United Nations Conference on the Law of the Sea

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Documents:
A/CONF.13/C.1/SR.31-35

Summary Records of the 31st to 35th 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))*

27. If the Yugoslav procedural motion were carried, the vote on article 15 would necessarily have to be put off for some days to give time for the discussion of revised amendments to Article 17 and for the discussion of Article 18.

28. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) asked for a ruling from the chair whether the United States revised proposal (A/CONF.13/C.1/L.28/Rev.1) was an amendment to the Commission's draft, which the Chairman rightly considered to be the basic text, or whether, as he (Mr. Koretsky) thought, it was an entirely new proposal and as such should be voted on after the Commission's text and the amendments thereto.

29. The CHAIRMAN said that the views which he had expressed at the 25th meeting concerning the procedure to be followed and which had been based on the proposals submitted by that date had but been confirmed by subsequent events. He could not concur in the Ukrainian representative's view that the revised United States proposal was not an amendment within the meaning of the rules of procedure, and accordingly *ruled* that it would have to be voted on before the Commission's text, as would also other amendments — such as that submitted by the delegation of India (A/CONF.13/C.1/L.73), which was equally applicable to the original article or to the revised United States proposal.

30. Mr. COMAY (Israel) explained that he had sought only to draw attention to the genuine predicament of those delegations which found acceptable some elements, but not others, of the revised amendments. If, after consultation with the United States delegation, it proved impossible to put the United States proposal to the vote in parts, he would not press the matter further.

31. Mr. SÖRENSEN (Denmark) proposed that further discussion be deferred so as to give the Committee's officers an opportunity of preparing suggestions on the voting procedure to be followed.

It was so agreed.

Address by the Secretary-General of the United Nations

32. The CHAIRMAN welcomed the Secretary-General.

33. Mr. HAMMARSKJOLD (Secretary-General of the United Nations) regretted that other duties had prevented him from attending the opening of the Conference, which had the task of drawing up a coherent set of rules establishing the legal régime of the sea to be embodied in appropriate instruments. He had followed its progress with keen interest, and had become increasingly aware of the difficulties which, however, he was sure would be overcome in a genuine spirit of constructive compromise. He wished the Conference every success in its work, which would greatly contribute towards the consolidation of peaceful relations between nations.

The meeting rose at 1 p.m.

THIRTY-FIRST MEETING

Monday, 31 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)*

ARTICLES 1, 2, 3 AND 66 (JURIDICAL STATUS OF THE TERRITORIAL SEA; JURIDICAL STATUS OF THE AIR SPACE OVER THE TERRITORIAL SEA AND OF ITS BED AND SUBSOIL; BREADTH OF THE TERRITORIAL SEA; CONTIGUOUS ZONE) [A/CONF.13/C.1/.L4, L,6, L.13, L.54, L.55, L.57, L.63, L.77/Rev.1, L.79]

1. The CHAIRMAN recalled the decision taken by the Committee at its 23rd meeting that discussion of articles 1, 2, 3 and 66 and the amendments thereto be deferred until a date to be fixed by the Chair, but not later than Monday, 31 March 1958, and that those articles be considered as a group.

2. Mr. DREW (Canada), introducing the Canadian amendments to articles 3 and 66 (A/CONF.13/C.1/L.77/Rev.1), said that, as pointed out in the comment to the amendments, they constituted a single proposal and should be discussed and voted upon as such.

3. In seeking to reach agreement on the codification of the law of the sea, the Conference had undertaken a formidable task indeed, and his delegation had submitted its amendments in the hope that they would offer a prospect of agreement between the widely differing points of view already expressed.

4. Canada attached great importance to the Conference's success, and he would remind representatives that the situation was now very different from that which had obtained in 1930 when the Conference for the Codification of International Law had been held at The Hague. Demands for wider zones of control over the living resources of the sea were rapidly increasing, and in recent years certain States had extended their territorial claims to far beyond the three-mile, six-mile or twelve-mile limits which constituted current practice. He mentioned those facts in order to draw attention to a trend which could not be ignored. If no agreement were reached at the Conference on the breadth of the territorial sea and contiguous zone, many countries would soon take the matter into their own hands.

5. The establishment of a contiguous fishing zone twelve miles broad would admittedly result in at least a temporary reduction in the catches of some of the fleets fishing waters far from their home ports. But he would point out to the representatives of States in that position that the issue was not whether they were to continue to fish to within three miles of other nations' shores, but whether they were to fish outside a much broader zone established by international law or outside a zone whose breadth might be established by the unilateral action of any coastal State.

6. It might be argued that it would not be legal for a State to take unilateral action which would greatly extend the sea area under its control. But if the Conference failed to reach agreement on a law regulating

the breadth of the territorial sea, no nation fishing distant waters would be able to prevent the coastal State from applying its own laws and regulations.

7. Surely no one could doubt the practical value of a law of the sea on which a constantly improving code of international laws could be built? He recognized that the first code approved by the Conference might not satisfy any one delegation in every detail, but improvements could be made in the light of experience. He therefore urged delegations to do everything in their power to ensure agreement on a workable code, which would establish a régime of settled law. When the principle of *mare liberum* advocated by Grotius had finally been generally accepted 300 years ago, not only had many nations agreed to recognize the freedom of seas far closer to their shores than they had recognized for centuries previously, but some had even renounced broad claims they had laid to the control of the entire area of some particular seas. The results had more than justified that course.

8. The three-mile limit had been recognized by nations responsible for some 80% of the world's maritime traffic. His delegation therefore hoped that the breadth of the territorial sea would be fixed at three miles; such would be the effect of the Canadian amendments to articles 3 and 66.

9. The International Law Commission had defined the contiguous zone as that contiguous to the territorial sea, and had said that it might not extend beyond twelve miles. The Commission must have been of the opinion that the territorial sea would be less than twelve miles broad, or the word "contiguous" would have no meaning in that context. The question how much less it should be would depend on whether control of the fishing rights was to be exercised only within the territorial sea or to the full breadth of the contiguous zone. An examination of the reasons given by different States for the unilateral extension of their territorial seas within recent years showed that such action had been related almost entirely to the demand for a wider area of control over the living resources of the sea. The Canadian amendment to article 66 recognized that fact.

10. If the article on the contiguous zone gave the same right of control over fishing throughout that zone, then there was reason to believe that States which were in fact concerned only with the need for a larger fishing zone would be ready, and perhaps anxious, to agree upon a limit of three miles for the territorial sea. Many of them would naturally be reluctant to take a decision on the width of the territorial sea until they knew whether control of fishing was to be exercised within a wider contiguous zone and, if it was, how wide that zone would be.

11. For many reasons, the Canadian Government advocated a twelve-mile contiguous zone for fishing as well as for the other purposes for which provision had already been made in the International Law Commission's draft. First, Canada had had a contiguous zone for fishing since 1911. That rule had applied to Canadian fishermen alone, because Canada had at no time taken unilateral action which would have affected foreign fishermen. Canada urged the Conference to agree upon a twelve-mile contiguous zone in the knowledge born of its own experience that it would work satisfactorily so long as it was made part of an international code.

12. Every nation must necessarily put the welfare of its own people first. The vital interests of hundreds of fishing communities strung along the east and west coasts of Canada, and the livelihood of hundreds of thousands of hard-working Canadians, were directly affected by — and in very many cases entirely dependent upon — fishing; and he recalled the figures he had quoted at the Committee's 17th meeting. Canadian fishermen had sought protection from the unrestricted activities of the new, large trawlers now fishing an offshore area which was the natural source of their livelihood. Operating in large numbers, modern mechanized fishing craft were trawling a large part of the living resources of the sea, to conserve and protect which Canada had spent vast sums.

13. He then quoted the observations on the breadth of the territorial waters submitted by Portugal to the Conference for the Codification of International Law held at The Hague in 1930.[1] Those observations accurately described Canada's present position. Portugal had then directly related its claim to a wider area of control of the territorial sea to the protection of its own fishermen and to that of the living resources of the sea to which they looked for their subsistence.

14. He therefore hoped that the Canadian proposals would be acceptable to Portugal. He also hoped that the other nations of Europe would accept the Canadian proposals once it was realized that, whether by agreement or otherwise, control of fishing was going to be demanded over a much wider area than the three-mile territorial sea so generally accepted throughout western Europe in the past.

15. No convincing argument had been put forward in the general debate why the territorial sea should be more than three miles, except that, in the absence of other means, it was a simple way of ensuring more extensive control over fishing. The creation of a contiguous fishing zone would achieve that result and give exactly the same rights over fishing as existed within the territorial sea; it would also make it possible for the freedom of the seas to extend to within three miles off-shore.

16. If the Canadian amendments were adopted, the measurement of the contiguous zone would be definite. Variable distances, to be established by unilateral action either in the case of the territorial sea or in that of the contiguous zone, would only lead to uncertainty and confusion. If a nation did not wish to exercise its rights over the full width of twelve miles it need not do so. But in his view, if a code of law was to be established, the best results would be obtained by legislating unambiguously. Once a code had been adopted, it would be possible to reach agreement on the intervals at which periodic reviews should be made.

17. Emphasizing the present-day importance of air transport, he said that, as the right to fly over the territory of other States was not covered by the principle of innocent passage, any extension of the territorial sea

[1] See Ser. L.o.N.P., 1929, V. 2, pp. 31 and 32.

would limit the air routes available in many parts of the world.

18. In conclusion, he pointed out that if the Conference reached general agreement on articles 1 and 66, which were the two most important articles of the proposed code, the other problems facing it would be much more susceptible of solution.

19. Mr. KATICIC (Yugoslavia), introducing the Yugoslav amendments to article 1 (A/CONF.13/C.1/L.57) and article 66 (A/CONF.13/C.1/L.54), recalled that his delegation considered that the breadth of the territorial sea should be fixed by the coastal State and should be between three and twelve miles.

20. The Yugoslav delegation could accept the Canadian amendment to article 66, paragraph 2, in principle, but would have to study it in greater detail. His delegation could not agree that the Canadian amendments to articles 3 and 66 must be considered as a single proposal.

21. Referring to the additional sentence which his delegation proposed to add to paragraph 2, he emphasized that, in the absence of an agreement, the delimitation of the contiguous zone between two States the coasts of which were opposite each other at a distance less than the breadth of their territorial seas and contiguous zones, or between two adjacent States, should be constituted by the median line every point of which was equidistant from the nearest points on the baselines from which the breadths of the territorial sea of the two States were measured. Any other solution would lead to difficulties and disputes.

22. Mr. KRISPIS (Greece), introducing the Greek delegation's amendment to Article 1 (A/CONF.13/C.1/L.63), pointed out that the right of sovereignty must be exercised subject to the "restrictions", and not the "conditions", prescribed in the articles and by other rules of international law.

23. Mr. GARCIA ROBLES (Mexico), introducing the joint proposal relating to article 3, submitted by India and Mexico (A/CONF.13/C.1/L.79) said that the Indian representative would speak on it at a subsequent meeting.

24. Under that proposal, article 3 would provide that every State was entitled to fix the breadth of its territorial sea up to a limit of twelve miles measured from the baseline applicable in conformity with articles 4 and 5.

25. It was the Conference's duty to formulate the rule for the delimitation of the territorial sea in accordance with international practice of 1958, not of some earlier period; neither was the Conference called upon to consider the rule which might prevail in A.D. 2,000. As he had already spoken on the subject in the general debate (20th meeting), he would merely state briefly the main arguments in favour of the joint proposal.

26. First, Professor Gidel had stated so long ago as 1933 that it was no longer possible to regard the three-mile rule as a rule of positive and general international law in the sense of a maximum limit for the territorial sea. If a three-mile rule existed, the professor had said, it could only be in the sense of a minimum breadth for the territorial sea.

27. Secondly, some two-thirds of the maritime States of the world had, some of them many years previously, fixed a breadth exceeding three miles for the territorial sea; in most cases, the breadth thus established did not exceed twelve miles.

28. Thirdly, concurring practice on the part of the great majority of States had given rise to a binding rule of customary international law.

29. Fourthly, the rule of international law in question provided for a variable breadth. In 1956, Mr. Padilla Nervo, the Mexican member of the International Law Commission, had suggested that recognition should be given to the right of States to fix the breadth of their territorial sea within a given maximum.[2]

30. Fifthly, the Inter-American Council of Jurists had, by its resolution XIII, adopted at its third meeting held at Mexico City in 1956, formulated certain principles concerning the law of the sea. The relevant part of that resolution had recognized the competence of each State to establish its territorial sea within reasonable limits, taking into account geographical, geological and biological factors, as well as the economic needs of its population and its security and defence. The principles laid down at Mexico City had been reaffirmed by the Third Hispano-Luso-American Congress on international law, held at Quito in October 1957.

31. Lastly, it was the clear duty of the Conference to formulate and adopt an article which faithfully reflected the existing rule of customary international law on the breadth of the territorial sea. Since that rule did not provide for a fixed breadth, it was for the Conference to determine the maximum limit which could at present be considered "reasonable", to use the language of the principles of Mexico. In the light of the practice followed by the great majority of States, the Mexican delegation had reached the conclusion that that limit was twelve miles. Very few States claimed a territorial sea of greater extent. In the exceptional cases in which claims to a greater breadth were made, it would seem that they did not refer to the territorial sea proper and could be satisfied by the recognition of sovereign or exclusive rights over the continental shelf and by that of exclusive or special rights in the contiguous zone or in a fisheries conservation zone.

32. The Mexican delegation hoped that the joint proposal would meet with the approval of the great majority of the States represented at the Conference. It had put its name to that proposal in a constructive spirit and would listen with interest to any relevant suggestions by other delegations. Its sole concern was that the article to be adopted should reflect the existing rule of customary international law.

33. The CHAIRMAN suggested that, as there were no further speakers on his list, the Committee should revert to article 15, paragraph 3.

34. Mr. DEAN (United States of America) felt that it might be better to complete discussion of articles 15 to 25 before returning to the consideration of articles 1, 2, 3 and 66.

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[2] See *Yearbook of the International Law Commission, 1956*, Vol. 1 (A/CN.4/SER.A/1956), p. 171.

35. The CHAIRMAN, concurring, suggested that further consideration of the four articles in question should be deferred until a date to be fixed on Wednesday, 2 April.

It was so agreed.

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1/L.6, L.23, L.28/Rev.1, L.64, L.65, L.73 to L.76] (continued)

36. Mr. IOSIPESCU (Romania) said that he would not press for a vote on his delegation's amendment to article 15, paragraph 3 (A/CONF.13/C.1/L.23).

37. Mr. SHUKAIRI (Saudi Arabia) said the Committee was faced with a situation which was not covered by the rules of procedure. It had before it three main texts, each of which sought to define innocent passage. Each was based on a particular conception of the right of passage and stood on its own merits. The texts were: the International Law Commission's draft, the revised United States proposal (A/CONF.13/C.1/L.28/Rev.1) and the joint proposal sponsored by his delegation and that of Burma (A/CONF.13/C.1/L.75). In his delegation's opinion, each one of those texts must be voted on as a separate and distinct text; none of them could be treated as an amendment.

38. The Committee had also before it a number of amendments in the strict sense of the word. Two of them — the Indian proposal (A/CONF.13/C.1/L.73) and the eight-power proposal (A/CONF.13/C.1/L.74) — could be applied to any of the three main texts. The Turkish amendment (A/CONF.13/C.1/L.65), introducing the reference to other rules of international law, could only be applied to the revised United States proposal, the only one of the three main texts which did not already contain such a reference. Lastly, the French amendment (A/CONF.13/C.1/L.76) applied only to the International Law Commission's text.

39. In the circumstances, he suggested that the Committee should vote first on the Indian and eight-power proposals. If either or both of those proposals were adopted, it would clearly be the sense of the Committee that the ideas expressed in them must be introduced into any text which might be adopted.

40. The Committee should then vote on the Turkish amendment. If that amendment was adopted, the Committee could vote on the United States revised proposal as thus amended. If the resulting text was adopted, his delegation would be prepared to withdraw its own proposal.

41. If, however, the Turkish amendment was rejected, his delegation would press for a vote on its proposal, and the Commission would be faced with the three main texts, each of which constituted a distinct and separate alternative. In that event, the Committee should be consulted, before any vote was taken, about the number of delegations supporting each of the main text. Such a consultation would clarify the position and assist the Committee to reach a proper decision.

42. As to the French amendment, it would only be voted upon if the Committee had finally to fall back on the International Law Commission's text.

43. Mr. DEAN (United States of America) drew attention to the Chairman's remarks at the 25th meeting regarding the procedure to be followed in the voting on the various proposals before the Committee, and the Committee's agreement to that procedure. In accordance with that procedure, the revised United States proposal was an amendment, and as such was governed by rule 40 of the rules of procedure; it should therefore be put to the vote together with the other amendments in the order of their substantive remoteness from the basic proposal — the International Law Commission's text.

44. Mr. SHUKAIRI (Saudi Arabia) said that, under the terms of the last sentence of rule 40 of the rules of procedure; the revised United States proposal did not constitute an amendment; it did not merely add to, delete from, or revise part of the International Law Commission's text; it completely altered its structure. It therefore constituted a separate proposal and was governed by rule 41.

45. Mr. AMADO (Brazil) said that the one important issue raised by the many amendments and sub-amendments before the Committee was whether the reference to "other rules of international law" should be deleted from the text. In the circumstances, the simplest way out of the Committee's difficulties would be to vote on that issue.

46. The CHAIRMAN ruled that the revised United States proposal constituted an amendment; being the furthest removed in substance from the International Law Commission's text, it would be put to the vote before the Brumese and Saudi Arabian joint proposal.

47. With regard to the Indian proposal and the eight-power proposal, he agreed with the Saudi Arabian representative that it would be appropriate to vote on them before the revised United States proposal and the Burmese/Saudi Arabian proposal; they could in fact be applied to any text which the Committee might adopt.

48. Lastly, he agreed that the French amendment (A/CONF.13/C.1/L.76) should be voted on last, before the vote — should such be taken — on the International Law Commission's text.

The meeting rose at 1 p.m.

THIRTY-SECOND MEETING

Tuesday, 1 April 1958, at 10.30 a.m.

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

Organization of the work of the Committee *(continued)* [1]

PROCEDURE FOR PUTTING PROPOSALS TO THE VOTE (continued) [1]

1. Mr. KATICIC (Yugoslavia) pointed out that articles 15, 17 and 18 were closely interrelated. He therefore proposed that no vote be taken on article 15 until the discussion on articles 17 and 18 had been concluded. He further proposed that the three articles be voted upon in the reverse order.

[1] Resumed from the 30th meeting.

2. Mr. BHUTTO (Pakistan) supported the Yugoslav proposal.

In the absence of any objection the proposal was adopted.

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

ARTICLE 17 (RIGHTS OF PROTECTION OF THE COASTAL STATE) [A/CONF.13/C.1/L.6, L.31, L.39, L.44, L.56, L.70 to L.72] (continued) [2]

Paragraphs 3 and 4

3. The CHAIRMAN said that there were no amendments to paragraph 2 of article 17. As to paragraph 3, the four-power proposal (A/CONF.13/C.1/L.70), which had been introduced at the 30th meeting by the representative of the Netherlands, replaced all the amendments proposed earlier, except for those submitted by Greece (A/CONF.13/C.1/L.31) and Romania (A/CONF.13/C.1/L.44).

4. Mr. KRISPIS (Greece) said that his delegation wished to add the words " among foreign ships " to the words " without discrimination ", which it had proposed should be inserted in paragraph 3. The purpose of the further addition was to make it clear that the coastal State should accord equal treatment to all foreign ships.

5. Mr. DEAN (United States of America) withdrew the United States amendment to paragraph 4 (A/CONF.13/C.1/L.39). His delegation now supported the text proposed by the Netherlands, Portugal and the United Kingdom (A/CONF.13/C.1/L.71).

6. The CHAIRMAN said that the Committee now had before it in respect of paragraph 4 the Chilean amendment (A/CONF.13/C.1/L.56) and the three-power proposal (A/CONF.13/C.1/L.71) just mentioned by the United States representative which had been introduced by the Netherlands representative at the 30th meeting.

7. Mr. SÖRENSEN (Denmark) said that his delegation had been in favour of the original Netherlands amendment to paragraph 4 (A/CONF.13/C.1/L.51 art. 17, para. 3), which had sought to replace the word " straits " by the word " sealanes ". Bays and other waters not used for international navigation often formed part of straits, and it was desirable that the provision should apply specifically to sealanes. The amended text contained in the three-power proposal referred to " straits or other sealanes which are used for international navigation ". The Danish delegation would support that text on the understanding that it referred to straits only in so far as they constituted sealanes.

8. Mr. GUTIERREZ OLIVOS (Chile) agreed with the Danish representative's remarks.

9. Mr. SHUKAIRI (Saudi Arabia) asked the sponsors of the three-power proposal to clarify three points. First, did any definition of the term " sealane " exist? So far as he knew, the word did not constitute a legal term, and was not defined by any writer on international law. Secondly, was there any specific reason for the omission of the word " normally " from the text of paragraph 4? That word, which had been adopted by the International Law Commission, was particularly appropriate in the context: only straits which were normally used for international navigation were the subject of the right of innocent passage. Thirdly, he wished to know the reasons for the departure from existing rules of international law constituted by the insertion of the words " or the territorial waters of a foreign State ". International law provided for the right of innocent passage through straits connecting two parts of the high seas; it did not provide for such a right in the case of straits linking the open sea with an internal sea or with the territorial sea of a particular State.

10. Lastly, he asked the United Kingdom representative whether his proposal that the words " or waters constituting the sole means of access to a port " be added to paragraph 4 (A/CONF.13/C.1/L.37) was embodied in the three-power proposal.

11. The CHAIRMAN said that it was his understanding that the United Kingdom amendment to paragraph 4 had been withdrawn in favour of the three-power proposal.

12. Mr. KUSUMAATMADJA (Indonesia) said that there was a close relationship between paragraphs 3 and 4 of article 17 — and, indeed, between those two paragraphs and paragraph 1. The basic rule was laid down in paragraph 1, which provided that the coastal State could take the necessary steps in its territorial sea to protect itself against any act prejudicial to its security or to such other of its interests as it was authorized to protect. In the light of that basic principle, paragraphs 3 and 4 as drafted by the International Law Commission were preferable to the amendments put forward in the joint proposals (A/CONF.13/C.1/L.70 and L.71).

13. As was said in paragraph 1 of the Commission's commentary on article 17, the coastal State had the right to verify the innocent character of the passage and to take the necessary steps to protect itself against any acts prejudicial to its security or interests. In order to exercise that right, the coastal State should be able to suspend temporarily the right of passage if it deemed such suspension necessary to protect the rights referred to in paragraph 1 of the article. The four-power proposal, which sought to replace in paragraph 3 the phrase " if it should deem such suspension essential " by the words " if such suspension is essential " was inconsistent with the meaning of the basic rule as laid down in article 17, paragraph 1.

14. With regard to paragraph 4, his delegation was prepared to accept the introduction of a reference to sealanes, but it could not accept the addition of the final words " or the territorial waters of a foreign State " proposed in the three-power amendment (A/CONF.13/C.1/L.71); as to form, the use of the vague expression " territorial waters " was undesirable in view of the International Law Commission's consistent use of the term " territorial sea ", while as to substance, his delegation did not agree that the right of innocent

[2] Resumed from the 30th meeting.

passage existed in the case of straits connecting the high seas with the territorial sea of a particular State.

15. He could not agree that the right of innocent passage should be regarded as being on a par with the rights of a coastal State over its territorial sea. The right of innocent passage through the territorial sea was different in character from the sovereign rights of the coastal State over its territorial sea.

16. Mr. VERZIJL (Netherlands), replying to the three questions asked by the representative of Saudi Arabia, said that, in the first place, the term " sea-lanes " had no special juridical significance. But it was a term that would be easily understood by all concerned with international navigation. The term " straits " was much too narrow, because there were sea-lanes used for international navigation elsewhere than in straits. Secondly, the word " normally " had been dropped because it was considered that paragraph 4 should apply to sea-lanes actually used by international navigation. Finally, the addition of the words " or the territorial waters of a foreign State " reflected existing usage safeguarding the right to use straits linking the high seas with the territorial sea of a State.

17. He supported the Indonesian representative's preference for the term " territorial sea " rather than " territorial waters ". He did not, however, support his preference for a subjective formulation of the rule in paragraph 3. Some objective criterion was essential if the coastal State was not to be left the sole judge of the propriety of suspending the exercise of the right of innocent passage. In paragraph 2 of its commentary to article 17, the International Law Commission had stated that it was permissible to suspend the right of passage temporarily " in exceptional cases " and " if compelling reasons connected with general security " required it. Those statements clearly indicated the need for an objective — not a subjective — criterion.

18. Mr. KUSUMAATMADJA (Indonesia) said that paragraph 2 of the commentary in no way conflicted with the text of paragraph 3 of article 17 as drafted by the Commission. The commentary was concerned with the justification for suspending the right of passage, whereas paragraph 3 of the article stipulated who was to take the decision.

19. If the coastal State's right to suspend the exercise of the right of innocent passage were limited to sea areas not used for international navigation, the provisions of paragraph 1 would apply only to areas of the territorial sea used by fishing boats and coastal shipping.

20. Given the absence of an independent organ which could arbitrate in the matter of the application of an objective rule, the only practical possibility was to maintain a subjective criterion as contained in the International Law Commission's draft. The coastal State should certainly substantiate any action it might take, but it undoubtedly had the right to initiate action at its own discretion.

21. Mr. SHUKAIRI (Saudi Arabia) said that paragraph 4 was a most important provision; accordingly the amendments to it should be very carefully considered before they were put to the vote.

22. The Netherlands representative's explanations had not allayed his misgivings about the use of the term " sea-lanes ". As that expression had never been defined in international law, its use in the text of a convention might give rise to much controversy.

23. The reasons given by the Netherlands representative for dropping the word " normally ", which appeared in the International Law Commission's text of paragraph 4, were equally unsatisfactory. The right of innocent passage could be exercised only in recognized international seaways; it could not, for instance, be invoked by ships using the North-West Passage, which had never been used for regular international navigation. He therefore urged the Committee to retain the word in question.

24. The three-power amendment (A/CONF.13/C.1/L.71) should be rejected, as it was in direct conflict with the accepted principles of international law. Paragraph 4 of the Commission's commentary to article 17 stated, with reference to the legal position of straits forming part of the territorial sea of one or more States and constituting the sole means of access to a port of another State, that the case could be assimilated to that of a bay whose inner part and entrance from the high seas belonged to different States. The commentary further stated that as the Commission had felt bound to confine itself to proposing rules applicable to bays wholly belonging to a singly coastal State, it had also reserved consideration of the foregoing case.

25. His government's participation in the final act of the Conference would be conditional, among other things, on the rejection of the amendments to article 17 at present before the Committee.

26. Mr. CARDOSO (Portugal) explained that, in drafting their amendment to paragraph 4, the authors had wished to ensure that a coastal State would not be entitled to suspend the right of innocent passage of foreign ships through sealanes which were used for international navigation between one part of the high seas and another part of the high seas or territorial waters.

27. Although his delegation had agreed to the omission of the word " normally ", it would not oppose its retention if the majority considered that it made paragraph 4 clearer.

28. Mr. TUNKIN (Union of Soviet Socialist Republics) could not support the four-power amendment to paragraph 3 (A/CONF.13/C.1/L.70) or the three-power amendment to paragraph 4 (A/CONF.13/C.1/L.71).

29. His delegation shared the Indonesian representative's views about the new text proposed for paragraph 3. The International Law Commission's draft of that paragraph clearly stated that the coastal State might suspend temporarily in definite areas of its territorial sea the exercise of the right of passage if it should deem such suspension essential for the protection of the rights referred to in paragraph 1. The four-power text did not specify who was to decide when the suspension of innocent passage was essential for the prescribed purposes. The coastal State might thus be deprived of very important rights over its territorial waters.

30. No mention of " sealanes " should be made in paragraph 4, since no one would understand what was meant. The word " normally " was very important, and should be retained. He drew attention, in that connexion,

to paragraph 3 of the International Law Commission's commentary to article 17, which said that the expression " straits used for international navigation between two parts of the high seas " had been suggested by the decision of the International Court of Justice in the Corfu Channel case.[3] The Commission had been of the opinion that it would be in conformity with the Court's decision to qualify the word " used " by the term " normally ".

31. Mr. DEAN (United States of America) agreed that it was clear from the commentary to paragraph 4 that the Commission had based the use of the word " normally " on the decision taken by the International Court of Justice in the Corfu Channel case. Careful examination of the records of that case would, however, show that the Court itself had never used the word. The Commission had not taken a vote on the insertion of the word " normally ", which had been proposed by the USSR member at the Commission's seventh session and accepted without discussion. He therefore considered that the Committee was free to delete or retain the word in question.

32. He wished to compliment the representative of Indonesia on the clarity of his statement, although he differed from him on many points affecting the doctrine of innocent passage. In an effort to meet the problems which that doctrine created for the coastal State, the delegations of Greece, the Netherlands, Portugal, the United Kingdom, the United States of America and Yugoslavia had jointly submitted amendments to articles 17 and 18 (A/CONF.13/C.1/L.72). The four-power amendment to paragraph 3 of article 17 also referred to the rights of coastal States in the matter of the innocent passage of foreign ships.

33. He agreed with the representative of Saudi Arabia that the doctrine of innocent passage was of primary importance, but emphasized that it must be governed by objective standards. In the amendments of which his delegation was one of the authors, efforts had been made to ensure that a coastal State had the right to enforce its own regulations, but the doctrine of innocent passage must never be allowed to depend on the caprice of such a State.

34. Mr. GUTIERREZ OLIVOS (Chile) considered that there was some contradiction between the wording of the four-power amendment to paragraph 3, that of the three-power amendment to paragraph 4 and that of the six-power amendment to articles 17 and 18.

35. Sir Reginald MANNINGHAM-BULLER (United Kingdom) could not agree with the Chilean representative. The amendments before the Committee were designed to eliminate from the International Law Commission's text many features which might lead to future disputes and conflict between nations.

36. Supporting the omission of the word " normally ", he pointed out that it was vague, and might well become a future source of argument, friction and dispute between nations as to what was or was not the " normal " use of a particular strait.

37. Associating himself with the remarks of the United States representative, he emphasized that in relation to paragraph 3 it was essential to have an objective standard if the doctrine of innocent passage was to have any reality.

38. He agreed with the representative of Saudi Arabia that the doctrine was of primary importance, but considered that it would be wrong to leave a coastal State to judge when and in what circumstances it should deem the suspension of innocent passage essential. If such action were taken, it might have very prejudicial effects on friendship between nations and on world commerce and trade alike.

39. Mr. CARDOSO (Portugal), too, was unable to agree that the contradictions mentioned by the Chilean representative in fact existed.

40. Mr. GARCIA ROBLES (Mexico), supporting the Chilean representative's observations, said that he would comment further on the matter at the next meeting. He asked whether any further discussion of the amendments to article 15 would be permitted.

41. The CHAIRMAN said that, apart from the discussion of certain amendments to article 15 concerning fishing rights, the Committee was now ready to vote on the substantive parts of the article.

The meeting rose at 1 p.m.

[3] *I.C.J. Reports, 1949*, p. 4.

THIRTY-THIRD MEETING

Tuesday, 1 April 1958, at 8.30 p.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)*

1. The CHAIRMAN announced that it had been agreed in the working group, that articles 15, 17 and 18 should be voted on in numerical order, and not in reverse order as had been decided at the previous meeting.

ARTICLE 17 (RIGHTS OF PROTECTION OF THE COASTAL STATE) [A/CONF.13/C.1/L.6, L.31, L.44, L.51, L.56, L.70 to L.72] (continued)

2. Mr. SIKRI (India) said that, according to the United Kingdom representative, the Commission's text of article 17, paragraph 3, gave the coastal State an unlimitted right of suspension at its own discretion, whereas what was necessary was an objective criterion. In that matter, he agreed with the views of the Soviet Union representative, and pointed out that in Anglo-Saxon national law security questions were invariably left to the subjective discretion of the State, which was in a position to discharge the burden of proof. Moreover, in such cases the State had ample material on the basis of which it could demonstrate conclusively that an impugned action had been taken for reasons of State security, although it was for those very reasons that it was unable to produce the material in court. In a number of important cases, legislation had been interpreted in such a way as to confer subjective jurisdiction on the State, first because security matters could not suitably be dealt with by the courts, and secondly because in most cases the courts did not have access to the relevant

documents. Those reasons were even more compelling on the international plane, as the coastal State would never be in a position to justify its action before an international tribunal if an objective criterion were applied. The net result would be to prohibit any action in the interest of security.

3. That did not, however, mean that the coastal State could act with impunity, for suspension of the right of passage would be *bona fide* only if ordered for the reasons given in paragraph 3, and the burden of proof would rest on the State alleging that such action was not bona fide. That safeguard was, moreover strengthened by two other requirements — namely, that suspension must be temporary, and that it must apply only to specific areas. The Commission had therefore achieved a correct balance between the right of innocent passage and the security of the coastal State. Acceptance of the amendments, on the other hand, would jeopardize the security of the coastal State, and his delegation would accordingly vote for the Commission's draft of paragraphs 3 and 4 of article 17.

4. Mr. SHUKAIRI (Saudi Arabia) said that when the United States and United Kingdom representatives had replied to his earlier arguments they had rightly referred to the decision of the International Court of Justice in the Corfu Channel case.[1] He accepted that decision; however, it stated, *inter alia,* that it was generally recognized that States in time of peace had a right to send their warships through straits used for international navigation between two parts of the high seas. Clearly, therefore, the right of innocent passage could be exercised in straits linking two areas of the high seas, but not in those linking a part of the high seas with the territorial waters of a State.

5. It had also been argued that to use the word " normally " in paragraph 4 would create confusion. Yet that term had been used in several international instruments, and had been specifically included in the Convention and Statute on the International Régime of Maritime Ports, adopted at Geneva in 1923 to remove any doubts and ambiguity.

6. In conclusion, he said that in his opinion the amended text no longer dealt with general principles of international law, but had been carefully tailored to promote the claims of one State. His delegation would be unable to support a text that covered only one specific case.

7. Mr. VERZIJL (Netherlands) said that, as a result of the discussion in the working group, it had been decided to delete the words " or other sealanes " and to replace the words " territorial waters " by the words " territorial sea ", in the three-power proposal (A/CONF.13/C.1/L.71).

8. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that the Commission's text for paragraph 1, which referred to the security of the coastal State and rules of international law, was clearer than and therefore preferable to the six-power proposal (A/CONF.13/C.1/L.72). The fact that the proposal was linked to a similar one relating to article 18, contained in the same document, did not make it any the more acceptable. His delegation would therefore vote against it and support the Commission's text.

9. The French proposal for an additional paragraph (A/CONF.13/C.1/L.6) raised a completely new problem in international law. The Commission had not gone into the question of nuclear-powered ships, and the Conference was not in a position to consider its technical and biological aspects. It was therefore doubtful whether any useful decision could be taken, and his delegation would accordingly vote against the proposal.

10. Mr. SOLE (Union of South Africa), referring to the French proposal, recalled that the International Atomic Energy Agency (IAEA) intended to investigate the question of the health and safety precautions to be taken in ports as a result of the introduction of nuclear-powered vessels. His delegation would hesitate to support the French proposal before the matter had been studied exhaustively by the competent bodies.

11. Mr. GUTIERREZ OLIVOS (Chile) withdrew his delegation's proposal (A/CONF.13/C.1/L.56), as it had failed to command adequate support.

ARTICLE 18 (DUTIES OF FOREIGN SHIPS DURING THEIR PASSAGE) [A/CONF.13/C.1/L.32, L.45, L.72] (continued) [2]

12. The CHAIRMAN explained that some of the proposals and amendments relating to Article 18 had been withdrawn, and others combined to form consolidated texts.

13. Mr. VERZIJL (Netherlands), elucidating the six-power proposal relating to article 18 (A/CONF.13/C.1/L.72), observed that paragraph 1 of the proposed new text differed from the International Law Commission's draft only in that the language had been slightly simplified. Paragraph 2 of the proposal was designed to ensure to the coastal State the right of enforcing the laws and regulations mentioned in paragraph 1.

14. The essential difference between the six-power amendment and that submitted by Mexico (A/CONF.13/C.1/L.45) was that in the latter the words " in conformity with the present rules and other rules of international law " applied to the exercise of the right of passage of foreign ships, whereas in the International Law Commission's draft and in the six-power proposal they applied to the enactment of laws and regulations by the coastal State. He attached great importance to the position of those words, and believed that they were correctly placed in the six-power proposal and the Commission's text.

15. Mr. GARCIA ROBLES (Mexico) pointed out that the amendment to article 18 was the only one which his delegation had submitted to articles 15-18. Having recalled that the title of the article was " Duties of foreign ships during their passage ", he said that there was no doubt in his delegation's view that the words " in conformity with the present rules and other rules of international law " should apply to the exercise of the right of passage by foreign ships, and not to the

[1] *I.C.J. Reports, 1949,* p. 4.

[2] Resumed from the 27th meeting.

enactment of laws and regulations by the coastal State.

16. That did not mean that there were no limitations in international law on the enactment of laws and regulations by the coastal State. On the contrary, the obligation on coastal States to comply with rules of international law in enacting domestic laws and regulations was clearly expressed in article 1, paragraph 2, and in article 17, paragraph 1, of the Commission's draft. It was surely unnecessary to re-assert the obligation in article 18, which related solely to the duties of foreign ships.

17. Mr. GUTIERREZ OLIVOS (Chile) supported the Mexican amendment. He had nothing substantive to add to what the Mexican representative had said; but, on a technical point, he could not agree with the Netherlands representative that the wording of the six-power proposal resembled the Commission's original draft more closely than did the Mexican amendment. From the Spanish text, at least, of the Commission's draft it appeared that the words " in conformity with the present rules and other rules of international law " qualified the exercise of right of passage by foreign ships, and not the enactment of laws and regulations by the coastal State. It would be absurd to lay down that foreign ships were obliged to conform only with the laws and regulations enacted by the coastal State, and not with the rules of international law.

18. Sir Gerald FITZMAURICE (United Kingdom) opposed the Mexican amendment on the grounds that it destroyed the entire balance of the International Law Commission's draft and that of the six-power proposal. The essence of the last two texts was that foreign ships must comply with laws and regulations enacted by the coastal State, subject to the one proviso that such legislation was in conformity with the present and other rules of international law. If that proviso were omitted, there would be no limitation whatsoever on the laws which the coastal State could enact. The Mexican amendment, far from making the enactment of laws and regulations by the coastal State subject to their conformity with the rules of international law, contained a quite different proposal: that the qualification should apply exclusively to ships exercising their right of passage.

19. His delegation would be prepared to support an amendment which imposed an obligation both on foreign ships and on coastal States to conform to the present rules and other rules of international law, but could not accept a one-sided amendment which imposed the obligation only on foreign ships exercising their right of passage.

20. Mr. CARMONA (Venezuela) said that his delegation supported the Mexican amendment on the grounds that every foreign ship was undoubtedly subject to the rules of international law in the exercise of its right of passage. However, in the light of the United Kingdom representative's suggestion, and in order to avoid prolonging the debate indefinitely, he wondered whether it would be possible to draft a text embodying both the viewpoints expressed.

21. Mr. NIKOLAEV (Union of Soviet Socialist Republics) believed that the Mexican representative had convincingly demonstrated the superiority of the Mexican amendment over the six-power proposal.

22. At the 30th meeting he had drawn attention to the shortcomings and imprecise phrasing of the six-power amendment to article 17, paragraph 1, and he regretted that those shortcomings had not been made good in the six-power proposal relating to article 18.

23. Under the Mexican amendment, foreign ships exercising their right of passage would be obliged to comply, first with the present rules; second, with other rules of international law; and third, with the laws and regulations of the coastal State. In the six-power proposal, on the other hand, ships exercising their right of passage would only be obliged to comply with the rules and regulations of the coastal State. There was, it was true, a reference in the latter proposal to the present and other rules of international law, but it occurred in such a context that it was not the foreign ships which would have to comply with those rules, but the coastal State in the enactment of its laws and regulations. His delegation regarded the Mexican amendment as more precise and would therefore vote for it.

24. Mr. GARCIA ROBLES (Mexico) considered the absence of opposition to his delegation's amendment a good sign.

25. Sir Gerald FITZMAURICE (United Kingdom) felt that the lack of speakers on the Mexican amendment indicated not so much general agreement with its content as forbearance on the part of its opponents in the interests of a limited debate. The United Kingdom delegation, for one, would oppose it.

26. Mr. YINGLING (United States of America) agreed with the United Kingdom representative, and said that his delegation, too, would vote against the Mexican proposal.

27. Mr. STABELL (Norway) said that the six-power proposal appeared to be at variance with the structure of the Commission's draft. The Commission had exercised great care in drafting sub-section A and, in particular, article 17, paragraph 1, and article 18, in order to ensure that the rules laid down therein should be applicable to all ships, including government ships and warships. Paragraph 2 of the six-power proposal, however, was directed towards ensuring the enforcement of laws and regulations, and it was difficult to see how the two could be reconciled.

28. Mr. VERZIJL (Netherlands) said that the question affected the arrangement of the Commission's draft articles as a whole. The United Kingdom delegation had already proposed (A/CONF.13/C.1/L.37) the rearrangement of articles 15 to 25, and the Netherlands delegation intended to make a similar proposal once the substance of the articles concerned had been adopted.

29. Mr. KRISPIS (Greece) said that the text of the Greek proposal (A/CONF.13/C.1/L.32) to which the Netherlands delegation had now also lent its name, had been adopted by The Hague Codification Conference of 1930, and referred only to the application, and not the enactment, of rules and regulations.

30. Mr. STABELL (Norway) said that his delegation

supported the Greek-Netherlands proposal. If countenanced, discrimination could assume proportions that would make the right of innocent passage illusory.

31. Mr. LOUTFI (United Arab Republic) said that his delegation would vote against the Greek proposal; its inclusion in the text of article 18 was unnecessary, for the reasons given by the Commission in paragraph 5 of its commentary thereto.

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1/L.28/Rev.1, L.65, L.73 to L.76] (continued) [3]

Paragraph 3 (continued)

32. Mr. GARCIA ROBLES (Mexico) said that his delegation was extremely disappointed with the texts which had been prepared at the price of several days' work and which were in many cases inferior to the Commission's draft. A great deal depended on the meaning of the right of innocent passage, and yet under the United States proposal (A/CONF.13/C.1/L.28/Rev.1) innocence of passage would be determined by reference to only one criterion. The sponsors of the eight-power amendment (A/CONF.13/C.1/L.74) had therefore proposed the inclusion of another criterion — namely, that of the interests of the coastal State. Their amendment was vitally important, as otherwise, to take only one example, the coastal State would be powerless to prevent passage which, while innocent under the terms of the United States proposal, resulted in the contravention of its customs or fishing regulations.

33. Sir Gerald FITZMAURICE (United Kingdom) observed that the Mexican representative had repeatedly stated that by the term " interests " his delegation meant exclusively the import and export controls and customs regulations of the coastal State, as mentioned in paragraph 4 of the International Law Commission's commentary to article 15. Had the term " interests " been so qualified in the text of the eight-power amendment, the United Kingdom delegation would have raised no objections. Unfortunately, however, the text of the amendment referred to interests in general, and it was clear from the Mexican representative's statement that the authors of the amendment did not intend to confine the term " interests " to the matters raised in paragraph 4 of the commentary.

34. In his view, the Mexican representative's argument rested on a curious and interesting admission — namely, that the passage of merchant ships was inherently innocent and that the security of a coastal State was threatened only by the passage of warships or aircraft carriers. If that was so, he would ask what grounds there were for widening the concept of article 15 at all, unless it were to enable coastal States, on pretexts which were not to be subject to any limitation, to hamper the innocent passage of merchant ships. If such were the purpose of the eight-power amendment, his delegation would vote against it.

35. Mr. GARCIA ROBLES (Mexico) regretted the assumptions made by the United Kingdom representative about the motives of the Mexican delegation. To demonstrate their falsity, he offered in the name of the authors of the eight-power amendment to withdraw it, on condition that the United States amendment to which it related was also withdrawn. His delegation would then vote in favour of paragraph 3 of article 15 as drafted by the International Law Commission, provided that the Rapporteur's report contained a statement to the effect that the prejudicial acts referred to in paragraph 3 were those mentioned in paragraph 4 of the commentary.

36. Mr. YINGLING (United States of America) said that his delegation was not prepared to withdraw its proposal.

37. The CHAIRMAN declared that consideration of article 15 and the amendments thereto, was closed.

38. He then put to the vote the eight-power amendment (A/CONF.13/C.2/L.74) to the United States revised proposal.

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

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

In favour: Liberia, Libya, Mexico, Panama, Philippines, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Afghanistan, Albania, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Czechoslovakia, Ecuador, Guatemala, Hungary, India, Indonesia, Iraq, Jordan, Republic of Korea.

Against: Monaco, Netherlands, New Zealand, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Burma, Cambodia, Canada, Cuba, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Greece, Haiti, Iran, Ireland, Israel, Italy, Japan.

Abstaining: Turkey, Yugoslavia, China, Costa Rica, Iceland.

The eight-power amendment was rejected by 32 votes to 31, with 5 abstentions.

39. The CHAIRMAN then put to the vote the Indian proposal (A/CONF.13/C.1/L.73). [4]

The Indian proposal was adopted by 38 votes to 19, with 12 abstentions.

40. The CHAIRMAN then put to the vote the Turkish amendment (A/CONF.13/C.1/L.65), to add at the end of the United States revised proposal after the words " with the present rules " the words " and to other rules of international law ".

The Turkish amendment was adopted by 38 votes to 19, with 14 abstentions.

41. The CHAIRMAN then put to the vote the United States proposal (A/CONF.13/C.1/L.28/Rev.1) as amended by India and Turkey.

The United States proposal, as amended, was adopted by 35 votes to 21, with 11 abstentions.

[3] Resumed from the 31st meeting.

[4] See above, 29th meeting, para. 3.

Article 15, paragraph 3, as amended, was adopted by 55 votes to none, with 8 abstentions.

42. Mr. NIKOLAEV (Union of Soviet Socialist Republics) explained that he had initially voted against the United States amendment as it appeared in document A/CONF.13/C.1/L.28/Rev.1. However, since the Indian and Turkish proposals themselves represented amendments of the United States text, he had found it possible to vote for the proposed text of article 15, paragraph 3, as amended.

43. Mr. ROSENNE (Israel) explained that he had abstained from voting on the amended text of paragraph 3 because he believed that, although the text proposed by the United States was more satisfactory in some respects than the International Law Commission's draft, the wording of the latter was more precise than that of the first sentence of the United States amendment. On the question of the definition of innocent passage, therefore, he wished expressly to reserve his government's position.

The meeting rose at 11.30 p.m.

THIRTY-FOURTH MEETING

Wednesday, 2 April 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)*

1. Mr. GUTIERREZ OLIVOS (Chile) said that it was not his intention to cast any doubts on the validity of the votes taken at the previous meeting on article 15. He wished, however, to analyse the results to illustrate certain problems which could arise in connexion with future votes.

2. The Turkish amendment (A/CONF.13/C.1/L.65) had been voted upon before the revised United States proposal for article 15, paragraph 3 (A/CONF.13/C.1/L.28/Rev.1). Once adopted, the Turkish amendment had become part of the revised United States proposal; many representatives had then felt bound in logic to vote for the resulting text, because they had previously supported the Turkish amendment.

3. In fact, the effect of the Turkish amendment had merely been to bring the United States revised text nearer to the International Law Commission's draft for paragraph 3, and the procedure followed had led to the Commission's text not being considered at all. It had also meant that the Committee had considered the Turkish amendment, which was nearer to the original text, before the revised United States proposal, which was the one furthest removed in substance therefrom, a procedure which was not in keeping with rule 40 of the rules of procedure.

4. He therefore suggested, in view of the desirability of the Committee's considering the texts prepared by the International Law Commission, that the Committee adopt the following procedure: if a sub-amendment moved to an amendment had the effect of bringing the latter closer to the International Law Commission's draft, the Committee would vote first on the amendment without the sub-amendment. If the amendment was adopted, the Committee would vote upon the sub-amendment. If, however, the amendment was defeated, the Committee would not vote upon the sub-amendment but would proceed to consider the International Law Commission's text.

5. The CHAIRMAN said that, in conformity with the rules of procedure, the Turkish amendment, being a sub-amendment to an amendment, had been correctly put to the vote before that amendment. No other procedure could be followed in the future, and he therefore regretted that he could not accept the Chilean representative's suggestion.

ARTICLE 17 (RIGHTS OF PROTECTION OF THE COASTAL STATE) [A/CONF.13/C.1/L.6, L.31, L.44, L.51, L.56, L.70 to L.72] (continued)

Paragraph 1

6. Mr. GARCIA ROBLES (Mexico) said that the Conference was engaged upon a very important piece of international legislation. It must avoid adopting texts which might later be the subject of divergent interpretations and give rise to international disputes, to avert which was the precise purpose of the codification of international law. There was little point in adopting decisions by narrow majorities in committee when they would require a two-thirds majority to be passed by the Conference.

7. It had been the Committee's unfortunate experience to see its labours culminating in the adoption of texts which from the point of view of juridical precision were inferior to those prepared by the International Law Commission. The effect of the procedure followed was that the valuable draft so carefully prepared by the Commission could only be considered if all the amendments to it were rejected.

8. He therefore intended, if the Chairman considered it in order, to propose an amendment to the six-power proposal relating to article 17 (A/CONF.13/C.1/L.72), seeking to replace the words " to prevent passage which is not innocent " by the words: " to protect itself against any act prejudicial to its security or to such other of its interests as it is authorized to protect under the present rules and other rules of international law ".

9. By moving that sub-amendment, his delegation would make it possible for the Committee to consider in the first place the text put forward by the International Law Commission.

10. The CHAIRMAN said that he could not accept the Mexican amendment, because the Committee had already reached the voting stage. The only motions he could now entertain were motions of order.

11. He felt it necessary to add, however, that there was another, more general reason why such a sub-amendment, which sought to restore the original text, was inadmissible. Representatives who preferred the International Law Commission's text could express their preference by voting against every amendment to it.

12. Mr. GARCIA ROBLES (Mexico) accepted the Chairman's ruling that it was too late for him to move an amendment; but he could not accept the additional reason given by the Chairman for refusing to receive his amendment, and reserved his right to raise the issue again if, on a future occasion, his delegation deemed it necessary to make such a proposal as he had outlined.

13. Mr. IOSIPESCU (Romania) said that his delegation would not press for a vote on its amendment to paragraph 3 (A/CONF.13/C.1/L.44), which was of a drafting character. That being so, he reserved the right to propose later that it should be referred to the Drafting Committee.

14. Mr. STABELL (Norway) maintained that the proposed deletion of the word " temporarily ", far from being a matter of drafting, raised a substantive issue of considerable importance. Hence, if the Romanian amendment to paragraph 3 was withdrawn, it could not be submitted to the Drafting Committee.

15. The CHAIRMAN said that the Romanian amendment to paragraph 3 was indeed one of substance. It could therefore only be referred to the Drafting Committee by virtue of a specific decision of the present committee. It was his understanding that the Romanian representative was reserving his right to request a vote at a later stage on the question whether his amendment should be submitted to the Drafting Committee.

16. With regard to paragraph 1 of article 17, the Committee had before it only the six-power proposal (A/CONF.13/C.1/L.72).

The six-power proposal was adopted by 36 votes to 21, with 10 abstentions.

Paragraph 2

17. The CHAIRMAN said that there were no amendments to paragraph 2. If there was no objection, he would consider that the Committee accepted the International Law Commission's text.

It was so agreed.

Paragraph 3

18. The CHAIRMAN said that in the case of paragraph 3, the Committee had before it the proposal by Greece (A/CONF.13/C.1/L.31) as amended at the 32nd meeting, to insert after the word " may " and before the word " suspend " the words " without discrimination among foreign ships ", and the four-power proposal (A/CONF.13/C.1/L.70).

The amendment moved by Greece was adopted by 34 votes to 11, with 20 abstentions.

The four-power proposal was adopted by 32 votes to 27, with 8 abstentions.

19. Replying to a question by Mr. STABELL (Norway), the CHAIRMAN said that the amendment by Greece applied to the revised four-power text just adopted, although it had originally been moved to the International Law Commission's text.

20. He called for a vote on paragraph 3 as a whole, as amended by the Greek amendment and by the four-power proposal.

Paragraph 3, as amended, was adopted by 31 votes to 27, with 5 abstentions.

Paragraph 4

21. The CHAIRMAN recalled that the three-power amendment to paragraph 4 (A/CONF.13/C.1/L.71), which was the only proposal before the Committee, had been modified at the Committee's 33rd meeting, the words " or other sealanes " having been deleted and the final phrase amended to read " or the territorial sea of a foreign State."

At the request of the representatives of Norway and Pakistan, a vote was taken by roll-call.

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

In favour : Portugal, Sweden, Switzerland, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Argentina, Australia, Belgium, Bolivia, Brazil, Cambodia, Canada, China, Colombia, Cuba, Denmark, Dominican Republic, France, Greece, Haiti, Honduras, Israel, Italy, Japan, Monaco, Netherlands, New Zealand, Norway.

Against: Poland, Romania, Saudi Arabia, Spain, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Czechoslovakia, Hungary, India, Indonesia, Iran, Iraq, Jordan, Libya, Malaya (Federation of), Mexico, Morocco, Pakistan, Panama.

Abstaining: Peru, Philippines, Yugoslavia, Ecuador, Finland, Federal Republic of Germany, Guatemala, Iceland, Ireland, Republic of Korea.

The three-power amendment (A/CONF.13/C.1/L.71), as amended at the 33rd meeting, was adopted by 31 votes to 30 with 10 abstentions.

Additional paragraphs

22. The CHAIRMAN put to the vote the new paragraph 3 proposed by the French delegation (A/CONF.13/C.1/L.6).

The French proposal was rejected by 23 votes to 16, with 25 abstentions.

23. The CHAIRMAN put to the vote the new paragraph 2 proposed by the Netherlands delegation (A/CONF.13/C.1/L.51).

The Netherlands proposal was rejected by 31 votes to 18, with 19 abstentions.

24. Mr. ITURRALDE (Bolivia) inquired what action had been taken on the amendment submitted by his delegation to article 17 (A/CONF.13/C.1/L.52), referring to the special right of passage of ships of land-locked States.

25. The CHAIRMAN said that he had consulted the Chairman of the Fifth Committee about the Bolivian amendment, and had agreed that it should first be debated by that committee, which was now considering a series of similar problems.

26. Mr. ITURRALDE (Bolivia) pointed out that if the Bolivian amendment was adopted by the Fifth Committee it would have to be included in article 17.

ARTICLE 18 (DUTIES OF FOREIGN SHIPS DURING THEIR PASSAGE) [A/CONF.13/C.1/L.32, L.45, L.72] (continued)

27. The CHAIRMAN put to the vote the Mexican proposal (A/CONF.13/C.1/L.45).

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

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

In favour: Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Afghanistan, Albania, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, China, Colombia, Czechoslovakia, Ecuador, Guatemala, Haiti, Honduras, Hungary, Indonesia, Iraq, Jordan, Republic of Korea, Libya, Mexico, Morocco.

Against: Netherlands, New Zealand, Norway, Pakistan, Portugal, Sweden, Switzerland, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Austria, Belgium, Cambodia, Canada, Denmark, Finland, France, Federal Republic of Germany, Greece, Iceland, India, Iran, Ireland, Israel, Italy, Japan, Liberia, Monaco.

Abstaining: Philippines, Spain, Thailand, Yugoslavia, Bolivia, Brazil, Burma, Cuba, Dominican Republic, Holy See.

The Mexican amendment (A/CONF.13/C.1/L.45) was adopted by 33 votes to 30, with 10 abstentions.

28. Sir Reginald MANNINGHAM-BULLER (United Kingdom), supported by Mr. VERZIJL (Netherlands), Mr. KRISPIS (Greece), Mr. DEAN (United States of America) and Mr. CARDOSO (Portugal) withdrew their support from the six-power amendment (A/CONF.13/C.1/L.72), as they did not wish it to be linked with the Mexican amendment.

29. Mr. BARTOS (Yugoslavia) said that he had abstained from voting on the Mexican proposal because it was not clear, and also because he was a co-sponsor of the six-power amendment, paragraph 2 of which he felt should be put to the vote.

30. Sir Gerald FITZMAURICE (United Kingdom) explained that paragraph 2 of the six-power amendment referred to the laws and regulations mentioned in paragraph 1 thereof. The adoption of the Mexican amendment had entirely altered the character of article 18, and deprived paragraph 2 of the six-power amendment of all meaning.

31. The CHAIRMAN pointed out that under rule 40 of the rules of procedure the adoption of the Mexican amendment necessarily implied the rejection of the six-power amendment.

32. He then put to the vote the joint amendment submitted by the Greek and Netherlands delegations (A/CONF.13/C.1/L.32).

33. Sir Reginald MANNINGHAM-BULLER (United Kingdom) asked that separate votes be taken on the two phrases of that amendment.

34. The CHAIRMAN put to the vote the first phrase — namely: "The coastal State may not, however, apply these rules or regulations in such a manner as to discriminate between foreign vessels of different nationalities,"

That phrase was adopted by 31 votes to 15, with 18 abstentions.

35. The CHAIRMAN put to the vote the second phrase — namely: "nor, save in matters relating to fishing and shooting, between national vessels and foreign vessels."

That phrase was rejected by 21 votes to 9, with 36 abstentions.

36. Mr. GARCIA ROBLES (Mexico), citing rule 39 of the rules of procedure, said that the amendment should be put to the vote as a whole.

37. The CHAIRMAN ruled that it was unnecessary to put the amendment to the vote as a whole, since it consisted of two phrases which were mutually independent. Rule 39 of the rules of procedure could not apply to such a case.

38. Quoting the fourth sentence of rule 40 of the rules of procedure, he said that he would put article 18 to the vote as a whole as amended.

39. Mr. SHUKAIRI (Saudi Arabia), moving the adjournment of the meeting, asked the Chairman to defer the vote on article 18 as a whole until the next meeting. The Mexican amendment and the joint amendment submitted by the delegations of Greece and the Netherlands, both of which had been adopted, could not be amalgamated. The joint amendment was pinned in substance to article 18 of the International Law Commission's text, and was quite foreign to the text of the Mexican proposal.

The motion for adjournment was adopted by 38 votes to 15, with 7 abstentions.

The meeting rose at 1.15 p.m.

THIRTY-FIFTH MEETING

Wednesday, 2 April 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 (A/3159) *(continued)*

ARTICLE 18 (DUTIES OF FOREIGN SHIPS DURING THEIR PASSAGE) [A/CONF.13/C.1/L.32, L.45] (continued)

1. Sir Reginald MANNINGHAM-BULLER (United Kingdom) said that there was considerable force in the observations made at the previous meeting by the representative of Saudi Arabia about the incompatibility of the two proposals adopted at the previous meeting as amendments to article 18. Clearly the Greek proposal (A/CONF.13/C.1/L.32) had been intended as an addition to the International Law Commission's text, and the difficulty arose because by the Commis-

sion's decision it would now have to be added to the Mexican text (A/CONF.13/C.1/L.45). The only courses open to Mr. Shukairi were either to vote against the article as a whole in its present form, or to move the reconsideration of the Commission's text.

2. The CHAIRMAN reminded the Committee that, in conformity with the rules of procedure, he had ruled that the two amendments adopted must be voted on as a whole.

3. Mr. SHUKAIRI (Saudi Arabia) proposed that the Greek proposal should not be incorporated in the Mexican text, because an obvious inconsistency would result if it were.

4. The CHAIRMAN ruled that proposal out of order.

5. Mr. LOUTFI (United Arab Republic) suggested that the two proposals might be referred to a drafting committee to see whether they could be embodied in two separate articles.

6. Mr. SEN (India), supporting the Chairman's ruling, said that there would be no inconsistency between the two texts if the word "laws" were substituted for the word "rules" in the joint proposal.

7. Mr. GUTIERREZ OLIVOS (Chile) asked whether the Committee would vote on the Commission's text for article 18 if the texts adopted at the previous meeting were rejected as a whole.

8. The CHAIRMAN replied in the negative; the adoption of the Mexican and joint proposals automatically entailed the rejection of the Commission's text. If they were not adopted on being put to the vote as a whole, there would be no text left before the Committee.

9. Mr. CARMONA (Venezuela) said that delegations which had supported one proposal but opposed the other would find it extremely difficult to vote on the article as a whole.

10. Mr. NIKOLAEV (Union of Soviet Socialist Republics) agreed with the previous speaker. The Soviet Union delegation had abstained from voting on the joint proposal and had supported the Mexican proposal. Unfortunately, the former had been originally moved to the six-power proposal (A/CONF.13/C.1/L.72) which had subsequently been withdrawn. He therefore favoured the course suggested by the representative of the United Arab Republic, and, invoking rule 22 of the rules of procedure, challenged the Chairman's ruling.

11. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), speaking as RAPPORTEUR, urged the Chairman to treat the joint proposal as an entirely separate one, and not to maintain his ruling.

12. The CHAIRMAN regretted that he could not regard as an independent proposal a text which he had already ruled to be an amendment to the Commission's text under the rules of procedure.

13. After a procedural discussion in which the representatives of SAUDI ARABIA, CEYLON, ITALY, JORDAN, MEXICO, NORWAY, PAKISTAN, the PHILIPPINES and the UNION OF SOVIET SOCIALIST REPUBLICS took part, the CHAIRMAN put to the vote the Soviet Union representative's challenge to his ruling.

The Soviet Union challenge was rejected by 43 votes to 14, with 11 abstentions.

14. Mr. SHUKAIRI (Saudi Arabia), explaining his vote, said that he had supported the challenge to the Chairman's ruling because it would be totally out of keeping with the Conference's importance and dignity to adopt a provision which first confirmed the coastal State's unconditional right to regulate the passage of foreign ships through its territorial sea and then withheld the right to enforce those regulations.

15. It was manifest from the dates on which the proposals in question had been submitted that the Greek proposal related solely to the International Law Commission's draft of article 18, and the Indian representative's suggestion, if adopted, would not wholly dispose of the inconsistency between the former and the Mexican proposal.

16. The CHAIRMAN announced that he would put to the vote as a whole article 18, consisting of the Mexican text (A/CONF.13/C.1/L.45) and the first part of the Greek amendment supported by the Netherlands (A/CONF.13/C.1/L.32), as adopted at the previous meeting.

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

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

In favour: Romania, Saudi Arabia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Colombia, Czechoslovakia, Ecuador, El Salvador, Guatemala, Honduras, Hungary, India, Indonesia, Iraq, Jordan, Libya, Mexico, Morocco.

Against: Norway, Pakistan, Peru, Portugal, Spain, Sweden, Switzerland, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Yugoslavia, Australia, Austria, Belgium, Cambodia, Canada, Denmark, Dominican Republic, France, Federal Republic of Germany, Greece, Iceland, Iran, Ireland, Italy, Japan, Lebanon, Luxembourg, Malaya (Federation of), Monaco, Netherlands, New Zealand.

Abstaining: Philippines, Poland, Tunisia, Brazil, China, Costa Rica, Finland, Ghana, Israel, Republic of Korea.

Article 18 as a whole was rejected by 34 votes to 28, with 10 abstentions.

17. Sir Reginald MANNINGHAM-BULLER (United Kingdom) moved that the explanations of vote on article 18 be deferred until the next meeting to enable the Committee to make some headway on the other articles before it.

The United Kingdom motion was rejected by 28 votes to 16, with 16 abstentions.

18. Mr. GUTIERREZ OLIVOS (Chile), invoking rule 32 of the rules of procedure, moved that consideration of the International Law Commission's text for article 18 be reopened. Unless that were done, the articles on innocent passage would be incomplete, since there would be no provision defining the duties of foreign ships during their passage through the territorial sea.

19. Mr. STABELL (Norway) said that the Chilean motion seemed unnecessary, because, as a result of the final rejection of all the amendments submitted to article 18, the original text prepared by the International Law Commission was the only one before the Committee. In his opinion, therefore, the Committee should first vote on the Greek proposal (A/CONF.13/C.1/L.32), which had originally been submitted as an amendment to the Commission's text, then on the Commission's text itself, and finally — if necessary — on the article as a whole.

20. The CHAIRMAN suggested that further discussion of the motions relating to article 18 should be deferred until the Committee's officers and the various sponsoring delegations had had an opportunity for consultation. Explanations of the votes cast earlier in the meeting might similarly be deferred.

It was so agreed.

ARTICLES 1, 2, 3 AND 66 (JURIDICAL STATUS OF THE TERRITORIAL SEA; JURIDICAL STATUS OF THE AIR SPACE OVER THE TERRITORIAL SEA AND OF ITS BED AND SUBSOIL; BREADTH OF THE TERRITORIAL SEA; CONTIGUOUS ZONE) [A/CONF.13/C.1/L.4, L.6, L.13, L.54, L.55, L.57, L.63, L.77/Rev.1, L.79 to L.84, L.118, L.131, L.133 to L.141] (continued) [1]

21. Sir Reginald MANNINGHAM-BULLER (United Kingdom), submitting the new United Kingdom proposal (A/CONF.13/C.1/L.134), stressed in the first place that it was still the view of the United Kingdom Government that under international law the maximum breadth of the territorial sea was limited to three miles, except where historic circumstances, such as those which applied to the four-mile Scandinavian limit, prevailed. In its opinion, no limit other than three miles could be validly asserted against any State which had not signified its acceptance of a wider limit. He wished to make it clear that the new United Kingdom proposal entailed no modification of that view.

22. He would advance no more legal arguments in support of his case, because the time for doing so was past. But he felt bound to refer to the arguments adduced in the general debate to the effect that the three-mile limit did not constitute a rule of international law.

23. His government had naturally given very careful consideration to those arguments; but it did not find them at all convincing. All of them could have been advanced with equal or even greater force against any other limit which might have been proposed. Even the argument that the majority of States did not accept three miles was unconvincing, for the majority did not accept six miles either — or, indeed, any of the other suggested distances. It remained true that international law had to prescribe a maximum, and there was no figure which had ever enjoyed any traditional, historical or wide general acceptance and application other than that of three miles.

24. It had been rumoured that if the United Kingdom did not get its way over recognition of the three-mile limit it would work to ensure that the Conference reached no agreement on the issue. But, like many of its kind, that rumour was utterly false. The United Kingdom, like many other countries, viewed with growing concern the encroachments which, for some time past, had been whittling down the principle of the freedom of the seas, because it believed that, if they continued, such encroachments would ultimately create a state of anarchy and chaos, provoke disputes and possibly even threaten peace. In his statement at the Committee's 5th meeting he had stressed the importance of arriving at an agreement on the matters before the Conference and had appealed for restraint, urging delegations not to submit proposals which stood no chance of acceptance or which, even if accepted by a considerable number of States, were unlikely to command any really general approval. Since making that statement, he had on occasions felt that his words had fallen on stony ground, but he hoped that in the days to come no one would venture to suggest that the United Kingdom wished the Conference to fail. It was indeed because it earnestly hoped for positive results that his delegation was now submitting a new proposal.

25. The Committee's debates had clearly revealed that there were wide differences of view between nations, and it would be wholly unrealistic to suppose that agreement could be reached without compromise. There were those who regarded it as in the truest interests of the world that the three-mile limit should be retained. On the other hand, there were those who demanded a twelve-mile limit for territorial waters or a twelve-mile limit for exclusive fishing rights. And, finally, there were those who were prepared to demand even more.

26. The United Kingdom Government had always believed that the legitimate needs of all countries should be met not by extending the breadth of the territorial sea but through an appropriate system of fishery conservation on the high seas, through exclusive rights for the coastal State for fishing and for the exploration and exploitation of the sea-bed and subsoil of the continental shelf, and through contiguous-zone rights in regard to customs, sanitary or fiscal matters. But nobody could dispute the strength of the feeling in many quarters against the three-mile principle as such. Recognizing that feeling — and after prolonged and careful consideration — his delegation had reluctantly but definitely decided to submit to the Conference a compromise proposal, in the hope that it might be accepted and lead to agreement. His delegation's reluctance was due to the fact that it still deplored any departure from the United Kingdom's traditional adherence to the three-mile limit.

27. The Committee already had before it several other proposals on the breadth of the territorial sea. The Colombian delegation had tabled a direct proposal for a twelve-mile limit (A/CONF.13/C.1/L.82), and the Mexican and Indian delegation had submitted one (A/CONF.13/C.1/L.79) which was somewhat differently expressed, but amounted to the same thing, and in fact was no compromise at all. The proposal that any

[1] Resumed from the 31st meeting.

State could claim a territorial sea up to twelve miles was in essence a proposal that the limit be fixed at that figure, even though the form or words was calculated to soften its impact. It permitted extensions up to twelve miles as a maximum, and it was clear that the maximum would soon become a minimum. The Mexican-Indian proposal was therefore wholly unacceptable to the United Kingdom delegation. In that connexion, he drew attention to the charts which his delegation had circulated showing the effect which a twelve-mile limit would have on navigation in a number of different important parts of the world. Many other similar instances could be given, showing vividly the extent to which in many of the most important sea-lanes — and though it had been argued that a sea-lane was not a juridical concept, most people knew what a sea-lane was — the effect of a twelve-mile limit would be to make it impossible for ships or aircraft to proceed from one place to another without constantly passing through, and indeed having to use as a channel of communication the territorial waters of other countries. Some might argue that those examples proved nothing, since there was always the right of innocent passage. But the discussion on articles 15 to 18 had made clear the extent to which the coastal State might be able to interfere with passage, however innocent, if it wished to do so.

28. Another point to remember was that there was no right of air passage over territorial waters. That might be regarded as immaterial, since the State affected could always seek permission, but one could never be sure that permission would be granted, and the need for continued applications would in itself hinder freedom of communication. Where aircraft of all nations had always been able to fly without anyone's leave or licence, an extension of territorial waters beyond three miles would debar passage except with the coastal State's consent. Yet the airlines of the world carried passengers of every race — not merely their own nationals.

29. In those circumstances, his delegation hoped that the Mexican and Indian delegations would be prepared to reconsider their proposal, which could not be regarded as a real compromise. In putting forward its own proposal, the United Kingdom had taken their views into consideration and had been influenced by them; and he was confident that they would reciprocate.

30. With regard to the Canadian proposal (A/CONF. 13/C.1/L.77/Rev.1), that there be a three-mile limit for the territorial sea, but a twelve-mile limit from the coast for exclusive fishing rights, he regretted that the United Kingdom Government had come to the conclusion that it could not support, and indeed must oppose, any attempt to legislate for such exclusive fishing rights. The United Kingdom had to maintain a population of fifty million people, in a comparatively small area in which the density of population was very high. It did not produce all the food it consumed, and a large part of its foodstuffs had to be imported and paid for out of its earnings in foreign currency. A commodity such as fish, which could be caught and marketed without spending any foreign currency and which did not need to be set off against corresponding exports, played a very important part in balancing the United Kingdom's economy. And the major part of the country's supply of fish was provided by its distant-water and middle-water fishing fleets, which would be grievously affected by a twelve-mile zone of exclusive fishing.

31. His delegation fully appreciated the claims of coastal populations which depended on fishing for their livelihood, for the United Kingdom too had numerous communities dependent on the fruits of the sea. Those were in fact the very communities which would be most seriously hit by a twelve-mile fishing limit.

32. The Canadian proposal was also open to objection on juridical grounds. A State exercised sovereignty, or the equivalent of sovereignty, over its territorial sea, and on that basis only could it exercise exclusive rights. It was a novel concept, for which there was no foundation in international law, that a State should have exclusive rights outside its territorial sea. But the Canadian proposal clearly meant that coastal States should have the right to exclude foreign fishing vessels from areas of the high seas and to subject them within such areas to their own sovereign jurisdiction. The United Kingdom Government considered such an exercise of sovereignty over high sea areas wrong in principle, incompatible with the status of the high seas and undesirable in practice. Customary contiguous-zone rights for customs, sanitary and fiscal purposes involved no such exercise of exclusive rights.

33. The United Kingdom's own proposal was very similar to that of Sweden (A/CONF.13/C.1/L.4), although differing from it in two respects. It had been put forward as an independent proposal, and not as an amendment to the Swedish one, because the United Kingdom believed that, as a major maritime Power, it was its duty to try to make a real and individual contribution to the success of the Conference and to make clear the nature of the compromise it proposed.

34. The United Kingdom proposal was simple and required little elucidation. It meant that each State could claim up to six miles of territorial sea, and that within whatever limit it claimed, up to the six miles, it would have exclusive fishery rights. It would have no such rights outside the territorial sea. Moreover, rights of passage for aircraft and vessels outside a three-mile limit were to remain free and unrestricted as before, and were not to be subject to the control or jurisdiction of the coastal State. The last stipulation had been prompted by the belief that the consequences of restrictions on such rights beyond three miles from the coast were likely to be so serious as to make them wholly unacceptable. The proposal therefore meant that an extension of the territorial sea to six miles was not to affect the present position with regard to the passage of vessels and aircraft outside three miles.

35. He wished to make three things absolutely clear: In the first place, the preservation of rights of passage was an essential part of the proposal, and if that principle were rejected the whole proposal would fall to the ground. Secondly, it was implicit that the limits of exclusive fishing should be co-terminous with the limits of the territorial sea. Thirdly, the proposal was not a bargaining position from which, under pressure, his delegation might be induced to depart.

36. The proposal had not been made lightly, and involved substantial sacrifices on the part of the United Kingdom. A six-mile fishery limit applicable to the waters frequented by its fishing fleets would mean an

appreciable diminution in catch and a serious economic blow to the fishing industry. It might, indeed, cause shortages, impoverish variety and, perhaps, even bring higher prices. Moreover, it was painful for the United Kingdom to suggest any departure from a rule to which it had adhered for 200 years. That was why he felt bound to emphasize yet again that the proposal did not involve the abandonment by his government of the view that the three-mile principle constituted the fundamental rule of law in the absence of any applicable convention to the contrary. It did, however, involve a willingness on a conventional basis to apply a different rule provided the passage reservations could be accepted.

37. In conclusion, he again expressed his delegation's hope that the efforts of the Conference would not prove vain and that the United Kingdom proposal would be received in the spirit in which it was proffered. The opportunity to assist in promoting the peace of the world and to agree on a régime of the seas in time of peace must not be let slip.

38. Mr. AYCINENA SALAZAR (Guatemala), referring to the charts which the United Kingdom representative had mentioned, stressed that two of them were regarded by his government as wholly inadmissible because they misrepresented the position in a territory which was exclusively Guatemalan.

39. Mr. GARCIA ROBLES (Mexico) said that his delegation could not allow the Guatemalan representative's statement to pass without stating that the Mexican Government adhered to its oft-repeated views about the status of the northern part of Belize.

40. Mr. AYCINENA SALAZAR (Guatemala) replied that his government recognized no Mexican rights over the territory in question.

41. Sir Gerald FITZMAURICE (United Kingdom) wished to place on record his government's rejection of the contentions regarding the status of British Honduras advanced by the delegations of Guatemala and Mexico.

42. Mr. DEAN (United States of America) had listened to the United Kingdom representative's statement with the keenest regret. The United States delegation still believed that the three-mile limit was the most appropriate and that any departure therefrom would deal a disastrous blow to the accepted legal order.

43. In a spirit of compromise — and fully aware of the possible adverse effect of such a concession — the United States delegation had agreed to support the Canadian proposal (A/CONF.13/C.1/L.77/Rev.1), for it believed that acceptance of that formula would at least represent a step forward and ensure the success of the Conference. He wished to stress, therefore, that his delegation's endorsement of the Canadian solution was not merely a bargaining manoeuvre, and that his government firmly believed that any extension of the territorial sea to six miles would raise totally unforeseen difficulties. The full views of the United States Government on the United Kingdom proposal would be stated later, but he could say at once that his delegation would feel constrained to oppose it and would continue to support the Canadian text.

44. Mr. ZARB (World Health Organization), speaking at the invitation of the CHAIRMAN, expressed the hope that, in formulating the final text of article 66 (Contiguous zone) the Conference would bear in mind his agency's memorandum (A/CONF.13/36) and the international sanitary regulations to which many participating States had subscribed.

The meeting rose at 6.30 p.m.

THIRTY-SIXTH MEETING

Thursday, 3 April 1958, at 10 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)*

ARTICLES 1, 2, 3 AND 66 (JURIDICAL STATUS OF THE TERRITORIAL SEA; JURIDICAL STATUS OF THE AIR SPACE OVER THE TERRITORIAL SEA AND OF ITS BED AND SUBSOIL; BREADTH OF THE TERRITORIAL SEA; CONTIGUOUS ZONE) [A/CONF.13/C.1/L.4, L.6, L.13, L.54, L.55, L.57, L.63, L.77/Rev.1, L.78 to L.84, L.118, L.131 to L.141, L.144] (continued)

1. Mr. PETREN (Sweden), introducing the Swedish amendment to article 3 (A/CONF.13/C.1/L.4), recalled the statement he had made in the general debate (6th meeting). He agreed with the statement made by the United Kingdom representative at the previous meeting that differences of opinion must not be allowed to widen, and emphasized that some compromise must be found on the breadth of the territorial sea. His delegation believed that a breadth of six nautical miles would provide the best possible compromise for the time being. He would comment in detail later on the United Kingdom proposal (A/CONF.13/C.1/L.134).

2. Mr. MONACO (Italy), introducing the Italian amendment to article 3 (A/CONF.13/C.1/L.137) recalled the statement he had made in the general debate (6th meeting) in which he had pointed out that the Italian Code of Navigation of 1942 fixed the breadth of the territorial sea at six miles, but that the well-known three-mile rule of customary law could well serve as the starting point of the search for a compromise. The Italian delegation considered, therefore, that each State had the right to fix the breadth of its territorial sea, but that in no case should that breadth exceed six nautical miles.

3. A decision must be taken on the fundamental problem of the breadth of the territorial sea before other closely related problems, such as those of the contiguous zone and of exclusive fishing rights in certain zones, could be considered.

4. Mr. NIKOLAEV (Union of Soviet Socialist Republics) introducing his delegation's proposal relating to article 3 (A/CONF.13/C.1/L.80) recalled that the International Law Commission had been unable to reach agreement on a text for that article, and had contented itself with recognizing that international practice