United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.1/SR.21-25

Summary Records of the 21st to 25th Meetings of the First Committee

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume III (First Committee (Territorial Sea and Contiguous Zone))*

constant physical and biological relationship with the shelf, not excluding the benthonic species". In fact, however, benthonic species comprised all animal and vegetable species that lived in a constant and biological relationship with the shelf. It was therefore absurd to talk of all those species and to add the words "not excluding the benthonic species". The unsatisfactory drafting of that part of the principles of Mexico was attributable to the fact that the members of the Inter-American Council of Jurists were not specialists in marine biology.

25. The representative of Mexico had stated that the resolution of Ciudad Trujillo did not in any way impair the validity of the principles of Mexico. He (Mr. García Amador) drew attention in that connexion to the final paragraph of that resolution containing the important recommendation "that the American States continue diligently with the consideration of the matters referred to in paragraphs 2, 6 and 7 of this resolution with a view to reaching adequate solutions". The paragraph 7 in question was the paragraph stating that there existed a diversity of positions among the States represented at the Conference with respect to the breadth of the territorial sea. It was therefore clear that the Conference of Ciudad Trujillo had not adopted the principles of Mexico concerning the breadth of the territorial sea.

26. Mr. GARCÍA ROBLES (Mexico) said that the Conference of Ciudad Trujillo had explicitly refrained from expressing "an opinion concerning the positions of the various participating States on the matters on which agreement has not yet been reached". That language did not contradict in any way the principles of Mexico, which stated that "each State is competent to establish its territorial waters within reasonable limits". The position in the Americas was that certain States, including Cuba, adhered to the three-mile limit; others, like Mexico, had a territorial sea of nine miles; yet others, like Venezuela, claimed twelve miles.

The meeting rose at 12.20 p.m.

TWENTY-FIRST MEETING

Wednesday, 19 March 1958, at 3.15 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 (conclusion)

STATEMENT BY MR. LOUTFI (UNITED ARAB REPUBLIC) AND MR. KORETSKY (UKRAINIAN SOVIET SOCIALIST REPUBLIC)

1. Mr. LOUTFI (United Arab Republic) said that his delegation, while approaching the task before the Conference in a spirit of co-operation and conciliation, was alive to the difficulties which would be encountered before success could be achieved. Above all, it believed that the Conference should concentrate on general points where agreement was most likely and not enter into a discussion of special cases or political aspects.

2. The International Law Commission's draft clearly covered the law of the sea in time of peace only. That fact was expressly recognized in paragraph 32 of the Commission's report, and, as the representative of Lebanon had already pointed out (4th meeting), the law applicable in time of war had not been taken up.

3. The central question before the Committee was that which had unfortunately caused the failure of the 1930 Conference for the Codification of International Law — namely, the breadth of the territorial sea. The general debate had brought out a considerable diversity of opinion on that issue. His delegation could not share the view of those who were trying to perpetuate the three-mile limit by asserting that it was the traditional rule, observed by many States and as such the only possible juridical point of departure for the Committee's discussions. Not only was the validity of the three-mile limit as a rule of law doubtful, but it did not enjoy universal application. That fact had already been adequately stressed by the representative of Sweden (6th meeting).

4. Several learned authors, including Gidel,[1] had repeatedly stated that there was no rule of international law regarding the maximum breadth of adjacent waters, and that three miles constituted only the minimum, on which there was general agreement. Gidel had even said explicitly that, in international law, States were competent to fix a breadth greater than three miles. In the face of such expert evidence, it could not be argued that any one limit constituted a rule of international law. That conclusion was further confirmed by international conventions and custom, which were the two main sources of the law of nations; there was certainly no multilateral convention stipulating that the territorial sea must necessarily be restricted to three miles, and the absence of agreement in practice and custom had already been proved at The Hague Conference and further demonstrated by the fact that the majority of the new countries that had gained their independence since that time had adopted a limit in excess of three miles. The argument that the three-mile rule constituted a principle of international law was thus devoid of substance. Even the International Law Commission had recognized the lack of uniformity in the practice of States, and had merely said that international law did not permit an extension beyond twelve miles. In those circumstances, the final decision was one solely for the Conference, and the delegation of the United Arab Republic believed that a rule recognizing the right of States to fix any limit between three and twelve miles at their own discretion could offer a satisfactory solution.

5. He had dwelt on the question of the limits of territorial waters because it was a matter of great importance to the security and economy of his country. The United Arab Republic possessed long coasts on the Mediterranean and Red Sea, and as its population was increasing rapidly, the government had decided to intensify its

[1] *Le Droit international public de la mer*, Vol. III, La mer territoriale et la zone contiguë. Paris, Librairie Sirey, 1934, pp. 123 *et. seq.*

efferts to promote the fishing industry and to ensure the conservation of living resources.

6. His delegation had noted with satisfaction that, in defining the juridical status of the territorial sea, of the air space over that sea, and of its bed and subsoil, the Commission had reaffirmed the well-established principle of international law that the sovereignty of the coastal State extended to all those regions. The assimilation of those regions to other parts of a State's territory was consistent with practice and international legislation. It had been confirmed by The Hague Conference ; and the text of articles 1 and 2 of the Chicago Convention on International Civil Aviation of 7 December 1944 seemed to indicate that there was no further doubt on the matter.

7. He welcomed the fact that, at its seventh session, the International Law Commission had changed its proposal regarding the passage of warships in territorial waters.[2] The right of innocent passage enjoyed by merchantmen was undisputed, but neither international custom nor doctrine had ever extended that right to warships. Where warships were allowed such passage, it was not as a matter of right, but of courtesy.

8. With regard to the question of nuclear tests, he recalled that his delegation had always voted for the discontinuance of such experiments. It would adopt the same position at the Conference, because it believed that the resulting risks were as great at sea as on land.

9. Finally, he wished to reply to the assertion of the representative of Israel that (13th meeting) the question of the Gulf of Aqaba had already been settled. In reality, as the Saudi Arabian representative had already pointed out, no single aspect of the Palestine question had yet been the object of any settlement whatever.

10. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that the long and arduous work accomplished by the International Law Commission, the comments of governments on its draft, the discussions at the eleventh session of the General Assembly and the general debate at the present conference would undoubtedly have helped to ascertain the attitude of participating States, and to reveal the questions which could be settled without difficulty. Attention could thus be concentrated on contentious issues which were not so numerous. Provided that each delegation was inspired by the desire to co-operate, agreement should be possible on all the fundamental problems.

11. Clearly, the coastal State itself fixed the breadth of its territorial sea in accordance with historical and geographical circumstances as well as economic and security requirements. Opinions differed as to the permissible limits of that delimitation, and having regard to the Commission's finding that international practice was not uniform in that respect his delegation supported the Soviet Union view that each coastal State was entitled to fix its territorial sea within reasonable limits — namely, three to twelve miles.

12. There was no need to stress the importance of the territorial sea both for security and economic reasons to countries which had recently acquired their independence, and which had formerly been debarred from enjoying the resources of those waters.

13. The present trend was obviously towards an extension of limits, and he regretted the delay in the preparation by the Secretariat of a summary table of the present practice and attitude of States which would give a full picture of the situation. As stated in the principles of Mexico on the juridical régime of the sea, the three-mile limit was insufficient, and did not constitute a general rule of international law. Even its supporters had in fact sought by circuitous means to extend the zone in which they exercised sovereign rights — as for instance, when for the enforcement of prohibition laws, United States patrol ships had pursued and arrested ships flying foreign flags beyond the territorial sea. Such States were devoting increasing attention to special zones, such as that dealt with in article 66 of the Commission's draft, the real purpose of which was to enlarge the territorial sea. In the final analysis rights exercised in such zones were the same as those possessed by the coastal State in the territorial sea and the effort to justify those claims on the ground that very were necessary solely for purposes of administration, control and jurisdiction carried no weight because those were precisely the functions discharged by a State in virtue of its sovereignty. It would be better to have a clear and precise régime covering territorial waters than fragmentary rights over different contiguous zones.

14. The problem of straits was naturally of great interest to the Ukrainian SSR, whose only outlet from the Black Sea was through the Bosphorus and the Dardanelles. The provision contained in article 17, paragraph 4, of the Commission's draft was inadequate, and must be replaced by a clear statement to the effect that the régime of international straits was in each case determined by international convention and established practice.

15. The Commission, while admitting its importance, had offered no solution to the problem of archipelagos. As had been demonstrated by the representative of Indonesia, subject to the requirements of international navigation, the sea should be a unifying element for a country consisting of 13,000 islands which had won its struggle for independence.

16. The CHAIRMAN, in pursuance of rule 24 of the rules of procedure, invited the representative of Israel to reply briefly to certain statements made during the discussion.

17. Mr. COMAY (Israel) said he had nothing to add to the statement which he had made at the 13th meeting in answer to the remarks made by the representative of Saudi Arabia concerning the Gulf of Aqaba and the Straits of Tiran, but was instructed to state in connexion with that representative's reference to the decree of his government purporting unilaterally to extend its territorial sea to twelve miles, that the Government of Israel did not recognize that extension as having any validity in international law or as affecting existing rights of navigation in the abovementioned waters.

[2] See *Official Records of the General Assembly, Tenth Session, Supplement No. 9* (A/2934), p. 22.

STATEMENT BY MR. FRANÇOIS, EXPERT TO THE SECRETARIAT OF THE CONFERENCE

18. Mr. FRANÇOIS (expert to the secretariat of the Conference) made a statement.[3]

The meeting rose at 4.30 p.m.

[3] The text of Mr. François' statement *in extenso* is annexed hereto.

Annex

STATEMENT BY MR. FRANÇOIS, EXPERT TO THE SECRETARIAT OF THE CONFERENCE [1]

1. I know that I shall be speaking for all my colleagues on the International Law Commission in expressing our profound gratitude for the praise which several speakers have been good enough to accord to the Commission's work. I was personally most touched by the kind remarks addressed to the Rapporteur of the Commission.

2. I have asked for the floor now that the general discussion of the articles referred to this Committee for examination is completed in order to make a few remarks which may perhaps shed light on the Commission's intentions on certain points or dispel any misunderstanding that might exist as to the interpretation of the articles of the draft. I must inevitably repeat in part what I already said in the Second Committee [13th meeting], since a number of questions have been discussed by both committees at the same time. This applies, for instance, to the first question with which I should like to deal — namely, the International Law Commission's attitude towards existing multilateral conventions regulating certain matters relevant to the law of the sea. This point has been raised by several delegations both in the First and in the Second Committee. From the outset, the International Law Commission had to determine its attitude towards the matters dealt with in those conventions, which are enumerated in the list prepared by the Secretariat for the Second Committee (A/CONF. 13/C.2/L.8).

3. Three courses were open to it. The first possibility was for the Commission to study afresh the matters regulated by the conventions and include the results of its study in its draft. The second was to confine itself to a reference to the conventions coupled with a recommendation that States accede to them. The final course was to include in its regulation the principles underlying the conventions in question without elaborating them.

4. The first course — detailed regulation of the matters in the draft — was rejected by the Commission from the outset. Neither the International Law Commission nor this diplomatic conference could be regarded as competent to revise the result of the work of the special conferences which produced the conventions in question.

5. The second alternative, to recommend that States accede to the existing treaties, a course since advocated by certain delegations was, in the Commission's view, no more satisfactory than the first. It is unlikely that a recommendation of this kind could win general acceptance from the States participating in this conference, including those States which have not hitherto been prepared to accept the conventions in point. Should this be so, it would mean that a conference for the codification of the law of the sea would leave open a whole series of questions of the utmost importance for maritime shipping and that a number of States would incur no obligations in the matter.

6. The Commission accordingly followed another course with respect to several of the conventions under consideration — namely, that of including in its regulation the principles underlying those general conventions — leaving States the option of discharging the obligations they had assumed either by ratifying the existing conventions or by ensuring application of those principles in some other way — for example, by inserting detailed regulations in their national law.

7. This course was followed in articles 22 (government ships operated for commercial purposes), 34 (safety of navigation), 36 (duty to render assistance), 37 (slave trade) and 48, paragraph 1 (pollution of the high seas by oil). Since the articles refer solely to the principles of the relevant conventions, there is no danger of incompatibility between them and the conventions. The Commission therefore regards this procedure as open to no pertinent objection.

8. In dealing with article 35 (penal jurisdiction in matters of collision), the Commission followed the same course, taking as its guide the Brussels Convention of 1952. This convention applies to collisions on the high seas and, also, in the territorial sea; the high contracting parties may, however, reserve to themselves the right to take proceedings in respect of collisions occurring in their own territorial waters — i.e., the right to exclude collisions in the territorial sea from the scope of their undertaking. The Commission's draft, on the other hand, deals solely with collisions on the high seas. Hence, States which accept article 35 of the Commission's draft will be in the same position as the high contracting parties to the Brussels Convention who have availed themselves of the right to make the reservation provided for therein with respect to the territorial sea. There is thus no incompatibility between the articles and the Convention.

9. The only cases which might inspire some doubts are those of article 21 (arrest of ships for the purpose of exercising civil jurisdiction), and article 46 on the right of visit in the case of vessels suspected of engaging in the slave trade. I should like to make a few remarks on the first case, about which the United Kingdom representative has spoken (5th meeting).

10. At its seventh session, the Commission decided to base these articles on the rules adopted in the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Sea-going Ships. When governments were consulted, however, some of them opposed this proposal, taking the view that the Brussels Conference had been mainly concerned with arrest in ports and internal waters, and had brought ships passing through the territorial sea within the scope of the article merely by using the phrase " in the jurisdiction of the Contracting States ", without properly realizing the prejudice which, by favouring private creditors, it would thereby cause to shipping merely passing through the territorial sea without entering a port. Such obstacles would be aggravated were the breadth of the territorial sea to be extended. The Commission, coming round to this point of view, replaced the text by that which had been proposed by The Hague Conference of 1930 for the Codification of International Law, and which the Commission had preferred in the beginning because it showed greater consideration for the interests of shipping.

11. The First Committee will therefore need to decide first on the substance of the question — i.e., whether it prefers the 1930 text or that of 1952. If it prefers the 1952 text, the article will naturally have to be changed. Should it prefer the 1930 text, now proposed by the International Law Commission, the question will then arise of the position of States which have already ratified the 1952 Convention. The Commission sees no great difficulty in this respect, and in paragraph 4 of the commentary on article

[1] Circulated to members of the first committee as document A/CONF.13/C.1/L.10.

21 expresses the following view: "The existence of different rules on this point could hardly be regarded as a bar to the adoption of the above-mentioned provision since the Brussels Convention would bind only the contracting parties in their mutual relations." The United Kingdom delegation, however, considers that its government could not accept two sets of international rules which in some respects impose different obligations. For this reason, the said delegation has suggested that the Conference confine itself to recommending accession to the Brussels Convention and, should the latter prove imperfect, that efforts be made to improve it under the procedure provided in the Convention itself. But I do not see how this procedure could be applied if in principle the Conference pronounces itself in favour of the 1930 system. It would be impossible to invite a conference of over eighty States to accede to a convention which it is unable fully to accept and which has only been ratified by some ten States, in the hope that it will later prove possible to amend it. It would be better, in my opinion, to include a paragraph worded as follows: "States which are parties to the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Seagoing Ships may apply, in their mutual relations, the provisions of that Convention where they differ from the rules of the foregoing paragraph." If such a proviso still fails to give satisfaction to the United Kingdom delegation, the Conference could go further and word the paragraph as follows: "States which are parties to the Brussels Convention may enter a reservation to the effect that the foregoing paragraph shall not apply whenever its application would not be in conformity with the rules of the Brussels Convention."

12. It was not the intention of the Commission to interfere in any way with the special conventions already existing in maritime law as far as the mutual relations between the States parties to those conventions are concerned. Thus, the Convention regulating the régime of the Bosphorus and the Dardanelles, to which the Turkish delegation has referred in the Second Committee [15th meeting] is not affected by the rules of the draft. This has been stated in so many words in paragraph 5 of the commentary on article 24: "The article does not affect the rights of States under a convention governing passage through the straits to which it refers." It might perhaps be advisable to include this general principle somewhere in the Convention itself.

13. As regards historic bays, the International Law Commission has given no definition, for it thought that the concept was familiar to everyone concerned with international law. Moreover, historic bays could be defined very satisfactorily in the words of the International Court of Justice: "By 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title." [2] That definition is a very innocuous one. If, however, it is desired to go farther and state the conditions which bays must satisfy in order to be considered historic bays, the matter becomes much more complicated. It raises the whole problem of acquisition by prescription, and several uncertain points will then have to be cleared up. Is this "continued and well-established" usage, as the Institute of International Law called it in 1894, or "international" usage, as the Institute called it in 1920? Or is it "uncontested" international usage, the word used in the 1928 draft? Must there be "established" usage, as the International Law Association's draft of 1926 requires, or established usage "generally recognized by nations", as required by the wording finally adopted? Can the vital interests of the coastal State be the sole root of a right? The 1930 Conference thought that, before beginning to study historic bays, it should have before it information from all the States on the bays which they claimed to be historic and the reasons for their claims.

14. The Secretariat's excellent memorandum [A/CONF.13/1] does not provide us with the material needed for a thorough study of this question. I therefore do not think it would be of any use to set up a sub-committee for that purpose, as proposed by the delegation of Panama [3rd meeting]. In my opinion, the Conference might merely use the term "historic bays" and leave it to be construed, in case of dispute, by the Court, with due regard for all the features of the special case, which could not possibly be provided for in a general rule. If necessary, the International Law Commission could be instructed to study acquisition by prescription, with special reference to historic bays.

15. The Commission was criticized for not having drafted some of the articles as precisely as might be desired. Such expressions as "where circumstances necessitate", "to any appreciable extent", "sufficiently closely linked", "adequate grounds", "reasonable measures", "unjustifiable interference" and others are, it is said, out of place. The Commission cannot regard these objections as fully justified. It is true that the articles ought to be drafted in the clearest possible language. Perhaps the Commission's texts can still be improved in this respect. Nevertheless, it should be remembered that these expressions all occur in national legislation. In the opinion of the International Law Commission, a codification of international law can no more do without these expressions than can national law. Any attempt to codify international law without using such expressions will prove vain. I entirely agree with the views expressed on this subject in another committee by the representative of India. In contentious cases, the meaning will have to be decided by an impartial authority, to which disputes regarding the interpretation of these expressions in specific cases will have to be submitted.

16. It is not always understood why the International Law Commission in some cases recommended the submission of disputes to the International Court of Justice or to an arbitral body, whereas in other cases it makes no recommendation at all. In general, the Commission considers it desirable that all disputes which cannot be settled through diplomatic channels should be submitted either to the jurisdiction of the Court or to arbitration. The Commission must, however, take into account the fact that the number of States prepared to accept compulsory jurisdiction or arbitration is still small. If it inserted in each of its proposals a compulsory jurisdiction or arbitration clause, it would be introducing by the back door a compulsory jurisdiction which it could not introduce by the front door, thereby rendering its proposals unacceptable to several States, and jeopardizing the success of its work from the outset. The Commission has, therefore, made it a rule not to insert a clause of that kind except in cases where it is to be expected that the majority of States would not accept certain obligations (necessarily framed in vague terms) without the guarantee of compulsory jurisdiction or arbitration. The most striking example of this is the arbitration provided for in disputes concerning the protection of the resources of the sea. In other cases, the Commission has left this matter to be dealt with in accordance with the existing rules for the settlement of disputes. Only if the arbitral or jurisdictional clause is reserved for exceptional cases will there be any hope of overcoming the objections of States which refuse to accept such a clause as a general rule.

17. The Commission showed a preference for arbitration in cases where extremely technical matters are involved, such as the protection of the living resources of the sea. Several States consider that arbitration is better suited to cases of this kind than the Court's jurisdiction. In other

[2] *Fisheries case, Judgment of 18 December 1951: I.C.J. Reports, 1951,* p. 130.

cases, the Commission prefers the jurisdiction of the Court, while leaving the door open to arbitration if the parties prefer it.

18. Article 3 of the draft, on the breadth of the territorial sea, has been construed in various ways. According to some delegations, the Commission's view was that international law allows the breadth of the territorial sea to be fixed up to a twelve-mile limit. That interpretation, however, is not what the Commission intended. The Commission mentions it in paragraph 5 of its commentary: " Another opinion was that the Commission should recognize that international practice was not uniform as regards limitation of the territorial sea to three miles, but would not autorize an extension of the territorial sea beyond twelve miles. On the other hand every State would have the right to extend its jurisdiction up to twelve miles." That is exactly what those delegations say. But the commentary continues, in paragraph 6: " None of these proposals managed to secure a majority." So the Commission has set its face firmly against claims to fix the breadth at over twelve miles. It refrains, however, from declaring that a breadth fixed between three and twelve miles is lawful or unlawful; it expresses no opinion on that point. The commentary plainly says so: " . . . the Commission was unable to take a decision on the subject, and expressed the opinion that the question should be decided by an international conference." I do not think anyone could maintain that this statement is ambiguous.

19. I should like to draw the Committee's attention to one other point: the right to fly over straits joining two parts of the high seas. In article 2, the Commission declared that the sovereignty of a State extends also to the air space over the territorial sea. Although it conceived its task as limited to the codification of the law of the sea, the Commission did not hesitate to state rules on the air space when they followed directly from the principle of the freedom of the seas. It might be asked whether the Conference would not do well to apply the same principle and insert a clause relating to the right of free aerial passage above straits. International law does not yet recognize a right of passage for aircraft above the territorial sea of another State. Nevertheless, the right of passage of aircraft above straits through which ships have a right to pass may be regarded as following directly from the freedom of the seas; and the recognition of that right would perhaps lessen some of the objections to an extension of the territorial sea. The United Kingdom delegation has rightly pointed out that one result of an extension of the territorial sea would be that certain straits above which aircraft can now fly would thereafter be closed to air traffic. Equal treatment for ships and aircraft in this respect does not seem unreasonable, and might go some way towards meeting the objection. The sovereignty of a State over the air space above its territorial sea does not conflict with the adoption of such a right of passage any more than its sovereignty over the territorial sea conflicts with the passage of ships through the straits. The Committee might see fit to take up this question, the importance of which was brought out during the general debate in this Committee and which does not appear to go beyond the framework which the Commission has established.

20. I am not called upon to defend the International Law Commission's draft against all the objections raised in the course of the general debate, which will be raised again during the discussion of the articles. If, however, the Committee should desire any information about the International Law Commission's intentions on points which do not seem sufficiently clear or on any particular point, I shall be most willing to give it all the information at my disposal.

TWENTY-SECOND MEETING

Thursday, 20 March 1958, at 10.30 a.m.

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

Organization of the work of the Committee (A/CONF.13/C.1/L.8) *(continued)* *

1. The CHAIRMAN said he felt that the Committee should begin by dealing with the proposal put forward by the representative of Ecuador at the third meeting for the postponement of the consideration of certain articles. He therefore suggested that the representative of Ecuador should submit his proposal orally.

It was so agreed.

PROPOSAL OF ECUADOR FOR THE POSTPONEMENT OF THE CONSIDERATION OF DRAFT ARTICLES 1, 2, 3 AND 66

2. Mr. PONCE Y CARBO (Ecuador) said the general debate had provided further evidence of the desirability of postponing the discussion of articles 1, 2, 3 and 66. Many suggestions had been put forward which had to be examined not only by delegations but also by governments. The four postponed articles should be examined jointly because they were closely interdependent.

3. He therefore proposed that the First Committee should decide to consider articles 1, 2, 3 and 66, taken as a group, and the amendments thereto, on 10 April. In the meantime, the Committee could examine, article by article, the remaining provisions of the draft which had been referred to it.

4. Mr. MARTINEZ MONTERO (Uruguay) supported the Ecuadorian proposal, and said that articles 7 and 10 to 14 were also closely linked with articles 1 to 3, and should therefore also be held over.

5. Mr. SHUKAIRI (Saudi Arabia) said that articles 1 and 2 were indeed closely linked, and could hence be treated as a unit; articles 3 and 66, however, dealt with completely different matters, and should be examined separately. His delegation would not oppose postponement of the consideration of the articles in question, provided that the delay did not exceed one week. The question of the breadth of the territorial sea was the most important one before the Conference, and should be dealt with as early as possible. If that question could be settled, the Conference would have no difficulty in disposing of the remaining articles.

6. Mr. SÖRENSEN (Denmark) said that all the articles which affected the delimitation of sea areas were closely interrelated. He therefore proposed that the postponement should cover articles 1 to 14 and 66. The Committee would thus commence its work with section III on the right of innocent passage (articles 15 to 25).

7. Mr. TUNCEL (Turkey) agreed with the remarks of the representative of Denmark. He drew attention to article 1, paragraph 2, stating that the sovereignty of the State over the territorial sea was exercised " subject to the conditions prescribed in these articles ". That pro-

* Resumed from the third meeting.

viso referred, in particular, to section III on the right of innocent passage. It was therefore desirable that the Committee should deal with the question of innocent passage before considering article 1.

8. A number of proposals concerning the territorial sea were being canvassed: there was a proposal for a minimum of three and a maximum of twelve miles; there was a Swedish proposal for the minimum breadth of three and a maximum of six miles; finally, there was the Canadian proposal. It was desirable to allow time for negotiations on those proposals.

9. Sir Gerald FITZMAURICE (United Kingdom) said his delegation would have no objection to the Ecuadorian and Danish proposals for the postponement of the consideration of certain articles, and to the Committee's commencing with the section on innocent passage, provided that consideration of articles 24 and 25 were also postponed. Those last-named articles dealt with the passage of warships, and would be influenced by whatever was decided concerning the breadth of the territorial sea.

10. Mr. BARTOS (Yugoslavia) said his delegation strongly opposed any postponement of the consideration of the most important articles before the Committee. The only logical method was to examine the most important questions first and to deal with details afterwards. The question of the breadth of the territorial sea had a bearing on many of the questions to be discussed in the other committees, whose work would thus be affected by the proposed postponement. His delegation would not oppose a few days' recess in the Committee's proceedings, if it was considered that such a recess would be conducive to fruitful negotiations. But it could not support any proposal which would upset the logical order of the articles as set out by the International Law Commission and its rapporteur.

11. Mr. TUNKIN (Union of Soviet Socialist Republics) said the crucial question of the breadth of the territorial sea should be the first one, or at least one of the first, to be considered by the Committee. It was not possible to discuss profitably the régime of the territorial sea, or indeed the régime of the high seas, so long as the actual area of the territorial sea was undetermined. The supporters of the Ecuadorian proposal were not, of course, wrong in noting the interrelationship between articles 1, 2 and 3 on the one hand and many subsequent articles on the other. But the list of interconnected articles could well be extended indefinitely; there would be little left for the Committee to discuss once it embarked on the proposed course of postponing questions connected with the breadth of the territorial sea.

12. Mr. SHUKAIRI (Saudi Arabia) said, with reference to the Turkish representative's remarks on article 1, paragraph 2, that in fact all the articles specified conditions governing the exercise of sovereignty over the territorial sea. The supporters of postponement would thus be led by the logic of their own reasoning to ask that the consideration of all the articles should be postponed. To postpone consideration of the question of the breadth of the territorial sea would be an act of defeatism. The Conference should face its difficulties with courage. The question of innocent passage, like most of the questions before the Committee, could only be decided in the light of the breadth of the territorial sea. The conditions to which a State would subject the right of innocent passage would naturally depend on whether the territorial sea was wide or narrow.

13. He urged the Ecuadorian representative to find a formula which would lead to the deferment of consideration of article 3 only, and for not more than a few days.

14. Mr. ZOUREK (Czechoslovakia) feared for the success of the Committee's work if it decided to postpone until 10 April the discussion of seventeen of the twenty-six articles assigned to it. Among the seventeen articles were some of the most important and most controversial of the International Law Commission's draft; the Committee would therefore have great difficulty in completing its work on those articles in the fifteen days left to the Conference after 10 April. He therefore associated himself with the Yugoslav representative's statement and suggested that the Committee should first discuss the most important articles.

15. Mr. GARCÍA ROBLES (Mexico) said that he had not come prepared to discuss the Ecuadorian proposal, and asked whether he was right in thinking that under rule 29 of the rules of procedure that proposal could not be put to the vote at the present meeting.

16. The CHAIRMAN explained that as no member of the Committee had raised any objection when he had suggested that the Ecuadorian representative should introduce his proposal orally, rule 29 of the rules of procedure could not now be invoked. He understood, however, that the representative of Ecuador would circulate his proposal in writing and, in that case, it would be voted on at the following meeting.

17. Mr. GARCÍA ROBLES (Mexico) said that his delegation would have to consider very carefully the date suggested in the Ecuadorian proposal, since the Conference had only a few weeks left in which to complete its work. While the Mexican delegation had no objection to the deferment of the consideration of certain articles, as proposed by the Ecuadorian representative, he urged the latter to find a formula acceptable to all delegations.

18. The CHAIRMAN said that, although in connexion with articles 4 to 14, in particular, questions of drafting and substance would probably arise which would not be merely consequential amendments arising from decisions taken by the Committee on the four basic articles (articles 1, 2, 3 and 66), the Committee might be able to dispose of the former articles in a short time when once it had reached decisions on the latter. If it did not do so, it would need more time to complete its work than some representatives seemed to think.

19. The discussions at the current meeting had strengthened his conviction that, while the general debate was valuable it had not made clear either the shape or size of the work to be done during the second stage of the Committee's discussions. He doubted whether it would be wise to reach a decision at the present time on the deferment until 10 April of the discussion of certain articles. He therefore wished to ask the Ecuadorian representative to introduce an element of flexibility into his proposal so far as the date was concerned.

20. Mr. PONCE Y CARBO (Ecuador) said that, an element of flexibility would be introduced into the final draft of his delegation's proposal, and he would leave it to the Chairman to decide the date on which the study of the articles covered by the proposal should begin.

21. Mr. BA HAN (Burma) said that the Committee should observe the order in which the International Law Commission had drafted the articles. He therefore supported the statements of the representatives of Saudi Arabia, Yugoslavia and the USSR, and opposed the Ecuadorian proposal.

22. Mr. STABELL (Norway) said that, generally speaking, his delegation was in sympathy with the Ecuadorian proposal and with the Danish representative's amendments thereto. The general debate had given the Committee a picture of what possibilities existed for negotiation on the crucial question of the territorial sea. However, many delegations now needed instructions from their Governments on possible concessions. It would therefore be impracticable and wrong to force such delegations to take a decision on the matter of the breadth of the territorial sea at the present early stage of the discussions.

23. While he agreed with the Danish representative that articles 4 to 14 were closely connected with the question of the breadth of the territorial sea, it would be inadvisable for the Committee to decide that such questions should not be taken up before a certain date. He suggested that the Committee should first discuss articles 15 to 23 of section III on the right of innocent passage, and should then decide, in the light of the progress made by the other committees on closely connected questions, when it would take up the question of the breadth of the territorial sea and articles 24 and 25.

The meeting rose at 1.5 p.m.

TWENTY-THIRD MEETING

Friday, 21 March 1958, at 10.30 a.m.

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

Organization of the work of the Committee (A/CONF.13/C.1/L.8) *(continued)*

PROPOSAL OF ECUADOR FOR THE POSTPONEMENT OF THE CONSIDERATION OF DRAFT ARTICLES 1, 2, 3 AND 66, (A/CONF. 13/C.1/L.12) (concluded)

1. Mr. PONCE Y CARBO (Ecuador) submitted the written text of his proposal (A/CONF. 13/C.1/L.12), revised in accordance with suggestions made at the previous meeting. The text ran as follows:

" *The First Committee*

" *Decides*

" (*a*) To postpone consideration of draft articles 1, 2, 3 and 66, together with the amendments thereto, to a date to be fixed by the Chairman, but not later than Wednesday, 9 April 1958, and to consider these four articles as a group, and not individually;

" (*b*) In the meantime to proceed with the consideration of the remaining draft articles referred to it, commencing with section III."

2. The CHAIRMAN, referring to statements made at the 22nd meeting, said he appreciated the reasons for which many delegations were unable to discuss articles 1, 2, 3 and 66 within the next few days and, if the Ecuadorian proposal was adopted, he would remain in close touch with delegations in case they might feel able to discuss those articles before the date specified in that proposal.

3. Mr. GARCÍA ROBLES (Mexico) thought the Committee should begin discussing articles 1, 2, 3 and 66 after a short interval. He could therefore support the Ecuadorian proposal if the date 9 April were replaced by 31 March. That amendment would allow ample time for negotiations between delegations and for the receipt by the latter of instructions from their governments on the delicate problems covered by articles 1, 2, 3 and 66.

4. Mr. COMAY (Israel) recalled that the Conference for the Codification of International Law held at The Hague in 1930 had come to grief on the question of the limitation of the breadth of the territorial sea. Articles 1, 2, 3 and 66 of the present draft were so important that, in the view of his delegation, the Committee should proceed with great caution. The Conference was both a legal and a diplomatic body, and it would be wise to allow time for consultations between delegations and governments. He therefore saw great merit in and would support the proposal of Ecuador.

5. Sir Claude COREA (Ceylon) recalled that when the representative of Ecuador had made his original oral proposal concerning articles 1, 2, 3 and 66 at the 22nd meeting, some representatives had suggested that the consideration of various other articles, amounting in all to twelve, should also be deferred. The Committee would thus have sixteen articles to consider between 9 April and the closing date of the Conference, which he felt would be too short a time. To achieve success, the Conference must proceed immediately to discuss the most difficult and important article — namely, article 3 on the breadth of the territorial sea. An attempt should also be made forthwith to harmonize the various points of view expressed on that question in the general debate. His delegation would support any resolution which would assist the Committee to settle the question of the breadth of the territorial sea.

6. Mr. GLASER (Romania) emphasized that the fate of the Conference rested on the decisions it took on the more important articles before it, some of which were very controversial. It would obviously be impossible to reach agreement on sixteen articles in the short time between 9 April and the date set for the close of the Conference. He could not believe that the interval suggested in order to allow for negotiations and consultations would serve any purpose; it must be remembered that after many years' study the International Law Commission had failed to find a solution to the problem of the breadth of the territorial sea acceptable to all members of that body. Since the opening date of the Conference, delegations had had ample time to consult their governments and to contact other delegations.

7. He therefore supported the Yugoslav representative's suggestion made at the 22nd meeting that the Committee should first discuss the most important articles of the draft — namely, those relating to the juridical status and limits of the territorial sea, and so help both the Third and Fourth Committees to reach decisions on the articles referred to them. Many tributes had been paid to the work of the International Law Commission. It was only fitting, therefore, that the First Committee should take up the articles of the draft prepared by the Commission in the order suggested by it. While he recognized the good intentions of the Ecuadorian delegation, he could not support its proposal, since any delay in discussing the fundamental issues referred to the Committee would be a flight from reality. His delegation was anxious for the success of the Conference, and would therefore urge all members to reject any proposal which would impede its work.

8. Mr. DEAN (United States of America) said it was apparent that to proceed immediately with articles 1, 2, 3 and 66 would probably mean wasting a whole week, because many delegations were still awaiting instructions on those important provisions. He saw no obstacle to the Committee's commencing with section III as proposed by Ecuador. As for the date on which the articles mentioned should be taken, his delegation did not consider it important to fix a time-limit. The decision as to the actual date should be left to the discretion of the Chairman. The Conference should not be obsessed by the thought of the 1930 failure. There were constructive forces at work which should make for the success of the present Conference.

9. Mr. SIKRI (India) said his delegation had at first had some misgivings concerning the proposal to postpone the consideration of certain articles, because it had felt that that amounted to proposing that the subject of the breadth of the territorial sea should not be considered at all. It had now become apparent that if time were allowed for negotiation, some compromise solution lying between the two extreme views might perhaps be worked out. A number of important proposals which had been made, including that of Canada (17th meeting), deserved careful consideration. He felt, however, that the period suggested in the Ecuadorian proposal was far too long, and he appealed to its sponsor to accept the Mexican amendment to substitute the date of 31 March for 9 April.

10. Mr. TUNKIN (Union of Soviet Socialist Republics) said the proposal before the Committee could have very far-reaching consequences for the Conference. Postponement of the consideration of the fundamental articles until 9 April would in fact mean that the Conference would leave its work unfinished. He regretted that the Committee should have spent so much time over that procedural proposal. The fate of the rules which the Conference would draft would depend, not on procedural issues, but on the extent to which the Conference succeeded in giving satisfaction to the legitimate interests of the various governments. The Conference was not a legislative body ; any provisions it adopted would be legally binding only if they were adopted subsequently by governments. He therefore urged the Committee to consider the draft articles referred to it in the sequence in which they had been set forth by the International Law Commission. The Committee had to try to formulate acceptable rules starting, as was logical, with the fundamental ones.

11. In reply to a question by the CHAIRMAN, Mr. PONCE Y CARBO (Ecuador) said that, in a spirit of co-operation, his delegation would accept the Mexican amendment.

12. Mr. SHUKAIRI (Saudi Arabia) said the Ecuadorian proposal, even as amended, was unfortunately still unacceptable to his delegation. The proposal was of more than procedural importance. Acceptance of it would pave the way for the failure of the whole Conference. His delegation could not accept paragraph 2 of the proposal because that would imply postponement of the whole of sections I and II (articles 1 to 14). Nothing had emerged from the general debate to justify the proposed postponement. The Canadian proposal, for instance, was not a new one; it had been well known to governments for a long time.

13. His delegation was, however, prepared to meet to some extent the desire of the Ecuadorian and other delegations to allow a few days for negotiation on the crucial question of article 3. He therefore asked whether the Ecuadorian representative would be prepared to amend his resolution by deleting paragraph 2 and also the mention of articles 1, 2 and 66. The proposal so amended would call for a decision to postpone consideration of article 3 to a date to be fixed by the Chairman but not later than 31 March.

14. The CHAIRMAN asked whether the representative of Ecuador accepted the amendment proposed by the Saudi Arabian representative.

15. Mr. PONCE Y CARBO (Ecuador) said his delegation was of opinion that articles 1, 2, 3 and 66 had to be considered as a group, and it followed that the problem facing the Conference could not be solved by postponing consideration of only article 3. He regretted, therefore, that he could not accept the Saudi Arabian amendment.

16. Mr. USTOR (Hungary) agreed with those representatives who had pointed out that logic demanded that the Committee should begin by considering the most important articles. As adoption of the Ecuadorian proposal might jeopardize the success of the whole conference, he asked for a vote to be taken on it by roll-call.

At the request of the representative of Ecuador, a vote was taken by roll-call.

Panama, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Peru, Phillipines, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Argentina, Australia, Bolivia, Brazil, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, France, Federal Republic of Germany, Greece, Guatemala, Holy See, Honduras, India, Ireland, Israel, Italy, Japan, Liberia, Mexico, Monaco, Nepal, Netherlands, New Zealand, Norway, Pakistan.

Against: Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Haiti, Hungary, Jordan.

Abstaining: United Arab Republic, Afghanistan, Austria, Indonesia, Iraq, Lebanon, Libya, Morocco.

The Ecuadorian proposal (A/CONF.13/C.1/L.12) was adopted by 46 votes to 16, with 8 abstentions.

The meeting rose at 1.10 p.m.

TWENTY-FOURTH MEETING

Friday, 21 March 1958, at 4 p.m.

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

Organization of the work of the Committee (A/CONF.13/C.1/L.8) *(continued)*

1. The CHAIRMAN announced that the delegation of Panama, unable to be present owing to other commitments, had asked that discussion of its proposal (A/CONF.13/C.1/L.9) be postponed until the following meeting.

After a procedural discussion the Committee agreed upon the deadline for the submission of amendments to Section III of the International Law Commission's draft.

The meeting rose at 5.45 p.m.

TWENTY-FIFTH MEETING

Tuesday, 25 March 1958, at 10.45 a.m.

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

Organization of the work of the Committee (A/CONF.13/C.1/L.8) *(continued)*

PROPOSAL OF PANAMA FOR THE SETTING-UP OF A SUB-COMMITTEE ON HISTORIC BAYS (A/CONF.13/C.1./L.9)

1. Mr. RUBIO (Panama) introduced his delegation's proposal (A/CONF.13/C.1/L.9) that the First Committee should set up a sub-committee on the régime of bays, including historic bays. The proposal, which he had already drafted at the third meeting, was not intended to start a fruitless discussion on bays which were already generally recognized as historic, but solely to obtain a clear definition of the conditions in which a bay could be described as having a historic character, and to establish machinery for the determination of the status of a bay in case of controversy.

2. Mr. SIKRI (India) said that his country, which possessed two historic bays, was highly interested in the problem raised by the Panamanian delegation. He felt, however, that the Committee had neither the time nor the material available to deal with the matter properly. Each bay having its own particular characteristics, a mass of data would have to be sifted and collated before any general principles could be established. He therefore proposed that, instead of taking the step envisaged by Panama, the Conference should adopt a resolution recommending to the General Assembly that the latter should make arrangements for further study of the question of historic bays by whatever body it might consider appropriate. If that course was acceptable to the Panamanian representative, the two delegations might perhaps agree on a joint text.

3. Mr. RUBIO (Panama) intimated that he was prepared to accept the Indian proposal and withdraw his own.

4. Mr. TUNCEL (Turkey) thought the Committee should defer taking any decision in the matter until the very end of its work. Similar questions might arise in other committees, and any premature decision might render subsequent co-ordination more difficult. Secondly, the actual form of the resolution needed further study. For his part, he felt that it might be inadvisable to restrict the competence of the General Assembly by a specific recommendation.

5. Sir Claude COREA (Ceylon) felt that it was always preferable to dispose of non-controversial matters promptly. The Committee should therefore merely treat the Indian counter-proposal as an amendment to the Panamanian proposal, approve the amended text and consider the matter closed.

6. Mr. STABELL (Norway) agreed with the Turkish representative that a hasty decision might be dangerous. The Indian suggestion tended to change a purely procedural proposal into one of substance. He proposed, therefore, that further discussion of the question be deferred until the Committee came to discuss article 7, which dealt with bays in general.

7. The CHAIRMAN said that similar problems were being discussed in other committees. He himself felt that the new text could be adopted at any time, but there seemed to be much force in the Turkish representative's second point. The Committee might therefore agree to defer further consideration of the matter until the new text had been submitted.

It was so agreed.

PROCEDURE FOR PUTTING PROPOSALS TO THE VOTE

8. The CHAIRMAN outlined the procedure which he proposed to follow in putting to the vote the various proposals before the Committee. The basic texts before the Committee were the articles prepared by the International Law Commission, which had been referred to the Conference by General Assembly resolution 1105 (XI). Each of the articles was therefore a proposal, which did not require submission or sponsorship by any delegation.

9. The majority of texts submitted by delegations would be in the nature of amendments to those basic proposals, seeking to introduce a change in the text of the relevant article prepared by the Commission. Accordingly, they would be governed by rule 40 of the rules of procedure, and would be put to the vote in the order in which they were " furthest removed in substance " from the basic proposal in the Commission's text.

10. Other texts submitted by delegations might embody a suggestion or idea relating to a subject matter not found in any of the Commission's articles, and thus constitute " proposals " in the strict sense of rule 41. Those proposals would be dealt with strictly in accordance with rule 41 and put to the vote in the order in which they had been submitted.

11. He stressed that the general use of the term " proposals " on committee documents would not affect the method of voting. The Secretariat had used that uniform heading not as a technical term, but simply to avoid prejudging a matter which was essentially within the competence of the Committee.

12. The procedure he had outlined was identical with that followed by the main committees of the General Assembly to which draft conventions had been referred. Furthermore, it would be in strict accordance with the rules of procedure, and the order of voting would depend solely upon the legal effect of the texts submitted. Thus, it would not matter whether an amendment purported to replace the entire article or merely to add to, delete or revise individual words or phrases. Anything designed to effect an alteration in an anterior text would be regarded as an amendment under rule 40.

13. Having regard to the nature of the Committee's task and the large number of amendments before it, there might be some advantage in resorting to rule 23 of the rules of procedure, and setting a time-limit for interventions. For the present it would probably not be feasible to limit the number of interventions by each speaker.

14. Mr. DE LUNA (Spain) considered it essential to impose a time-limit of five minutes on speakers.

15. Mr. GARCÍA ROBLES (Mexico) thought it would be preferable if, instead of imposing a rigid rule, the Chairman made a general recommendation to speakers not to exceed certain definite limits.

16. Mr. KATICIC (Yugoslavia) was in principle opposed to any time-limit, but recognized that some self-discipline would be needed. He hoped that whatever rule was adopted would be applied with flexibility.

17. Mr. DEAN (United States of America) suggested that speakers might be limited to five minutes, it being left to the discretion of the Chairman to extend that period when warranted by the importance of the subject.

It was so agreed.

Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) *(continued)* [1]

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1/L.6, L.15, L.23 to L.30]

18. The CHAIRMAN said that all the texts submitted by delegations on article 15 seemed to be in the nature of amendments within the meaning of rule 40 of the rules of procedure. Some of them merely suggested changes of form. Others raised issues of substance, and often two or more amendments related to the same point, even though they did not always envisage the same solution. Regardless of their nature, however, the number of texts clearly necessitated some steps to simplify the Committee's proceedings.

19. Amendments of form would, he felt, have to be dealt with by a working party. But such a party would be of little purpose until the points of substance had been disposed of and the Committee knew what amendments had been submitted to the other articles in section III. He therefore suggested that consideration of amendments of form be temporarily deferred.

It was so agreed.

Paragraphs 1, 2 and 3

20. The CHAIRMAN said that, so far as the first three paragraphs of article 15 were concerned, the amendments of substance seemed to be contained in documents A/CONF.13/C.1/L.15, L.24, L.25, L.26, L.27 and L.28. Since all of those amendments related to one point — namely, the concluding words of the third paragraph of the article prepared by the Commission — he suggested that the Committee's officers might be authorized to arrange for an informal consultation between the sponsoring delegations. If that consultation proved fruitful, it might constitute a valuable precedent for the Committee's future work.

It was so agreed.

21. The CHAIRMAN accordingly asked authors of amendments to paragraph 3 to introduce them.

22. Mr. KATICIC (Yugoslavia), explaining his delegation's proposal (A/CONF.13/C.1/L.15) to delete the words " or to other rules of international law ", said that during the general debate his delegation had already emphasized the need for the Conference to accomplish an exhaustive work of codification. Consequently, the convention must state the law, and the phrase he had mentioned should be deleted wherever it occurred. Any provisions of multilateral treaties which had acquired the status of general rules would have to be expressly mentioned, if it was not possible to embody their principles in the proposed convention. To meet the possibility of that amendment being rejected, his delegation had submitted a variant which, however, would be far less precise and adequate.

23. Mr. PFEIFFER (Federal Republic of Germany) said that his delegation had submitted its amendment (A/CONF.13/C.1/L.25) because the phrase " or to other rules of international law " was redundant. Such rules remained valid in all circumstances, provided they were not at variance with the convention under discussion.

24. Mr. BOAVIDA (Portugal) stated that the Portuguese amendment (A/CONF.13/C.1/L.26) had been inspired by the very pertinent considerations put forward by the Commission in its commentary on article 66, in the first two sentences of paragraph 4 and the second sentence of paragraph 8.

25. Mr. VERZIJL (Netherlands) said that the Netherlands amendment (A/CONF.13/C.1/L.27) to paragraph 3 must be considered in conjunction with its amendment to paragraph 1, which made reference to

[1] Resumed from the 21st meeting.

the articles restricting the right of passage so as to remove any uncertainty as to which articles were applicable. The purpose was to provide a definition of the right of innocent passage which, unfortunately, had seldom been done, either in theory or practice. It was regrettable, for example, that the Institute of International Law, in the resolution which it had adopted at Amsterdam in 1957, while recognizing the right of innocent passage, should have avoided defining it. The Netherlands amendment sought to establish that passage was innocent if it was in accordance with international law and was not contrary to the vital interests of the coastal State.

26. Mr. DEAN (United States of America) said that his delegation had proposed (A/CONF.13/C.1/L.28), the omission of the words " or to other rules of international law " for the same reasons as those mentioned by other speakers. It had proposed the substitution of the words " it is not " for the words " a ship does not use the territorial sea for committing any acts " because it favoured a more general formulation, and did not believe it was necessary to mention the kind of acts that rendered passage no longer innocent. The right of innocent passage was so important that the provision should be as unambiguous as possible ; that was the aim of his amendment.

27. Sir Gerald FITZMAURICE (United Kingdom), confining himself for the time being to the second United Kingdom amendment (A/CONF.13/C.1/L.24) because it was related to the same point as that mentioned by previous speakers, explained that it would automatically be withdrawn if the phrase " or to other rules of international law " were suppressed.

28. Mr. IOSIPESCU (Romania) said that the purpose of his amendment (A/CONF.13/C.1/L.23) was to make the definition of innocent passage complete by mentioning one of its long-established and integral elements — namely, that it must be necessary for the " normal course of the ship ". Departure from that course was regarded as sufficient reason for the coastal State to exercise its rights of control, as was expressly admitted by the Commission in its commentary on article 15. Apart from economic and security considerations there were, of course, other interests at stake ; in particular, the fishing interests of the coastal States must be protected against the practice of some fishing vessels of putting down their nets illegally while traversing the territorial sea, which was an additional reason for providing a comprehensive definition of innocent passage.

Additional paragraphs

29. The CHAIRMAN invited delegations which had proposed additional paragraphs to explain their proposals.

30. Mr. KATICIC (Yugoslavia) explained that the purpose of his delegation's proposal (A/CONF.13/C.1/L.15) for a new paragraph 6 was to subject flying-boats taking off from the territorial sea to the same regulations as aircraft taking off from land. It would be noted that the rights of the latter had been severely restricted even by the Chicago Convention of 1944 on International Civil Aviation.

31. Mr. SÖRENSEN (Denmark) said that it was generally assumed that the right of innocent passage extended also to fishing vessels, and in view of the implications of article 15, paragraph 2, there was no need to state expressly that they were debarred from fishing in the territorial sea of a foreign State. The purpose of the Danish proposal (A/CONF.13/C.1/L.29) was to prevent their abusing their right of innocent passage, and a similar provision already existed in a number of bilateral conventions. Its adoption would make it unnecessary to impose other restrictions on fishing vessels making use of their right of innocent passage. The proposed text could be placed after paragraph 5, which also dealt with a special category of vessels.

32. Mr. UDINA (Italy) said that his delegation had submitted its amendment (A/CONF.13/C.1/L.30) because it was desirable to mention expressly that fishing vessels also enjoyed the right of innocent passage, it being understood that they could not fish in the territorial sea of another State and that they must observe its regulations. The proposed text might be inserted as a final paragraph in article 17 ; that would apparently be acceptable to the Yugoslav delegation.

The meeting rose at 12.50 p.m.

TWENTY-SIXTH MEETING

Wednesday, 26 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 (A/3159) *(continued)*

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE [A/CONF.13/C.1/L.6, L.15, L.23 to L.30] (continued)

1. The CHAIRMAN announced that the working group consisting of the authors of amendments to article 15, paragraph 3, had still not completed its work, and he therefore proposed that the Committee should continue hearing explanations of the proposals for additional paragraphs.

Additional paragraphs

2. Mr. KATICIC (Yugoslavia), introducing his proposal (A/CONF.13/C.1/L.15) for the addition of a new paragraph 7, pointed out that fishing boats presented a special problem in relation to the right of innocent passage because some were equipped with very modern gear that could be lowered and taken up rapidly, so that it might be difficult to prevent their fishing in the territorial sea of another State while ostensibly traversing it for navigational purposes only. The right of the coastal State to issue regulations in that regard was clearly established by international practice, in support of which contention he quoted provisions from the International Convention of 1882 for Regulating the Police of the North Sea Fisheries, the Convention of 1901 between Great Britain and Denmark for Regulating the Fisheries outside Territorial Waters in the