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QUESTION OF INITIATING A STUDY OF THE JURIDICAL REGIME OF
HISTORIC WATERS, INCLUDING HISTORIC BAYS (RESOLUTION OF THE
UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA)

Note by the Secretary-General

1. At its twentieth plenary meeting, held on 27 April 1958, the United Nations Conference on the Law of the Sea adopted the following resolution:

"The United Nations Conference on the Law of the Sea,

"Considering that the International Law Commission has not provided for the régime of historic waters, including historic bays,

"Recognizing the importance of the juridical status of such areas,

"Requests the General Assembly of the United Nations to arrange for the study of the juridical régime of historic waters, including historic bays, and for the communications of the results of such study to all States Members of the United Nations."

2. This resolution was drawn up and adopted in the circumstances described hereafter:

3. The draft articles on the Law of the Sea prepared by the International Law Commission,^{1/} which were used as a basis for the work of the Conference, did not deal with the régime of historic waters. Draft article 7, however, reproduced below, contained a fourth paragraph referring to historic bays.

"1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An

1/ Official Records of the General Assembly, eleventh session, Supplement No. 9 (A/3159).

indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

"2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

"3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

"4. The foregoing provisions shall not apply to so-called 'historic' bays or in any cases where the straight baseline system provided for in article 5 is applied."

4. As the above text shows, the Commission merely excluded historic bays from the scope of the general rules which it drew up for ordinary bays.

5. In order to provide the Conference with information on historic bays, the Secretariat of the United Nations had prepared a memorandum on the subject which is contained in document A/CONF.13/1.

6. During the third meeting of the First Committee^{1/} of the Conference, held on 3 March 1958, the representative of Panama proposed that a sub-committee should be set up to study the problem of bays, particularly the régime of historic bays. The First Committee decided at the same meeting to defer consideration of the Panamanian proposal for the time being on the understanding that it would be resubmitted to the Committee in due course.

7. At its forty-seventh meeting, on 15 April 1958, the First Committee adopted in amended form the first three paragraphs of article 7 of the Committee's draft. At the following meeting, held the same day, the First Committee dealt inter alia with two proposals concerning the question of historic bays, the first submitted by Japan (A/CONF.13/C.1/L.104) and the other submitted jointly by India and Panama (A/CONF.13/C.1/L.158).

^{1/} The First Committee was called upon to consider articles 1-25 (Territorial Sea) and 66 (Contiguous Zone) of the draft articles concerning the Law of the Sea prepared by the International Law Commission.

8. The proposal put forward by Japan called for the replacement of article 7 (4) of the International Law Commission's draft by a text containing a definition of historic bays, worded as follows:

"4. The foregoing provisions shall not apply to historic bays. The term 'historic bays' means those bays over which the coastal State or States have effectively exercised sovereign rights continuously for a period of long standing, with explicit or implicit recognition of such practice by foreign States."

9. The joint proposal of India and Panama, submitted as a draft resolution, called upon the Conference (a) to take into consideration the fact that the International Law Commission had not provided for the régime of Historic waters including Historic bays; (b) to recognize the importance of the juridical status of such areas; and (c) to decide to request the Secretary-General of the United Nations to arrange for the study of the régime of historic waters including historic bays and the preparation of draft rules which might be submitted to a special Conference.

10. The Chairman of the First Committee pointed out that the Conference should address its request to the General Assembly rather than to the Secretary-General. He therefore suggested that the operative part of the joint draft resolution should be replaced by a provision under which the Conference would refer the matter to the General Assembly of the United Nations, requesting it to make appropriate arrangements for a more thorough study of the problem and for the preparation of draft rules regarding the régime of historic waters, including historic bays.

11. In order to enable delegations to study the matter more closely, the First Committee decided to postpone consideration of both the joint draft resolution and the proposal submitted by Japan.

12. At its sixty-third meeting, on 24 April 1958, the First Committee took up the question again. The representatives of India and Panama submitted a revised draft resolution, reading as follows (A/CONF.13/C.1/L.158/Rev.1):

"THE FIRST COMMITTEE,

"Considering that the International Law Commission has not provided for the régime of Historic waters, including Historic bays,

"Recognizing the importance of the juridical status of such areas,

"Recommends that the Conference should refer the matter to the General Assembly of the United Nations with the request that the General Assembly should make appropriate arrangements for the study of the juridical régime of Historic Waters including Historic Bays, and for the result of these studies to be sent to all Member States of the United Nations."

13. The Japanese representative pointed out that the definition contained in the Japanese proposal (A/CONF.13/C.1/L.104) took into consideration the Secretariat's memorandum concerning historic bays (A/CONF.13/1). If the Committee adopted the revised draft resolution which provided for the study of the juridical status of historic bays, his delegation would not insist on its proposal being put to the vote. He nevertheless hoped that the proposed definition would be communicated to any body that might be called upon to undertake the study in question.

14. During the same meeting, the First Committee adopted the revised draft resolution submitted by India and Panama by 54 votes to 2, with 10 abstentions. It also adopted without amendment article 7 (4) of the International Law Commission's draft:^{1/}

15. At its nineteenth plenary meeting, which was held on 27 April 1958, the Conference adopted an amended version of the article 7 originally proposed by the International Law Commission. This provision has been incorporated as article 7 in the Convention on the Territorial Sea and the Contiguous Zone; paragraph 6 of this article is substantially the same as article 7 (4) of the International Law Commission's draft (A/CONF.13/L.52). At its twentieth plenary meeting, on the same day, the Conference adopted by 77 votes to none, with 3 abstentions, the resolution contained in paragraph 1 of the present note.

^{1/} Report of the First Committee (A/CONF.13/L.28).