United Nations Conference on the Law of the Sea

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ELEVENTH MEETING

Tuesday, 11 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. HSUEH (CHINA), THE MARQUIS OF MIRAFLORES (SPAIN) AND MR. ASANTE (GHANA)

1. Mr. HSUEH (China) paid a tribute to the excellent work of the International Law Commission, and said that, after careful examination, his government had found the great majority of the draft Articles on the Law of the Sea acceptable. However, certain provisions would have to be amended or rearranged if they were to command universal acceptance, and a few matters would have to be further studied by the Conference before generally applicable rules on them could be formulated.

2. One of the most difficult problems before the Committee was that of the breadth of the territorial sea, and the Chinese delegation believed that the success of the Conference would depend upon the outcome of the Committee's endeavour to solve that problem. His delegation would approach it objectively, and he hoped that a compromise solution which was fair, reasonable and just, would be devised.

3. The Chinese delegation considered that the question what was the existing law on the breadth of the territorial sea could be answered, although article 3, paragraph 1, of the draft stated that international practice was not uniform as to the delimitation of that sea. The limit of the territorial sea had been traditionally based on Bynkershoek's maxim: *Imperium terrae finiri ubi finitur armorum potestas.* It could not be denied that European States, among which international law had originated, had for many decades accepted the limit thus laid down. Only when the range of shore artillery had substantially increased had that limit been questioned. But Bynkershoek's theory of the three-mile rule could be likened to a builder's scaffolding: when the building was completed, the scaffolding no longer played any part. Consequently, the three-mile rule had not changed.

4. The States which still kept to the three-mile rule greatly outnumbered any single group of States which had adopted another standard. Although he recognized that some of the former might have changed their position without officially announcing the fact, statistics showed that some thirty States had adopted the three-mile limit, whereas only seventeen had adopted the six-mile limit. Seven States had adopted the twelve-mile limit, and even fewer had adopted the four-mile, five-mile, nine-mile, twelve-kilometre or 200-mile limits. Those figures supported the International Law Commission's contention in article 3, paragraph 2. But there were many other subjects on which the practice of States was not uniform, and he thought the Committee should perhaps recognize that the common practice of the greatest number of States showed where the existing law lay.

5. His delegation did not believe, however, that the existing law, whatever it might be, could not be modified to accommodate the justifiable new needs of States. Article 13, 1 (*a*), of the United Nations Charter called not only for the codification of international law, but also for its progressive development. He therefore considered that, in view of the divergent views which had been expressed on the breadth of the territorial sea, a possible solution might be for the Committee to ascertain the new needs of States which rendered the existing law inadequate and to formulate some new provisions to supplement the three-mile rule.

6. To be generally acceptable, such a solution would have to meet the following requirements. First, it was true that rules of international law had been modified from time to time to meet changing circumstances. It was equally true that such modifications had never been abrupt or sudden, and it could not be hoped that drastic departures from the existing rule would meet with the general approval of the international community. Therefore, if the Committee decided to supplement the three-mile rule, such modifications as it recommended would have to be reasonable.

7. Secondly, it had been argued that the territorial sea, being a belt of water over which the coastal State exercised sovereignty, could be unilaterally delimited by that State to meet its particular needs, and that the codified law should only state the principle and not specify any figure. His delegation could not share that view, as in practice it would lead to complete anarchy. A law which was uncertain and ambiguous could only defeat its own purpose. The Conference must therefore reach agreement on the figure or figures to be laid down for the width of the territorial sea.

8. Thirdly, there must be a proper balance among three kinds of interest: the justifiable needs of coastal States; the general interests of the international community; and the interests of the maritime Powers. The interests of coastal States should be given priority. Many such States had found the three-mile limit satisfactory until comparatively recent times; some were now seeking an extension of that limit in order to safeguard their new needs, such as the protection and control of fisheries beyond the three-mile limit. Such needs were justifiable and should be taken into consideration. The general interests of the international community as a whole came next. Such interests, which had been eloquently described by the United States representative at the previous meeting, included the advantages resulting from the principle of freedom of the high seas, the safety requirements of air navigation, the need for international co-operation in the exploitation and conservation of the living resources of the sea for the common welfare of mankind, and the necessity of navigating on the high seas for purposes of communication and commerce. Lastly, the interests of the maritime Powers should not be overlooked; many States whose maritime activities were under-developed, as well as the land-locked countries, depended on those Powers for essential services.

9. His delegation did not wish to make any concrete proposal at that stage; but it would give careful con-

sideration to all views expressed in the Committee, and would comment in detail on the draft articles later.

10. The Marquis of MIRAFLORES (Spain) said that the conflict between maritime and deep-sea-fishing States, and States which fished in the vicinity of their own shores, recalled the age-long conflict between shepherd and farmer. The latter now belonged to history; it had been resolved by laws enacted in the interests of the community. It was to be hoped that the present Conference would succeed in similarly reconciling the interests of both maritime and coastal States or, where that was not possible, would at least decide which of the two sets of interests should be given priority for the good of the international community.

11. Spain, which had a merchant navy of over one million tons and fisheries with an annual catch of three quarters of a million tons, was particularly interested in the success of the Conference. The Conference could not afford to fail as The Hague Codification Conference of 1930 had done. If agreement could not be reached on the breadth of the territorial sea, or if it proved impossible to balance the exploitation and conservation of the living resources of the sea, it was plain that it would be equally impossible to reach a solution of the major international problems of the day, on which man's very existence depended. Such a failure at a time when scientists had achieved the splitting of the atom and the conquest of space would spell bankruptcy for jurists and diplomatists.

12. Rules of international law could have their source only in custom or treaty; in both cases, the rules were formed with the participation of States other than the interested party or parties. With regard to the breadth of the territorial sea, it was true to say that there was no rule of international law which was binding on all States. There were rules of international law of limited application, establishing a breadth of three, four, six, twelve or even 200 miles — rules which were valid for a number of States inversely proportional to the extent of the territorial sea proclaimed. The rules in question were binding only on those States which had accepted them by treaty or custom.

13. In the territorial sea, the particular interest of the coastal State prevailed over the general interest of the international community; on the high seas, the general interest prevailed over the national interest, and the principle of freedom of the seas, which Vitoria had based on *jus communicationis,* held sway. That principle, however, was not absolute; departures from it were permitted either in the interest of the community of States, as in the case of the suppression of piracy, or in the special interest of coastal States, as in the cases of historic bays, the continental shelf and the contiguous zone. Those exceptions to the freedom of the seas, however, were not arbitrary ; they were based on the realization by the international community, first, that an interest existed which deserved legal protection, and secondly, that the only way to protect that interest was to curtail the principle of freedom of the seas to some extent. The basic principle of the international law of the sea was that the international community should be assured the maximum freedom compatible with the special interest of the coastal State; but it was clearly incumbent upon the coastal State to show that the two conditions for a departure from the existing rules were satisfied.

14. It was necessary to examine the various interests which could justify a broader territorial sea than that which had been recognized in the past for security purposes, since modern inter-continental ballistic missiles could be fired effectively from a submerged submarine 1,500 miles off the coast, no conceivable breadth could be sufficient; hence, the traditional breadth might as well be retained. Where the enforcement of customs, fiscal or public-health regulations were concerned the greatly increased speed of shipping would seem to justify an increased breadth for the territorial sea. The same conclusion could be drawn from consideration of the problem of conserving fish stocks; it was now known that the living resources of the sea, far from being inexhaustible, could be severely depleted by excessive exploitation.

15. In the past, it had been possible to solve such problems only by extending the sovereignty of the coastal State to cover a wider belt of territorial sea. Thus, although in both world wars Spain had been content with a territorial sea of three miles for purposes of maintaining its neutrality, for other purposes it had been claiming a territorial sea of six miles for more than two centuries.

16. However, there was now another remedy. Practically all States admitted the existence of the contiguous zone — a zone which was not subject to the sovereignty of the coastal State and entailed only a limited departure from the principle of freedom of the seas, but which gave satisfaction to certain specific interests of a coastal State.

17. In the opinion of the Spanish delegation, the only way in which a convention likely to command general support could be drafted, was for each of the coastal States represented at the Conference to specify those of its interests which it desired to see protected internationally. The Conference could then consider how legal protection could be afforded to those interests with the least possible detriment to the principle of free and equal use of the high seas by all States.

18. The conclusion would probably be reached that it was not necessary to extend the breadth of the territorial sea unduly, and that all legitimate interests could be safeguarded with a breadth of three miles by recognizing the coastal State's special rights in historic waters, in the continental shelf and in the contiguous zone, and by adopting conservation measures in certain areas of the high seas and, in the case of migratory species of fish, throughout the high seas.

19. Spain was prepared to abandon its traditional claim to a six-mile territorial sea if the interests which that breadth was intended to protect were universally recognized by the Conference and protected in some other manner. In doing so, Spain would feel that it had gained rather than lost by contributing to a generally acceptable solution; for in the long run, the success of the Conference would benefit all mankind.

20. Mr. ASANTE (Ghana) said that his delegation was determined to play its part in achieving the widest possible agreement consistent with Ghana's legitimate interests. He hoped that all delegations would be

realistic and bear in mind that any far-reaching rules drawn up by the Committee which did not have the approval of the more important maritime Powers would be difficult to apply. He was not suggesting that the smaller nations should necessarily defer to those Powers, but his delegation counted on the latter's sympathy, understanding and magnanimity.

21. He had listened with great interest to the different legal and historical arguments advanced in support of the various breadths proposed for the territorial sea, but would not comment on them at that stage. Although, for historical reasons, Ghana applied the three-mile limit, it recognized the need for revision. While his delegation would support the adoption of a definite limit provided that it commanded a reasonable and useful majority and was consistent with the interests of small States, he appreciated that such a result would be difficult to achieve.

22. The delegation of Ghana therefore wished to suggest, at the risk of being accused of pessimism, that the Committee should seriously consider adopting a rule laying down a maximum width for the territorial sea — say twelve miles — within which individual coastal States would be free to declare what width they intended to adopt. He did not think that all coastal States would adopt the maximum permissible width, as had been suggested at an earlier meeting, because such action would imply increased responsibility. If his delegation's proposal was adopted, the rule should provide that all coastal States in a given region should negotiate an agreement on a uniform breadth for the territorial sea in that region.

23. He hoped that a spirit of compromise and realism would prevail in the Committee's discussions, and emphasized that, to be effective, all decisions would have to be taken by a large majority. A great responsibility rested on all representatives, for they had an opportunity of making a valuable contribution to international understanding and world peace.

The meeting rose at 4 p.m.

TWELFTH MEETING

Wednesday, 12 March 1958, at 10.30 a.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) ***(continued)***

General debate (continued)

STATEMENTS BY MR. TUNKIN (UNION OF SOVIET SOCIALIST REPUBLICS), MR. GUTIÉRREZ OLIVOS (CHILE), MR. ALVAREZ AYBAR (DOMINICAN REPUBLIC), MR. GLASER (ROMANIA) AND MR. COMAY (ISRAEL)

1. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his country, being wedded to a policy of peaceful co-operation and having a coast-line of over 25,000 miles, a considerable tonnage of shipping and a large fishing industry, was interested in the international settlement of the fundamental problems appertaining to the law of the sea — an achievement which would contribute to international co-operation generally. In carrying out its task, the Conference should take account of the interests of all countries, and of the fact that many countries had different economic, political and legal systems. Among the countries taking part in the Conference were many which had only recently obtained their independence and which were now taking part, on an equal footing with other States, in the drafting of international rules for the law of the sea.

2. The rules of international law were not being framed *in vacuo,* for a number had already received general sanction and were in accord with present-day needs; but that might not necessarily be true of enactments promulgated in the national legislation of individual countries during the sixteenth, seventeenth and eighteenth centuries.

3. In drafting and codifying international rules for the law of the sea consideration must be shown for the interests of all States, both large and small, both coastal and land-locked, both ancient and newly founded. The trend towards collaboration must be developed and solutions acceptable to all countries found, bearing in mind that rules of international law were created by agreement between States as sovereign and equal subjects of international law.

4. The régime of the territorial sea obviously affected the vital interests of coastal States for economic and security reasons. In the past, the crucial issue of the breadth of the territorial sea had been determined by each coastal State in accordance with geographical and other considerations, so that different limits had been fixed. At the present time there existed limits of three, four, five, six, nine, ten and twelve miles for the territorial sea. The USSR, together with many other States, had applied the twelve-mile limit; that breadth had been determined by Russia half a century ago. Few had laid claim to a wider belt. Thus, there had arisen a practice whereby coastal States themselves fixed the breadth of the territorial sea within limits ranging ordinarily from three to twelve sea miles.

5. As had been recognized by the International Law Commission after exhaustive study, international law did not permit extensions beyond twelve miles, in other words, it allowed the breadth of the territorial sea to be fixed within a limit of twelve miles. Some delegates who had addressed the conference, particularly the representatives of the United Kingdom and the United States of America, had claimed that the three-mile limit for the territorial sea was the only one generally recognized and accepted in practice and that it must be the starting point for settling the question of the breadth of the territorial sea at the present conference. History refuted the assertion that the three-mile limit was the only universally accepted rule in theory and practice. According to the available information, out of 63 countries, some 40 claimed a territorial sea of over three miles and the Norwegian and Swedish delegations to The Hague Conference of 1930 had contended that the four-mile limit had the advantage of seniority. The attempt to impose the three-mile limit at The Hague Conference had failed, and more recently, at the eleventh General Assembly, it had been described as anachronistic and

as having failed to receive general recognition. His delegation upheld that view.

6. The Soviet Union Government was firmly convinced that the problem of delimitation could only be solved by respect for the sovereign rights and legitimate interests of every State and by taking account of realities. In settling the question of the breadth of the territorial sea, it was obviously essential to keep in mind the interests both of coastal States and of international shipping, and not to make the use of international seaways more difficult. The Soviet Union was a consistent champion of the freedom of the high seas and had already, in the Second Committee (seventh meeting), made constructive proposals for the reinforcement of that principle. It therefore held that the Conference should decide, in accordance with existing practice and international law, that each coastal State should fix its territorial sea in accordance with established practice, within limits ordinarily ranging from three to twelve sea miles, after taking into account historical circumstances, geographical, economic and security interests and also the interests of international shipping. There was no foundation whatever for the allegation that a twelve-mile limit would cause difficulties for international navigation and aerial communications, and the attempt by the few protagonists of the three-mile limit to represent themselves as the only ones concerned with the common interest, while the rest were concerned solely with advancing their own interests, did not stand up to examination. As some speakers had quite clearly and convincingly shown the previous days such contentions were a cover for the special interests of individual maritime powers.

7. The attitude of the Soviet Union concerning the delimitation of the territorial sea was prompted not only by the fact that it had itself adopted the twelve-mile limit, but also by its policy of helping small and economically less advanced countries to develop their national economies and improve their standards of living. In advocating the adoption of the proposal he had put forward for fixing the breadth of the territorial sea, he was guided by his country's attitude of principle ; at the same time, he was convinced that his proposal offered the most equitable solution of a problem in which all States were interested.

8. With regard to the closing lines of bays, as had been confirmed by the International Court of Justice in its judgement in the Anglo-Norwegian fisheries case, there was no generally accepted international rule concerning the maximum length of such lines.[1] His government believed that from both the legal and the practical viewpoints a rule could be based on the breadth of the territorial sea and that the maximum length for the closing line of a bay should be fixed at double that dimension — i.e., 24 miles.

9. His government favoured recognition of the right of innocent passage, which was such an important element in the régime of the territorial sea and was one of the essential conditions for normal international navigation. That right entitled merchants ships to enter the territorial sea of a coastal State for the purpose of entering or leaving a port or following a normal sea route; it did not include the right to stop or anchor, unless such action was necessitated by a breakdown or by weather conditions. Such stipulations did not constitute a restriction on peaceful passage and were a guarantee for the coastal State that the right would not be used for other purposes prejudicial to its interests.

10. His delegation could not agree with the contention that foreign warships could pass through the territorial sea without the consent of the coastal State, because that could entail a security risk for the latter and had in practice given rise to abuse. His delegation considered that the requirement of a number of coastal States that the passage of warships should be subject to authorization or notification provided some protection, particularly for smaller countries, and that it should not be circumscribed in the process of codification.

11. Apart from those general considerations on the régime of the territorial sea, he would at that stage mention only briefly his delegation's views — already expounded in detail in the Second Committee — on the prohibition of nuclear tests on the high seas. He could not agree that the Conference was not the proper place for the consideration of that matter, since the prohibition of such tests on the high seas, though a separate issue, was one which directly affected the régime of the sea and which the Conference therefore could not overlook. Nuclear tests were a patent violation of the principle of freedom of the seas and, consequently, of the freedom of navigation and fishing, as well as of the principle of conservation of the living resources of the sea. They should, accordingly, be declared illegal in order to reinforce that fundamental freedom and, at the same time, safeguard international peace and security.

12. Mr. GUTIÉRREZ OLIVOS (Chile) said that his delegation could not accept the thesis that, in the absence of agreement on the breadth of the territorial sea, only the three-mile limit could be regarded as a reasonable basis for discussion. The United Kingdom representative had not denied that certain States claimed wider zones, nor had he questioned the competence of the Conference to change the so-called " traditional " rule; but he had argued that the three-mile limit was the only legitimate starting-point. He had added that the Conference should first ascertain the existing law and defer consideration of any changes until later.

13. In order to grasp the true significance of the United Kingdom position, it was necessary to remember that jurists in the common law countries were traditionally hostile to categorical formulae and favoured codification only in exceptional circumstances, as a means of confirming existing practice. The exact purpose of the United Kingdom's suggestion then became clear: it was that the Conference should recognize at the outset that the distance established by Galiani was still that accepted by international custom and that, when it came to deal with the question whether a change was necessary and what that change should be, its inability to agree on a specific distance other than three miles should result in consolidation of the three-mile rule.

14. The Conference had not been convened in order to consolidate old rules; however: General Assembly resolution 1105 (XI) showed that its function was to consider every aspect of the subject and to make new

[1] See *I.C.J. Reports, 1951,* p. 131.

law. Moreover, the International Law Commission had expressly stated that, in dealing with the law of the sea, the distinction between codification and progressive development could not be maintained (A/3159, para. 26). The impropriety of the procedure suggested by the United Kingdom was therefore clear.

15. There was, too, considerable doubt as to the United Kingdom's basic contention that the range of coastal batteries determined by Galiani corresponded to the breadth of the territorial sea adopted by the majority of maritime States. At The Hague Conference of 1930, nine countries had favoured the three-mile limit, fourteen had claimed wider zones and eight had been prepared to accept the three-mile limit subject to the express proviso that they were entitled to exercise specialized jurisdiction in an area beyond that limit. Professor Gidel himself had recognized that three miles was only a minimum and that international law left the delimitation of the territorial sea to the discretion of States. Consequently, the basic assumption of the United Kingdom was without foundation.

16. The advocates of the three-mile rule sought to justify their position by arguing that those who held different views had created insuperable obstacles. Particularly strong language had been used by critics of the action taken by the South American countries of the Pacific. The facts, however, showed that those countries had done nothing extraordinary or unlawful. Chile, Ecuador and Peru had only taken individual action, and subsequently signed the Declaration of Santiago of 1952, in order to protect the living resources in the maritime zone off their coasts against excessive exploitation by fishing fleets from distant parts. However audacious, that step had received the explicit support of Costa Rica and El Salvador, and the States represented at the Inter-American Council of Jurists at Mexico City in 1956 had recognized it as being consistent with the juridical conscience of the continent. Nor was the act unprecedented; there was a tendency to forget President Truman's proclamation of 28 September 1945.

17. The reasons which had prompted the South American countries of the Pacific to claim limited sovereignty over a 200-mile zone had been recognized as valid by many authorities. It was widely conceded that the exact zone within which the Humboldt current produced its beneficial effects was impossible to determine. On the other hand, those who criticized the use of the word " sovereignty " in the Declaration of Santiago should remember that the terminology used in international law was not uniform and that many of the words were susceptible of various interpretations. It was worth noting, however, that until very recently few authorities had dared to suggest that the coastal State enjoyed sovereign rights over the contiguous zone. The International Law Commission had used the expression " sovereign rights " in article 68 of its draft, and the coastal State's rights over the continental shelf were very similar to those claimed by the signatories of the Declaration of Santiago. In brief, they were sovereign rights for certain specified purposes.

18. Chile had 3,000 miles of sea coast, although the average width of the country was only 90 miles. Its eastern part consisted mostly of mountains. The population was rapidly increasing and the country's agriculture obviously could not meet the growing demand. Consequently, Chile had to rely increasingly on the resources of the sea. His government was therefore deeply distressed when Chile and some of its sister States were accused of action contrary to the interests of mankind. The Declaration of Santiago and the regulations made pursuant to it expressly guaranteed the freedom of navigation and only reserved preferential fishing rights to the nationals of the contracting parties in certain exceptional cases. The States signatories to the declaration had done no more than exercise the right of self-defence, which was recognized by international law in time of peace as well as war. The most ardent supporters of that right had always been statesmen and jurists of the Anglo-Saxon countries. In those circumstances, the Chilean Government deeply regretted that the International Law Commission, in its final report, had rejected the basic thesis of the Declaration of Santiago. Six of the nine countries which had voted for the three-mile rule at The Hague had been represented on the Commission and had scored a temporary triumph. It should be remembered, however, that the idea of a contiguous zone had also once been an object of derision, yet that institution was now accepted in article 66. The theory of the continental shelf, unknown before the Second World War, had similarly received the full approval of the International Law Commission. Furthermore, it was now conceded that the coastal State enjoyed " sovereign rights " in the continental shelf, subject only to the condition that it must not unjustifiably interfere with navigation, fishing or conservation measures.

19. He emphasized that the Chilean Government fully appreciated the reasons which had prevented the International Law Commission from incorporating in article 48 the conclusions of Margolis and Gidel on the question of nuclear tests on the high seas.

20. In conclusion, he expressed the hope that all the States represented at the Conference would show understanding for legitimate interests and a desire to formulate acceptable rules of law without adhering to outmoded principles which had never been generally accepted.

21. Mr. ALVAREZ AYBAR (Dominican Republic) said that until 1952 the breadth of his country's territorial sea had been three leagues and the law had contained no provision concerning a contiguous zone. It had become increasingly clear, however, that Dominican law would have to be brought into line with the prevailing principles of public international law. Consequently, a new act had been passed in 1952 specifying that the territorial sea was three miles broad, and that beyond it there was a contiguous zone of twelve miles, in which the State was entitled to exercise jurisdiction for the enforcement of its regulations governing public health, fiscal matters, customs and conservation. The same act stipulated that the Dominican State reserved its right of ownership and exploitation in the natural resources of the soil and subsoil in an adjacent maritime area, the width of which would be determined by the government or by international treaties. It also contained a transitional provision to the effect that the position of the Dominican Republic was not immutable

in regard to any progressive trends that might develop in positive international law on those matters.

22. That very prudent legislative measure had made the Dominican Republic an appropriate site for the Inter-American Specialized Conference which had met at Ciudad Trujillo in March 1956 to study the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters and natural resources in the light of present-day scientific knowledge. The views expressed at that Conference — the most recent of the Pan-American conferences — were particularly pertinent; the conclusion reached had influenced the text relating to the continental shelf adopted by the International Law Commission (article 67). The representatives at the Specialized Conference had also stated their views on the living resources of the sea and on the interests of the coastal State, and the discussions had brought out a wide diversity of views regarding the breadth of the territorial sea.

23. The Dominican Republic had adopted the three-mile limit for a number of reasons. In the first place, there was no justification for the theory that there was some interdependence between the territorial sea and the conservation of fisheries. Secondly, his government considered that since the right exercised in the territorial sea was sovereignty, and remained full sovereignty although subject to the right of innocent passage, it would be more logical to try to justify extension of the territorial sea by the necessity of exercising sovereign rights over a greater part of the waters pertaining to the State and not, as had sometimes been done, by special security arguments based on military defence, the speed of vessels, smuggling, or the unspecified requirements of States which had been invoked as "vital needs" on several occasions. Lastly, the Dominican Government believed that any increase in the breadth of the territorial sea would constitute an unwarranted extension of State sovereignty. Ever since the First World War there had been a tendency to restrict State sovereignty and to rely increasingly on collective action. Any extension of sovereignty thus seemed at variance with the basic principles of international co-operation.

24. For those reasons, the Dominican Government could not accept the argument that law could be created merely by unilateral action, unless such action was subsequently validated by the consent of other States or had received collective approval in advance.

25. He found it difficult to accept that since 1945, when the first declarations based on the new tendencies had been made, there had been more piracy, more smuggling and more lack of good faith in the exercise of rights, with a consequent reduction of individual security, and that everything was leading to a crisis in internationalism. He preferred to believe that there were only limited differences of opinion which could be reconciled through sincere effort.

26. Mr. GLASER (Romania) said that although the Conference was faced with a difficult task, none of the problems before it was insoluble or incapable of regulation provided that allowance was made for the legitimate interests of every State and that the basic principles of international law were respected. In the past, a small number of maritime Powers had fixed the rules, but with the ever-increasing number of independent States those rules now required the express or tacit agreement of every country. Success should therefore be easier to achieve for the present Conference than it had been for The Hague Conference, when the opposition of a few maritime nations had presented agreement on a realistic delimitation of the territorial sea. So many States having fixed a limit in excess of three miles, it should be possible to agree that the distance should in each case be determined by the coastal State — which was best acquainted with its own geographical situation, its economic and security interests, and the local requirements of international navigation — within, as a rule, a minimum of three and a maximum of twelve miles. His delegation would support any proposal in that sense and believed that the attempt to force States to renounce part of their present territorial sea was doomed to failure. His own country had adopted the twelve-mile limit, which was in accordance with international law.

27. The peaceful co-existence of States with different economic and social systems implied mutual respect for the juridical systems of those States. One of the consequences of that principle in regard to the law of the sea was the necessity of recognizing that State ships could be used for commercial purposes, as in many socialist States, without losing their juridical status, which gave them the benefit of immunity from jurisdiction in accordance with the general principles of international law relating to the immunity of sovereign States and their property.

28. The concept of innocent passage had naturally changed with the times and many coastal States might now have legitimate apprehensions about the passage of warships through their territorial sea. His delegation would accordingly press for a provision recognizing the right of the coastal State to make the passage of such ships subject to previous authorization or notification. It should also be made clear, in the definition of innocent passage for merchant vessels, that it was allowed because their normal sea route traversed the territorial sea.

29. His government agreed that nuclear tests on the high seas, which were incompatible with the freedom of the high seas, should be prohibited.

30. Mr. COMAY (Israel) said that this country had, from the first, been vitally concerned with the law of the sea. In its efforts to become economically self-supporting, it was taking advantage of the fact that it had two coast-lines to build up an ocean-going fleet and a fishing industry. With its land borders sealed off by hostile neighbours and its freedom of navigation disputed, it depended on its coasts for security, economic life and the maintenance of its communications with the outside world.

31. The legal system which sustained the freedom of the seas around Israel's shores had been evolved over several centuries, chiefly through the practice of the traditional maritime Powers and the genius of their jurists. In pursuing their own inter-continental concerns, those Powers had laid the foundations of the maritime law which was now a common asset. The full process of evolution, however, was far from being spent and the international law of the sea would have to be constantly modified to meet new needs and new technical developments. He hoped that well-established rules which

had enjoyed great authority for decades would suffer the minimum of impairment in that process.

32. In advocating far-reaching changes, some delegations had invoked the special conditions in their area which made the traditional rules inappropriate. Views such as those of the South American States of the Pacific deserved great sympathy and respect, but they threw into relief the difficulty of changing accepted rules in a manner that would take account of different conditions in different parts of the world. The situation in the south Pacific, for instance, appeared to be very different from that in the Mediterranean and the Indian Ocean, in which any further extension of the territorial sea would serve neither the individual nor the common good.

33. Some of the Mediterranean States still adhered to the three-mile limit, while others had extended this territorial sea to six miles, which should be the maximum. Israel had reluctantly joined the second group for reasons of local conformity and would be willing to consider its position afresh, since the balance of advantage remained with the three-mile rule. In any case, article 3 merely recognized that the practice of States was not uniform and it did not settle the legalisms involved; it certainly did not license any coastal State suddenly to appropriate the high seas up to a limit of twelve miles from its coast, regardless of the rights of other States or of the international community as a whole.

34. He agreed upon the need for a careful scrutiny of the articles on innocent passage. It would be hazardous to leave unclarified the present provisions on the rights of coastal States to interfere with the passage of foreign ships. Innocent passage was an independent right, not subordinate to the right of sovereignty over the territorial sea.

35. The contention that coastal States should be allowed to extend their territorial sea in order to secure greater control of the living resources in adjacent waters was certainly not valid with regard to the Mediterranean, the fishing resources of which were concentrated in a few localized areas and were unlikely to be exhausted by the techniques employed. The countries concerned lived mainly from agriculture and industry, fishing being only a secondary source of food. Furthermore, considerable progress had been made in mutual co-operation through the General Mediterranean Council for Fisheries. The delegation of Israel therefore believed that such economic and social questions should be considered independently of the problem of the breadth of the territorial sea; nor should there be sweeping exclusivity on any other basis. The provisions adopted should, however, be sufficiently flexible to take exceptional cases into account. The draft articles on fishing and the continental shelf showed that the specific needs of a coastal State could be dealt with on their own merits without any extension of the territorial sea itself.

36. The International Law Commission had omitted any mention of the special problems arising in connexion with bays, gulfs and estuaries having more than one coastal State. For example, whatever might be decided about extending the territorial sea, no extension could ever justify the appropriation by one coastal State of waters in an international gulf deemed to be part of the high seas, without regard for the rights of other States. Furthermore, the rule set forth in article 7 regarding the closing line for bays would be meaningless if the coast of more than one State lay behind the closing line of a bay. Again, the right to suspend innocent passage could not be exercised in such a manner as to deny access to ports within such a bay and the only feasible rule was free passage. Other difficulties would arise with regard to articles 12, 13 and 66.

37. With reference to the statement by the representative of Saudi Arabia, he pointed out, firstly, that international law knew nothing of Arab coasts and waters any more than it did of Slav or Anglo-Saxon waters. International law dealt with relations between States. The description of the Gulf of Aqaba as " closed Arab waters under exclusive Arab jurisdiction " was based neither on law nor on fact, since there were four coastal States on it. Secondly, if the suggestion were accepted that where a normal atmosphere did not prevail international law could be suspended, international law would become meaningless and the peace of the world would be destroyed. The United Nations Charter did not permit of a state of war between Member States. In 1951, the Security Council had firmly rejected the contention that there was a state of war between Israel and its neighbours and that belligerent rights could therefore be exercised against shipping. The Conference was neither a political forum nor a judicial organ and could not deal with specific local situations and conflicts. Self-interest cut across continents and political groupings, but it was enlightened self-interest to preserve the sea as a common domain.

The meeting rose at 1 p.m.

THIRTEENTH MEETING

Thursday, 13 March 1958, at 10.30 a.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. SHUKAIRI (SAUDI ARABIA), MR. GARCÍA AMADOR (CUBA) AND MR. GASIOROWSKI (POLAND)

1. Mr. SHUKAIRI (Saudi Arabia) paid a tribute to the work of the International Law Commission, and welcomed its choice of the term " territorial sea " which his government had decided to adopt by a decree of February 1958. It was to be hoped that the adoption of a uniform term would not only remove confusion, but also prevent abuses such as had arisen in complaints lodged with the Security Council, in which the term " territorial waters " was used as meaning exclusively inland waters.

2. He applauded the Commission's wisdom in defining the juridical status of the territorial sea as well as in asserting the coastal State's sovereignty over the air space above it and over the seabed and sub-soil beneath

it, in a manner consonant with existing international law, as formulated in the text adopted at The Hague Conference of 1930[1] and numerous international conventions. A similar formulation had been used in his government's decree of February 1958. The Commission had finally settled an academic controversy, and had proclaimed the coastal State's inherent right to the same sovereignty over its territorial sea as it had over the land, without which sovereignty its existence would be threatened.

3. Accordingly, subject to some drafting changes, his delegation favoured articles 1 and 2 of the Commission's draft. In regard to the right of innocent passage, he agreed with the United Kingdom representative that it was analogous to a right of way but disagreed with that representative's conclusions since, under every system of law the exercise of a right of way must be subject to law. Thus an aggressor had no right of way through the property of his victim, and a State found guilty of a breach of the peace, a violation of international law or defiance of the United Nations Charter, was not entitled to a right of way through the territorial sea of a State directly affected by its actions. The right of innocent passage must be subject to the security of the State, since that was the basis of international law.

4. The Commission's failure to reach agreement on the fundamental issue of the breadth of the territorial sea was mainly due to the recalcitrant attitude adopted by the handful of adherents of the obsolete three-mile limit, which no longer corresponded to present-day needs. That attitude had remained unchanged during the twenty-eight years which had elapsed since The Hague Conference, where it had wrecked the valuable preparatory work of many years. It was for the present conference to reach a successful settlement of the question, which, though juridical in form, involved political and national issues of the highest order. He could not endorse the United Kingdom representative's contention that the Conference was solely a legal forum, inasmuch as, according to the Commission's recommendation and General Assembly resolution 1105 (XI), its task was to examine the law in its economic, political and other aspects.

5. The United Kingdom representative had belittled the utility of examining the origin of the breadth of the territorial sea, because that would undermine the position of supporters of the three-mile limit. It was necessary to remember that the concept of the coastal State's dominion over its territorial sea had been founded on the rule of self-defence, the most ancient right and duty of any community. Security requirements were, however, bound to change with the times, as was the criterion of delimitation, which had been, in turn, the distance navigable in two days, the range of the visual horizon and the range of a cannon, then estimated at three miles. A whole series of judgements in both United States and United Kingdom courts had confirmed that last criterion, as had also a series of international treaties concluded during the eighteenth century.

6. With the advent of fresh economic interests, advances in science and technology and new threats to the security of States the time had come for further progressive development of international law. Indeed, by force of necessity, States had already been compelled to exercise dominion over wider belts of territorial sea and their practice had received recognition. It was by new practice superseding the old that international law was created. In support of his argument he cited a series of extensions promulgated by a number of States, emphasizing in particular the recognition by the United States, in its treaty of 1948 with Mexico, of a belt of territorial waters nine nautical miles in breadth — a fact which, together with others, disproved the United States representative's claim that his country had been a consistent upholder of the three-mile limit.

7. There was thus much evidence to substantiate the Commission's conclusion that international practice was not uniform in regard to the delimitation of the territorial sea : in support of the extension of the territorial sea beyond the three-mile limit and in order to show that that limit did not command universal recognition, had long been contested and had ceased to be a rule of general practice he quoted from a number of United States and other authorities and from conventions.

8. His own country had recently fixed the limit of its territorial sea at twelve nautical miles in conformity with modern trends and practice as well as with the Commission's conclusions. It remained for the Conference to sanction extensions within that maximum, each coastal State being left free to choose for itself — a procedure which would accord with the Commission's recommendations and would in no sense constitute an encroachment upon the freedom of the high seas.

9. In conclusion, he said he had deliberately refrained from refuting the allegations made by the representative of Israel at the twelfth meeting, because it would be more fitting to hear the views of its States that had founded Israel, because his delegation was only willing to consider statements made by representatives of States which had been legitimately born, in their legitimate homeland, and because Israel was without international frontiers, either on land or sea . . .

10. Mr. COMAY (Israel), intervening on a point of order, said that the speaker was out of order in expressing views about the legality of the existence of another State, and asked that his remarks be expunged from the record.

11. Mr. SHUKAIRI (Saudi Arabia), observing that a considerable portion of the Israeli representative's statement the previous day had been devoted to criticizing the attitude of the Saudi Arabian Government, said that he had not wished to question that representative's credentials.

12. The CHAIRMAN pointed out that there was no provision in the rules of procedure authorizing the presiding officer to require the withdrawal of expressions of the kind which in many deliberative assemblies would be subject to disciplinary action. He had therefore taken no action on the one or two occasions during the general debate when such expressions had been used. On the point of order raised by the representative of Israel, he ruled that the representative of Saudi Arabia had not been in order in impugning, directly or indirectly, the credentials of another representative.

[1] Ser. L.o.N.P., 1930, V.16, p. 213.

13. Mr. SHUKAIRI (Saudi Arabia) accepted the Chairman's ruling and, continuing his statement, said that under the Palestine Armistice Agreements, endorsed by the Security Council, the status of Israel was that of an occupied zone with armistice lines dictated by military considerations and without political significance. Israel had no legal standing either in the Mediterranean or on the Gulf of Aqaba, which was wholely inland water under the exclusive sovereignty of Saudi Arabia, the United Arab Republic and Jordan. The eastern Mediterranean was entirely within the dominion of the United Arab Republic, Palestine, Lebanon, Turkey and Greece.

14. Mr. COMAY (Israel) reserved his right under rule 24 of the rules of procedure to reply, if necessary, to the statement by the representative of Saudi Arabia.

15. Mr. GARCÍA AMADOR (Cuba) said that the importance of the Committee's general debate was enhanced by the fact that speakers were not concentrating solely on the problems of the territorial sea and the contiguous zone but were ranging over the juridical régime of the sea as a whole. That development had been inevitable from the start because of the interdependence of the various topics, and would greatly help to clarify the issues before the Conference.

16. The General Assembly had instructed the Conference to deal with a branch of international law that was currently undergoing a continuous process of transformation, the causes of which were often wholely outside the field of juridical science. The changes were mostly due to technological developments and their economic and social repercussions on the lives of peoples. The new developments were thus an inescapable fact, but care should be taken to ensure that they were viewed in their proper perspective and interpreted in a manner consistent with reality.

17. The most characteristic new development was the gradual recognition of the special interests of the coastal State in the resources of the waters adjacent to its coast. It would be erroneous to contend, however, that those interests were to be given absolute priority over the interests of mankind as a whole. The interests of the community of nations had already been expressly recognized in resolution LXXXIV adopted by the Tenth Inter-American Conference at Caracas, and the greatest merit of the International Law Commission's report (A/3159) was that it represented a serious effort to reconcile those two apparently conflicting categories of interest. Those who maintained that the Commission had not gone far enough in its recognition of the rights of the coastal State were being somewhat unfair.

18. Other important points to remember were the interdependence of the various factors involved and the unity of the subject before the conference. At first sight, those questions appeared purely academic, but they also raised certain vital practical considerations. In the first place, the fact that the various legal, economic, scientific and other factors were closely interdependent meant that the validity of any provision would not be determined solely by the fact of majority acceptance. If a rule should conflict with some economic or scientific reality, the fact that it had been approved by the Conference would be of little consequence. Such a situation had already arisen in Latin America in connexion with one of the " principles " adopted at Mexico City in 1956 by the Inter-American Council of Jurists.

19. The unity of the subject also had a practical bearing: when the subject before the Conference was viewed as a whole, it became apparent that the problems pertaining to the territorial sea, including its breadth, had now lost much of their original importance and that the legitimate rights of the coastal State could be safeguarded otherwise than by an extension of territorial limits. In that respect, the Conference was much better placed than had been the jurists assembled at The Hague in 1930, when even the idea of a contiguous zone had seemed revolutionary.

20. In dealing with the contiguous zone, the Conference should never lose sight of its legal character and purpose. Unlike the territorial sea or internal waters, it was a part of the high seas and the coastal State enjoyed therein only special rights for specified purposes. In the words of Gidel, the zone was " une projection des compétences spécialisées ". As long as the zone was claimed solely for the enforcement of customs, fiscal or sanitary regulations, the issues involved were not highly controversial. Some difficulties arose, however, when such a zone was also claimed as a fishery conservation zone or as an exclusive fishing area. Where the claim was to a conservation zone *stricto sensu,* the interests being protected were not exclusively those of the coastal State and the coastal State's rights were therefore necessarily subject to certain conditions, such as those set forth in the International Law Commission's draft articles on conservation. On the other hand, States which claimed that they could reserve fishing rights in their contiguous zones exclusively to their own nationals were not claiming a contiguous zone in the accepted sense, but a special zone in which the rights exercised were very similar to those enjoyed in the territorial sea. The various difficulties and apparent contradictions might perhaps be resolved through some revision of draft article 66. The rule for measuring the contiguous zone should correspond to what was actually required in practice for the purposes specified in paragraph 1 of that article.

21. As repeated references had been made to the position of the regional group of which Cuba was a member, he would stress what the predominant views of that group really were. The representative of Peru had said at the fifth meeting that the Declaration of Santiago had not been abandoned, and had survived the heavy fire of abuse constantly directed against it. In support of that argument, the Peruvian representative had cited resolution LXXXIV of the Tenth Inter-American Conference and the " principles of Mexico on the juridical régime of the sea ". The first of those documents certainly had no such implications as the Peruvian representative had suggested. At the time, there had been a formal proposal before the Conference for the establishment of a 200-mile maritime zone, but the Conference had confined itself to a very guarded statement. As to the principles of Mexico City, the validity of that document should be considered in the light of the resolution unanimously adopted by the Inter-American Specialized Conference held at Ciudad Trujillo in 1956.

22. Cuba's record as a contributor to the development and codification of international law was second to none, and it had consequently been one of the foremost pioneers in the formulation of new principles of the law of the sea. At the Rome Conference in 1955 Cuba had submitted, jointly with Mexico, a proposal on the conservation of living resources which had since been accepted by the International Law Commission. At Ciudad Trujillo in 1956 Cuba had been the leading proponent of certain rules on the continental shelf, which also appeared in the International Law Commission's draft. Cuba's main preoccupation had at all times been to maintain a balance between the special rights of the coastal State and those of the international community, and the same objective would be pursued by the Cuban delegation at the present conference.

23. Mr. GASIOROWSKI (Poland) said that the pivotal question before the Conference was that of the breadth of the territorial sea. Inability to solve it had brought about the failure of The Hague Conference of 1930. It was clear, therefore, that the present conference would have to approach that question in a spirit of understanding and conciliation.

24. Under Polish law, his country's territorial waters extended three miles, beyond which there was a contiguous zone of the same breadth. Poland did not envisage any extension of those limits ; hence, as far as its immediate interests were concerned, agreement on any breadth in excess of three miles would have no practical effect. Poland sincerely hoped, however, that the Conference would be successful and thus contribute to co-operation between States.

25. The controversy over the three-mile rule, which had disturbed The Hague Conference, was still raging. The speakers favouring the three-mile rule, who seemed to be in a minority, argued that it had acquired a mandatory character by reason of being the only one generally recognized and applied in practice. That contention was not borne out by facts. Even in 1930, more than two-thirds of the States represented at The Hague had opposed the three-mile rule. Its advocates would also encounter difficulties if they claimed that it had acquired the force of law merely through being historically the oldest-established principle. Representatives of Scandinavian countries had already argued at The Hague that their four-mile rule had been evolved earlier. One of the supporters of the three-mile rule had invoked the authority of Gidel, who had, however, clearly stated that, in his view, the three-mile rule was not a rule of international law. In practice, the three-mile rule was only one of many. The Scandinavian countries adhered to a four-mile limit, while several countries of the Mediterranean basin had set a six-mile limit. Another important group of countries had fixed the breadth of their territorial sea at twelve miles. In those circumstances — and bearing in mind that the fundamental source of international law was the will of States — it was clear that the law allowed States a certain discretion in the delimitation of their territorial waters.

26. The Swedish representative had maintained that there was a rule of international law permitting States to fix whatever breadth they desired, provided that it did not exceed a certain maximum. The Polish delegation shared that view, but could not understand why the Swedish representative had proposed that the maximum should be set at six miles. If international practice was to be the decisive factor, there was no reason for stopping half-way and ignoring the twelve-mile rule, which had been internationally applied for many years. The Polish delegation therefore considered that the Conference should agree on a rule confirming the right of States to claim a territorial sea not less than three miles and not more than twelve miles broad. On that point, it shared the views of the Soviet Union delegation.

27. The question of the territorial sea was closely linked with that of the contiguous zone. The narrower a country's territorial sea, the greater the importance it attached to that zone. The speed of modern vessels rendered a narrow belt of sea inadequate for the effective protection of legitimate interests. The International Law Commission had consequently been fully justified in recognizing the right of States to establish contiguous zones. An important difficulty nevertheless remained. According to article 66 of the draft, the State exercised in the contiguous zone the control necessary to prevent infringement of its customs, fiscal or sanitary regulations. The draft thus left out of account the coastal State's special security rights in the zone. Provisions confirming those rights had been included in several draft codes prepared in the past. The International Law Commission had not recognized them, however, on the grounds that the extreme vagueness of the term " security " would open the way for abuses and that, where " measures of self-defence against an imminent and direct threat " to the State's security were concerned (para. 4 of commentary on article 66), the matter was governed by the general principles of international law and the Charter of the United Nations. Those arguments seemed unconvincing, for the Commission itself had used the term " security " in other contexts, particularly in article 15, paragraph 3, and a State might be obliged to take precautionary measures against something less serious than an " imminent and direct threat ".

28. The recognition of a State's security rights in the contiguous zone was particularly important for countries with a narrow territorial sea. Failing such recognition, those countries might be compelled to extend their territorial waters in order to secure protection of their legitimate interests.

29. The question of the contiguous zone also raised a point connected with the right of hot pursuit (article 47). The Commission had rightly stressed that pursuit could be undertaken in case of violation of laws and regulations within the internal waters or the territorial sea of the pursuing State. That provision should be supplemented, however, to allow a State to undertake hot pursuit when the trespass was committed in the contiguous zone.

30. If the question of the breadth of the territorial sea were satisfactorily solved, several other problems would disappear automatically. For example, there would be no further difficulty regarding the question of the length of the closing line across a bay.

31. Lastly, article 24 would be greatly improved if what it stated to be the exception were made the rule. In support of that opinion, he cited the words used in the

North Atlantic Fisheries Arbitration case by the United States jurist Elihu Root: " Warships may not pass without consent, because they threaten."

The meeting rose at 1.5 p.m.

FOURTEENTH MEETING

Thursday, 13 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

Proposal of the delegation of Mexico (A/CONF.13/C.1/L.1/Rev.1) *(concluded)* [1]

1. Mr. GARCÍA ROBLES (Mexico) introduced his delegation's revised proposal (A/CONF.13/C.1/L.1/Rev.1), the text of which was as follows:

" *The First Committee*

" *Requests* the Secretariat:

" (*a*) To draw up, in consultation with the delegations, a summary table of the provisions of the laws and regulations in force in the States represented at the Conference with regard to the breadth and juridical status of the belt of sea adjacent to their coasts, as well as of the claims on the same matter which the governments of such States may have made officially prior to the opening date of the Conference;

" (*b*) To use as sources for the aforesaid table the relevant documents and publications of the United Nations, and also others which may be provided by the delegations; and

" (*c*) To submit the result of its work to the Committee within a period not exceeding ten days."

2. He drew attention to the fact that the phrase " the present practice and positions " had been replaced by the words " the provisions of the laws and regulations in force " and " the claims . . . made officially ". The object of inserting this latter phrase was to include in the summary table claims which had not yet been incorporated in the texts of laws or regulations.

3. The summary table proposed by his delegation would be found a very useful working paper, since the secretariat publication, *Laws and Regulations on the Régime of the Territorial Sea* (ST/LEG/SER.B/6), contained no information on certain countries represented at the Conference.

4. Mr. CARMONA (Venezuela), supporting the Mexican proposal, considered that the Conference should have before it information for all the States represented with regard to the laws and regulations on the subjects to be discussed.

5. Sir Gerald FITZMAURICE (United Kingdom) said that his delegation would have had to vote against the original Mexican proposal; it would have to abstain from voting on it even in its revised form because it appeared to create a great deal of unnecessary work for the Secretariat without serving any useful purpose. A volume compiled by the Secretariat contained precisely the information called for by the Mexican proposal. The only information lacking affected a small group of States which were in process of declaring themselves as rapidly as possible. By the time that information was communicated to the Committee, the Conference would have advanced so far in its proceedings that the information would have become superfluous.

6. Mr. SEN (India) supported the revised Mexican proposal, which contained certain amendments suggested by his delegation and would produce information supplementing that already communicated by the Secretariat.

7. Mr. BARTOS (Yugoslavia) was in favour of the Mexican proposal.

8. Mr. LIANG (Secretariat) said that the Secretariat had had certain misgivings regarding the original Mexican proposal since it would have meant analysing and interpreting the present practices of States. The Secretariat would be happy to do the work called for in the revised proposal if the summary table would be of real use to the Conference. The Secretariat would ask States which had not responded to its request for copies of their laws and regulations on the territorial sea to do so in order that the next edition of the publication, *Laws and Regulations on the Régime of the Territorial Sea,* might be complete. The secretariat could only meet the time-limit specified in the Mexican revised proposal if it had the co-operation of all delegations, especially of those whose governments had not yet furnished information.

9. Mr. GARCÍA AMADOR (Cuba) expressed some doubts about the wording of the revised proposal.

10. Mr. GARCÍA ROBLES (Mexico) said that he had purposely used the phrase, " claims on the same matter which the governments of such States may have made officially prior to the opening date of the Conference ", in order to cover any such claims made officially by governments, but not those made by an individual speaking at a private meeting, for example.

11. Mr. GARCÍA AMADOR (Cuba) said that his delegation would not oppose the revised proposal, but he still had some doubts regarding the success which the Secretariat might expect in collecting the information desired. He was not referring to the laws and regulations in force regarding the territorial sea, but to certain claims which had been made. It was difficult sometimes to decide whether such claims were made officially or unofficially.

12. Sir Claude COREA (Ceylon) supported the revised proposal since it would not involve an interruption of the Committee's work such as adoption of the first proposal would have caused, and would also have the advantage of completing the documentation communicated by the Secretariat.

13. Mr. HOOD (Australia) observed that while the revised proposal asked the Secretariat for certain work which would undoubtedly prove useful, the time-limit proposed for its accomplishment might reduce the ultimate value of the study. His delegation would have

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[1] Resumed from the eighth meeting.

to abstain from voting on the proposal, because although the proposed study was necessary, there was ground for doubting whether it was desirable to make a special request for such information at the present stage.

14. Mr. CARMONA (Venezuela) suggested in order to make allowance for the doubts expressed regarding the wording of the revised proposal, that the word " claims " might be replaced by " rights invoked by States." He also suggested deleting the word " officially " since all claims with regard to the breadth and juridical status of the zones of the sea contiguous to a country's coasts must be made in accordance with the customs, principles and laws of that country.

15. Mr. GARCÍA ROBLES (Mexico) did not object to the deletion of the word " officially ", but he asked the representative of Venezuela not to press his amendment, since the wording of the Mexican proposal aimed at facilitating the Secretariat's task by limiting it to a specific number of claims already made.

16. Mr. LIANG (Secretariat), referring to the interpretation of the word " claims ", said that there was no doubt in his mind that a proclamation by the president of a State could be regarded as an official claim. However he doubted whether a statement by a member of the Sixth Committee of the General Assembly claiming a certain limit for the territorial sea could be so regarded.

17. Mr. GARCÍA ROBLES (Mexico) felt that there would in practice be no great difficulties concerning claims which might have been put forward in the Sixth Committee. In most cases, such claims would reflect a situation already covered by the laws and regulations of the State concerned. In the rare cases where this was not so, the Secretariat would act in accordance with paragraph (*a*) of the revised proposal, and consult with the delegations concerned; the latter would decide whether or not the declaration or declarations in question should be treated as " official claims ".

18. Mr. GARCÍA AMADOR (Cuba) emphasized that the Secretariat would be seriously embarrassed if it had to interpret the text of the revised proposal in case of a contradiction between a specific claim and the written law of the State concerned.

19. Sir Gerald FITZMAURICE (United Kingdom) said that the discussion had only served to increase his misgivings regarding the revised proposal. He associated himself with the Cuban representative's remarks and hoped that in compiling the summary table the Secretariat would indicate quite clearly cases in which a State was making a new claim and especially those in which claims, although not new, differed in some way from what was already contained in the laws of the State concerned. As he understood it, the representative of Mexico envisaged the inclusion in the summary table of claims of that type and, where a difference existed, a statement of the most recent claim. He feared that in such cases the table might provide misleading information, particularly if compiled partly from the legislation of the country concerned and partly from statements which various representatives of that country might have made in forums such as the Sixth Committee of the General Assembly.

20. Mr. RUEDEL (France) felt that in view of the extreme difficulty of the subject the revised proposal would place too heavy a burden on the Secretariat. The latter would have to include in the proposed summary table all existing laws and regulations and all claims that had been made. The French delegation would have to abstain if the proposal was put to the vote.

21. Mr. KRISPIS (Greece) said that for the reasons given by the United Kingdom representative he would have to abstain from voting on the revised proposal.

22. Mr. VERZIJL (Netherlands) also would have to abstain.

23. Mr. LIANG (Secretariat) felt that it would be invidious to make a distinction between members of the Sixth Committee of the General Assembly and representatives at the present Conference so far as their ability to interpret the position of the country they represented was concerned. In compiling the summary table, the Secretariat would call attention to any divergency that might come to light between a provision in the laws and regulations of a particular State and any so-called " official " claim it might make. It would not be easy for the Secretariat to make distinct presentations of the laws and regulations of a State on the one hand and of the official claims made by that State on the other.

24. Mr. BARTOS (Yugoslavia) congratulated the representative of the Secretariat on his reply, which was the only correct one in view of the existence of resolution 598 (VI) of the General Assembly dealing with reservations to multilateral conventions ; according to that resolution, the Secretary-General should only transmit communications received from States concerning matters of fact without passing upon their legal effect, leaving it to the States themselves to draw legal consequences in cases where such interpretation would give rise to a difference of opinion.

25. Mr. OHYE (Japan) would have to abstain from voting on the revised proposal.

26. Mr. HSUEH (China), while agreeing that the proposed summary table would be useful, had some doubts on the second part of paragraph (*a*) of the proposal. The word " claims " could, it seemed, be interpreted as covering claims that might have been put forward for the future. That would make the task of the Secretariat very difficult. He would therefore have to abstain from voting on the proposal.

27. Mr. GUTIÉRREZ OLIVOS (Chile) suggested that instead of calling for a summary table the Mexican proposal should ask the Secretariat to supplement the information already communicated with data on States not covered in the Secretariat's publication, *Laws and Regulations on the Régime of the Territorial Sea.* The information submitted should take the form, not of a summary table containing matters which might raise

questions of interpretation, but of an analysis of laws and regulations.

28. Mr. GARCÍA ROBLES (Mexico) said that his delegation had carefully considered what form the information to be communicated by the Secretariat should take and had decided that it would be more useful if it took the form of a summary table. The *Laws and Regulations on the Régime of the Territorial Sea* was a difficult volume to consult, but the summary table he had suggested, if accompanied by appropriate footnotes, would be a very easy one. The Chilean representative's suggestion was therefore unlikely to facilitate the Committee's work.

29. The CHAIRMAN put to the vote the revised Mexican proposal (A/CONF.13/C.1/L.1/Rev.1).

The proposal was adopted by 39 votes to none, with 26 abstentions.

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. TUNCEL (TURKEY), MR. RUIZ MORENO (ARGENTINA) AND MR. BÉLIZAIRE (HAITI)

30. Mr. TUNCEL (Turkey) recalled the valuable services rendered to the Montreux Conference by its technical committee. While it would be difficult for the present conference, having already adopted its rules of procedure, to establish such a committee, it was still possible for it to set up groups of experts in connexion with any technical questions which might arise during the examination of the articles. The experts would in each case be drawn from the delegations directly interested in the issue under consideration.

31. In view of its geographical position, and of the fact that its coasts were adjacent to the Turkish straits — the Bosphorus and the Dardanelles — to the internal sea of Marmara, and close to a number of islands, Turkey felt a special concern in all maritime questions, and was affected by all the articles of the International Law Commission's draft. The Montreux Convention governed international navigation through the Straits. Article 12 of the Treaty of Lausanne laid down the juridical status of certain of the Aegean islands.

32. The Turkish delegation, while paying a tribute to the Commission's work, would point out that its composition had prevented many governments from actively participating in its work. True, the membership of the Commission had been enlarged, but the United Nations practice of carrying out elections on the basis of regional groupings meant that the composition of a commission did not necessarily correspond to the realities of the situation.

33. The Commission did not appear to have taken fully into account, particularly with regard to the articles on straits, the need expressed in its statute for codifying the rules of international law in the light of State practice, precedents, and the opinions of writers.

34. With regard to the relation of the proposed rules to existing treaties, he emphasized that those treaties formed part of international law and could not therefore be set aside by any general rules enacted under the international instrument or instruments which the Conference might adopt. The Commission itself, in article 1 of its draft and in the commentaries to articles 12 and 24 and to section III, had made it clear that the rules it had drafted did not affect the rights and duties of States under existing treaties and, more especially, under the Charter of the United Nations. It would have been preferable that the Commission should not depart from treaty provisions in force when endeavouring to draft general rules. That was particularly true with regard to the legal status of straits. The Turkish Government had in its comments pointed out that the régime of straits did not lend itself to the formulation of general principles.[2] Although his delegation did not entirely agree with the International Law Commission's draft, it was prepared to accept it as a basis of discussion, but its participation in the Conference did not imply any commitment on the part of his government.

35. With regard to the breadth of the territorial sea, the text of article 3 as adopted by the Commission was calculated to create confusion. For various reasons the delimitation of the territorial sea did not lend itself easily to general agreement. Economic factors were of special importance in that matter. Countries which had inadequate land resources looked to the living resources of the sea for compensation. Examples could be given in support of the reservation of exclusive fishing rights over a sea belt broader than three miles. On the other hand, there were cases where economic needs were not the essential reason for extending the breadth of the territorial sea. It was therefore necessary, as a first step, to examine carefully the economic conditions prevailing in all the coasts of the world in order to determine whether there existed economic needs justifying an extension of the territorial sea.

36. Turkey was prepared to accept a breadth of three miles if that was generally agreed. Its position was rather special in that respect. The Soviet Union, Romania and Bulgaria claimed a territorial sea of twelve miles and Greece and Syria six miles. Failing the adoption of a general rule, Turkey would have the right to invoke the principle of reciprocity as it was entitled to do in accordance with international law; the rules concerning the delimitation of the territorial sea of two neighbouring countries could not be applied if the two countries concerned claimed different breadths.

37. The articles concerning the right of innocent passage, those on the high seas and to some extent those on the continental shelf, could serve as a basis for agreement. In any event, the First Committee would act wisely by examining first the articles on the right of innocent passage.

38. In the opinion of his delegation, the text of article 26, paragraph 2, concerning internal waters, should be completed and then incorporated in article 4 or 5. The closing line specified in article 7 on bays should be longer. Article 12, paragraph 3, should be amended so as to avoid the formation of enclaves in the middle of

[2] See *Yearbook of The International Law Commission, 1956* (A/CN.4/SER.A/1956/Add.1), Vol. II, p. 73.

a strait whatever its breadth; the right of passage had to be recognized. Article 12 was not clear concerning the delimitation of the territorial sea at the mouth of a strait; the system adopted in article 13 for the delimitation of the territorial sea at the mouth of a river could be extended to that case. Article 17, paragraph 4, was at variance with customary law; the passage of warships through a strait could be suspended or made subject to special conditions. In connexion with article 22, government ships operating for commercial purposes should be unarmed in order to benefit from the rules contained in sub-sections A and B. Lastly, the competence of the coastal State to enact regulations concerning the passage of warships in the territorial sea should be recognized.

39. Mr. RUIZ MORENO (Argentina) said his country had long advocated the revision of certain outmoded principles of the law of the sea. As long ago as 1916, the Argentinians Admiral Storni and Professor Suárez had referred to the need to seek international agreement to extend the territorial sea. Admiral Storni had submitted to the International Law Association, at its 31st Congress held at Buenos Aires in 1922, the view that, in the light of geographical and other considerations, a uniform breadth for the territorial sea could not satisfy all cases. Suárez had pointed out that the old rules concerning the territorial sea were out of date as a result of changes in military defence; furthermore, those rules impeded the exploitation of the riches of the seas. His country had accordingly readily subscribed to the declaration adopted at the third meeting of the Inter-American Council of Jurists in Mexico City in January 1956 to the effect that the enlargement of the zone of the sea traditionally called " territorial waters " was justifiable. The Argentine delegation was, however, prepared to contribute to the search for an agreement on the basis of mutual concessions.

40. It was apparent that the freedom of the seas was the underlying principle of the various articles drafted by the International Law Commission. Rules which had been formulated at a time when navigation was by sail and fisheries were conducted with rudimentary tackle had to be revised in the light of present needs. There was in the Americas a strong movement for the revision of those rules in relation to the utilization of the resources of submarine areas.

41. Several speakers had invoked an advisory opinion of the International Court of Justice concerning the Anglo-Norwegian fisheries case as an argument against the movement for revision. In that connexion, he would call to mind the provisions of article 59 of the Statute of the International Court of Justice stating that a decision of the Court had no binding force except between the parties and in respect of that particular case. In any event, the International Court had added certain significant comments to those quoted by the other speakers. It had, in particular, stated that " another fundamental consideration . . . is the more or less close relationship existing between certain sea areas and the land formations which divide or surround them " and that " there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage ".[3] The Court had also stated that the solution it had adopted was dictated by geographical realities.[4] It was precisely on those principles — namely, those of the close relationship between certain sea areas and the land domain and of the economic interest peculiar to certain regions — that the measures adopted by various American States on the law of the sea were based.

42. The Argentinian delegation agreed that it was desirable to arrive at a text acceptable to the majority of States. If such a text could not be found for all the questions under discussion, it could perhaps be reached with regard to some of the institutions of the law of the sea. As, in the case of the territorial sea, it appeared unlikely that a single text would obtain general agreement, it was perhaps desirable to begin with simpler problems and postpone the discussion of the more complex ones.

43. The old concept of the freedom of the seas could no longer be regarded as sacrosanct or absolute, just as sovereignty itself was not absolute. Two new trends of thought were becoming apparent: first, that the general interest required the regulation of the use of the high seas by individual States and, secondly, the idea of the special position of the coastal State arising out of modern technical progress. The rights and duties of coastal States, particularly in regard to the high seas near their coasts, had to be revised in the light of those new trends.

44. Writers had at one time argued whether it was permissible to limit the principle of freedom of the seas by treaty. State practice, however, showed that States could validly enter into agreements concerning the use of their high seas. It was thus, for example, that international treaties had been concluded for the suppression of the slave trade, the promotion of the safety of life at sea and the enactment of rules for the avoidance of collisions at sea. The United States had gone even further by entering into agreements with various European countries concerning the suppression of the smuggling of alcoholic beverages. It could be said that the international community was heading towards the regulation of the use of the oceans for the purpose of avoiding abuses and of utilizing their resources.

45. His delegation did not believe any useful purpose would be served by discussing at that stage whether the unilateral declarations of States had international validity. What the United Nations expected was international legislation which would bring those discussions to an end. It was necessary to dispel another misunderstanding. Declarations made by certain American States had been construed as a claim to an exaggerated extension of their territorial sea. Following the clarifications given by the representatives of those States, it was now clear that that interpretation was inaccurate.

46. It was possible that the failure to show understanding for certain new trends might lead to no general agreement being reached on the extent of the territorial sea. It did not appear, however, that that same lack of

[3] *I.C.J. Reports, 1951*, p. 133.

[4] *Ibid.*, p. 128.

understanding would be displayed with regard to the special interest of the coastal State in the protection of fisheries and the exploitation of the resources of the continental shelf. In a report submitted to the League of Nations in 1926, the Argentinian Professor Suárez had stressed the fact that most of the useful species were concentrated in sea areas having a depth of less than 200 metres. It was a law of nature that the extent and variety of the living resources of the sea was in inverse ratio to the depth of the waters.

47. The general debate had been conducted against the background of the freedom of the seas. It was desirable that the discussion of the draft article by article should take place against a different background, that of the functions of the State in the territorial sea and contiguous zone. Against that background, the Conference should recognize the existence of a fisheries and conservation zone. The proposal by the Indian delegation (7th meeting) constituted an excellent basis of discussion in that respect.

48. With reference to the special case of ports or bases accessible only by means of a channel across the high seas, he observed that such channels were subject to the sovereignty of the coastal State irrespective of the breadth of the territorial sea.

49. Lastly, with reference to a statement by the Uruguayan representative concerning the Rio de la Plata, which had been described (A/CONF.13/1, para. 43) as an estuary or an historic bay, he pointed out that, as its name implied, the Rio de la Plata was not an estuary or a bay, but a river.

50. Mr. BÉLIZAIRE (Haiti) said that the problem before the Conference could be summed up as that of determining the manner in which States should make use of the seas which nature had intended for the common use of the international community. In the days when force had been the decisive factor in human relations, it had been possible for a few individuals to appropriate for their sole benefit the resources which nature had placed at the disposal of all. At present, scientific progress, coupled with the moral progress of which the establishment of the United Nations was the tangible expression, made it imperative that all disputes should be settled by peaceful means. International law, whether it dealt with the sea, the air or the land, had to be based on universal consent. None of the Great Powers could, for example, impose its views when these clashed with those of the others. The Haitian delegation hoped that such problems as the territorial sea, the contiguous zone and access to the sea by land-locked countries, would be settled in accordance with the principles of the United Nations.

51. The breadth of Haiti's territorial sea was six miles, but his delegation realized that it was desirable that a uniform distance be adopted in the codification of international law. It would therefore co-operate in the formulation of rules governing not only the extent of the territorial sea but also such questions as the contiguous zone and the high seas.

The meeting rose at 5.50 p.m.

FIFTEENTH MEETING

Friday, 14 March 1958, at 10.45 a.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. SUBARDJO (INDONESIA), MR. KIM (REPUBLIC OF KOREA), MR. ABDESSELEM (TUNISIA) AND MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY)

1. Mr. SUBARDJO (Indonesia) was obliged to speak again because of certain statements made by the United States representative (10th meeting). That representative had suggested that the method of delimitation envisaged in the Indonesian declaration of 13 December 1957 represented a unilateral attempt to convert into territorial, or possibly even internal, waters vast areas of the high seas formerly used by the ships of all countries. He had added that if such acts were tolerated the freedom of navigation would be seriously restricted, and had stressed that the seas were held in common for the benefit of all peoples.

2. The question of archipelagos had not received much attention in the past. It had been discussed at various times by learned societies, and the Preparatory Committee of The Hague Conference for the Codification of International Law in 1930 had included in its report a draft provision stipulating that the constituent islands of archipelagos should be considered as forming a whole.[1] The Hague Conference itself, however, had not even discussed the question in plenary meeting.

3. State practice with regard to the régime of the territorial sea around an archipelago varied greatly, as was shown in preparatory document No. 15 (A/CONF. 13/18). Moreover, the International Law Commission had said in its report that it had been prevented from stating an opinion on the subject, not only by disagreement on the breadth of the territorial sea, but also by a lack of technical information (A/3159, p. 17). But the Indonesian delegation believed that those difficulties did not preclude the Conference's discussing the subject.

4. The traditional method of measuring the territorial sea from the low-water mark was based on the assumption that the coastal State possessed a land territory forming part of a continent. In the case of archipelagos, such a system could not be applied without harmful effects. An archipelago being essentially a body of water studded with islands rather than islands with water round them, the delimitation of its territorial sea had to be approached from a quite different angle. In the opinion of the Indonesian Government, an archipelago should be regarded as a single unit, the water between and around the islands forming an integral whole with the land territory.

5. Indonesia consisted of some 13,000 islands scattered

[1] *Ser. L.o.N.P.,* 1929. V.2, p. 51.

over a vast area. To treat them as separate entities, each with its own territorial waters, would create many serious problems. Apart from the fact that the exercise of state jurisdiction in such an area was a matter of great difficulty, there was the question of the maintenance of communication between the islands. Because of the obvious interdependence of the latter, communications had to be secured in peace as well as in war. Moreover, in wartime, the freedom of communications would be seriously threatened even if the archipelagic State was not itself a belligerent. Events of the Second World War had shown that a neutral flag was no guarantee of freedom of passage.

6. If each of Indonesia's component islands were to have its own territorial sea, the exercise of effective control would be made extremely difficult. Furthermore, in the event of an outbreak of hostilities, the use of modern means of destruction in the interjacent waters would have a disastrous effect on the population of the islands and on the living resources of the maritime areas concerned. That was why the Indonesian Government believed that the seas between and around the islands should be considered as forming a whole with the land territory, and that the country's territorial sea should be measured from baselines drawn between the outermost points of the outermost islands.

7. In referring to situations which might arise in wartime, he had not lost sight of the fact that the draft articles prepared by the International Law Commission were intended to apply only in time of peace. He believed, however, that when urgent matters were being discussed, unpleasant contingencies should not be overlooked.

8. The United States representative had asserted that the Indonesian Government's proclamation of 13 December 1957 constituted a serious encroachment on the freedom of the high seas. But the declaration expressly guaranteed freedom of navigation, provided that it did not endanger Indonesia's security or damage its interests. That provision might seem open to criticism in that it left the question of freedom of navigation solely to the discretion of the coastal State. He had shown, however, that if the interjacent waters were to be regarded as high seas, the Indonesian population might in certain circumstances be left at the mercy of belligerent Powers. Confronted with those alternatives, the Indonesian Government had chosen that which afforded the surest safeguards for the welfare of its people.

9. The measure taken by the Indonesian Government in no way signified that the latter no longer recognized the freedom of the high seas. A country which relied on shipping for its existence could not fail to be a champion of that principle. He had consequently been distressed to hear the United States representative assert that the action of the Indonesian Government amounted to unlawful appropriation because the seas were held in common for the benefit of all mankind. The fact that the seas were the common property of all nations did not preclude the possibility of a special régime for archipelagos of a unique nature.

10. The final decision on the question of archipelagos was a matter solely for the Conference. The fact that the nations most directly interested in the question were few and comparatively weak was no reason for leaving the problem unsolved.

11. Mr. KIM (Republic of Korea) said that the draft articles prepared by the International Law Commission provided a valuable basis for discussion. However, like many other countries, the Republic of Korea could not readily accept some of the draft articles in their present form.

12. The International Law Commission seemed to have concluded that there was no rule of international law fixing the precise breadth of the territorial sea. That fact, in his opinion, merely proved that times and circumstances changed; and the international jurists assembled at the Conference would be doing a disservice to mankind if they failed to take all the implications of those changes into account.

13. The Korean delegation believed that no rule governing the breadth of the territorial sea could stand the test of practical application unless it provided an adequate safeguard for the paramount interests of the coastal State. Several representatives had stressed how useful the three-mile limit had been in the past — at a time when it had been consistent with prevailing conditions. But those conditions had changed, and the three-mile limit was no longer adequate. Korea, as a peninsular State deeply concerned with its security and economic needs, earnestly hoped that the Conference would adopt a principle better adapted to the varying conditions obtaining in different regions of the world.

14. Korea was also greatly interested in draft article 5, which authorized a special régime in areas where there were islands in the immediate vicinity of the coast. The International Law Commission had rightly recognized that, in such circumstances, the baselines for the delimitation of the territorial sea could be drawn independently of the low-water mark.

15. With regard to the right of innocent passage, it was vitally important to ensure that the sovereign rights of the coastal State in its territorial sea were not prejudiced. He could not therefore accept the Commission's recommendation that government ships operated for commercial purposes should be subject to the same rules as private merchantmen. In his view, all government ships should be required to give prior notification of passage, in the same way as warships.

16. In paragraph 4 of the commentary to article 66, the International Law Commission explained that it had not recognized special security rights in the contiguous zone because of the extreme vagueness of the term " security ". That explanation was difficult to accept as there were references to security in other parts of the draft, and he hoped that the omission would be remedied and that the coastal State would be authorized to exercise the control necessary to safeguard its national safety.

17. Mr. ABDESSELEM (Tunisia) said that the report of the International Law Commission and the supplementary material prepared by the Secretariat and experts would greatly help the Conference in its important task. As the interests of States differed, a great deal of mutual understanding would be needed, but even an imperfect result should be a step forward towards a better international society.

18. The processes of codification and the progressive development of international law could not be separated, and, without impugning the value of the former, he must emphasize that it should be concerned with principles on which there was general agreement, should reject those which had no possibility of survival and should open the way to further evolution in harmony with actual needs.

19. It had been argued by those who upheld the three-mile limit that extensions would undermine the principle of the freedom of the high seas; but the Commission itself, in the provisions concerning the continental shelf and the right of visit, had — however justifiably — to some extent derogated from the principle of the freedom of navigation. As drafted by the Commission, article 3 decided nothing, being merely a statement of the existing situation. He cited a number of authorities to show that no universally accepted rule existed, that each State was free to fix the limit of its own territorial sea, and that there was a progressive tendency towards extensions beyond three miles, which, in any event, had never constituted a maximum. Only a rule sanctioned by long practice could be codified, and the three-mile limit had been conclusively rejected at The Hague in 1930.

20. He had been surprised at the conclusion drawn by some speakers from the judgement rendered by the International Court of Justice in the Anglo-Norwegian Fisheries case [2] — namely, that the coastal State was not free to determine the breadth of its territorial sea. In fact, that point had not been at issue, the Court having been required to pronounce on the validity in international law of the lines delimiting the fisheries zone laid down by the Norwegian Government. It was clear that the Court had recognized that the coastal State was free to adapt its delimitation of the territorial sea to practical needs and local requirements. The Tunisian Government held that it was permissible for each coastal State to determine its territorial sea up to a maximum breadth of twelve miles.

21. If he had understood correctly, the special rights being claimed by countries in the south Pacific were for conservation purposes, and as such should be admitted. They did not relate to the breadth of the territorial sea. His delegation would later explain its support for the principle of innocent passage. It found article 1 acceptable, and believed that only limited exceptions to it should be allowed. Tunisia could not agree to foreigners coming to fish in Tunisian territorial waters without authorization. The Tunisian Government was resolved to punish such infringements by every legal means at its disposal.

22. Though Tunisia recognized the need for a contiguous zone, coastal States should not enjoy the same rights there as in the territorial sea in exercising control for customs, fiscal or sanitary purposes, as the creation of such a zone would detract from the principle of the freedom of the high seas.

23. Mr. PFEIFFER (Federal Republic of Germany) thanked the International Law Commission for its valuable work, which had made the Conference possible. Difficult as the Conference's task was, he was sure it could be successfully accomplished, given good will and mutual understanding and provided there was general recognition of the principle of the freedom of the high seas — the cornerstone of the Commission's draft. His delegation supported the articles reaffirming that freedom, but would have suggestions and amendments to offer in those instances where the draft seemed to depart from it. As his delegation agreed in great measure with some of the statements already made, he could explain its point of view very briefly, starting with three general comments.

24. First, some provisions of the Commission's draft went beyond the scope of the section in which they had been placed. For example, the articles on the immunity and nationality of ships had been placed in part II, though they were no less important in the régime of the territorial sea. His delegation considered that all general provisions, and the major definitions, should be brought together in a special section at the beginning of the draft.

25. Secondly, he considered that the Conference should carefully examine the question of the scope of the draft's application. The Commission had indicated in paragraph 32 of its report that " the draft regulates the law of the sea in time of peace only ", but his delegation believed that the draft contained certain rules which should always be unconditionally applicable; and it did not find the expression " in time of peace only " sufficiently precise to preclude the possibility of differing interpretations. During the past decades situations had arisen — and some of them persisted — where it was difficult to decide whether there was a state of peace or war. A formula which could only give rise to fresh doubts should be avoided.

26. Thirdly, many questions pertaining to the law of the sea had been regulated either by general or by regional conventions which were still in force; their relation to the proposed convention would therefore have to be determined.

27. Commenting on articles 1 to 25 and 66, he expressed his delegation's agreement with the view that according to existing international law the width of the territorial sea was in principle three miles, and that that was the sole rule which had for long been recognized without question. There was no foundation for the argument that the rule was no longer applicable, and consequently his delegation would recommend that the Conference reaffirm it. However, account could be taken of the fact that in certain regions a greater width had received the sanction of customary law. Any disputes on the matter should be decided by an international tribunal.

28. There was a close link between articles 5 and 7; any undue extension of straight baselines or the closing lines of bays, as envisaged in article 7, paragraph 2, would bring parts of the territorial sea under the régime of internal waters. His delegation therefore recommended the adoption of a limit of 10 miles in both cases — a limit which, in the latter case, was already incorporated in numerous international conventions.

29. With regard to article 7, paragraph 4, historic title should of course be respected as in other cases, but it would be difficult to establish general rules applicable to " historic " bays.

[2] *I.C.J. Reports, 1951*, p. 118.

30. While on the subject of bays, he wished to point out in reply to the Netherlands representative (6th meeting) that the facts given in chapter V, section 2, of document A/CONF.13/15, concerning the delimitation of the frontier between Netherlands and Germany at the mouth of the river Ems, were perfectly correct. The problem was a special one which was at present under negotiation between the two countries.

31. Together with many other countries, the Federal Republic of Germany considered that there was a close link between the width of the territorial sea and the problem of the contiguous zone. In principle, it supported the establishment of such zones on the lines advocated by the Commission, but it considered that the coastal State's rights in that zone should be strictly defined and limited, since a vague formula conferring powers beyond the scope of article 66 might unduly restrict the principle of the freedom of the high seas.

The meeting rose at 12.5 p.m.

SIXTEENTH MEETING

Friday, 14 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. LAMANI (ALBANIA), MR. RUEGGER (SWITZERLAND), MR. MARTÍNEZ-MORENO (EL SALVADOR), MR. URIBE HOLGUÍN (COLOMBIA) AND MR. SADAKA (LEBANON)

1. Mr. LAMANI (Albania) said that a just and equitable codification of the international law of the sea would contribute to peaceful co-existence between States having different social systems and hence to the cause of peace. In the past, certain rules had been imposed by the great maritime Powers in their own interests. It was necessary now to take into consideration the changes that had occurred and to recognize the legitimate interests of other countries. The task of the present conference, which was attended by many new countries that had had no opportunity of expressing their views at The Hague Conference for the Codification of International Law in 1930, but had now successfully emerged from colonial or semi-colonial rule, would be greatly facilitated by the detailed draft prepared by the International Law Commission.

2. Albania, with over 250 miles of coastline and a growing export and import trade, was particularly interested in the law of the sea. Fisheries constituted an important source of food and were the basis of a valuable export trade. By an Act of 4 September 1952, Albania had fixed the breadth of its territorial sea at ten miles. His delegation considered reasonable the practice whereby States fixed the breadth of their territorial sea at distances varying between three and twelve miles. Some sixty countries had already done so. The contention that the three-mile limit constituted a fixed rule of international law was therefore without foundation. Article 3, paragraph 2, of the International Law Commission's draft left no room for doubt: International law allowed States to extend their territorial sea to twelve miles. His delegation therefore considered that the best international solution would be to adopt a rule permitting each State to fix the breadth of its territorial sea at a distance of between three and twelve miles in the light of its economic, security and other interests.

3. With regard to innocent passage, his view was that foreign warships had no right of passage without the prior authorization of the State to which the territorial sea belonged. There were many examples of foreign Powers using sea routes for other than peaceful ends; a foreign warship crossing the territorial sea without permission could not be said to be engaged in innocent passage.

4. In connexion with the freedom of the high seas, his delegation considered that nuclear tests were illegal. They represented a threat to the future of humanity; they polluted the oceans and interfered with the freedom of navigation and the freedom of flying over the high seas. Daily protests against those tests were issued by eminent scientists and others, and the Soviet Union had made specific proposals to abolish them. It was the duty of the Conference to call for the prohibition of nuclear tests on the high seas, a matter which was clearly within its competence.

5. Mr. RUEGGER (Switzerland) said that the present debate had been expanded to cover so wide a field that his delegation, which had originally intended to confine its remarks to certain articles in the International Law Commission's draft, thought that it too should make known its views on some of the major problems of a general character that had been raised, particularly as Switzerland, not being a member of the United Nations, had not taken part in the discussions in the Sixth Committee of the General Assembly.

6. As early as 1907, the Swiss delegate at the second Hague International Peace Conference had successfully established the thesis that his country, though landlocked, possessed economic interests in maritime trade which placed it in the front rank of the community of nations as it then existed. Now those interests had developed, and Switzerland had a merchant fleet flying its own flag on the seas. In 1957, through the port of Basle alone, 5 million tons of goods reached Switzerland from the sea and thence by the Rhine; to this should be added the heavy import and export traffic through Genoa, Marseilles and the northern ports, with the result that Switzerland, if not a maritime country, was at any rate an important user of the seas. It had therefore a very great interest in the establishment of a stable and definite code of law for the sea; in a word, in the greatest possible freedom over the widest possible spaces.

7. The Swiss Government appreciated all the more the courage of the United Nations General Assembly in deciding that the subject of the first great conference for the codification of international law should be the important but controversial one of the law of the sea inas-