existed with respect to fisheries, particularly the dispute between the United Kingdom and Iceland, and other disputes might also arise. Moreover, an effort should be made to avoid casting any discredit on positive international law with respect to the principle of the freedom of the seas and the competence of each State to determine the extent of its territorial sea. Those who spoke of abandoning the three-mile rule did not claim that it should be replaced by another, and the absence of a rule might weaken international law even further. It was undoubtedly necessary to conform to the development of international life, but no State had ever been able to revise such a rule of its own volition without a diplomatic agreement. As the representative of Ceylon had said at Geneva, the new conference should not be called too soon, so that time would be given for the necessary development, nor too late, in order to forestall any dangerous situations which could not be corrected, as the representative of Canada had said in the Sixth Committee (583rd meeting, para. 37).

22. He urged that a date for a conference should be fixed at the current session, and opposed the statements by the representatives of the Union of Soviet Socialist Republics and Ecuador who had proposed (583rd meeting) that the question be postponed until the fourteenth session. There could be no question of undue haste, since the countries which were particularly affected by the existing difficulties had themselves advocated an early date for the holding of a conference. There could be no question either of any pressure by the great Powers, since procedure by convention was the best method of safeguarding the rights of small Powers.

23. For those reasons, the French delegation had joined the sponsors of the joint draft resolution (A/C.6/L.435), only operative paragraph 2 of which could give rise to any discussion. That paragraph left the place of meeting blank, but the French delegation preferred that the second conference should be held at Geneva in order to mark the continuity of the two Conferences.

24. As shown by the Geneva Conference, certain States, such as the United States, the United Kingdom and France, were prepared to renounce the three-mile rule and to seek a solution which would take into account the interests of the coastal States. No agreement could be reached if all the parties tried to impose their own rules. If anarchy was allowed to continue, the situation so far as existing or potential conflicts were concurred would tend to deteriorate. Conciliation was obviously the only remedy, with each party accepting the sacrifice of a part of its interests. The only sacrifice which could not be accepted was that of the authority of international law and the freedom of the high seas; for such a sacrifice would lead to anarchy and to the return to conditions prevailing before the Middle Ages. If no agreement was reached at present, it might well be necessary to wait another thirty years, as had been done since The Hague Codification Conference. He asked the States which were not very favourable to the holding of a new conference whether they were none the less prepared to make concessions and to give up certain rules. He hoped that the delegations of those countries would also be prepared to show a spirit of conciliation which would constitute an act of faith and hope.

POINT OF ORDER RAISED BY THE REPRESENTATIVE OF THE UNION OF SOVIET SOCIALIST REPUBLICS

25. Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, protested against the partiality shown in the drafting of the provisional summary record of the 583rd meeting of the Sixth Committee. The statements of the representatives who had spoken in favour of calling a conference, namely, the representatives of Iceland and Norway, had been summarized, respectively, in three and a half pages and in four pages; by contrast, the statements against convening a conference, which had in fact been longer than the others, occupied only four pages in all: two and a half pages for Ecuador and only one and a half for the Soviet Union.

26. That lack of balance would have serious consequences on the remainder of the Committee's debate. Not only did the very brief summary fail to correspond to the length of his statement, but some very important parts had been omitted; consequently, the position of the Soviet Union could not be properly understood. In particular, he had clearly stated that, in his view, a settlement of the question of the breadth of the territorial sea by a new conference was desirable, and the omission of that point from the summary record had prompted the French representative to ask a question on the subject. The French representative had also said that the formula defended by the Soviet Union was that of the twelve-mile limit, whereas under the formula recommended by the USSR delegation at Geneva, and repeated by him at the 583rd meeting, each State would determine the breadth of its territorial waters in accordance with established practice within the limits, as a rule, of three to twelve miles, having regard to historical and geographical conditions, economic interests, the interests of the security of the coastal State and the interests of international navigation. The summary record, however, did not set out that formula. It was quite clear that the Secretariat's lack of objectivity had been intentional.

16/ Ibid.

27. In those circumstances, he considered the summary record of his statement at the 583rd meeting null and void. He requested the Secretariat to refer to the sound track of the meeting in order to determine the space which should be given to the summary of his statement, having regard to its duration. He would then submit a new summary, which would have to appear in a revised provisional summary record. That revised record should then be circulated among the members of the Committee, so that they might be informed of the USSR delegation's true position.

28. He also asked the Secretary of the Committee to explain to him how summary records were prepared.

29. With reference to the first question asked by the French representative, he had already said that, in principle, he favoured the calling of a conference to solve the question on the breadth of the territorial sea by means of a convention. The only point remaining was the date of the conference about which the USSR delegation entertained certain doubts.

30. As to Mr. Chaumont's second question, the French representative had no right to ask the Soviet Union what concessions it was prepared to make without himself stating what France was ready to give. The six-mile rule which the French representative proposed did not constitute a concession, and had indeed been rejected at Geneva by many delegations.

31. Mr. CHAUMONT (France) replying to the point of order raised by the USSR representative, pointed out that in his earlier statement he had not based himself on the summary record of the 583rd meeting of the Committee, but on the debates at the Geneva Conference. The Secretariat was thus in no way responsible. Moreover, he had duly referred in that statement to the formula proposed at Geneva by the representative of the Soviet Union.

32. With reference to the question that he had raised a little earlier, he stressed that he had not asked what concessions the Soviet Union wished to make out simply whether it was prepared to make any concessions.

33. Mr. ILLUECA (Panama) pointed out, in connexion with the point of order raised by the USSR representative, that the Secretary of the Committee could not be held responsible for the drafting of summary records, as précis-writers came under the jurisdiction of the Office of Conference Services and not the Office of Legal Affairs.

34. In that connexion, it was noteworthy that original summary records were drafted exclusively in English or French; that could cause serious complications, as some statements were not summarized directly in the language in which they had been made. Thus the Spanish version of the summary of a statement made in Spanish was a translation of a summary record drafted in French or English.

35. Mr. LIANG (Secretary of the Committee) confirmed what the Panamanian representative said regarding the method of preparing summary records. The secretariat of the Committee did not normally revise such records. Moreover, the work of the précis-writers had thus far drawn nothing but praise.

36. He protested against the assertion that the Office of Legal Affairs or the précis-writers showed partiality in deciding on the length of the summary of each statement. That was a matter of appreciation, and representatives always had the opportunity to send corrections. He would communicate the USSR representative's comments to the technical service concerned, which would willingly accept any corrections and issue a revised summary record of the 583rd meeting.

37. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he was satisfied with the Secretariat's promise to issue a revised summary record.

38. He was surprised at the Panamanian representative's disclosures regarding the methods followed in the preparation of summary records, and at the fact that the précis-writers were alone responsible for maintaining a balance between the different parts; it was inadmissible that there should be no liaison with the secretariat of the Committee.

39. He also thought that the Secretary of the Committee should call attention to the lack of objectivity of the précis-writers, and that the Under-Secretary present in the Committee, who represented the Secretary-General, should ensure that the summary records were prepared properly.

40. Mr. LIANG (Secretary of the Committee) said that when there was a striking disproportion between the summaries of statements, or patent inaccuracies, in the summary record, the secretariat of the Committee took the necessary steps to introduce the desired corrections. But it was difficult to decide that the opinion of one single delegation regarding the balance between the different parts of a summary record reflected the views of all the other delegations present. In the present case, the secretariat of the Committee would examine the complaint that had been made and take the necessary action.

41. Mr. PERERA (Ceylon) asked whether, in view of the importance of the item before the Committee, it would be possible to have verbatim records made of the meetings devoted to that item.

42. The CHAIRMAN replied that, in view of the lateness of the hour, that question would be discussed at the next meeting.

The meeting rose at 1.10 p.m.

Litho. in U. N. 77601-March 1959-2,050