United Nations Conference on the Law of the Sea

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Documents:
A/CONF.13/C.1/SR.46-50

Summary Records of the 46th to 50th 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))*

the report of the working party dealing with amendments to article 5.

29. Mr. KRISPIS (Greece) referring to the new article 2 A proposed by the Danish delegation (A/CONF.13/C.1/L.81), pointed out that a statement to the effect that " areas of the sea within the normal baseline " were considered internal waters would be correct if it were found in a scientific legal book, but, in view of the text of the International Law Commission, it seemed that there existed no sea waters within the normal baseline, as defined in article 4. There were sea waters only within the straight baseline (article 5 of the text) as well as within the closing line of a bay (article 7, paragraph 3, of the text). The Danish proposal might mean that areas of the sea within the closing line of a bay were considered internal waters.

30. Mr. SÖRENSEN (Denmark) said that he would be grateful for any drafting suggestions which would make the meaning of the proposed article 2 A clear.

31. Referring to the Italian representative's suggestion, he felt that it would be difficult for the Committee to reach a decision on the principles of application of a system of straight baselines without knowing what decision would be taken regarding the waters included within such baselines. The two problems of the principle of straight baselines and that of the status of the waters within them could not be considered separately, but should be studied by the same working group. The fact that the Danish proposal regarding a new article 2 A involved a slight consequential amendment to article 5 was another important reason why those two problems should be considered together.

32. Sir Gerald FITZMAURICE (United Kingdom) said that it was not his delegation's wish to dispute the view that the waters to landward of baselines were internal waters, but it greatly sympathized with the idea underlying the Danish proposal for a new article 2 A, and especially with the idea behind paragraph 1 of that proposal.

33. Until comparatively recently there had been little doubt as to what were internal waters since they were generally regarded as being waters situated behind the coastline, such as rivers, estuaries, canals, lakes, and so forth. In the case of bays the water behind the straight baseline was also considered as internal waters.

34. The institution of straight baselines was a comparatively modern innovation, the drawing of which had been sanctioned by the International Court of Justice in the Anglo-Norwegian fisheries case in connexion with certain types of coasts. An entirely different situation had thus arisen, and waters situated behind a straight baseline which was nevertheless in front of a coast had also been classified as internal waters.

35. He felt that the Conference might be confronted with the question whether some kind of distinction should not be drawn between the two categories of internal waters, and pointed out that the problem of the right of passage might arise in the case of internal waters which were in front of a coastline but behind a straight baseline. The point might perhaps be discussed with experts.

36. Mr. PETREN (Sweden) said he could not agree with the United Kingdom representative's statement, and suggested that the Committee should defer further discussion of articles 4 and 5 until it received the report of the working group.

37. Mr. STABELL (Norway) said he could not agree with the United Kingdom representative that there were two categories of internal waters. The internal waters which were enclosed by straight baselines, such as those which had been at issue in the Anglo-Norwegian fisheries case, did not differ in any respect from other internal waters.

38. He felt that the Danish proposal for a new article 2 A introduced a new aspect into the international law regarding the marginal seas. A problem which might arise if that proposal was adopted concerned the status of internal waters which, on the entry into force of any convention adopted by the Conference, might already be enclosed behind straight baselines. He wondered whether their status would be changed in any way or whether the rule in the Danish proposal applied only to such parts of the high seas or territorial waters as might in the future be enclosed by straight baselines.

39. The CHAIRMAN suggested that the representative of Turkey should become a member of the Working Party dealing with amendments to article 5.

It was so decided.

The Committee decided to refer the proposal of the Danish delegation (A/CONF.13/C.1/L.81) and that of the Turkish delegation (A/CONF.13/C.1/L.94) to the Working Party dealing with amendments to article 5.

The meeting rose at 5.15 p.m.

FORTY-SIXTH MEETING

Monday, 14 April 1958, at 3.30 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)*

ARTICLE 8 (PORTS) [A/CONF.13/C.1/L.97, L.101]

1. Mr. STABELL (Norway), introducing the amendment proposed by the Norwegian delegation (A/CONF.13/C.1/L.97), said that the mandatory expression " shall be regarded " was too categorical. The permissive term " may " would be more appropriate, as a State could not reasonably be required to advance the baseline or outer limit of its territorial sea against its will.

2. Mr. BOAVIDA (Portugal) said that the new paragraph proposed by his delegation (A/CONF.13/C.1/L.101) merely stated a rule of existing international law; it was fully consistent with the text of article 27 (Freedom of the high seas) adopted by the Second Committee at its 22nd meeting.

3. Mr. SHUKAIRI (Saudi Arabia) thought that the Norwegian amendment would leave the text open to various interpretations and detract from its clarity. The

Portuguese amendment was even more unacceptable, as it seemed to be totally misconceived. Article 8 dealt specifically with ports, while the proposed new paragraph raised diverse issues pertaining to the régimes of the high seas, of internal waters, of the territorial sea and of bands of water forming "the only access to a foreign port". Nor could such a confused provision stand the test of logic as a separate article, for each of the points raised was already fully covered in its proper context. His delegation hoped, therefore, that the Committee would reject the Portuguese amendment outright.

4. Mr. CARMONA (Venezuela) stressed that the International Law Commission had approved the text of article 8 only after the most exhaustive study. The construction of harbour works being of vital importance not only to the coastal State but also to the ships of all nations, no doubt should be allowed to subsist regarding the status of such works. Governments which had made heavy economic sacrifices to secure their port facilities against the elements had always acted on the assumption that the legal position was precisely as stated in the Commision's text. In those circumstances, any interference with that text might have very serious consequences.

5. Mr. STABELL (Norway), replying to the Saudi Arabian representative, said that the Norwegian amendment was primarily designed to make the Commission's draft more consistent as a whole. In their original form, certain articles, such as articles 5 and 11, were drafted in permissive terms, while others, such as articles 7 and 8, were mandatory. In the Norwegian delegation's view, the permissive form would be preferable in all cases, and there was certainly no justification for imposing on the coastal State a duty to avail itself of a provision which was an exception in its favour.

6. Mr. BA HAN (Burma) said that the Norwegian proposal seemed superfluous, for in circumstances such as those contemplated in article 8, the terms "may" and "shall" meant one and the same thing. That view had been expressly upheld by the House of Lords in the Bishop of Oxford case. With regard to the Portuguese amendment, he fully endorsed the views of the Saudi Arabian representative.

7. Mr. ZAKARIYA (Iraq) agreed with the Saudi Arabian representative that the idea put forward in the Portuguese amendment was too far removed from the subject-matter of article 8 to merit serious consideration.

8. Mr. BOCOBO (Philippines) felt that the prohibition contained in the Portuguese amendment was already implicit in article 27. Moreover, the amendment could be interpreted as implying that a band of waters of the high seas which was not the only means of access to a foreign port could be lawfully appropriated.

9. Mr. VERZIJL (Netherlands) said that the Commission's text seemed to impose a rule that was binding on the international community, whereas the Norwegian amendment would vest a discretionary power in the coastal State. It would be helpful to know which of those results the Commission had intended to achieve.

10. Mr. BOAVIDA (Portugal) said that his delegation's amendment had been designed to dispel all doubt regarding the application of article 24, which governed the passage of warships, and of the accepted principle that foreign aircraft were not permitted to fly over territorial waters.

11. Mr. FRANÇOIS (Expert to the secretariat of the Conference) said that the Commission had deliberately drawn the provision in mandatory terms in order to eliminate every shadow of doubt. States had long regarded harbour works such as jetties as part of their land territory and that practice should be universally recognized as unchallengeable. The Norwegian amendment would thus tend to introduce an element of uncertainty which the Commission had wished to avoid.

At the request of the representative of Portugal, a vote was taken by roll-call on the Portuguese amendment to article 8 (A/CONF.13/C.1/L.101).

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

In favour: Netherlands, New Zealand, Norway, Panama, Portugal, Spain, Sweden, Switzerland, Bolivia, Brazil, China, Haiti, Holy See, Israel, Italy.

Against: Mexico, Morocco, Pakistan, Philippines, Poland, Romania, Saudi Arabia, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yugoslavia, Albania, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Colombia, Czechoslovakia, Honduras, Hungary, India, Iran, Iraq, Jordan, Republic of Korea, Lebanon, Libya.

Abstentions: Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Belgium, Cambodia, Canada, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Finland, France, Federal Republic of Germany, Greece, Guatemala, Iceland, Indonesia, Ireland, Japan, Liberia.

The Portuguese amendment was rejected by 33 votes to 15, with 23 abstentions.

12. The CHAIRMAN then put the Norwegian amendment to article 8 (A/CONF.13/C.1/L.97) to the vote.

The Norwegian amendment was rejected by 54 votes to 6, with 10 abstentions.

The text of article 8 of the International Law Commission's draft was adopted by 70 votes to none, with 1 abstention.

ARTICLES 9 (ROADSTEADS) [A/CONF.13/C.1/L.7/Rev.1, L.67, L.68, L.97, L.101, L.107, L.110, L.111]

13. Mr. STABELL (Norway) withdrew his amendment to article 9 (A/CONF.13/C.1/L.97), since a similar amendment to article 8 had been rejected.

14. Mr. VERZIJL (Netherlands) observed that the Commission's draft was open to two interpretations: either that the whole belt of water between the normal limit of the territorial sea and a roadstead outside it was included in the territorial sea, or that the roadstead only was to be regarded as territorial sea, the intervening belt remaining part of the high seas. The purpose of the Netherlands amendment (A/CONF.13/C.1/L.67) was to establish the first interpretation, which he be-

lieved to have been that intended by the Commission.

15. Mr. SIKRI (India) said that the Indian amendment (A/CONF.13/C.1/L.107) sought to represent what, as was clear from the commentary on article 9, had been the minority view; but by using the word "deemed" it obviated the objection to such a provision raised in the Commission. His amendment also met the Netherlands representative's objection to a belt of high seas lying between the territorial sea and a roadstead.

16. Mr. LEDESMA (Argentina) said that his amendment (A/CONF.13/C.1/L.7/Rev.1) was designed to ensure that buoyed channels were included in the territorial sea. He accepted the Uruguayan amendment (A/CONF.13/C.1/L.68) which was a useful amplification of his own text.

17. Mr. YINGLING (United States of America), introducing his amendment (A/CONF.13/C.1/L.110), said it was obviously desirable for roadsteads to be marked by buoys or other navigational devices and to be indicated on charts.

18. Mr. GUITIAN (Spain) said that the purpose of his delegation's amendment (A/CONF.13/C.1/L.111) was to improve the Spanish text, which in its present form was ambiguous.

It was agreed to refer the Spanish amendment to the Drafting Committee.

19. Mr. BOAVIDA (Portugal) withdrew the Portuguese amendment to article 9 (A/CONF.13/C.1/L.101), in view of the rejection of the similar amendment he had proposed to article 8.

20. Mr. STABELL (Norway) favoured the Netherlands amendment, which had been drafted in permissive form and hence accorded with the amendment he had withdrawn.

21. Mr. YINGLING (United States of America) opposed the Netherlands amendment because he saw no objection to roadsteads forming, as it were, an island of territorial sea in the high seas. The purpose of article 9 was to ensure that the coastal State could exercise police powers and general jurisdiction in its roadsteads, but that did not mean that when roadsteads lay outside the territorial sea the whole of the intervening belt must be assimilated to it, especially as they might lie some way outside. For the same reasons he opposed the Indian amendment.

22. Sir Gerald FITZMAURICE (United Kingdom) also opposed the Indian amendment, for the reason given by the United States representative. The purpose of the Netherlands amendment, with which he agreed, seemed to be already covered by the Commission's text, which he interpreted to mean that the outer limit of the territorial sea would be extended to include roadsteads. If that were not the case, the words "are included in" in article 9 were misleading, and should be changed to some such words as "shall be regarded as being".

23. Mr. YINGLING (United States of America) said that he did not interpret article 9 in that sense at all and would have to oppose it if the United Kingdom representative's view was correct.

24. Mr. SÖRENSEN (Denmark) asked whether there were, in fact, any roadstead lying so far from the coast that its landward limit was outside the outer limit of the territorial sea of any State. He himself did not know of any, and if there were none the point at issue was surely academic.

25. Mr. SHUKAIRI (Saudi Arabia) disagreed with the United Kingdom representative's interpretation of article 9, and supported the Netherlands amendment, because it would eliminate the possibility of a belt of high seas lying between the territorial sea and a roadstead. He was gratified that the Netherlands text should have retained the word "normally".

26. Mr. QUENTIN-BAXTER (New Zealand) did not think the Indian amendment would overcome the objection to which the International Law Commission had referred in its commentary, because its effect would be precisely to create the danger which the Commission had wished to avoid — namely, that innocent passage through waters between roadsteads and the coast might be prohibited if they became inland waters.

27. Mr. SIKRI (India) said, that in order to make the purpose of his amendment perfectly clear, he wished to add at the end the words "for the purpose of exercising special supervisory and police rights in such roadsteads".

28. Mr. SHUKAIRI (Saudi Arabia) said that although he would have supported the Indian amendment (A/CONF.13/C.1/L.107) in its original form, he did not find its author's addition acceptable, because the coastal State in any case exercised full sovereignty over roadsteads lying within the territorial sea. Of course, the addition was not objectionable when applied to roadsteads outside that limit.

29. Mr. SIKRI (India) said he was unable to meet the Saudi Arabian representative's point, because his amendment was intended to provide that waters between roadsteads and the coastline should be deemed to be internal waters for limited purposes only.

30. Mr. KRISPIS (Greece) had understood the original Indian amendment to refer to internal waters in their proper sense; the addition would only cause confusion about the meaning of that term. The same effect could be achieved by treating the waters between roadsteads and the coastline as part of the territorial sea.

31. The CHAIRMAN said that the rapporteur had drawn his attention to the fact that the commentary on article 9 made it clear that if a roadstead lay outside the territorial sea the waters between it and the outer limit of the territorial sea remained high seas, and that it was only the area of the roadstead itself which became territorial sea.

32. He proposed to put the Indian amendment (A/CONF./13/C.1/L.107), as amended by the Indian representative, to the vote first, since it departed furthest from the original by assimilating the waters between roadsteads and the coast line to internal waters.

The Indian amendment was rejected by 30 votes to 1 with 33 abstentions.

The Netherlands amendment (A/CONF.13/C.1/

L.67) was rejected by 24 votes to 22 with 21 abstentions.

The Argentine amendment (A/CONF.13/C.1/L.7/Rev.1) as amended by the Uruguayan amendment (A/CONF.13/C.1/L.68) was adopted by 35 votes to 17 with 14 abstentions.

33. Mr. YINGLING (United States of America) said that in view of the adoption of the Argentine amendment, he wished to insert the words "and buoyage channels" after the word "roadsteads" in his own amendment.

The United States amendent (A/CONF.13/C.1/L.110), thus amended, was adopted by 54 votes to none with 12 abstentions.

34. The CHAIRMAN put to the vote the whole of article 9 as amended.

Article 9 as amended was adopted by 52 votes to 7 with 8 abstentions.

35. Mr. SÖRENSEN (Denmark) said that he had voted against the Argentine amendment despite the fact that in the Second Committee his delegation had made a similar, though less far-reaching, proposal, to give the coastal State limited jurisdiction outside its territorial sea, when it assumed responsibility for buoyage and other devices to ensure safety of navigation in fairways outside the territorial sea, so as to enable that State to discharge its responsibilities (A/CONF.13/C.2/L.100). However, his delegation's proposal had been defeated. The text now adopted on the proposal of Argentina referred not to a limited jurisdiction over buoyed channels, but to a general extension of the territorial sea, and was, moreover, in mandatory form. The effect of including buoyage channels in the territorial sea, in the case of Denmark, might be to extend it to a breadth of some twenty miles in certain areas, and his government could not assume the responsibilities resulting from such an extension. He therefore reserved its position on the text just adopted by the Committee.

The meeting rose at 5.35 p.m.

FORTY-SEVENTH MEETING

Tuesday, 15 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)*

ARTICLE 7 (BAYS) [A/CONF.13/C.1/L.62, L.63, L.101 to L.105, L.109, L.158]

1. Sir Gerald FITZMAURICE (United Kingdom) introduced his delegation's proposal concerning article 7, paragraph 1 (A/CONF.13/C.1/L.62). Apart from drafting changes, some of which were necessitated by the United Kingdom amendments to paragraphs 2 and 3, the United Kingdom proposal was that a provision limiting the effects of the article to bays the coast of which belonged to a single State should be included as a separate initial paragraph. The purpose of that amendment was to make it clear that, according to international law, a closing line could only be drawn across a bay in cases where the whole coastline belonged to a single State. The effect of drawing such a line was to make the waters of the bay in question internal waters, and the concept of internal waters had never been regarded as applicable to a bay belonging to more than one State. In the case of bays the coasts of which belonged to several States, those States could agree to treat each other's ships in a particular way, but that agreement would not affect the ships of other countries.

2. Mr. BOAVIDA (Portugal) introduced his delegation's amendment to paragraph 1 (A/CONF.13/C.1/L.101). The purpose of the amendment was to improve, from a technical point of view, the language of the paragraph in question. His delegation was prepared to withdraw that proposal if the new paragraph 3 proposed by the United Kingdom (A/CONF.13/C.1/L.62) were adopted.

3. Mr. READ (United States of America) withdrew his delegation's amendment to paragraph 1 (A/CONF.13/C.1/L.109). His delegation supported the United Kingdom amendment to that paragraph.

4. Mr. KRISPIS (Greece) introduced his delegation's amendments to paragraphs 2 and 3 (A/CONF.13/C.1/L.63). The purpose of that amendment was to ensure that as small a sea area as possible was taken away from the high seas.

5. His delegation, however, withdrew its proposal for the replacement of the word "maximum" by the word "minimum" in paragraph 3.

6. Mr. DREHER (Federal Republic of Germany) introduced his delegation's amendment to paragraphs 2 and 3 (A/CONF.13/C.1/L.102) replacing the word "fifteen" by the word "ten". The ten-mile line proposed by his delegation had a good deal of support in State practice, and had been recognized in certain international instruments.

7. Mr. YOKOTA (Japan) said that his delegation also proposed a closing line of ten miles (A/CONF.13/C.1/L.104).

8. Mr. READ (United States of America), introducing his delegation's amendment to paragraphs 2 and 3 (A/CONF.13/C.1/L.109), said that the distance of ten miles reflected a long-established State practice. In addition, the limit of normal vision at sea was about five miles, so that a closing line of ten miles represented the maximum distance from the mid-point of which it was possible to see both headlands of a bay.

9. Mr. GRIGOROV (Bulgaria) introduced the proposal of Bulgaria, Poland and the Soviet Union to replace, in paragraphs 2 and 3, the word "fifteen" by the word "eighty" (A/CONF.13/C.1/L.103).

10. The International Law Commission had adopted a closing line of twenty-fives miles at its seventh session.[1] At its eighth session, it had reduced that distance to

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[1] See *Official Records of the General Assembly, Tenth Session, Supplement No. 9* (A/2934), chap. III, art. 7.

fifteen miles quite arbitrarily; the reasons set forth for that change in the commentary to article 7 (A/3159) were by no means convincing.

11. The three-power proposal was based on the premise that the maximum breadth of the territorial sea was twelve miles; it was therefore logical that the closing line for a bay should be twice that distance. States had fixed the breadth of their territorial sea at distances varying between three and twelve miles. It was, however, undesirable to establish on that basis a closing line varying between six and twenty-four miles because such a system would not be acceptable to those States which had a territorial sea of three or four miles. In the circumstances, the best course was to place all States on the same footing for the purpose of the drawing of closing lines of bays.

12. Mr. AYCINENA SALAZAR (Guatemala) introduced his delegation's proposal to replace, in paragraphs 2 and 3, the word "fifteen" by "twenty-four" (A/CONF.13/C.1/L.105). The reasons for that proposal had been set forth by him during the general debate (6th meeting).

13. Mr. NIKOLAEV (Union of Soviet Socialist Republics), speaking as one of the co-sponsors of the three-power proposal (A/CONF.13/C.1/L.103), said that the International Court of Justice had held in the Anglo-Norwegian fisheries case that the distance of ten miles was accepted as the closing line by only a few States and did not constitute a general rule of international law.[2]

14. The fact that the International Law Commission had adopted first a distance of twenty-five miles and then a distance of fifteen miles showed that its decisions on the closing line did not rest on any very strong basis. The closing line of twenty-four miles would correspond to an established international practice, and would protect the vital interests of the States concerned.

15. Mr. GASIOROWSKI (Poland), speaking in support of the three-power proposal, said that the argument relating to normal vision was not a valid one. The provisions of article 7, paragraph 4, concerning the straight baseline system made it possible to declare internal waters the waters of bays having a closing line of many tens of miles.

16. Mr. STABELL (Norway) said that in view of the rejection at the previous meeting of the Norwegian amendment to article 8, his delegation withdrew its amendment to article 7, paragraphs 2 and 3 (A/CONF. 13/C.1/L.97).

17. Sir Gerald FITZMAURICE (United Kingdom) introduced his delegation's proposal for the replacement of paragraphs 2 and 3 by four new paragraphs (A/CONF.13/C.1/L.62).

18. With regard to the closing line of bays, the United Kingdom proposed a distance of ten miles. That distance was not arbitrary; it was based on the practical consideration of the normal range of vision at sea. It was true that the International Court of Justice had not recognized the ten-mile closing line as a general rule of international law, but it was equally true that the International Court had not acknowledged any other distance.

19. The object of the new paragraph 5 proposed by the United Kingdom was to prevent the interference with navigation which would result from the drawing of closing lines across normal navigational routes.

20. Apart from the provision concerning the length of the closing line, paragraphs 3, 4 and 6 of the United Kingdom proposal were largely a redraft in more precise technical terms of the International Law Commission's text.

21. Mr. YOKOTA (Japan) introduced his delegation's amendment to paragraph 4 (A/CONF.13/C.1/L.104). The definition of historic bays could not be left to the arbitral tribunals or courts which would deal with disputes. The definition of such bays was part of the task of codification and could not be left to the courts. The intention of his delegation's amendment was to introduce such a definition into the text of paragraph 4; the definition had been prepared with the aid of the secretariat's excellent memorandum concerning historic bays (A/CONF.13/1).

22. Sir Gerald FITZMAURICE (United Kingdom) introduced his delegation's amendment to the effect that paragraph 4 be replaced by a new paragraph 7 (A/CONF. 13/C.1/L.62). The purpose of the amendment was to limit the exception to historic bays, so that the cases where the straight baseline system was applied would not be covered by the exception. According to article 5, that system could only be applied in the case of certain kinds of coasts. A bay could occur in any type of coast; also, a bay occurring in a coast to which the straight baseline system applied was properly subject to the rules applicable to bays.

23. Mr. BOCOBO (Philippines) said that his delegation would vote against the proposals for a closing line of ten miles. In cases where the rule of international law was in doubt, a provision favouring the coastal State should be adopted.

24. Mr. ANDERSEN (Iceland) proposed that the United Kingdom amendment to paragraph 4 should be voted upon before the amendments to the other paragraphs.

25. Mr. GUTIERREZ OLIVOS (Chile) suggested that the United Kingdom amendments to the various paragraphs should be treated as a single proposal which, being the furthest removed from the International Law Commission's text, should be voted upon first.

26. Mr. URIBE HOLGUIN (Colombia) pointed out that the wording of the new paragraph 3 of the United Kingdom amendment (A/CONF.13/C.1/L.62) closely resembled that of paragraph 1 of the International Law Commission's text.

27. He suggested that the last sentence of paragraph 3 proposed by the United Kingdom delegation should be redrafted along the following lines, and submitted to the Drafting Committee: "The area of the islands within a bay shall be considered part of the total area of the bay."

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

28. Sir Gerald FITZMAURICE (United Kingdom) explained that in the last sentence of the proposed new paragraph 3 the United Kingdom delegation had used the word "indentation" in preference to the word "bays". He considered that islands within a bay should be included as if they were part of the water area of the bay.

29. Luang CHAKRAPANI (Thailand) agreed with the Japanese delegation that the definition of the term "historic bays" should not be left to any court or tribunal. The definition of such bays in the Japanese amendment (A/CONF.13/C.1/L.104) was, however, not precise enough and should be referred to the Drafting Committee.

30. Mr. SHUKAIRI (Saudi Arabia) said that the amendments to paragraph 4 required careful study and hence should not be voted upon at that meeting.

31. He associated himself with the Chilean representative's suggestion that the United Kingdom amendments should be treated as a single proposal and put to the vote as a whole. He would vote for the International Law Commission's text of article 7 as amended by the three-power proposal (A/CONF.13/C.1/L.103), which provided for a twenty-four-mile closing line.

32. Mr. BA HAN (Burma) said that questions of drafting were inextricably bound up with substance in the United Kingdom amendments. For example, the International Law Commission's text defined a bay as a "well-marked indentation", whereas the United Kingdom text spoke simply of an "indentation". But surely not every indentation was a bay.

33. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that, in view of the terms of the draft resolution submitted by India and Panama (A/CONF.13/C.1/L.158) concerning the régime of historic waters, consideration of the Japanese amendment to paragraph 4 (A/CONF.13/C.1/L.104) should be deferred for the time being.

34. He considered that the United Kingdom proposal should be put to the vote as a whole in accordance with the rules of procedure.

35. Mr. GARCIA ROBLES (Mexico) supported the Chilean representative's suggestion concerning the United Kingdom proposal.

36. Sir Gerald FITZMAURICE (United Kingdom) objected to the United Kingdom proposal being put to the vote as a whole. It was obvious that the question of the length of the closing line should be voted upon first, and the proposed new paragraph 5 should also be voted on separately.

37. He saw no objection to his delegation's amendments to paragraph 1 and its proposals concerning paragraphs 3 and 4 being voted upon as a whole since they were merely drafting amendments and could, if the Committee so desired, be sent direct to the Drafting Committee.

38. Mr. STABELL (Norway), recalling the difficulties experienced by the Committee when it had voted on article 18, suggested that the paragraphs of the United Kingdom proposal should be put to the vote one by one and a vote taken on the amendments to the United Kingdom text.

39. The Norwegian delegation would certainly urge a separate vote on paragraph 7 of the United Kingdom proposal and would move, as an amendment to the United Kingdom proposal, the addition of the last phrase of the International Law Commission's text, "or in any cases where the straight baseline system provided for in article 5 is applied". The Japanese delegation should also submit its amendment as a modification of the United Kingdom amendment to paragraph 4.

40. The CHAIRMAN said that he could not accept the Icelandic representative's proposal or the suggestion that the United Kingdom amendments should be put to the vote as a single proposal. The amendments to the various paragraphs of article 7 of the International Law Commission's draft would be put to the vote separately.

The United Kingdom delegation's amendments to paragraph 1 (A/CONF.13/C.1/L.62) were adopted by 28 votes to 21 with 20 abstentions.

The amendment submitted by Bulgaria, Poland and the Soviet Union to paragraphs 2 and 3 (A/CONF.13/C.1/L.103) together with that submitted by Guatemala (A/CONF.13/C.1/L.105) was adopted by 31 votes to 27, with 13 abstentions.

41. Sir Gerald FITZMAURICE (United Kingdom) said that, in view of the adoption of the three-power amendment and the Guatemalan amendment, the word "twenty-four" should replace the word "ten" wherever it appeared in the new paragraphs 4 and 6 proposed by the United Kingdom delegations.

42. Mr. GARCIA ROBLES (Mexico) said that if the United Kingdom amendments to article 7, with the exception of the new paragraph 5, were not sent direct to the Drafting Committee, the Mexican delegation, which supported the International Law Commission's text, would have to vote against them.

43. The CHAIRMAN agreed that apart from the new paragraph 5, the United Kingdom amendments to article 7 were of a drafting nature and would therefore be sent to the Drafting Committee.

The new paragraph 5 proposed by the United Kingdom (A/CONF.13/C.1/L.62) was rejected by 28 votes to 18 with 22 abstentions.

The meeting rose at 1.15 p.m.

FORTY-EIGHTH MEETING

Tuesday, 15 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)*

ARTICLE 7 (BAYS) [A/CONF.13/C.1/L.62, L.104, L.158] (continued)

Paragraph 4

1. In reply to a question from Mr. GARCIA ROBLES

(Mexico), Mr. FRANÇOIS (Expert to the secretariat of the Conference) explained the purpose of the last part of article 7, paragraph 4, which the United Kingdom proposal (A/CONF.13/C.1/L.62) in effect sought to delete. It covered the possibility that certain coasts to which the straight baseline system might be applied contained bays ; in that case the straight baseline would have to be drawn in such a way as to include the entire bay in the area of internal waters. In short, the International Law Commission had considered that, should straight baselines be drawn covering the coast of the bay, the special rules relating to bays would no longer be applicable. According to the United Kingdom amendment, the straight baseline could not in that event be continued across the bay but would have to stop on one side and be continued on the other.

2. Mr. SÖRENSEN (Denmark) said that certain problems were raised by the relationship between articles 5 and 7. In its comments (A/CONF.13/5, section 6), his government had suggested the amalgamation of those two articles, so that straight baselines, whether in front of bays or in front of a coast such as that described in article 5, could be drawn according to identical rules. Awkward situations might well arise if the two articles were inconsistent, as in certain cases geographical conditions were such that doubts might exist as to which article could be applicable. His delegation therefore felt that precedence in application should be given to article 5, and favoured retention of the last part of article 7, paragraph 4. Otherwise the situation would be extremely confused, since the United Kingdom proposals relating to article 5 (A/CONF.13/C.1/L.62/Corr.1) provided for certain exceptions which did not apply to article 7.

3. Sir Gerald FITZMAURICE (United Kingdom) withdrew the United Kingdom proposal relating to article 7, paragraph 4 (A/CONF.13/C.1/L.62, new paragraph 7).

4. Mr. RUBIO (Panama), introducing the draft resolution submitted by Panama and India (A/CONF.13/C.1/L.158), said that it sought to provide for the study and legal recognition of the régime of historic waters, which was not on the agenda of the Conference. He suggested that the word " special " in the last line might be replaced by the word " specialized ".

5. Mr. SIKRI (India) said that his delegation had associated itself with that of Panama in the belief that a precise definition of historic bays was necessary. He appealed to the Japanese delegation not to press its proposal (A/CONF.13/C.1/L.104) if the draft resolution was adopted.

6. Mr. STABELL (Norway) said that only the General Assembly, and not the Conference, had the right to request the Secretary-General to take the action described in the draft resolution. He suggested that the co-sponsors should raise the matter at the General Assembly's next session.

7. Mr. GASIOROWSKI (Poland) supported the draft resolution in principle. However, he agreed with the Norwegian representative and said that the idea of convening a conference simply to study draft rules on the régime of historic waters was impractical. The matter could, in his view, be examined at a conference to which any problems unresolved at the present time might be referred.

8. Sir Gerald FITZMAURICE (United Kingdom) said that he opposed not the substance but the form of the draft resolution. He agreed with the view expressed by the Norwegian representative and suggested that the operative paragraph should be amended to read " Decides to request the General Assembly of the United Nations to consider making arrangements for the study of the régime . . ."

9. He also agreed that it might be unnecessary to convene a conference to examine the question, particularly as the recognition of historic bays did not depend on the decisions of conferences and as only a few draft rules might be involved. Accordingly, he suggested that the last part of the draft proposal should be amended to read " . . . preparation of draft rules on the subject and to take such consequential action as the General Assembly may consider appropriate."

10. Mr. SHUKAIRI (Saudi Arabia) said that the Conference could quite properly address a request to the Secretary-General, particularly as the wording of the draft resolution did not limit him to any specific course of action. The difficulty with the words " to arrange for the study of " might be overcome if they were replaced by the words " to take the necessary steps for the study of ". The objection to the convening of a special conference could similarly be met by replacing the last two words of the operative paragraph by the words " international conference at which other legal questions could be discussed ".

11. There seemed to be general agreement on the substance of the draft resolution, which the Committee might adopt in principle and refer the text to the Drafting Committee for rewording.

12. The CHAIRMAN noted that, although the Conference might request the Secretary-General of the United Nations to take certain action, the First Committee was not qualified to make such a request. In any case, it was more seemly for the Conference to address itself to the General Assembly than to the Secretary-General. He therefore suggested that the operative part of the draft resolution should be replaced by the following text :

" Recommends :

" That the Conference should refer the matter to the General Assembly of the United Nations, with the request that the General Assembly should make appropriate arrangements for the further study and preparation of draft rules on the régime of historic waters, including historic bays ".

13. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that all the Committee's decisions had to be endorsed by the Conference as a whole. He pointed out that the régime of each historic bay had been developed by, and was the result of, special historical circumstances. Accordingly, it was impossible to request the preparation of general rules applicable to all historic bays ; steps could only be taken to determine whether such rules could be drafted. In any case, the text of the operative part of the draft resolution needed

revision and a decision on the draft should accordingly be deferred.

14. Mr. RUBIO (Panama) accepted the Chairman's text of the operative part of the draft resolution.

15. Mr. SIKRI (India), referring to the Ukrainian representative's observations, said that no general rules would be drafted if it was clearly impossible to do so. It was precisely the object of the proposed study to determine whether such rules could be drafted. He accepted the Chairman's new version of the operative paragraph.

16. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), invoking the second sentence of rule 29 of the rules of procedure, proposed that the vote on the draft resolution should be deferred to enable delegations to study the matter further.

17. Mr. NIKOLAEV (Union of Soviet Socialist Republics) supported the Ukrainian representative's proposal. The operative part of the draft resolution was certainly unclear and the Committee should take extreme care in its wording.

18. After a procedural discussion concerning the Ukrainian representative's proposal, Mr. RUBIO (Panama), speaking as one of the sponsors, requested that the vote on the joint draft resolution should be postponed.

It was so agreed.

19. The CHAIRMAN suggested that consideration of the Japanese proposal (A/CONF.13/C.1/L.104) should be deferred until the Committee had dealt with the joint draft resolution.

It was so agreed.

ARTICLE 23 (GOVERNMENT SHIPS OPERATED FOR NON-COMMERCIAL PURPOSES) [A/CONF.13/C.1/L.48, L.50, L.155] (continued) [1]

20. Mr. GUTIERREZ OLIVOS (Chile) withdrew the three-power proposal (A/CONF.13/C.1/L.155), in view of the decisions of the Second Committee with regard to article 33.

21. The CHAIRMAN put the proposal of the Republic of Korea (A/CONF.13/C.1/L.50) to the vote.

The proposal was rejected by 41 votes to 7, with 14 abstentions.

22. Mr. SIKRI (India) recalled that, at the 43rd meeting, his delegation had resubmitted in its own name the proposal originally submitted but later withdrawn by the Federal Republic of Germany (A/CONF.13/C.1/L.48). Article 19 concerned charges to be levied upon foreign ships, and government ships not used for sovereign purposes should be liable to such charges.

23. Sir Gerald FITZMAURICE (United Kingdom) said that the purpose of article 19 was to make it clear that certain charges might not be levied even on merchant ships. Government ships operated for non-commercial purposes were normally immune from charges, including, in theory, those for specific services rendered to the ship. However, if such a ship did not pay for such services, it would not receive them. He knew of no case of a ship's refusing to pay such charges. It was therefore inappropriate to make government ships operated for non-commercial purposes subject to article 19.

The proposal (A/CONF.13/C.1/L.48) was adopted by 18 votes to 15, with 28 abstentions.

24. The CHAIRMAN said that there were no further amendments to article 23 to be considered except for questions of form with which the drafting committee would deal.

ARTICLE 5 (STRAIGHT BASELINES) [A/CONF.13/C.1/L.58, L.62/Corr.1, L.63, L.67, L.81, L.86, L.91, L.95 to L.101, L.106, L.142, L.147, L.157]

25. Sir Gerald FITZMAURICE (United Kingdom), introducing his delegation's revised proposal (A/CONF.13/C.1/L.62/Corr.1), said that it embodied certain drafting changes and took the views of other delegations into account. Apart from the rearrangement of paragraphs, and certain additions, the revised text followed closely the text of article 5 as drafted by the International Law Commission.

26. Mr. AGO (Italy) introduced the four-power proposal (A/CONF.13/C.1/L.157) and referred to the note appended to the proposal. The co-sponsors supported the whole of the United Kingdom proposal (A/CONF.13/C.1/L.62/Corr.1) except the second sentence of paragraph 2, and preferred it to the International Law Commission's text. The purpose of the joint proposal was to safeguard the freedom of navigation. The second sentence of paragraph 2 of the revised United Kingdom proposal said that the length of the straight baseline should not exceed ten miles. That provision might sometimes prove too rigid, for in certain cases it would equally be possible to accept a baseline greater than ten miles. But the main defect of the United Kingdom proposal was that it did not deal with the distance of straight baselines from the coast, and thus allowed of abuses by the coastal State. For that reason the co-sponsors proposed that no point on such lines should be more than five miles from the coast.

The delegations of Denmark, Japan, the Federal Republic of Germany, Italy, Greece, Spain and the Philippines then withdrew their amendments to article 5 (A/CONF.13/C.1/L.81, L.95, L.96, L.147, L.63, L.91, L.98).

The United States delegation withdrew its amendments to the title and to paragraph 1 of article 5 (A/CONF.13/C.1/L.86).

27. Mr. BOAVIDA (Portugal) said that his delegation maintained its amendment (A/CONF.13/C.1/L.101) because it would be absurd if one coastal State were able to deny another coastal State access to the high seas.

28. Mr. STABELL (Norway) explained that his delegation had to maintain its proposal (A/CONF.13/C.1/L.97) because conceivably paragraph 4 of the revised United Kingdom proposal (A/CONF.13/C.1/L.62/Corr.1), which covered the same ground, might not be adopted.

[1] Resumed from 45th meeting.

29. Mr. YOKOTA (Japan) explained that the paragraph 2 proposed by his delegation (A/CONF.13/C.1/L.95) had been replaced by the joint proposal (A/CONF.13/C.1/L.157).

The meeting rose at 10.50 p.m.

FORTY-NINTH MEETING

Wednesday, 16 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.81, L.82 and Corr.1, L.83, L.84, L.118, L.131 to L.141, L.144, L.145, L.149, L.152, L.153, L.159] (continued) [1]

1. Sir Claude COREA (Ceylon) suggested that the voting on articles 1, 2, 3 and 66 should be deferred for one day in view of the fact that a new United States proposal (A/CONF.13/C.1/L.159) had just been circulated.

2. Mr. LOUTFI (United Arab Republic), supported by Mr. NIKOLAEV (Union of Soviet Socialist Republics), proposed that the question of the time of voting should be deferred until after the new proposal had been introduced at the following meeting.

It was so decided.

3. Mr. OHYE (Japan) said that the statements made at earlier meetings to the effect that the three-mile limit for the territorial sea had been established for the benefit of the maritime Powers was very far from the truth as could be seen fom the recent history of Japan. When that country had decided, some ninety years previously, to renounce its policy of isolation, it had not owned a single large ocean-going vessel. It had, however, supported the three-mile rule, and had thus enjoyed the freedom of the high seas.

4. His delegation had carefully considered all the proposals submitted to the Committee on the question of the breadth of the territorial sea, and noted that many States which were not maritime Powers were attempting to decrease the area of the high seas. Japan remained convinced that the three-mile limit was the only established rule of international law and that no reasonable grounds existed for extending the breadth of the territorial sea beyond that limit. The Japanese delegation therefore supported the Greek proposal (A/CONF.13/C.1/L.136). It felt, however, that the United Kingdom delegation's compromise proposal (A/CONF.13/C.1/L.134) was an admirable effort to bring the Conference to a successful conclusion. Japan, which depended heavily on the sea for its very existence, was very anxious that the Conference should achieve success. In recent years, many Japanese ships had been the victims of acts committed by foreign countries in contravention of international law. If such a reign of anarchy on the high seas was permitted to continue, Japan would lose its means of livelihood. The extension of the breadth of the territorial sea to six miles would call for great sacrifices on the part of Japan, but his government was ready to support the United Kingdom proposal, if its adoption meant that the Conference would come to a successful conclusion.

5. The Japanese delegation could not accept any proposal which would grant the coastal State exclusive fishing rights beyond the limit of the territorial sea. If the proposal for a six-mile limit were rejected, then the Japanese delegation would regard the three-mile limit as the recognized rule. With the exception of the Scandinavian countries' claim to a breadth of four miles, all other claims for a greater breadth should be rejected.

6. Mr. IOSIPESCU (Romania) considered that it would be impracticable to establish a uniform breadth for the territorial sea. The Romanian delegation could not, therefore, support the proposal that the limit should be fixed at three miles, as suggested by the Canadian delegation, or at six miles, as had been suggested by the United States and other delegations. The three-mile limit had never been a rule of international law, and every coastal State should have the right to decide the breadth of its territorial sea in the light of history, geography, economic interests and security.

7. His delegation could not accept the Canadian proposal that there should be a twelve-mile contiguous zone over which a coastal State would have exclusive fishing rights only (A/CONF.13/C.1/L.77/Rev.1). A coastal State must have full sovereignty over its territorial sea for all purposes. The outer limit of the territorial sea was, in fact, a frontier of a special type; it safeguarded the interests of the coastal State not only *vis-à-vis* the neighbouring States, but *vis-à-vis* all States. To reduce the extent of the territorial sea of a coastal State might, indeed, endanger its security. The Canadian proposal was therefore unacceptable to a large number of States which already claimed a wider breadth for their territorial sea.

8. For the same reason, the United States proposal (A/CONF.13/C.1/L.159) was unacceptable, since it proposed a breadth of six miles for the territorial sea and a zone of a maximum breadth of twelve miles in which the coastal State had the right to regulate fishing and the exploitation of the living resources of the sea.

9. The United Kingdom proposal (A/CONF.13/C.1/L.134) had been submitted as if it were a great concession to other countries. It did not, however, take into account the large number of States which already claimed a territorial sea of more than six miles; besides, it contained stipulations which would, in effect, maintain the three-mile limit.

10. Romania had established a twelve-mile limit for its territorial sea, and would therefore vote against any proposal which suggested a lesser limit. The security and other vital interests of a coastal State must not be sacrificed to the fishing interests of any oher State.

[1] Resumed from 45th meeting.

11. Mr. QUENTIN-BAXTER (New Zealand) referred to the fact that the United States had made a new proposal (A/CONF.13/C.1/L.159). His delegation had been greatly encouraged by that further evidence of a willingness to compromise. New Zealand, no less than others, was deeply interested in its surrounding waters but did not believe that the protection of the legitimate interests of the State called for any extension of sovereignty beyond the three-mile limit. His government could, however, understand the motivation of those countries which took the view that the extension of national sovereignty was the natural and appropriate way of asserting their interests. But claims to an extended breadth of territorial sea not only restricted the freedom of the seas but tended to obscure the real merits of conflicting claims to economic interest in the resources of the sea. His Government considered that extensions of the territorial sea did not assist defensive measures. It was true that States might need to police the waters near their coasts to implement fiscal, immigration and other policies, but that was a different question, amply covered by the International Law Commission's concept of the contiguous zone.

12. It had been suggested that the " cold war " was a reason for accepting the proposal that each State should be free to fix the breadth of its own territorial sea up to a maximum limit of twelve miles. The New Zealand delegation considered the converse to be true. In a period of international tension there was all the more reason for ensuring that freedom of navigation was not overshadowed by pretensions of national sovereignty.

13. It had also been argued in the Committee that a twelve-mile maximum rule was necessary to take account of existing claims ; but that was buying conformity at far too high a price. The Conference could reach agreement only if there was willingness to compromise on every side.

14. A few delegations had supported the twelve-mile limit as a point of departure for even wider claims to exclusive fishing rights, and it had been suggested that the sovereign rights of the coastal State were entitled to prevail over a régime which was supposed to have been ordained by the maritime Powers. That was a way of obscuring the actual conflicts of economic interest which were predominantly regional in nature.

15. The New Zealand delegation believed that there was justification for the doctrine of the contiguous fisheries zone, but it also considered that areas of the high seas should not be appropriated without regard to established patterns of fishing. The very existence of certain fishing industries depended upon access to distant grounds where they had habitually fished. Such industries, and the countries to which they belonged, had rights which should be respected.

16. The New Zealand Government realized that conflicts of interests were acute, not only in Western Europe but elsewhere, and felt that the interests of the coastal State should not be asserted without full regard to such a situation.

17. Of the proposals which had been before the Committee at earlier meetings his Government would have given preference to the United Kingdom proposal (A/CONF.13/C.1/L.134), even though it would have liked the three-mile limit to be maintained, and even though other proposals might have better suited its local interests in fishing. Despite those reservations, his delegation considered that that proposal was entitled to the great respect which it had received since it offered a substantial economic sacrifice in the interests of general agreement.

18. Mr. BOAVIDA (Portugal) referred to his delegation's amendment (A/CONF.13/C.1/L.144) to the Canadian proposal (A/CONF.13/C.1/L.77/Rev.1). The amendment related to those zones of the high seas in which fishing had taken place over a long period of years, and which would become contiguous zones to the territorial sea of the coastal State if the Canadian proposal was adopted. The scope of the amendment was therefore limited and would not apply to the majority of the coastal States, as could be seen from the synoptic tables prepared by the Secretariat (A/CONF. 13/C.1/L.11/Rev.1).

19. The Portuguese amendment related only to fishing carried out in accordance with internationally accepted conservation measures. Should the last sentence of the amendment be rejected, his delegation would propose the alternative set forth in document A/CONF.13/C.1/L.144.

20. The Portuguese amendment was based on a generally accepted principle of customary law, and was the inevitable result of the Canadian proposal which had been submitted as a possible compromise between the States supporting the three-mile limit and those supporting the twelve-mile limit. Quoting paragraph 5 of the International Law Commission's commentary to article 66, he pointed out that the Commission had been unwilling to recognize any exclusive right of the coastal State to engage in fishing in the contiguous zone. The adoption of the Canadian proposal as drafted would mean that certain States whose vital supplies of fish came from distant fisheries would lose the most productive part of their fishing grounds, which would mean complete ruin for some of them and enormous losses for others.

21. He emphasized that Portugal was a truly maritime State. Since the fifteenth century, its people had fished both in the waters off the coasts of west Africa and on the Newfoundland banks. Fishing grounds discovered by Portuguese fishermen were among the most important sources of food supplies for a great number of States.

22. He then quoted data taken from the preparatory document entitled " The economic importance of the sea fisheries in different countries " (A/CONF.13/16), to show that no harm had been done to fish stocks by the increased catches of fish made during the past eight years by the coastal States bordering the north-west Atlantic area — Canada, Greenland and Iceland.

23. In the area covered by the convention of 5 April 1946, for the regulation of meshes of fishing nets and the size limits of fish, the southern boundary would in the very near future be placed on the parallel of Gibraltar, with the consequence that the Convention would cover fishing grounds adjacent to Portugal, which were heavily fished by Portugal, Spain, France and Belgium. Almost all the fishing grounds fished by Portuguese nationals would thus be covered by international conservation measures.

24. He noted that the new United States proposal (A/CONF.13/C.1/L.159) embodied the Portuguese amendment to the Canadian proposal.

25. Mr. FISER (Czechoslovakia) noted that the difficulty of solving the problem of the breadth of the territorial sea lay in the fact that it was necessary to find a solution which would strike a balance between two important principles of existing international law — namely, the sovereignty of the coastal State — and the freedom of the high seas.

26. If it were desired to remain in the realm of fact, the practice of States was a valuable indication of the direction in which international law should progressively develop. The majority of States had fixed a limit for their territorial sea which was greater than the three-mile limit, and tended to be between 6 and 12 miles, or even greater. That was a fact, and must be taken into account.

27. The proposals submitted by the various delegations for determining the breadth of the territorial sea fell into two categories. On the one hand, there were the proposals fixing a uniform breadth like those of Canada, Greece and Ceylon. On the other hand, there were the proposals which, taking into account the development of State practice, allowed States the possibility of determining the breadth of the territorial sea within limits varying from 3 to 12 miles, or more. This category included the proposals of India and Mexico (A/CONF. 13/C.1/L.79), the Soviet Union (A/CONF.13/C.1/L. 80), Peru (A/CONF.13/C.1/L.133), Yugoslavia (A/CONF.13/C.1/L.135) and Italy (A/CONF.13/C.1/L. 137).

28. To attempt to standardize the breadth of the territorial sea in an entirely mechanical manner would not be a good method, particularly if the starting-point were to be the practice of a minority of States. Such a method would be bound to fail, as had been shown at the Conference for the Codification of International Law at The Hague in 1930. At the same time, the difficulty could not be overcome by merely asserting that it was for the coastal State itself to fix the breadth of its territorial sea without having its freedom limited by any objective criterion. In reality, the breadth of the territorial sea represented the result of a long historical development and corresponded to the various requirements of the States.

29. If the proposals concerning the limits of the territorial sea were considered from that standpoint, the most acceptable were that of India and Mexico and that of the Soviet Union. The Soviet Union proposal was the one most in conformity with the present trend in international law. It had, moreover, the advantage of containing objective criteria for fixing the breadth of the territorial sea. It confirmed the practice of all States in the matter, so that no State would be obliged to make any change whatsoever in respect of the breadth of its territorial sea as fixed by itself, provided that breadth was not greater than 12 miles. Furthermore, that proposal made it possible to envisage, in very exceptional cases, fixing a breadth of the territorial sea in excess of that limit.

30. Finally, his delegation supported the proposal of Iceland (A/CONF.13/C.1/L.131), which covered the case of a population primarily dependent on its coastal fisheries for its livelihood or economic development.

31. Mr. WESSELS (Union of South Africa) said that his country had maintained a three-mile limit of the territorial sea for all purposes and at all times. His government therefore saw with regret the approach of the irrevocable end of the three-mile rule. His delegation could not help feeling that there had not been sufficient political preparation for the weighty decisions which the Conference was going to take, and reserved its position with regard to the various proposals.

32. Mr. ARAMBURU (Peru) said that, for the purpose of reaching agreement on the question of the breadth of the territorial sea, it was not essential that there should be agreement on a fixed distance. It was sufficient to agree on a method of determining the breadth. That was the idea underlying the Peruvian proposal (A/CONF. 13/C.1/L.133 and Add.1).

33. The language of the Peruvian proposal (A/CONF. 13/C.1/L.133) was taken from the principles approved by the Inter-American Council of Jurists at its third meeting at Mexico City in 1955, and hence had the support of an important regional body.

34. The adoption of the Peruvian formula would alone make it possible to draft a convention likely to receive general approval. If the Conference were to adopt a rule specifying a fixed breadth for the territorial sea, and the distance specified was not acceptable to a group of countries, or even to one important Power, the rule would remain a dead letter.

35. It was significant that while Iceland's claim to a territorial sea of twelve miles had resulted in protests by a certain Power, that same Power had not protested when other countries had adopted the same distance of twelve miles. The reason for that apparent anomaly was that the delimitation of the territorial sea by a State was of concern only to States having interests in the sea area affected.

36. The adoption of a universal rule in respect of the breadth of the territorial sea could only be of interest to Powers which possessed large fleets operating in all the oceans and which used those fleets as instruments of domination. The Conference, however, should adopt a provision which favoured the majority of countries.

37. It would be unrealistic to ignore the differences existing between the Mediterranean, the Baltic and the Pacific. Nuclear tests were being carried out in the Pacific because it was considered that the losses resulting from those tests affected only a minute portion of that immense ocean ; and yet, the quantity of fish destroyed by atomic explosions must have been much greater than the quantities of fish which the tuna clippers had been prevented from fishing as a result of the conservation measures adopted by Peru, Chile and Ecuador.

38. It was significant that regional sea areas had been established for purposes of defence by the North Atlantic Treaty Organization and, in the Western Hemisphere,

by the Declaration of Panama of 1939 and the Inter-American Treaty of Reciprocal Assistance of 1947. The United Nations Command in Korea itself had declared a defence perimeter extending out to sea to a distance of 200 miles at certain points.

39. Since regional arrangements had been made for such purposes as defence, it was quite appropriate to follow the same method for the purpose of the delimitation of the territorial sea. The countries of the South American Pacific — Peru, Chile and Ecuador — had solved their problems in accordance with the characteristics of their region; the measures they had adopted would safeguard the living resources of the region for the benefit of all mankind.

40. Mr. PONCE Y CARBO (Ecuador) said that his delegation supported the proposal submitted by Iceland (A/CONF.13/C.1/L.131).

41. His delegation also agreed with the proposals of Yugoslavia, Canada, Colombia and Mexico (A/CONF. 13/C.1/L.54, L.77/Rev.1, L.82 and Corr.1 and L.141) in so far as those proposals recognized the exclusive fishing rights of the coastal State in the contiguous zone. It was significant that those proposals and a similar proposal submitted by India in the Third Committee (A/CONF.13/C.3/L.50) had been put forward by States in several different areas of the world. That fact pointed to the general recognition of the rights of the coastal State.

42. Mr. SÖRENSEN (Denmark) said that his delegation would vote against all proposals which contemplated the extension of the territorial sea beyond six miles. In general, his delegation opposed any wholesale extension of the coastal State's exclusive fishing rights beyond a distance of six miles, and would therefore abstain in the vote on proposals which would have that effect. At the same time, his delegation were of the opinion that the legitimate interests of the populations of certain coasts, islands and groups of islands required special measures, and he therefore viewed with great sympathy the underlying idea of the proposal submitted by Iceland (A/CONF.13/C.1/L.131).

43. There was much to be said for not placing legal obstacles in the way of the economic development of under-developed areas at a time when the more developed countries were incurring great expense precisely for that purpose. Unfortunately, the language of the proposal submitted by Iceland could lend itself to abuse. It was necessary to make provision either for some maximum distance or for some system of arbitration which would ensure that the question of the existence of special circumstances was determined by an impartial body.

44. Mr. GUTIERREZ OLIVOS (Chile) said that the Declaration of Santiago of 1952 had claimed sovereign rights to effect the protection of the living resources of the south Pacific. International law had not at that time offered any other means of safeguarding that natural wealth but such other means could be found at the present conference.

45. With the aim of arriving at a just solution of the problem, his delegation, together with a number of other delegations, had proposed in the Third Committee that the fishing interests of the coastal State should receive special consideration if restrictions were imposed on the intensity of fishing (A/CONF.13/C.3/L.66). That proposal was still being discussed by the Third Committee.

46. The proposal submitted by the United States of America (A/CONF.13/C.1/L.159), but not yet officially explained by the United States representative did not appear to provide a satisfactory formula for the protection of fishing by the coastal State. It appeared in some respects to be even less acceptable than the earlier Canadian proposal (A/CONF.13/C.1/L.77/Rev.1) which had been supported by the United States delegation and therefore, subject to such further comments as might be justified on the basis of the explanations the United States representative might give, the Chilean delegation wanted to place on record its provisional opposition to the new United States proposal.

47. Sir Gerald FITZMAURICE (United Kingdom) said, with reference to the proposal submitted by Iceland (A/CONF.13/C.1/L.131), that, although his delegation fully understood the peculiar position of Iceland, it found the wording of the proposal unsatisfactory. That wording could lead to extensive claims to exclusive fishing rights by one State after another. If a proposal like that of Iceland were to be incorporated in any part of the proposed convention, the United Kingdom Government would have to reserve its position with regard to that convention.

48. Mr. COMAY (Israel) said that his delegation wished to enter an express reservation arising out of the synoptic table prepared by the secretariat. That table, as originally circulated on 20 March 1958 (A/CONF. 13/L.11), had indicated the breadth of the territorial sea of Egypt as twelve miles, giving 1951 as the year to which the information was related. His delegation had thereupon written to the secretariat, inquiring on what authority that statement was based, in view of the fact that the Egyptian Royal Decree of 1951 specified a breadth of six miles. The secretariat had replied by a letter of 1 April 1958 that it had discussed the position with the delegation of the United Arab Republic; that delegation had informed it that the entry of twelve miles should stand, but that the relevant legislation had been enacted in 1958.

49. A revised version of the synoptic table, which had appeared on 3 April 1958 (A/CONF.13/C.1/L.11/Rev. 1) contained, in the place of the earlier entries for Egypt and Syria, an entry to the effect that the territorial sea of the United Arab Republic had a breadth of twelve miles followed by the year 1958.

50. That was the first and only indication which had reached the Israel Government of any claim by Egypt or the United Arab Republic to a territorial sea of twelve miles. The Israel Government did not regard such a claim or legislation purporting to give effect to it as having any validity in international law or as affecting in any way existing rights.

The meeting rose at 12.5 p.m.

FIFTIETH MEETING

Wednesday, 16 April 1958, at 3.15 p.m.

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

Consideration of the draft articles adopted by the International Law Commission at its eighth session (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.2, L.78, L.80, L.81, L.82 and Corr.1, L.83, L.84, L.118, L.131 to L.141, L.144, L.145, L.149, L.152, L.153, L.159) (continued)

1. Mr. BOCOBO (Philippines) urged all delegations to show more understanding. The African and Asian countries should realize that the former metropolitan Powers were in a position rather like that of loving parents who insisted on reminding their grown-up children of precepts that the latter found irritating; the western States, on the other hand, should recognize the fact that the newer countries valued their freedom above all else and refused to accept certain rules of international law evolved before they had attained statehood. The Conference could only succeed if all States agreed to subordinate their own selfish interests to the greatest good of the greatest number.

2. Mr. DEAN (United States of America), introducing the new United States proposal (A/CONF.13/C.1/L.159), said that it had been put forward in the firm conviction that it contained the essential elements of a just, honourable and realistic compromise on the most important issue before the Conference. Clearly, mutual concessions were essential between coastal States which must be recognized to have a just claim to a larger share of the resources of the sea than had hitherto been allowed by existing rules of international law, and States whose position was based on equity and legal principles. He reiterated his government's view that the greatest possible freedom of the seas was in the best interests of all States, whether large or small, old or new; the new proposal sought to reconcile all their diverse interests.

3. Under the new proposal, if a coastal State chose a six-mile limit for its territorial sea, it would be entitled to regulate fishing and the exploitation of the living resources of the sea in an additional contiguous zone of six miles, making a total of twelve miles from the applicable baseline. With a three-mile territorial sea, the fishing zone would be nine miles. The right of the coastal State to regulate fishing, however, was conditional upon recognizing the right of nationals of other States who had been fishing regularly anywhere within the contiguous zone for, say, eight to ten years previously, to continue to do so. No limitation was placed on the number of such nationals engaged in fishing, the size of vessels or the volume and character of the catch. Nationals of other States permitted to continue fishing would be bound to comply with such conservation regulations enacted by the coastal State as were consistent with the rules of the present draft and other rules of international law.

4. He urged that consideration be given first to the essential elements in his proposal. His delegation had an open mind regarding arbitral procedure, which was dealt with in paragraph 3. It was aware that some States might need time to bring their laws into line with its proposal, and it would favour an amendment stipulating that reasonable time should be allowed for doing so.

5. The proposal was the outcome of the most careful thought at the highest level, and was made at a substantial sacrifice of the interests of the United States, which since 1793 had consistently adhered to the three-mile limit and continued to do so, even though at times it would have been advantageous to abandon it. Thus, the United States Government had been actuated solely by the common interest and the belief that its proposal offered better prospects of reconciling conflicting interests than the initial Canadian proposal (A/CONF.13/C.1/L.77/Rev.1) which it had supported. Though the effect of the United States proposal would be to reduce the total area of the high seas, vitally important national fishing industries would not be eliminated, nor would the eating habits of any country be drastically affected by supplies of any particular species being cut off. Careful study of the text would show how far the United States Government had gone towards meeting other points of view and facing realities. As a firm advocate of the three-mile limit, it had taken a momentous step in agreeing to depart from that rule against its own vital interests, and he felt fully justified in appealing to every other delegation to re-examine its own position with impartiality and altruism so that final agreement might be reached.

6. Mr. SHUKAIRI (Saudi Arabia) said that, although he had no doubts regarding the sincerity of the United States delegation's motives, the new proposal was open to the most serious criticisms. The substance of the proposal was in no way new, for the six-mile rule had been advocated for years by learned societies and authorities throughout the world. Furthermore, a proposal for a six-mile limit was largely incompatible with the official position often adopted by the United States Government in the past; for example, almost immediately after the Declaration of Independence, the United States Government had laid claim to all marine areas within sixty miles of its continental coast, and that claim had been recognized in the Peace Treaty of 1783 between the United States and Great Britain.

7. The original United States proposal (A/CONF.13/C.1/L.140) for a three-mile territorial sea within a twelve-mile exclusive fishery zone — although unacceptable to the Saudi Arabian delegation for reasons already explained — had at least been clear. The new proposal, on the other hand, was ambiguous in the extreme, since the reference to the maximum breadth of territorial sea that could be "claimed" left open the question whether that claim would be regarded as legitimate and internationally recognized.

8. With regard to the United States representative's assertion that the proposal had been submitted in a spirit of conciliation, he certainly did not doubt that all those present wished the Conference to succeed. Nor was there any disputing the fact that the question

of the breadth of the territorial sea, which had caused the failure of The Hague Conference, was the central issue on which success depended. In fact, if that question were to be left unsettled, there would be no point in persisting in the attempt to codify the law of the sea. But a distinction should always be maintained between compromise and abject surrender. The States which proposed a twelve-mile limit — and whose contentions had been implicitly confirmed by the International Law Commission — were not asking for anything either novel or extreme, and the adoption of that limit would already involve a substantial sacrifice on the part of many countries, such as the South American countries of the Pacific.

9. It was totally unreasonable to expect the advocates of the twelve-mile limit to defer to the wishes of a minority, and in those circumstances the Saudi Arabian delegation felt bound to oppose the new United States proposal; it would vote for the proposal submitted by the delegations of India and Mexico (A/CONF.13/C.1/L.79), which confirmed the practice of many States with very different legal systems. If none of the twelve-mile proposals obtained adequate majority approval, his delegation would press for the adoption of its draft resolution (A/CONF.13/C.1/L.153), which — pending a further effort to settle the matter by multilateral treaty — would at least provide a clear statement of the rules regarding which there was no reasonable doubt.

10. Mr. DREW (Canada) expressed his delegation's regret at the tendency of certain representatives to question the motives of all those who held views opposed to their own. Both the United Kingdom and the United States delegations had made a sincere effort to bring the positions of governments closer together, and it was unfortunate that their intentions — and those of the other traditional upholders of the three-mile limit — had been needlessly questioned. The three-mile rule had, after all, long enjoyed wide acceptance, and had formed the basis of the maritime policy which Great Britain had pursued in opening up the highways of international navigation and safeguarding them for almost a century. It was not fair to say that the proposals of the United Kingdom and the United States were prompted solely be a desire to perpetuate an outmoded tradition.

11. Holding those beliefs, the Canadian delegation naturally accepted the statement of the United States representative that his delegation's sole desire was to reach a fair compromise. But, as the Canadian delegation's statement at the 17th meeting had indicated, the Canadian Government could never agree to a proposal which would authorize certain foreign nationals to exploit a State's reserved fishing zone in perpetuity. It had been suggested that the question of fishery conservation was of little importance to Canada, as it did not fully utilize its adjacent fishing grounds in any case. But that contention was refuted by the fact that the annual catch of the Canadian fishing fleets was the sixth largest in the world and by the number of hard-working Canadian citizens who depended entirely on fishing for their subsistence.

12. As far as the Canadian delegation was concerned, the reservation proposed by the United States in favour of certain foreign nations would make the whole idea of a twelve-mile fishing zone entirely meaningless, Fishing grounds which might long have remained practically inexhaustible by traditional fishing methods were being invaded with increasing frequency by new and remarkable vessels — some of a displacement of 4,000 tons or more — containing all the necessary industrial equipment for processing the catch into canned products, oils and fertilizers. Those were no longer fishing craft in the accepted sense, but mobile canning factories and commercial carriers combined. Their continued operation in areas close to a State's coast would not only injure the coastal population, but would also bring about an ultimately dangerous diminution in the world's fish supply. Nor could the matter be remedied solely by the proviso contained in the United States proposal that the nationals of other States would be bound to observe the coastal State's conservation regulations, unless the measures taken were something infinitely more drastic than the term "conservation" normally implied.

13. The Canadian delegation still believed in the soundness of its initial proposal (A/CONF.13/C.1/L.77/Rev.1) — which the United States delegation had originally supported without reservation — that the rights of the coastal State should be secured by the recognition of an exclusive fishery zone twelve miles wide. But with regard to the concurrent Canadian proposal that the breadth of the territorial sea proper should be fixed at three miles, the situation had undergone an important change. The two States which between them owned over 50% of the world's mercantile shipping had abandoned the three-mile rule, and it would be merely quixotic for other countries to disregard that decisive break with tradition and the swing towards a six-mile limit. The Canadian delegation would therefore follow suit and, in order to be completely realistic, would also press for recognition of the fact that certain States claimed a territorial sea wider than six miles, and that there was no likelihood of their agreeing to withdraw. That was particularly true of States which had made such claims for a long period; for example, Mexico had claimed nine miles for over a hundred years, and the limit of Russian national waters had been fixed at twelve miles at the turn of the century.

14. Mindful of all those factors, and fully aware of the need for a régime broadly acceptable to States with different legal systems, Canada, with Mexico and India, was submitting a new proposal (A/CONF.13/C.1/L.77/Rev.2) superseding the earlier Canadian proposal (A/CONF.13/C.1/L.77/Rev.1) and that of India and Mexico (A/CONF.13/C.1/L.79). The new proposal embodied the basic features of the United States amendment, but differed from it in two essential respects: it maintained the original Canadian suggestion for a twelve-mile fishery zone without reservations; and it recognized that established claims to zones between six and twelve miles could not be impugned. The text would thus preclude new claims in excess of six miles, but would recognize the validity of certain limits as wide as twelve miles that had been fixed in the past.

15. Lastly, he repeated his government's earlier suggestion that the Conference should provide for a

periodic review of any instrument it might adopt. By that means, the code could be kept up to date and constantly improved.

16. The CHAIRMAN suggested that, in view of the important proposals just introduced, the Committee might not wish to adhere to its decision to vote on articles 1, 2, 3 and 66 at the present meeting.

17. Mr. MUHTADI (Jordan) moved that the vote on article 3 be postponed until the Committee had concluded its work on all the other articles referred to it.

18. Mr. RUIZ MORENO (Argentina) seconded the motion.

19. Mr. GARCIA ROBLES (Mexico) found the motion acceptable but urged that a definite hour be fixed for voting on article 3.

20. Mr. SIKRI (India) suggested that a definite time be fixed on 18 April, the day before the Committee was due to conclude its agenda.

21. Mr. TUNKIN (Union of Soviet Socialist Republics) regretted that the Committee should have postponed consideration of the articles in question at the outset and that it once more wished to defer voting. The Indian representative's suggestion was the most acceptable.

22. Mr. MUHTADI (Jordan) agreed with the Indian representative's suggestion.

23. Mr. RUIZ MORENO (Argentina) maintained that the Committee should defer the vote on article 3 until the last possible moment, because, if agreement was to be reached, delegations must have time to obtain further instructions and the matters at issue concerned not one, but several government departments.

24. Mr. AGO (Italy) agreed with the Argentine representative.

25. The CHAIRMAN observed that the weight of opinion seemed to be in favour of postponing the vote on article 3 until 18 April and suggested that it should be fixed for 4 p.m.

It was so agreed.

26. Mr. RIGAL (Haiti) supported the United States proposal which, he believed, would serve the cause of world peace and ought to win the support of the majority.

27. Mr. SIKRI (India), explaining the motives that had prompted his delegation to join those of Canada and Mexico in submitting a new proposal (A/CONF.13/C.1/L.77/Rev.2), said that India's requirements would have been fully satisfied by the United States proposal which, moreover, was fully consistent with Indian legislation. Anxious — as was every delegation — to find a formula commanding the greatest measure of support on a complex matter involving very diverse and sometimes conflicting interests, his delegation had been influenced by three considerations. First, that almost all maritime Powers held the traditional view that three miles was the most reasonable limit; secondly, that fishing interests in the coastal waters of numerous countries, many of which were small, must be recognized; and thirdly, that despite the preference for the traditional three-mile limit throughout the nineteenth and much of the present century, a number of States had laid claim to a territorial sea of over three or over six miles, and their claims had long been recognized. It was most unlikely that such countries could easily be persuaded to reduce the breadth of their territorial sea.

28. He was aware of the genuine difficulties that some delegations might have in accepting the proposal, but urged the United States to adhere to the original concession it had made in regard to the first Canadian proposal, despite the sacrifices that would involve. Again, he realized that United Kingdom interests would be very adversely affected in certain areas, notably in the North Sea and off the coasts of Iceland, but he hoped that the United Kingdom would be able to reach a settlement with Iceland in a spirit of mutual understanding.

29. The three-power proposal might at first sight disturb the convinced upholders of the three-mile limit, but they should face the fact that a small number of States — and it did not exceed fifteen — had long enjoyed rights in a wider belt by general consent, and countries such as the Arab States, with their slender resources, might regard a twelve-mile limit as essential and be unwilling to concede any reduction. He could see no objection to making an exception to a general rule, as was frequently done in municipal law.

30. In conclusion, he earnestly commended the joint proposal as offering a real compromise which, if accepted, would inaugurate a new era of the rule of law.

31. Mr. GUTIERREZ OLIVOS (Chile) said that the United States proposal (A/CONF.13/C.1/L.159) failed to protect the fishing interests of coastal States. The contiguous zone it provided for proved, on closer examination, to be so hedged about with reservations as to deny the coastal State effective rights and the possibility of excluding foreign fishing vessels. For those reasons the proposal was unacceptable to his delegation.

32. It was only elementary justice to accord to coastal States a privileged position if conservation measures made it necessary to restrict fishing in certain waters. If the Conference failed to recognize the special position of coastal States, the situation would remain unchanged, and unilateral protection measures would continue to be promulgated when necessary; hence, unless the coastal States received a real and not merely verbal recognition of their special rights, they would be forced to support at the Conference such proposals regarding the breadth of the territorial sea as would give them broader areas of territorial sea because of the fishing rights in respect of those areas.

The meeting rose at 5.30 p.m.