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FIFTY-FIRST MEETING

Thursday, 17 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)*

TITLE OF ARTICLES (A/CONF.13/C.1/L.5, L.61)

1. Mr. SHUKAIRI (Saudi Arabia) introduced his delegation's proposal (A/CONF.13/C.1/L.5) to insert, immediately after the general title of the articles, the following text:

" *General Provision*

" These articles shall be known as The Law of the Sea in Time of Peace."

2. It was necessary to give the law its title, as was the custom in municipal legislation. The obvious title was that suggested by his delegation, because the International Law Commission itself had emphasized that its draft articles regulated the law of the sea in time of peace only.

3. Only one delegation had objected to his delegation's proposal, on the grounds that the United Nations Charter did not permit the existence of a state of war between Member States of the United Nations. It was true that the United Nations Charter had entirely abolished the conception of war as an institution of international law. Unfortunately, it was necessary to distinguish between ideals and realities. It was a brutal fact that neither the Charter as a code nor the United Nations as an organization had been able to prevent the occurrence of war — for example, in the Middle East in the autumn of 1956. If war should unfortunately break out, it was more humane that it should be conducted according to certain rules rather than without any rules whatsoever. The law of war constituted a part of international law.

4. Accordingly, a clear distinction had to be drawn between the law of the sea applicable in time of peace and the law of the sea applicable in time of war. That distinction had been drawn by the International Court of Justice in its decision in the Corfu Channel case.[1] In that decision, the Court had referred on three occasions to a legal rule as applying " in time of peace ". In addition, the plea of the existence of a state of war had been raised in that case and had been considered by the Court, even though the plea had been of a technical nature. It had not been dismissed outright by the Court on the grounds that the Charter had outlawed war. It was clear — to give but one example of the implications of his proposal — that a coastal State could not allow the exercise of the right of innocent passage in its territorial sea in favour of an aggressor State at a time of armed conflict.

5. His delegation's proposal was not intended to serve regional policies or transient situations. It was the expression of a general principle.

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

ARTICLE 5 (STRAIGHT BASELINES) (A/CONF.13/C.1/L.58, L.62/Corr.1, L.67, L.86, L.97, L.99 to L.101, L.106, L.142, L.157) (continued)[2]

6. Mr. PETREN (Sweden) said that his delegation was in general agreement with the revised United Kingdom proposal (A/CONF.13/C.1/L.62/Corr.1). His delegation, however, considered the distance of ten miles specified in paragraph 2 as too short, and proposed in its stead a distance of fifteen miles. In addition, his delegation opposed paragraph 3, for in Sweden baselines had for a long time been drawn to and from drying rocks and drying shoals. Accordingly, he proposed the deletion of paragraph 3.

7. His delegation opposed the four-power proposal for a new paragraph (A/CONF.13/C.1/L.157) not only because that proposal provided for a ten-mile maximum for straight baselines, but also because it specified that such baselines could only be drawn, between a headland and an island or between islands, in cases where an island was not more than five miles from the coast. Sweden had many archipelagos, each consisting of numerous islands which were situated close to one another and which formed a continuation of the coast. It was not by any means rare, however, that some of the islands of an archipelago were situated more than five miles from the coast of the mainland.

8. There was no reason in the case of archipelagos — such as those of Sweden — for not applying the straight baseline method.

9. Mr. YOKOTA (Japan), introducing the four-power proposal for a new paragraph (A/CONF.13/C.1/L.157) said that, as far as he knew, the straight baseline method had not been mentioned in any textbook on international law or in any articles on the territorial sea before the International Court of Justice decision in the Anglo-Norwegian fisheries case in 1951. Neither had any institutes or associations of international law ever embodied a method of straight baselines in any of the resolutions concerning the territorial sea.

10. His delegation considered that if the straight baseline method was to receive general recognition, it should be subject to reasonable limits. The maximum length of ten miles and distance of five miles from the coast were therefore proposed, in keeping with the system originally adopted by the International Law Commission at its sixth session.[3]

11. Sir Gerald FITZMAURICE (United Kingdom) said that his delegation accepted the Swedish amendments to its revised proposal.

12. The CHAIRMAN said that the acceptance by the United Kingdom delegation of the Swedish amendments met the requirements of a number of amendments which, like that of Iceland (A/CONF.13/C.1/L.142) and of Norway (A/CONF.13/C.1/L.97), proposed the deletion of the last sentence of the International Law Commission's article 5, paragraph 1.

13. Mr. KATICIC (Yugoslavia) said that paragraphs 1

[2] Resumed from the 48th meeting.

[3] *Official Records of the General Assembly, Ninth Session, Supplement No. 9* (A/2693), chap. IV, article 5.

to 5 of the United Kingdom revised proposal, as amended, were acceptable to his delegation.

14. Mr. SHUKAIRI (Saudi Arabia) said that the text proposed by the United Kingdom was an improvement on that of the International Law Commission.

15. With regard to paragraph 6, his delegation desired an explanation of the term " normally ".

16. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that his delegation could not accept the four-power proposal because it was based on the so-called ten-mile rule for the drawing of straight baselines, a rule which the First Committee had already rejected.

17. With regard to the revised United Kingdom proposal, he said that his delegation had no objection to paragraph 1, which did not differ in substance from the corresponding passage in the International Law Commission's text.

18. His delegation opposed paragraph 2 of the revised United Kingdom text, even if the length of the straight baseline was increased to fifteen miles. His delegation preferred the International Law Commission's formulation in the relevant passage of article 5.

19. With regard to paragraph 4 of the revised United Kingdom proposal, he said that his delegation also preferred the International Law Commission's formulation in the fourth sentence of article 5, paragraph 1, which constituted a better safeguard of the interests of the coastal State.

20. His delegation had no objection to paragraph 5 of the revised United Kingdom proposal.

21. His delegation would vote against paragraph 6 of the revised United Kingdom proposal because it had intended to vote against paragraph 3 of the International Law Commission's text containing similar provisions.

22. For all those reasons, his delegation would vote against the revised United Kingdom proposal as a whole.

23. Sir Gerald FITZMAURICE (United Kingdom) said, in reply to the representative of Saudi Arabia, that the word " normally " used in the revised United Kingdom proposal had been taken from the International Law Commission's text. The United Kingdom delegation did not regard that word as essential, and would be quite prepared to omit it.

24. With reference to the Soviet Union representative's objection to paragraph 2 of the revised United Kingdom proposal, he said that the first sentence of that paragraph was identical with the relevant passage of the International Law Commission's text.

25. Mr. SHUKAIRI (Saudi Arabia) said that in his delegation's view the word " normally " was necessary, and should be retained in the text of paragraph 6.

26. Mr. HSUEH (China) said that his delegation would support the revised United Kingdom proposal. It would also support, as an amendment to that proposal, the four-power proposal, which was more precise than the passage in the United Kingdom proposal providing for an exception " where... imposed by the peculiar geography of the coast concerned ".

27. Mr. SIKRI (India) inquired whether the words " as a whole ", as used in paragraph 1 of the revised United Kingdom proposal, implied that the rule would only apply where the whole coastline of a State was deeply indented. The International Law Commission's text could clearly apply to a part of a coast which was deeply indented.

28. With regard to paragraph 6, he suggested that the words " has been effected by enclosing " be replaced by the words " has the effect of enclosing " appearing in the International Law Commission's text.

29. Sir Gerald FITZMAURICE (United Kingdom) accepted the change suggested by the Indian representative in paragraph 6. The departure from the International Law Commission's text in that passage had been the result of a typing error.

30. In reply to the Indian representative's question concerning paragraph 1, he said that the words " as a whole " were not intended to mean that the provision only applied where the whole coastline of a State was deeply indented, or even where the whole of a particular coastline of a State was so indented. Those words were governed by the initial words of the paragraph — " In localities "; the intention was to exclude the application of the straight baseline method in cases of isolated curvatures of a coast.

31. Mr. VERZIJL (Netherlands) said that his delegation, notwithstanding the introduction of the revised United Kingdom proposal, maintained its amendments to paragraphs 1 and 3 of the International Law Commission's text (A/CONF.13/C.1/67). The substance of those Netherlands amendments applied to the United Kingdom text.

32. The Netherlands amendments would have a fourfold effect. First, the condition that the drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast was formulated without exceptions, as in the International Law Commission's text. Secondly, the provision stating that baselines could not be drawn to and from drying rocks and drying shoals was restored and formulated without exceptions. Thirdly, the proviso that " account may be taken of economic interests peculiar to the region " was made applicable only to cases where the sea areas lying within the straight baselines were " sufficiently closely linked to the land domain ", which was the condition stipulated in the Commission's text. Fourthly, in paragraph 6 of the United Kingdom proposal, equivalent to paragraph 3 of the International Law Commission's draft, the last phrase would be deleted. In the opinion of the Netherlands delegation, the right of innocent passage existed in all cases and not merely where the waters concerned had been normally used for international traffic.

33. Mr. AGO (Italy), speaking on behalf of the sponsors of the four-power proposal (A/CONF.13/C.1/L.157), said that in view of the United Kingdom's acceptance in the text of its proposal of a maximum distance of fifteen miles in substitution for ten miles, the same change was made in the corresponding passage of the four-power proposal.

34. His delegation supported the Netherlands amend-

ment deleting the last phrase of paragraph 6 of the revised United Kingdom proposal. In the interests of international navigation, the right of innocent passage had to be maintained without reservations.

35. His delegation favoured the retention of the provision that baselines could not be drawn to and from drying rocks and drying shoals.

36. Mr. KRISPIS (Greece) asked for a separate vote on the words " They shall not be drawn to and from drying rocks and shoals " in the Netherlands amendment (A/CONF.13/C.1/L.67). That request for a separate vote would have the effect of reintroducing paragraph 3 of the revised United Kingdom proposal, which had been withdrawn by its sponsor.

37. Mr. MORRISSEY (Ireland) said that his delegation had some difficulty in understanding the words " imposed by the peculiar geography ". The whole straight baseline system was meant to apply to an area having a peculiar geographical configuration. It was difficult to conceive of an exceptionally peculiar geography in an area which was already peculiar.

38. Mr. GUTIERREZ OLIVOS (Chile) introduced his delegation's amendment deleting the word " immediate " in the first sentence of paragraph 1 of the International Law Commission's text (A/CONF.13/C.1/L.100); that amendment applied equally to paragraph 1 of the revised United Kingdom proposal.

39. The two criteria specified in article 5 were: firstly, that the drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast; and secondly, that the sea areas lying within the lines had to be sufficiently closely linked to the land domain. Those principles were based on the decision of the International Court of Justice in the Anglo-Norwegian fisheries case. The notion of " immediate " vicinity was at variance with the general principles underlying article 5.

40. The second sentence of paragraph 2 of the revised United Kingdom proposal was not acceptable to the Chilean delegation. Its formulation was not based on any ruling by the International Court of Justice.

41. The Chilean delegation had proposed the deletion of the provision contained in paragraph 3 of the revised United Kingdom proposal, and was therefore opposed to its reintroduction. That provision was not in harmony with the provision of article 11 on drying rocks and shoals.

42. Although the revised United Kingdom proposal was, from the point of view of drafting, an improvement on the International Law Commission's text, his delegation could not vote in favour of it because paragraphs 1 and 2 contained provisions to which it was opposed.

43. Sir Gerald FITZMAURICE (United Kingdom), replying to the representative of Ireland, said that the exception regarding cases of a peculiar geography of the coast was intended to introduce an element of flexibility into the fifteen-mile rule. Each individual case had to be judged on its own merits. It was in the first instance for the coastal State to decide whether peculiar geographical conditions existed to justify the drawing of straight baselines longer than fifteen miles. In the event of objection, it was a matter for argument between the coastal State and the other States affected.

44. Mr. KATICIC (Yugoslavia) said that his delegation could not support the four-power amendment (A/CONF.13/C.1/L.157) since it introduced an element — breadth — which had nothing to do with criteria only applicable for the determination of waters situated *inter fauces terrarum,* and which was incompatible with the principle of the sovereignty of the coastal State.

45. The Yugoslav amendment to article 5 which proposed the deletion of paragraph 3 of the International Law Commission's text (A/CONF.13/C.1/L.58) was also applicable to paragraph 6 of the revised United Kingdom proposal (A/CONF.13/C.1/L.62/Corr.1), which his delegation could otherwise support. The Yugoslav delegation considered that the same régime must apply to inland waters whether they were in front of, or behind, the coastline. His delegation also considered that the recognition by the coastal State of a right of innocent passage through such waters would cause great confusion in practice.

46. Recalling the statement of the Rapporteur of the International Law Commission that straight baselines were adopted in order to constitute the waters within them as internal waters, he said that once the method of drawing such baselines had been determined and limited, as had been done both in the International Law Commission's text and the United Kingdom proposal, it was unnecessary for any other rules to be laid down which might change the nature of the waters within the baselines.

47. Mr. GARCIA ROBLES (Mexico), introducing his delegation's amendments to article 5 (A/CONF.13/C.1/L.99), said that they applied both to the International Law Commission's text and to the revised United Kingdom proposal. If the Commission's text was not put to the vote, he would ask that the Mexican amendments be put to the vote before the corresponding paragraphs of the United Kingdom proposal.

48. The Mexican delegation considered that the words " by a long usage " were unnecessary in paragraph 1 of the International Law Commission's draft, and that baselines should not be drawn to and from rocks, shoals or other elevations which were above water at low tide only, unless lighthouses or similar installations which were permanently above sea level had been built on them.

49. Mr. SIKRI (India) withdrew his delegation's amendment (A/CONF.13/C.1/L.106), which had proposed the addition of the words " and other " after the word " economic " in paragraph 1 of article 5.

50. Referring to the revised United Kingdom proposal, he thought the expression " localities where the coastline as a whole is deeply indented " in paragraph 1 very vague; he quoted, in that connexion, the International Law Commission's commentary to article 5. The International Court of Justice, in its judgement in the Anglo-Norwegian fisheries case, had referred to " minor curvatures of the coastline " [4] and he considered that that expression was preferable.

[4] *I.C.J. Reports, 1951,* p. 130.

51. Mr. ANDERSEN (Iceland) said that the revised United Kingdom proposal was an improvement on the International Law Commission's text, but pointed out that paragraph 2 of the proposal introduced the idea that baselines should as a general rule be limited to fifteen miles and only in exceptional circumstances, where justified on historical grounds or imposed by the peculiar geography of the coast, could they be extended. His delegation did not think it necessary to distinguish between the various types of coast, and therefore proposed that the second sentence of paragraph 2 of the United Kingdom proposal should be voted on separately.

52. Sir Gerald FITZMAURICE (United Kingdom), referring to the remarks of the representative of India, said that the United Kingdom text did not differ in substance from the International Law Commission's text, but only in arrangement and, to some extent, in drafting. Paragraph 1 of the International Law Commission's text did not mention " minor curvatures of the coastline ". In the part of the International Court of Justice's judgement in the Anglo-Norwegian fisheries case to which the Indian representative had referred, the Court was merely stating what had been done in certain cases, but it was not a decision of the Court. As he read the decision of the Court as a whole, it was to the effect that the straight baselines system could only be justified on one or both of two grounds, either historical grounds or peculiar geography. It was quite certain that the whole decision in the Anglo-Norwegian fisheries case had been based upon the peculiar geography of the Norwegian coast. He considered that it was not justifiable to draw a straight baseline in the case of a coast which was not deeply indented but had a minor curve somewhere. If, however, a coast was deeply indented it was justifiable to establish a straight baseline system and to draw a straight baseline across a minor curvature.

53. Mr. SÖRENSEN (Denmark), supporting the revised United Kingdom proposal, said that a certain flexibility in the rules governing baselines was necessary if their application was to produce reasonable results.

54. In certain cases the coastline viewed as a whole might well be of the exact type described by the draft rules, but there might also be localities in which the baseline which would fit into the whole system very well could only be drawn if it were fifteen and a half miles instead of fifteen. Another peculiar geographical factor which might in certain cases influence the drawing of concrete baselines occurred in the Arctic regions where the coast was icebound for most of the year. In such peculiar geographical conditions it would be unreasonable for the maximum permissible length of fifteen miles to apply.

55. Mr. YINGLING (United States of America), introducing his delegation's amendment (A/CONF.13/C.1/L.86) to paragraph 3, said that the United States delegation considered that all the articles on innocent passage should be incorporated by reference in article 5, and not merely the provisions of the defining clause (article 15), since articles 16 to 25 should be equally applicable.

56. The text of the International Law Commission's draft paragraph 3 and that of the United Kingdom proposal contained the words " where the waters have normally been used for international traffic ". Those words would certainly lead to dispute in practice. Such disputes would be avoided by the adoption of the United States amendment.

57. Mr. BOAVIDA (Portugal), referring to the amendment submitted by his delegation (A/CONF.13/C.1/L.101), emphasized that a coastal State had duties as well as rights.

58. Mr. STABELL (Norway) asked whether the provisions of the United Kingdom proposal were intended to apply to straight baselines established before the entry into force of the proposed convention. He was thinking of the particular stretches of internal waters which had been established by the judgement of the International Court of Justice in the Anglo-Norwegian fisheries case. That judgement had made it clear that the stretches of water inside the Norwegian baselines on the coast were internal waters in the accepted meaning of that term.

59. Sir Gerald FITZMAURICE (United Kingdom) replied that a provision such as that in the United Kingdom proposal could only affect baselines drawn after the coming into force of the proposed convention.

60. Mr. BOCOBO (Philippines) said that his delegation supported the Mexican delegation's amendments (A/CONF.13/C.1/L.99), but would have to vote against the four-power proposal (A/CONF.13/C.1/L.157). He recalled that the International Law Commission had stated in paragraph 3 of its commentary to article 5 (A/3159) that a paragraph, which was similar to that now suggested by the four Powers, had been withdrawn at its seventh session " so as not to make the provisions of the first paragraph too mechanical ".

61. Mr. GARCIA ROBLES (Mexico) said that he would have to vote against the four-power proposal. He could support the United Kingdom proposal with the exception of paragraph 2, and therefore associated himself with the proposal of the representative of Iceland that it should be put to a separate vote. He also asked that the phrase " as a whole " in paragraph 1 of the United Kingdom proposal should be put to a separate vote, and suggested that the words " economic circumstances " in paragraph 4 of the United Kingdom amendment should be replaced by " economic interests ".

62. Sir Gerald FITZMAURICE (United Kingdom) accepted that amendment.

63. Mr. AGO (Italy) said that the question covered by the four-power amendment had been debated at great length by the International Law Commission, which had included in its draft article 5 the phrase " Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity ". The purpose of the four-power proposal was to define that phrase. The idea of internal waters was a new one, and rules should be laid down to cover that category of waters within the régime of the law of the sea.

64. Mr. KRISPIS (Greece), referring to the four-power proposal, recalled that the group of experts which had

met at The Hague in 1953 at the request of the International Law Commission had recommended that no point of a straight baseline should be more than five miles from the coast.

65. Sir Gerald FITZMAURICE (United Kingdom) replying to a question by Mr. GUTIERREZ OLIVOS (Chile) said that he had no objection to a separate vote on the word "immediate" in paragraph 1 of his proposal.

66. Mr. BOCOBO (Philippines) considered that the definition of the phrase "immediate vicinity" should be left to the courts to decide.

67. Mr. PETREN (Sweden), referring to the archipelagos of Sweden, recalled Sweden's concept of what was meant by internal waters and said that he would be unable to vote for the four-power amendment.

68. Mr. KATICIC (Yugoslavia) emphasized that the concept of "internal waters" was not a recent innovation: it had been recognized even before the time of Grotius.

The meeting rose at 1 p.m.

FIFTY-SECOND MEETING

Thursday, 17 April 1958, at 2.45 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 5 (STRAIGHT BASELINES) (A/CONF.13/C.1/L.58, L.62/Corr.1, L.67, L.86, L.97, L.99 to L.101, L.142, L.157) (continued)

1. The CHAIRMAN, observing that the discussion on article 5 had been concluded, said he proposed to put to the vote first the amendments which applied both to the Law Commission's draft and to the revised United Kingdom proposal (A/CONF.13/C.1/L.62/Corr.1).

2. The Portuguese amendment (A/CONF.13/C.1/L.101) to the first sentence of paragraph 1 would be referred to the Drafting Committee.

The Chilean amendment (A/CONF.13/C.1/L.100) was rejected by 29 votes to 21 with 6 abstentions.

The joint amendment submitted by the Federal Republic of Germany, Greece, Italy, and Japan (A/CONF.13/C.1/L.157) was rejected by 30 votes to 13 with 12 abstentions.

The Mexican amendment (A/CONF.13/C.1/L.99) deleting the words "by a long usage" was rejected by 26 votes to 20 with 10 abstentions.

The Netherlands amendment (A/CONF.13/C.1/L.67) deleting the words "in all those cases ... for international traffic" from paragraph 3 in the International Law Commission's text or from paragraph 6 in the United Kingdom text was rejected by 32 votes to 11 with 14 abstentions.

The amendment proposed by Yugoslavia (A/CONF.13/C.1/L.58), deleting paragraph 3 in the Commission's text or paragraph 6 in the United Kingdom text, was rejected by 34 votes to 8 with 10 abstentions.

The alternative amendment (A/CONF.13/C.1/L.58) proposed by Yugoslavia was rejected by 33 votes to 11 with 13 abstentions.

The United States amendment (A/CONF.13/C.1/L.86) substituting the words "as set forth in articles 15 to 25 shall exist in those waters" for the words "as defined in article 15 ... for international traffic" was adopted by 24 votes to 14 with 23 abstentions.

3. Mr. BOAVIDA (Portugal) said that in the light of the decisions taken, he wished to substitute the word "not" for the word "never" in his proposal (A/CONF.13/C.1/L.101) for the addition of a new paragraph.

The Portuguese proposal, thus amended, was adopted by 33 votes to 16 with 10 abstentions.

4. The CHAIRMAN announced that, having disposed of all the amendments that were equally applicable to both texts, he would next put the revised United Kingdom proposal to the vote, paragraph by paragraph.

5. In accordance with requests made at the previous meeting, separate votes would be taken on the words "as a whole" in paragraph 1, and the second sentence of paragraph 2. The Committee would remember that following the discussion at the previous meeting, the word "fifteen" had been substituted for the word "ten" in paragraph 2, that paragraph 3 had been withdrawn, that the word "interests" had been substituted for the word "circumstances" in paragraph 4, and that the words "the effect of" had been substituted for the words "been effected by" in paragraph 6. As a result of the withdrawal of paragraph 3, the last three paragraphs of the proposal would, of course, be renumbered.

It was decided by 29 votes to 24 with 10 abstentions to retain the words "as a whole" in paragraph 1.

Paragraph 1 of the United Kingdom proposal was adopted by 47 votes to 5 with 12 abstentions.

The first sentence of paragraph 2 was adopted by 54 votes to 1 with 8 abstentions.

The second sentence of paragraph 2 was adopted by 31 votes to 23 with 12 abstentions.

Paragraph 3 (former paragraph 4) was adopted by 43 votes to 12 with 11 abstentions.

Paragraph 4 (former paragraph 5) was adopted by 62 votes to none with 2 abstentions.

Paragraph 5 (former paragraph 6) as amended was adopted by 44 votes to 15 with 8 abstentions.

6. The CHAIRMAN observed that it remained to decide whether the last sentence of paragraph 1 of the Law Commission's draft should be retained. The delegations of Norway (A/CONF.13/C.1/L.97) and Iceland (A/CONF.13/C.1/L.142) had proposed its deletion and the Mexican delegation had proposed an amendment to it (A/CONF.13/C.1/L.99).

7. Mr. GARCIA ROBLES (Mexico) said that in order to have time he would agree to the proposal of Norway and Iceland being voted on first; if it was adopted his own amendment would lapse.

The proposal to delete the last sentence of para-

graph 1 of the Law Commission's draft was rejected by 27 votes to 18 with 20 abstentions.

The Mexican amendment (A/CONF.13/C.1/L.99) to that sentence was adopted by 35 votes to 13 with 18 abstentions.

The United Kingdom text, as amended, was adopted by 44 votes to none with 13 abstentions.

8. The CHAIRMAN said that the questions of form arising from the adoption of that text would be referred to the Drafting Committee.

ARTICLE 4 (NORMAL BASELINE) (A/CONF.13/C.1/L.6, L.58, L.62, L.63, L.81, L.85, L.87, L.89, L.90, L.94, L.143) (continued) [1]

9. The CHAIRMAN observed that many of the proposals relating to article 4 were drafting amendments, and would be referred direct to the Drafting Committee. There remained the proposals to add a new paragraph submitted by the delegations of Greece, China, Turkey and Yugoslavia (A/CONF.13/C.1/L.63, L.85, L.94, L.58). Representatives would have noted from the letter (A/CONF.13/C.1/L.143) addressed to him by the Chairman of the Second Committee that article 26, paragraph 2, had been referred to the First Committee. Finally, there was the Danish proposal (A/CONF.13/C.1/L.81) for a new article 2 A.

10. Mr. SÖRENSEN (Denmark) said that the purpose of his proposal had been to distinguish between internal waters in the usual sense and internal waters between the coast and straight baselines fixed in pursuance of article 5. However, that point had now been settled by the decision just taken by the Committee on paragraph 5 of article 5, and he accordingly withdrew his proposal (A/CONF.13/C.1/L.81).

11. Mr. KATICIC (Yugoslavia) pointed out that his proposal had been that the new paragraph should form a separate article to follow article 5, since it related to both article 4 and article 5.

12. The CHAIRMAN suggested that that point, being mainly one of form, could be referred to the Drafting Committee.

It was so agreed.

13. Mr. GUTIERREZ OLIVOS (Chile) said he was unable to understand the purport of the Turkish amendment.

14. Mr. TUNCEL (Turkey), observing that the working group set up to simplify the amendments to article 5 had not had time to examine the Turkish amendment, explained that his government had submitted a similar proposal to the International Law Commission, but the Special Rapporteur had intimated that since the term "inland waters" covered internal seas there was no need for such an addition. The present amendment had been put forward because internal seas were not affected by the straight baseline system, so that the definition proposed in the new paragraph would not suffice.

15. Mr. ROSENNE (Israel) thought that article 26, paragraph 2, of the International Law Commission's draft adequately covered the Turkish representative's point.

16. Mr. NIKOLAEV (Union of Soviet Socialist Republics), while agreeing that internal seas were considered to be inland waters, said that the Turkish amendment would be totally out of place in a provision relating to the baseline of the territorial sea, which was a quite separate matter.

17. Mr. TUNCEL (Turkey) agreed with the Soviet Union representative; his amendment could form a separate paragraph.

18. Mr. DE LA PRADELLE (Monaco) pointed out that the object of article 4 was not to define internal waters, but merely to explain the effect of applying straight baselines, so that the adoption of the Turkish amendment might lead to misunderstanding.

19. Mr. KRISPIS (Greece), thought that in order to avoid confusion the Turkish amendment should form a separate article.

20. Mr. RUEDEL (France) did not favour the Turkish amendment, because article 4 did not refer to inland waters as such, but only to a particular part of the territorial sea, between the coast and a straight baseline.

21. Mr. TUNCEL (Turkey) considered that there would have been advantage in stating the fundamental principle of international law that all inland waters were exempt from international regulation, except in particular cases; but in order to avoid the vexatious consequences that would result from the rejection of his amendment, there being unanimous agreement that internal seas were considered to be internal waters, he was prepared to withdraw it provided that it was mentioned in the Rapporteur's report, together with the Commission's view on the status of internal seas.

22. The CHAIRMAN put to the vote the proposal to add a new paragraph to article 4 reading: "Waters within the baseline of the territorial sea are considered as internal waters."

The proposal was adopted by 60 votes to 1 with 2 abstentions.

ARTICLE 10 (ISLANDS) (A/CONF.13/C.1/L.3, L.59, L.98, L.112 to L.114)

23. Mr. BA HAN (Burma) said that the Burmese amendment (A/CONF.13/C.1/L.3) was designed to fill the gap arising from the fact that the Law Commission's draft failed to specify the position of a foreign island situated within the territorial sea of another State. If such an island were to have its own territorial sea, it would also be entitled to its own contiguous zone and continental shelf and the result would only be an intolerable conflict of jurisdiction. The "median line" principle could at the very best only provide a solution on the landward side of the island, and it was therefore necessary to specify that the first sentence of article 10 did not apply in such circumstances.

24. Mr. YINGLING (United States of America) explained that the United States proposal (A/CONF.13/

[1] Resumed from the 45th meeting.

C.1/L.112) aimed at correcting certain deficiencies and inaccuracies in the Commission's draft. In the first place, it was incorrect to say that every island had its own territorial sea, for no such rule could apply to an island within a straight baseline. Secondly, the United States proposal — unlike any of the Commission's provisions — specified where the baseline of an island could be drawn. And lastly, it emphasized that an island had to be a natural formation, so that States could not extend their territorial sea merely by creating artificial " areas of land " beyond their established limits.

25. Mr GUITIAN (Spain) said that the Spanish proposal (A/CONF.13/C.1/L.113) was one purely of form. It was preferable to give a definition of an island before stating its attributes.

26. The CHAIRMAN observed that the Spanish proposal, as well as that of Mexico (A/CONF.13/C.1/L.114), would be referred to the Drafting Committee.

27. Mr. KATICIC (Yugoslavia) said that paragraph 2 in the Yugoslav proposal (A/CONF.13/C.1/L.59) sought to settle the whole question of the baselines from which the territorial sea of islands could be drawn by a simple reference to article 4 (normal baseline) and article 5 (straight baseline).

28. With regard to paragraph 3 in the Yugoslav proposal, the Yugoslav delegation had originally hoped that the Conference might act on the International Law Commission's recommendation and try to solve the complex and controversial problem of archipelagos. Since that time, however, the only State directly concerned with the problem which had submitted a proposal thereon had withdrawn it, and the Yugoslav delegation would therefore withdraw its own proposal for an additional paragraph 3.

29. Mr. SORENSEN (Denmark) regretted the Yugoslav delegation's decision to withdraw its proposal on archipelagos. In its commentary on article 10 the Commission had expressly urged the Conference to give some attention to the problem and an excellent study on the subject had been submitted to the Conference by the Secretariat (A/CONF.13/18) proposing a solution substantially the same as that advocated by Yugoslavia. The complexities of the problem would be greatly reduced by the newly adopted text of article 5, which limited the maximum length of a straight baseline to fifteen miles and reserved the right of innocent passage in all areas which a straight baseline would enclose. The Danish delegation would therefore take up the former Yugoslav proposal and formally reintroduced it.

30. Mr. ANDERSEN (Iceland) supported the new Danish proposal.

31. Luang CHAKRAPANI (Thailand) deplored the Burmese amendment, which seemed to be directed solely at certain Thai islands off the Burmese coast. Such difficulties could best be resolved by bilateral negotiations.

32. Mr. KRISPIS (Greece) said that the Burmese proposal was illogical on five grounds: first, it took no account of the security needs of the islands in question; secondly, it raised issues of transit and seemed to envisage the novel phenomenon of a "sea-locked" country; thirdly, it would place such islands in a hopeless position in time of war; fourthly, sovereignty could never be surrendered and an island's sovereign right to a territorial sea was undeniable; and lastly, the Fourth Committee had already decided at its 19th meeting, when dealing with article 67, that islands were entitled to exploit their own continental shelf, which could not be done without a belt of territorial waters.

33. Sir Gerald FITZMAURICE (United Kingdom) thought that the point contemplated by the Burmese delegation was merely a special instance of the situation covered by article 12, and that the waters separating the foreign islands from the coastal State could be equitably divided by the median line method. He also agreed with the Greek representative that it was juridically impossible for a maritime territory to have no territorial waters.

34. Mr. GUTIERREZ OLIVOS (Chile) hoped that the United States delegation could change the second sentence of its proposal so as to emphasize that each island had its own territorial sea.

35. Mr. YINGLING (United States) said that the primary design of the United States proposal had been to correct the inaccurate first sentence of the Commission's draft, which disregarded the fact that islands behind straight baselines could have no territorial sea whatever. The Chilean delegation might, however, be satisfied with the compromise wording: "The low-tide line on an island may be used as the baseline of its territorial sea."

36. Mr. GUTIERREZ OLIVOS (Chile) accepted the United States representative's suggestion.

37. Mr. BA HAN (Burma) found the Greek representative's arguments unconvincing. The primary security needs to be considered were those of the coastal State, and the untenable position of foreign islands in wartime would be but little strengthened by the recognition of their right to a surrounding belt of water. The question of transit would not arise, as innocent passage would be permitted on either side of the island. And as far as sovereignty was concerned, the paramount rights were those of the dominant territory.

38. Sir Gerald FITZMAURICE (United Kingdom) agreed with the Danish representative that the question of archipelagos was important, but thought that it required considerably more study. The complexities of the problem had caused it to be left pending both by The Hague Conference of 1930 and by the International Law Commission. It was particularly complex in the case of oceanic — as opposed to coastal — archipelagos, some of which were compact groups of islands with overlapping territorial seas, while others were widely scattered. The application of the principle embodied in the former Yugoslav proposal to widely scattered groups would enclose huge areas of water wholly out of propotion with the land area. Nor would the position be greatly simplified by the new limit to the length of straight baselines stipulated in article 5, for wholly artificial baselines might be drawn between mere reefs and atolls. In those circumstances, the United

Kingdom delegation would prefer to see the matter held over for special study, in the same manner as the question of historic bays.

39. Mr. RUEDEL (France) pointed out to the United States representative that the Commission had made adequate provision for the baselines of islands by employing the flexible expression " along the coast " in article 4. The most defective text in that respect was the United States delegation's own proposal on article 4 (A/CONF.13/C.1/L.87), which stated that the baseline was the low-tide line " on the mainland ".

40. Mr. BARTOS (Yugoslavia) supported the United Kingdom representative's view that the question of archipelagoes should be held over for further study. It was precisely that belief that had prompted his delegation, after consultation with representatives of the States most directly concerned, to withdraw its proposal.

41. Mr. SÖRENSEN (Denmark) withdrew the former Yugoslav proposal which the Danish delegation had reintroduced. He nevertheless thought that the exchange of views on the subject had served a useful purpose.

The Burmese proposal (A/CONF.13/C.1/L.3) was rejected by 32 votes to 1 with 22 abstentions.

The United States proposal (A/CONF.13/C.1/L.112), as amended by its sponsor, was approved by 37 votes to 6 with 14 abstentions.

The Yugoslav proposal for a new paragraph 2 (A/CONF.13/C.1/L.59) was approved by 47 votes to 1 with 7 abstentions.

Article 10 as a whole, as amended, was adopted by 62 votes to none with 1 abstention.

The meeting rose at 6 p.m.

FIFTY-THIRD MEETING

Friday, 18 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.2 and 3, L.78 to L.81, L.82 and Corr.1, L.83, L.84, L.118, L.131, L.133 and Add.1 and 2, L.134 to L.140, L.141/Rev.1, L.144/Rev.1, L.145, L.149, L.152, L.153, L.159/Rev.1, L.160) (continued) [1]

1. Sir Reginald MANNINGHAM-BULLER (United Kingdom) said that he wished to make clear the United Kingdom Government's attitude to the United States proposal (A/CONF.13/C.1/L.159) and the proposal of Canada, India and Mexico (A/CONF.13/C.1/L.77/Rev.2).

2. When he had explained, at the 35th meeting, the United Kingdom proposal (A/CONF.13/C.1/L.134) that the limit of the territorial sea should not extend beyond six miles, but that rights of passage for aircraft and vessels (including warships) beyond three miles should not be affected, he had made it plain that that proposal involved a very considerable sacrifice and a serious economic loss for the United Kingdom, and that it was the limit to which his government could go. He had emphasized that the proposal did not involve any abandonment by the United Kingdom Government of the three-mile principle as constituting the fundamental rule of law in the absence of any applicable convention to the contrary, but that it involved a willingness to apply a different rule on a conventional basis.

3. He felt that the revised United States proposal (A/CONF.13/C.1/L.159/Rev.1) was a truly remarkable gesture of compromise on the part of a great country which, despite tendentious attempts to misrepresent its attitude, had, like the United Kingdom, traditionally and fundamentally adhered to the principle of the three-mile limit. That proposal could bring no material benefit to the United States of America, but was a sincere and genuine attempt to meet different interests and points of view, and to bring the Conference to a successful conclusion on the major issues before it. The United Kingdom Government had therefore reluctantly decided to support the United States proposal in the First Committee. His delegation would have to consider its attitude carefully in the plenary meeting, since it would depend on the context of the other articles as decided on by the Conference.

4. The United States proposal took account of distant water interests so far as fishing was concerned and went a long way, though not all the way, towards mitigating the serious damage a twelve-mile territorial sea or exclusive fishery zone would do to existing and long-established fishery interests. It was clear from the United States representative's explanation of his proposal that a State whose nationals had fished in the zone between the limit of the territorial sea and the twelve-mile line would be entitled to continue to do so in future, without limitations other than those necessary to meet legitimate conservation requirements. The stipulated period of five years' regular fishing seemed reasonable, having regard to post-war conditions.

5. The United States proposal to extend the territorial sea to six miles did not contain the express reservations for passage rights of aircraft and shipping contained in the United Kingdom proposal, but his delegation, on further reflection, did not consider it absolutely necessary that, for the passage of ships and aircraft, the area outside the three-mile line should be regarded as part of the high seas. However, it was essential, in the interests of the world and of world trade, that the established rights of innocent passage should be maintained and the extension of the territorial sea should not operate to deprive international straits of their character, or to prevent access to ports of other nations. It was upon the assumption that those rights would continue to be recognized that the United Kingdom Government sup-

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[1] Resumed from the 50th meeting.

ported the United States proposal in so far as it related to shipping.

6. Referring to the passage of aircraft, he agreed with the statement made on that matter made by the Canadian representative at the Committee's 31st meeting. He wondered what had happened between that meeting and the 50th meeting, when the Canadian representative, together with those of India and Mexico, had submitted a proposal (A/CONF.13/C.1/L.77/Rev.2) that involved recognizing claims to a twelve-mile territorial sea without any provision relating to the passage of aircraft The Canadian representative had stated at the 31st meeting that " any extension of the territorial sea would limit the air routes available in many parts of the world ". Recognition of the claim to a twelve-mile limit would assuredly do so. The United Kingdom Government regarded it as essential that air travel should not be impeded by the extension of the territorial sea even to six miles. It was in the belief that the Conference would agree that that extension should not prejudice normal and existing practice with regard to the movement of aircraft, which should remain as it was until the problem had at least been fully considered, perhaps by another body, that the United Kingdom delegation would vote for the United States proposal. He wished to make it clear that, even to secure a compromise, the United Kingdom Government could not make any further sacrifices.

7. Turning to the proposal submitted by Canada, Mexico and India (A/CONF.13/C.1/L.77/Rev.2), he said that while he appreciated the spirit in which it had been put forward, he could not regard it as any concession. There was no concession in relation to fishery interests, and he could not understand why it should be thought that the only concession to secure agreement as to fisheries should come from those who for years had fished the distant waters of the sea. He failed to see why it was necessary for Canada to have an exclusive fishery zone of twelve miles, from which the vessels of other countries which had traditionally fished there for centuries were to be excluded. Any danger of over-fishing could be dealt with by the coastal State under article 55.

8. In so far as the three-power proposal involved extending the territorial sea to six miles, it was a compromise , but twelve miles was in no sense a compromise. Reference to long-standing claims of twelve miles had been made at the 50th meeting by the representatives of Canada and India, but such claims had never been generally recognized and had, indeed, been constantly protested. He saw no valid ground for recognizing such claims, nor for recognizing those which had been made as recently as January and February 1958. To do so would be invidious and clearly discriminatory. The three-power proposal offered no prospect of stability, and he appealed to the sponsors to submit a real compromise, and to recognize the historic fishery rights of distant-water fishery countries.

9. The revised Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) was clearly no real compromise, since it provided for a twelve-mile fishery zone without any recognition of the interests of distant-water fisheries.

10. Lastly, he referred to the great trust and faith which the ordinary peoples of the world had placed in the United Nations. Those who had had the good fortune to survive two world wars had hoped and believed that the United Nations would be a potent force for the preservation of amity between nations. The extent of the authority of the United Nations depended in no small measure on States being prepared to surrender their individual interests to the interests of the world as a whole. He emphasized that decisions by a group of States to vote as a bloc without hearing the views of other States might constitute a serious threat to the authority and influence of the United Nations. All States represented at the Conference should have regard to wider considerations than those of purely national interest. It had been in that spirit that the United Kingdom delegation had proposed its compromise solution, and it was in that spirit that it supported the United States proposal.

11. If conferences held under United Nations auspices became the plaything of national politics with various States and various groups scheming to secure individual advantages, sometimes at the expense of a neighbouring State, then the authority and influence of the organization was bound to diminish, and it might cease to command the respect of the peoples of the world. He therefore appealed to all whose views differed from those of the United Kingdom delegation to move towards its views, as his delegation had moved towards theirs.

12 Mr. GARCIA ROBLES (Mexico) said that the Mexican delegation had carefully studied the purposes and aims of the Conference, and had concluded that if it was to achieve success, international law must be codified in a manner consistent with conditions existing in 1958, and there must be a spirit of understanding and compromise. His delegation had acted on those considerations throughout the Conference.

13. Referring to his statement in the general debate at the 20th meeting, he emphasized that the Conference must decide what breadth of territorial sea governments considered best suited to their present-day interests. It had been at his delegation's request that the Secretariat had prepared a synoptic table listing present-day laws and regulations applied by coastal States to their territorial seas (A/CONF.13/C.1/L.11/Rev.1).

14. At the Committee's 31st meeting he had introduced the joint proposal on article 3 submitted by the delegations of India and Mexico (A/CONF.13/C.1/L.79). That proposal had the two-fold advantage of being conciliatory and of taking into consideration existing rules of customary law relating to the territorial sea ; he would listen with interest and great attention to any comments and suggestions that representatives might make to improve it. The proposal submitted by Canada (A/CONF.13/C.1/L.77) was similar to the joint proposal of India and Mexico, and, after informal conversations, the three delegations had agreed on a conciliatory proposal (A/CONF.13/C.1/L.77/Rev.2) which had been introduced at the Committee's 50th meeting.

15. At the same meeting, however, the representative of the United States delegation had also submitted a proposal (A/CONF.13/C.1/L.159) which the Mexican delegation found unacceptable. The United States proposal did not allow for the fact that the law of the sea must take into account the existing laws and regu-

lations of coastal States. It also provided that nationals of any State which had fished in a certain zone regularly for a period of ten years immeditely preceding the signature of the convention should have the right to fish in that portion of the zone lying beyond the outer limit of the territorial sea of a coastal State. The United States representative had also stated that the proposal was not intended to limit the catch of foreign vessels. On considering that proposal, the Mexican delegation could not blame any coastal State for being concerned. He emphasized, in that connexion, that the plight of the millions of undernourished citizens of the smaller and less-developed countries must be borne in mind. Many such countries had found the sea to be one of the most important factors in their efforts to improve their economy and raise the standard of living of their peoples.

16. After much thought, the Mexican delegation had decided to withdraw its sponsorship of the three-power proposal (A/CONF.13/C.1/L.77/Rev.2) in favour of the original proposal submitted by the delegations of India and Mexico (A/CONF.13/C.1/L.79) which faithfully reflected existing rules of international law on the breadth of the territorial sea.

17. The events of the past week had shown that the Conference must categorically state the will of the majority of governments in a clear and simple manner which could not be misinterpreted. The Conference could not be deemed a failure even if an article on the breadth of the territorial sea was not carried by the required two-thirds majority. Professor Gidel had referred to the three-mile limit twenty-five years previously as a fallen idol, but it was now dead and buried, since two of its traditional champions had withdrawn their support. The vote on article 3 would be a plebiscite of the peoples of the world. Those who supported the joint proposal of India and Mexico would reject the idea that the peoples of the smaller nations must be disowned and prevented from enjoying the living resources of the seas adjacent to their coasts for the benefit of private interests in foreign countries thousands of miles away.

18. Mr. SEN (India) said that his delegation had made every effort to try to find a compromise solution. It was not sufficient to approve a rule of law by a majority ; the rule should be accepted by an overwhelming majority of the members of the international community.

19. The original United States proposal (A/CONF.13/C.1/L.159) would have been acceptable to his delegation, but the position of other delegations had to be considered. His delegation had accordingly endeavoured to find a formula satisfactory to the smaller and newer countries of Asia, Africa and Latin America. The generally held belief that the big Powers were alone responsible for the peace of the world was incorrect. It was evident that that responsibility rested equally on the smaller nations.

20. The revised United States proposal (A/CONF.13/C.1/L.159/Rev.1) was a commendable attempt to achieve a compromise and was satisfactory to India, but the qualifications which it contained were not acceptable to many of the smaller nations or to those Powers which, for their own reasons, had deemed it necessary in the past to fix the breadth of their territorial sea at twelve miles.

21. The three-power proposal (A/CONF.13/C.1/L.77/Rev.2) having been withdrawn, his delegation, like that of Mexico, reverted to the earlier proposal by Mexico and India (A/CONF.13/C.1/L.79). That proposal satisfied the aspirations of those States which had recently entered the international community.

22. His delegation agreed with much of what had been said by the United Kingdom representative. No solution would be found if the delegations formed blocs ; they should consider the various proposals on their merits rather than with reference to their sponsors.

23. India's efforts to arrive at a satisfactory compromise solution had been criticized by some, and it had been said that India was not really a small nation. His country had no desire to be a great Power, and considered that the cause of world peace would be well served if the division between great and small Powers was obliterated. It was not possible to ignore the belief of many small nations that only a twelve-mile territorial sea could safeguards their interests. It was also necessary to allow for the fact that the twelve-mile limit had been applied by certain Powers for a considerable time. He appealed to the smaller nations to rise to the occasion and make their contribution to the success of the Conference. For his part, he thought that the Conference would at least be able to lay the foundation for a rule of law on the subject under discussion.

24. The CHAIRMAN pointed out that the amendment submitted by Thailand (A/CONF.13/C.1/L.160) to the three-power proposal had lapsed in consequence of the withdrawal of that proposal.

25. Mr. BA HAN (Burma) said that the so-called concessions made in the various proposals fell far short of his delegation's hopes. International law was not law in the same sense as statute law. To talk of rigid rules of international law was to disregard the fact that that law was constantly growing and developing to meet changing circumstances. The synoptic table prepared by the Secretariat (A/CONF.13/C.1/L.11/Rev.1) showed that the great majority of States claimed a territorial sea of more than three miles and had actually exercised jurisdiction over a belt of a greater breadth, notwithstanding certain protests. It would be unrealistic to disregard those facts.

26. The new proposals by the United States and Canada, made at considerable sacrifice, were admirable attempts to reach a compromise. They added a new page to the history of the law of the sea, because they marked the abandonment of the outmoded three-mile doctrine. His delegation could not support those proposals, however, because the Burmese Government was resolutely in favour of twelve miles as the breadth of the territorial sea and, although the Canadian and United States proposals discarded the so-called three-mile rule, they did not give unqualified recognition to the twelve miles claimed by some States. In addition, the revised Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) was unacceptable to the Burmese delegation because it took away much of what had been conceded by its sponsor in the three-power proposal (A/CONF.13/C.1/L.77/Rev.2).

27. It had been suggested that the States which had recently entered the international community had inherited the obligations previously assumed on their behalf by their foreign rulers His delegation could not accept that contention ; Burma was in no way bound by international obligations assumed by others before it had become independent. He entirely agreed with the views which had been expressed by the representative of Mexico.

28 At the close of the Conference, his delegation would report to its government, and it would be for that government to arrive at its own decision.

29 Mr ULLOA SOTOMAYOR (Peru) said that in the midst of the relative confusion produced by the great number of proposals and amendments before the Committee, it was possible to perceive fairly general agreement on the principle that it was for the coastal State to determine the breadth of its territorial sea. That principle was stated explicitly in some of the proposals ; it was implicit in all of them.

30 Unfortunately, while recognizing the competence of the coastal State to determine its territorial sea, many proposals limited the breadth of that sea in an arbitrary manner If the coastal State was competent to fix the breadth of its territorial sea, it was absurd to assert that it could only do so with the concurrence of other States. That inherent contradiction meant that the unquestionable rights of the coastal State were curtailed for the benefit of the private interests of nationals of other States For it was the interests of large-scale fishery undertakings which lay behind the limitations it was sought to impose on the rights of the coastal State His delegation agreed with many of the arguments put forward by the Canadian delegation concerning the depletion of fish stocks resulting from modern methods of fishing.

31. He ventured to ask the sponsor of the revised United States proposal on what basis the period of ten, and then five, years had been chosen for the purpose of establishing historic fishing rights Such rights could not possibly be upheld except on the basis of a longstanding usage ; a period measured in terms of centuries would be more in keeping with the concept of historic rights. In fact, the ten-year period in the original United States proposal (A/CONF.13/C.1/L.159) was not very different from that put forward on behalf of the tuna clippers flying the United States flag which fished near the coasts of Peru.

32. It was generally considered that the breadth of the territorial sea constituted the crucial problem before the Conference. In fact, for many of the States represented, the chief problem was that of protecting their fisheries from the depletion which could be brought about by the abuse of superior economic or technical resources. The action taken by Peru and certain other States in extending their jurisdiction over the sea to a distance of 200 miles from their coasts was not an end in itself ; it was purely a means of protecting their fisheries.

33. For that reason, his delegation had sought a reasonable compromise which would provide satisfactory safeguards for the coastal State's right to protect its national economy. Accordingly, his delegation's position in the First Committee depended on whether a satisfactory compromise was arrived at in the Third Committee. Unfortunately, the proceedings of the Third Committee had given rise to numerous and determined attempts to impose obligations on the coastal State instead of acknowledging its rights. Attempts were being made to make the coastal State a mere junior partner in the exploitation of its own resources. Much had been said of helping the under-developed countries. It would be more equitable to make fewer offers of that nature and refrain from depriving those States of their God-given resources He appealed to the powerful countries to remember that greatness was transient. Indeed, rules of law were also transient, and the greatest legal system the world had ever known — Roman law — had survived only in so far as it reflected permanent realities of human nature.

34 Mr. DEAN (United States of America) introduced his delegation's revised proposal (A/CONF 13/C.1/L. 159/Rev.1) which, he explained, was the result of discussions with delegations that had expressed an interest in the substance of the original United States proposal (A/CONF.13/C 1/L.159).

35. Paragraph 1 of the revised proposal was practically identical with the first sentence of the original proposal

36 Paragraph 2 had been separated from the following paragraph for purposes of clarity Some delegations had suggested in private discussions that paragraph 2 should be placed at the end ; that change was quite acceptable to his delegation.

37. Paragraph 3 of the revised proposal had two substantive differences from the original proposal, which must be considered together In the first place, the right of the coastal State to control fishing to the point of excluding the nationals of other States for a distance of six miles from the baseline was not made dependent on whether the coastal State had claimed a six-mile territorial sea; that change had been made in order to meet the requirementes of those States which did not wish to assume the responsibilities involved in extending their territorial sea beyond three miles. In the second place, the period during which a State's vessels must have been engaged in fishing in order to have a continued right to fish in the outer six miles of the zone had been changed from ten to five years in order to meet the objections raised on the grounds that, in the aftermath of the Second World War, fishing fleets were in very bad condition

38. In paragraph 4 of the revised proposal, all reference to articles 57, 58 and 59 had been deleted Arbitration under paragraph 4 would thus not take place under articles 57 to 59 unless both parties so agreed

39. He drew attention to the note appended to the United States revised proposal, which had been added because of the impossibility of foreseeing all the situations that could develop in the future and from which inequities might develop Article 3 would thus be adopted on the express understanding that each party would consider sympathetically the request of another party for consultation on whether an inequitable situation had developed. Although that understanding would not necessarily appear in the text of the article, it was not without substance ; it was in keeping with the duty of States

Members of the United Nations, under the Charter, to settle their differences by peaceful means.

40. The revised proposal involved serious sacrifices on the part of his country. It constituted an important departure from a historic principle. But it was only a proposed departure. It contemplated that others would also yield to some extent on the demands with which they had come to the Conference. Such a compromise proposal must be considered as a whole ; it was not possible to take from it the part in which concessions were made and then reject the rest.

41. The revised United States proposal had been put forward as a result of the fear expressed by many delegations that the Conference would end in failure if a determined attempt to reach a compromise solution was not made. The United States Government had decided to propose that the territorial sea of any State could extend to six miles ; that proposal involved a sacrifice not only on the part of the United States Government, but also on the part of other governments. It had been couched in terms providing for a reasonable balance between the many conflicting demands that had been made. His government was not prepared to agree that States which had asserted a right to a twelve-mile territorial sea before an arbitrarily fixed date should not be called upon to compromise or make sacrifices of any kind.

42. His delegation had been greatly encouraged, and its faith in the ultimate success of the Conference had been strengthened, by the favourable reaction of many delegations to its revised proposal. That proposal was the best compromise that his delegation could make, and it must be viewed as a single whole. He was confident that it would gain the approval of the necessary majority.

The meeting rose at 1 p.m.

FIFTY-FOURTH MEETING

Friday, 18 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.3, L.78 to L.81, L.82 and Corr.1, L.83, L.84, L.118, L.131, L.133 and Add.1 and 2, L.134 to L.140, L.141/Rev.1, L.144/Rev.1, L.145, L.149, L.152, L.153, L.159/Rev.1) (continued)

1. Mr. DREW (Canada) said that although the submission of the first revised United States proposal (A/CONF.13/C.1/L.159) had sounded the death knell of the three-mile limit, it had immediately been clear to the Canadian delegation that neither that text nor any other then before the Committee could possibly command universal acceptance. One of the major difficulties was the fact that several countries had long claimed a territorial sea in excess of six miles, and that for some of them, such as Mexico, the limit thus claimed had assumed a deep historical significance. In an endeavour to resolve that difficulty, the Canadian delegation had joined the delegations of India and Mexico in sponsoring a proposal (A/CONF.13/C.1/L.77/Rev.2) to recognize all already established limits not exceeding twelve miles, but it had never contemplated the possibility of an elastic rule which would allow States to fix whatever limit they might wish not exceeding twelve miles, for a complete absence of uniformity would lead to a serious disruption both of maritime communications and of air transport. That proposal had unfortunately not met with the response which its sponsors had hoped for, and they had consequently been forced to abandon it.

2. The Canadian delegation had therefore submitted a new proposal (A/CONF.13/C.1/L.77/Rev.3), which differed from its original one (A/CONF.13/C.1/L.77/Rev.1) only to the extent that supervening events had rendered one particular modification inevitable. The particular modification was, of course, the recognition of the fact that — after the defection of its principal proponents — the three-mile rule could no longer be defended, so that a six-mile breadth of the territorial sea proper represented the only possible basis on which agreement might be reached.

3. The Canadian delegation still believed that almost every extension of the territorial sea in the past had been prompted by the coastal State's need to secure control over its adjacent fisheries. Once that fact was accepted, it became clear that the reasonable interests of the coastal State could be adequately safeguarded by recognition of an exclusive twelve-mile fisheries zone ; the further extension of the territorial sea beyond the six-mile limit, an extension now accepted by the United States and the United Kingdom, was unnecessary. As far as defence and security requirements were concerned, the Canadian delegation believed that the question of the breadth of the territorial sea was no longer material. Carrier task forces, rocket-firing submarines, heavy bombers and long-range nuclear weapons had long since moved such matters on to another plane.

4. The new Canadian proposal was thus substantially the same as the one Canada had been pressing ever since 1956. It emphasized that the primary objective was the protection of coastal fisheries and it was thus designed to reassure States which, in the absence of any positive guarantees on that point, had previously sought to safeguard their legitimate interests by extensions of the territorial sea proper.

5. The measurement of the territorial sea in the strict sense was of little direct concern to Canada, and it had only proposed a figure of six miles in the belief that the wish of the States which between them controlled over 80% of the world's mercantile tonnage had to be seriously considered. The Canadian proposal — now simplified to the extent that it stated the applicable principles solely within the confines of article 3 — thus represented no change of front by his government, which had been pressing for an exclusive fishing zone of twelve miles ever since 1911. But the Canadian Go-

vernment would have been guilty of a blatant change of front if it had acquiesced in the new United States proposal, which made the twelve-mile fishing zone subject to a proviso that would completely neutralize its purpose and effect. The true meaning of the United States reservation was that any State which, over a period of five years, had regularly sent a few fishing boats to points within twelve miles of another State's coast could continue to exploit in perpetuity not merely the same specific areas but the whole "major body of water" concerned. Nor would there be any limitation on the size or number of ships that it could employ in such operations. Clearly, therefore, any State accepting the United States proposal would be signing away for all time rights to protect its fishermen in any area where foreigners had fished in the past.

6. The Canadian Government had always shown itself willing to co-operate with its friends, but the reasonable and legitimate interests of the coastal population had to come first Furthermore, it had not been sufficiently emphasized that the same modern developments that so seriously threatened the coastal State fishermen also enabled States operating ocean-going fleets to fish farther out on the high seas; if they only modernized those fleets sufficiently, they could avail themselves of highly productive zones a long way outside the twelve-mile limit of any other State.

7 Canada had a fast-growing population whose welfare had to be assured, and as the stocks of fish off its shores had often been threatened in the past, it had expended much money and effort on conservation and research Naturally, therefore, it hoped that all States would support its proposal, which it considered the only possible basis for an equitable solution. States with only a limited interest in the matter would recall the Canadian delegation's readiness to uphold their legitimate interests in other contexts.

8 In conclusion, he stressed that the question of the territorial sea and exclusive fishery rights remained as the only obstacle to the success of the Conference. No solution could be perfect and universally acceptable, but the establishment of proper machinery for periodic review would meet all the demands of changing circumstances.

9. Mr AGO (Italy) regretted the tone of some of the statements they had listened to and which tended to obscure the fact that a rule of law on the breadth of the territorial sea had always existed. In fact, some of the proposals before the Committee clearly sought to transform into a rule what had always hitherto been regarded as a violation.

10. Paragraph 1 of the United States proposal was fully consistent with the law of Italy and of several other European States which had adopted the six-mile limit as a compromise between the somewhat inflexible three-mile rule and the excessive pretentions from other quarters The Italian delegation also realized that in proposing a limit of six miles the United States was making a considerable sacrifice.

11. With regard to paragraph 2 of the United States proposal, there seemed to be some need for clarification As drafted, the text could lend itself to the construction that a group of States could vary the six-mile limit, and that their agreement in the matter would be binding on others.

12. Paragraph 3 was open to more serious criticism, since it suggested that the contiguous zone could be utilized for the assertion of excessive fishing rights. The concept of the contiguous zone — in so far as it was accepted at all — had never been recognized except for the specific purpose of enforcing fiscal, customs, sanitary and immigration regulations. That fact was fully borne out by the Commission's commentary to article 66. Consequently, the Italian delegation wished to place on record its belief that, as a general principle of existing law, the coastal State had no right whatever to reserve fishing in its contiguous zone to its nationals. The Italian Government would, however, accept a modification of that principle on a conventional basis, subject to the safeguard envisaged in the United States proposal that the acquired rights of States which had long depended on distant fishing grounds would be respected. If the United States proposal were not eventually embodied in a convention, the Italian Government would, of course, continue to adhere to its fundamental position on the existing rule of law.

13. The Canadian proposal mercifully no longer contained the clause which would have recognized the rights of those who had made unlawful claims in good time. Its first paragraph was, therefore, as unexceptionable as its counterpart in the United States proposal. The second paragraph, however, distorted the notion of the contiguous zone to an extent the Italian delegation could not countenance. The Canadian delegate had been guilty of serious misrepresentation in suggesting that the attempt to force such a concept on the Conference should be regarded as an effort at conciliation, for the second paragraph merely sought to give the coastal State a very special privilege without offering any safeguard for the legitimate rights of others. The fact that many States wished to develop their economies was no reason for giving them a right to appropriate the resources of the high seas and to exclude from participation therein fishermen who had braved the perils of the oceans precisely because their own coastal waters were deficient in marine life. The contention that fishermen from distant parts had no legitimate rights off the shores of other States and that modern equipment would open up previously unproductive zones was superficially attractive, but the high seas — of which the contiguous zone was part — were the common heritage of all, and no part thereof could be closed to all but a privileged few.

14. In those circumstances, the Italian delegation would support the proposal submitted by the United States. It would do so with a heavy heart, for it realized that the adoption of such a formula would bring hardship to Italian fishermen. He therefore sincerely hoped that others would be similarly disposed to make concessions in order to ensure the success of the Conference. Those who resorted to questionable tactics merely to further their own interests should realize that such methods were unlikely to yield anything permanent.

15. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the United States representative's claim that his proposal constituted a far-reaching advance was true in the sense that it had struck a decisive blow against the three-mile limit, but numerous speakers had

already demonstrated that the three-mile limit had never been a generally accepted rule of international law. The International Law Commission had declared that extensions up to twelve miles were not contrary to international law and, indeed, many States had already established a limit at that figure so that by not allowing extensions beyond six miles, the United States was merely trying to put the clock back.

16. Again, the considerable restrictions imposed on the rights of the coastal State in the proposed twelve-mile fishing zone were a retrogression from the original United States proposal and existing rules of international law. The representatives of Chile, Mexico and Burma had convincingly moved that such restrictions would nullify the exclusive rights conferred upon the coastal State. Those fundamental flaws in the proposal made it unacceptable.

17. His objections to paragraph 1 of the United States proposal applied equally to paragraph 1 of the latest Canadian proposal, and he regarded that issue not only from the national angle but also from the angle of reaching agreement. For half a century, his country's territorial sea had been twelve miles and he was grateful to the Canadian, Indian and Mexico delegations for having recognized that situation in their joint proposal which had now been withdrawn. Nevertheless, his government could not have accepted that proposal for reasons of principle, because it believed in the principle of the equality of States. It would have been altogether inequitable and unrealistic to establish a future maximum limit of six miles while recognizing a twelve-mile limit for those States which had already fixed it. The only solution would be to establish rules which, if not at once, could in time acquire general acceptance and thereby become binding on all States.

18. For those reasons his delegation remained firmly convinced that its proposal (A/CONF.13/C.1/L.80) was the only one which possessed those attributes and which, in so far as that was possible in a legal text, took account of all the complex considerations involved. The proviso contained in the words " as a rule " allowed for a wider limit than twelve miles where exceptional circumstances justified it. Those that had asked who would be the judge of whether a State, in determining the breadth of its territorial sea, had taken account of historical and geographical conditions, economic and security interests and the interests of international navigation, had overlooked the fact that there was no compulsory jurisdiction under international law. However, that did not deprive rules of international law of significance ; indeed, they were binding on States, and disputes over alleged violations had to be submitted to peaceful settlement according to article 33 of the United Nations Charter.

19. Though he believed that the Soviet Union proposal provided the basis for an acceptable solution, in the desire to reach agreement on a rule which took into account existing practice, the vital interests of States and could become a general rule of international law, he was prepared to support the joint Indian and Mexican proposal which had now been re-introduced.

20. Mr. PETREN (Sweden) said that the assertion by the representatives of Canada, India and Mexico, just reiterated by Mr. Tunkin, that the Soviet Union's claim for a twelve-mile limit had a long history and should be recognized, had no foundation as far as the Baltic Sea was concerned. In that sea, coastal States had for centuries applied a three- or four-mile limit so that unilateral appropriations of a wider belt were inadmissible. In a small sea in which each coastal State had sailed and fished from time immemorial, an extension of its territorial sea by one coastal State would deprive others of long-standing rights. As soon as the Soviet Union had, in 1949, informed the Swedish Government of its intention to fix a limit of twelve miles in the Baltic, the Swedish Government had protested strongly against such a step and had been prevented from taking the dispute to the International Court of Justice by the refusal of the Soviet Union to accept the jurisdiction of the Court ; the dispute was accordingly still awaiting settlement. His government's atitude to other recent extensions was the same, and was dictated by its concern for the general interests of navigation.

21. While appreciating the spirit of conciliation which had inspired the latest United States proposal, for reasons that he had already given he favoured a rule either on the lines of the one he had himself proposed (A/CONF.13/C.1/L.4) or that proposed by the United Kingdom. However, the United States text was clearly preferable to all those which tried to justify claims to a territorial sea or a fishing zone of up to twelve miles in which existing fishing rights of other States would not be recognized. He believed the time had now come for champions of the twelve-mile limit to make concessions and to realize that his country, for example, had already made a considerable sacrifice in allowing extensions of up to six miles.

22. Mr. VERZIJL (Netherlands) said that he had maintained close contact with his government in deciding how far his delegation could agree to depart from clearly established and sound principles of international law. Too much stress had been laid on national at the expense of the general interests, but the Netherlands was prepared to make some sacrifice in order to prevent the failure of the Conference, a failure which would be followed by legal chaos.

23. He did not regard either the latest Canadian proposal or the Indian and Mexican proposal as offering a genuine compromise, but the United Kingdom and United States proposals did contain the elements for a reasonable agreement. He preferred the former but as the United Kingdom representative was not going to insist on a vote he was prepared to support the latter, though with some reluctance because the far-reaching concessions made in the United States proposal might undermine the very foundations of international law and in the long run prove harmful. Moreover, its adoption would entail a serious economic loss for large groups of the population in his country which depended upon fishing for their livelihood.

24. His delegation's decision in no way affected its view that the United States proposal constituted a departure from international law, and that there was no substance whatever in the assertion, so categorically refuted at the 21st meeting by Mr. François, Expert to the secretariat of the Conference, that the International Law Commission had recognized as admissible unilateral extensions up to twelve miles.

25. Mr. SHUKAIRI (Saudi Arabia) said that the States envisaged by the proviso in the joint Canadian, Indian and Mexico proposal, according to which the establishment of a territorial sea beyond six miles and up to twelve would be recognized provided it had been enacted before 24 February 1958, had not wished to accept that privilege because their action was consistent with international law and did not require endorsement.

26. Turning to the new Canadian proposal, he said that paragraph 1 was unacceptable because a six-mile limit was not an existing rule of law ; his delegation continued to maintain the principle of a twelve-mile limit. Though paragraph 2 was not wholly satisfactory, the concept of exclusive fishing rights within a twelve-mile limit was consistent with his government's position, and he would therefore support that paragraph.

27. He had not been convinced by the United States representative's arguments, and particularly criticized paragraph 2 in his proposal whereby any extension beyond six miles, whether now or in the future, must be subject to bilateral or multilateral arrangements. The United States representative's claim that its proposal was a compromise would hardly stand up to examination since the United States Government had on several occasions during the past century suggested in one form or another departures from the three-mile limit of which it professed to be such a faithful adherent. Nor should the representative of a country with a large and powerful fishing fleet accuse small and newly formed States in process of building up their economies of being grasping when they fixed their territorial sea at twelve miles.

28. The United Kingdom representative had appealed to delegations to vote on the merits of the proposals and not as members of a bloc, but it was precisely the United States text which emanated from a single group whereas the Indian and Mexican proposal represented a wide range of political and economic views. The latter proposal was simple, contained no reservations and would not require any country to change its laws because it allowed absolute freedom to fix the territorial sea at any limit between three and twelve miles. He supported that proposal and would also vote in favour of the proposals of the Soviet Union and of Colombia (A/CONF.13/C./1/L.82 and Corr.1).

29. He hoped as the representative of a small State which, being weak, only had the protection of international law, that the great Powers would discharge their responsibility with a due sense of the occasion and would be guided by the common interest, as had been the case when his delegation had opposed the joint Canadian, Indian and Mexican proposal, although it had been to his country's advantage.

30. Mr. COMAY (Israel) said that he had already indicated at the 12th meeting that, as far as his part of the world was concerned, the balance of advantage was with three miles, but six miles should be the maximum, so that he welcomed that provision in both the United States and Canadian proposals. He was dissatisfied, however, with the provisions concerning exclusive fishing zones for coastal States because, as he had already explained, such additional zones beyond the territorial sea were not warranted by the local conditions and the needs of the coastal States in his region. Their interests could be adequately safeguarded by the type of conservation measures under discussion in the Third Committee, and he could not welcome the conferring on coastal States everywhere of exclusive fishing rights in a contiguous zone regardless of whether it was justified by local conditions or not. However, the United States proposal contained important qualifications, since it provided some protection for established fishing rigths, leaving scope for local arrangements and for submitting disputes to arbitration. No such reservation existed in the Canadian proposal and while he would not presume to judge the merits of the Canadian representative's contention about the situation off his own coasts, he considered that the proposal offered little prospect for adjustment to the situation in the Mediterranean and Red Sea.

31. He would support the United States compromise in spite of the fact that its provision concerning fishing did not fit the particular circumstances of the region where his country was situated and might adversely affect Israel's young fishing industry, because it provided the best basis for reaching some definite agreement on the breadth of the territorial sea within a reasonable maximum. He thanked that delegation for taking into account the special needs of new States by reducing the length of time during which waters had to have been fished previously from ten years to five.

32. The foregoing considerations and his support for the United States proposal implied no modification in the declared view of his government concerning existing rules of international law — pending the entry into force of any convention or other instruments emanating from the present conference to which his government became a party.

33. The provision in the three-power proposal purporting to bestow a certificate of legitimacy on any claim for a twelve-mile limit — however recent, dubious, or disputed — on the sole ground that it had been made before the opening of the Conference had no discernible basis whatever in international law, and he was glad that it had been dropped.

34. Mr. EL ERIAN (United Arab Republic) regretted that he was unable to support either the United States or the Canadian proposals because they failed to provide a comprehensive formula covering the practice of all States.

35. Mr. BOCOBO (Philippines) supporting the joint Indian and Mexican proposal, thought the three-mile limit was now generally regarded as being defunct.

36. Mr. WILSON (New Zealand) considered that the latest United States proposal alone offered a basis for a positive decision on the breadth of the territorial sea and an exclusive fishing zone. The efforts of a number of countries went towards its evolution. The Canadian delegation had contributed the original idea of separating the question of sovereignty over the territorial sea from that of exclusive fishing rights. The United Kingdom with an understandable anxiety and reluctance had proposed that under certain conditions the breadth of the territorial sea might be six miles The United States had made the whole proposal viable by the provision safeguarding long-established fishing interests, a provision which was vital for countries whose past development and future survival depended on access to distant

waters. No such protection was offered by the Canadian proposal.

37. In fact, the adoption of either would have the same practical result for New Zealand and perhaps also for other countries, including some of its neighbours in Asia. Clearly, the problem was more tractable where there was no heritage of conflicting interests. In other regions there were other problems. If several countries had been accustomed to exploit marine resources in a particular area, proximity could not be the only determining factor. Although the coastal State had special claims which were entitled to consideration, they were not the only ones. All countries, and specially small countries like his own, would benefit from a uniform rule but agreement would not be reached if each pressed for a solution meeting local or regional needs only.

38. He did not propose to discuss the overwhelming objections to a twelve-mile limit, but would content himself with emphasizing that on that basis, there could be no agreement at the Conference. The freedom of the high seas remained for his Government the primary and indispensable principle.

39. He was disturbed by the fact that the Canadian delegation, which had played such a conspicuous part in the discussions, appeared dissatisfied with the United States proposal. His Government had carefully weighed the conflicting equities and taken into account on the one hand the substantial concession made by States which had long fished in distant waters, and, on the other, the fact that the United States proposal would give to Canada, and to other States larger areas than before in which to exercise exclusive fishing rights. Further concessions would be a cause of greater hardship to other countries always assuming that they could be induced to accept the change. His government had reached the conclusion that, although the United States compromise proposal did not give satisfaction to all States, it was the only proposal which took all legitimate interests sufficiently into account.

The meeting rose at 6 p.m.

FIFTY-FIFTH MEETING

Saturday, 19 April 1958, at 10.15 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.3, L.78 to L.81, L.82 and Corr.1, L.83, L.84, L.118, L.131, L.133 and Add.1 and 2, L.134 to L.140, L.141/Rev.1, L.144/Rev.1, L.145, L.149, L.152, L.153, L.159/Rev.1) *(continued)*

1. Mr. GROS (France) said that his delegation fully endorsed the statement made by the representative of Italy at the previous meeting, especially in regard to attempts to present violations of international law as an expression of international law.

2. With a view to arriving at a generally agreed convention the French Government would be prepared — he emphasized the use of the conditional mood — to accept sacrifices with respect to its traditional position.

3. His delegation supported the revised United States proposal (A/CONF.13/C.1/L.159/Rev.1) and opposed all others. The French Government would thus be prepared to accept, in a new international convention receiving general agreement, the novel principle that any State might extend its territorial sea up to six miles. In so doing, his Government would be giving up an existing rule and therefore making a concession.

4. It would also be prepared to accept another novel principle : that any State could set up a twelve-mile contiguous zone within which it could regulate fisheries, subject to the explicit reservation that foreign fishermen habitually fishing in that zone could continue to do so freely. His Government would thus be departing from the existing rule of international law that no contiguous zone for fisheries existed.

5. The acceptance of a reservation safeguarding traditional fisheries was not a concession by the coastal States, for a coastal State had no right of ownership over the fish in the high seas. The new principle which a fair number of States would be prepared to consider was the equitable one that the coastal State had a certain priority of interest, to the extent of its needs, in living resources easily accessible from its coasts. That principle might be recognized more particularly in view of certain situations deserving special attention. All fishing interests, however — whether coastal or remote — deserved equal respect. Because the provisions on fisheries in the revised United States proposal considered all the legitimate interests, his delegation supported it.

6. A speaker had expressed grave alarm at the danger of depletion of fish stocks from over-fishing. That question, however, had been adequately dealt with in article 55 as finally adopted by the Third Committee. There was no need for further limitation of the number or tonnage of ships fishing in a sea area, or of the annual catch, beyond the provisions contained in article 55. The United States proposal meant that, so long as there were fish available for everyone, those at present fishing could continue to do so in peace ; if any danger of depletion arose, regulation would be introduced by negotiation or arbitration.

7. It should be made clear that paragraph 2 of the revised United States proposal applied only to the provisions of its paragraph 3, and it would therefore be preferable to reverse the order of these two paragraphs.

8. The International Court of Justice had three times ruled that a compromise proposal by a government which was rejected in one course of negotiations became null and void. If the compromise proposed by the United States of America, the United Kingdom, France and other nations to depart from the three-mile rule were rejected, no importance could be attached to the fact that, in the course of the Conference,

those States had proposed that the breadth of the territorial sea should be fixed at six miles.

9. Many appeals had been made for the formulation of a new international law adapted to reality. Those who made such appeals were, however, also ardent advocates of the absolute sovereignty of the State. New rules of international law could not be made if every State considered its own interests only and acted in accordance with its own will. Carried to that extreme, the principle of absolute sovereignty denied international law precisely when technical progress made the whole world interdependent. The Conference must strike a real balance between advantage and sacrifice, or international law would enter a new dark age.

10. Mr. PFEIFFER (Federal Republic of Germany) said that none of the arguments put forward against the three-mile rule had convinced his delegation. It would, however, in order to contribute to the success of the Conference, be prepared to accept the amendment of that rule by treaty. His delegation supported the revised United States proposal because, to a certain extent, it took into account the rights and legitimate interests of States other than the coastal State.

11. It had viewed with increasing concern the tendency to restrict the freedom of the seas by setting up a contiguous zone in which exclusive fishing rights were claimed. Such a departure from existing international law would represent a serious loss to the economy of the Federal Republic of Germany. It had invested many hundreds of millions of marks in the rebuilding of its fishing fleet after the war, relying firmly on existing international law. If, because of decisions reached at the Conference, German fishermen were excluded from their traditional fishing grounds, the German economy would suffer a disastrous loss.

12. His delegation viewed with understanding the position of countries such as Iceland which were predominantly dependent on fisheries.

13. It was glad to note that the prospects of a general agreement had improved in the past few days, and it regretted that governments had not had time to consider all the implications of the revised United States proposal. If they had been able to do so, they would have given it much greater support.

14. Since agreement had been reached by the Conference on a large number of difficult questions relating, among other matters, to the continental shelf and the conservation of living resources, the Conference could not be described as a failure even if agreement were not reached in the little time that remained on the questions which still remained to be settled.

15. Mr. BHUTTO (Pakistan) said that his delegation had warmly supported the original Canadian proposal (A/CONF.13/C.1/L.77/Rev.1) for a three-mile territorial sea combined with a twelve-mile fisheries zone. That constituted a workable compromise solution, though one unsatisfactory to his country because it would deprive Pakistan nationals of many of their traditional fishing grounds. His delegation had been prepared to make tangible concessions in that direction provided the three-mile rule were left unaffected. That rule, which ensured the maximum freedom of the seas, was vital to Pakistan because the sea provided the means of communication between the country's eastern and western portions.

16. The Canadian delegation, in its revised proposal (A/CONF.13/C.1/L.77/Rev 3), was now advocating a territorial sea of six miles. His delegation could not support that proposal. It supported the revised United States proposal which, though it departed from the three-mile rule, contained reservations concerning traditional fishing grounds which adequately safeguarded the interests not only of Pakistan but of all mankind.

17. If it were not possible to reach a compromise, his delegation would resume its freedom of action in the Plenary Conference and the three-mile rule might be resuscitated Pakistan was in the forefront of the struggle for the legitimate interests of Asia and Africa, but expected in return an understanding of its own position and legitimate interests.

18 Mr. BOAVIDA (Portugal) said that his delegation would support the revised United States proposal as the only satisfactory attempt to reconcile the conflicting interests That decision would call for a great sacrifice by Portugal and its 50,000 fishermen.

19. Since the withdrawal of the three-power proposal (A/CONF.13/C.1/L.77/Rev 2), point 1 of the Portuguese amendment (A/CONF.13/C 1/L.144/Rev.1) no longer stood. Point 2 stood as an amendment both to the revised Canadian proposal (A/CONF 13/C.1/L 77/Rev.3) and to the proposal by India and Mexico (A/CONF 13/C.1/L.79). In order, however, to bring the amendment into line with the new article proposed by Portugal in the Third Committee (A/CONF 13/C 3/L.70), he wished to add the words " formulated by the coastal State in conjunction with the competent international conservation agency ".

20. It was significant that the three-power proposal (A/CONF 13/C.1/L 77/Rev 2) had explicitly recognized rights which had been claimed only some nine days before the opening of the Conference, as was made clear by the table prepared by the Secretariat (A/CONF.13/C.1/L 11/Rev.1) Yet its sponsors had confirmed that its paragraph 2 refused to respect the rights of foreign fishermen in sea areas which had from time immemorial been subject to the legal régime of the high seas. That refusal was all the more surprising because centuries of foreign fishing in the adjacent areas had not prevented Canada from becoming the sixth major world fishing State with a production of one million tons a year, nor India from increasing its production from 819,000 tons in 1938 to over one million tons in 1956, nor Mexico from increasing its production from 17,000 tons in 1938 to 67,000 tons in 1953 (A/CONF.13/16).

21. The purpose of the Portuguese amendment was to safeguard existing rights if the proposals of either Canada or Mexico and India were adopted.

22. Mr. URIBE HOLGUIN (Colombia) said that, since the Committee was discussing article 3 only, his delegation asked for a divided vote on its proposal for an article 1 to replace articles 1, 2 and 3 (A/CONF. 13/C.1/L.82). At that stage, only the portion of its proposed article 1 referring to the breadth of the territorial sea would be voted upon. He would amend

paragraph 2 of the article proposed by his delegation by adding the words "reckoned at sixty nautical miles to one degree of latitude" taken from the United Kingdom proposal (A/CONF.13/C.1/L.134). The portion to be voted upon would therefore read:

"1. The sovereignty of a State extends to a belt of sea twelve miles broad adjacent to its coast, described as the territorial sea,...

"2. The unit of measurement employed for the purpose of fixing the breadth of the territorial sea of a State is the nautical mile, defined as a linear distance equal to 1,852 times the international prototype metre reckoned at sixty nautical miles to one degree of latitude."

23. The Colombian proposal had the advantage of clearly recognizing the twelve-mile limit. It avoided the ambiguities of a text like that of the Soviet Union (A/CONF.13/C.1/L.80), which seemed to leave the coastal State to decide whether it would depart from the proposed general rule regarding a maximum of twelve miles and a minimum of three.

24. The Colombian proposal also avoided the serious difficulties which would arise in delimiting the territorial sea in straits and off other opposite coasts, and the territorial sea of two adjacent States not claiming the same breadth. A State might make several successive claims in respect of the territorial sea, first fixing its breadth, say, at seven miles and later at twelve miles. It was difficult to see how in that case the problems of delimitation would be solved.

25. The rights of a coastal State in its territorial sea were undoubtedly rights of sovereignty, and that rule had to be clearly expressed. That sovereignty was exercised subject to the conditions prescribed by international law. There was no need to make any specific reference to the convention which the Conference was preparing, because that convention would become a part of international law for the States signatories to it.

26. He asked that the following declaration be included in the summary record:

"The position of Colombia with respect to the breadth of the territorial sea has not been adopted at the last moment but is backed by legislation going back for the respectable period of over thirty-five years. When the Territorial Waters Committee of the Conference for the Codification of International Law, held at The Hague from 13 March to 12 April 1930, accepted the term 'territorial sea' as the most appropriate one, that term had already been embodied by Colombia for over seven years in article 17 of its Law No. 14 of 31 January 1923."

27. Mr. SINACEUR BEN LARBI (Morocco) emphasized that in the codification of the law of the sea the rights of all nations must be borne in mind. Statements had been made in the Committee that the three-mile limit for the territorial sea was a universal rule; but a glance at the synoptic table prepared by the Secretariat (A/CONF.13/C.1/L.11/Rev.1) showed that only nineteen States had adopted that rule and twenty-six had adopted breadths varying between four and twelve miles. Morocco had adopted a breadth of six miles. The Moroccan Government considered that each State should have the right to determine the breadth of its own territorial sea within a limit of twelve nautical miles, as had been proposed by the International Law Commission, and would therefore support the joint proposal submitted by the Indian and Mexican delegations (A/CONF.13/C.1/L.79).

28. His delegation appreciated the various efforts to reach a compromise, especially those made by the delegations of Canada, the United Kingdom and the United States of America, and would vote for paragraph 2 of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) concerning the contiguous fishing zone, if the various paragraphs of that proposal were put to the vote separately.

29. Sir Claude COREA (Ceylon) said that the vote to be taken on the breadth of the territorial sea would affect not only the success of the Conference, but also the orderly and peaceful evolution of the law of the sea. He had said in the general debate (10th meeting) that common understanding would be reached, and now felt that his faith had been amply rewarded in view of the agreement reached by the committees on the various articles of the International Law Commission's draft. The States which had traditionally supported the three-mile rule had now recognized the interests and needs of the majority of the human race. His delegation was gratified at that change of opinion, and wished to express its appreciation of the sincere desire of those States to make the Conference a success.

30. No harm would be caused by extending the limit of the territorial sea to twelve miles. Ceylon had always supported the six-mile rule, but was satisfied that those States which supported the twelve-mile rule had very good reasons for so doing. Some had exercised that right unopposed for many years. His delegation therefore supported the joint Indian-Mexican proposal (A/CONF.13/C.1/L.79), and withdrew its own amendment to article 3 (A/CONF.13/C.1/L.118).

31. Both the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) and the United States proposal (A/CONF.13/C.1/L.159/Rev.1) covered fishing rights. He readily understood the desire of the maritime Powers to protect the fishing interests of their own peoples, and the economic reasons which had impelled the United States delegation to amend its first proposal in order to meet the needs of those countries whose fishing rights would have suffered from the acceptance of the twelve-mile exclusive fishing limit. Since, however, the United States proposal would introduce discrimination into international law, his delegation could not support it.

32. Mr. KRISPIS (Greece) again emphasized that his country would be glad if the three-mile rule were maintained, and drew attention to his delegation's proposal (A/CONF.13/C.1/L.136). His delegation had noted with regret the trend in the Conference towards an extension of the territorial sea. Only lip-service was now paid to the three-mile rule. The Conference was already seriously jeopardizing the freedom of the high seas by its decisions on the continental shelf, the conservation of living resources, the system of straight baselines, and the length of the closing lines of bays. Failure of the Conference would have a serious impact on the United Nations, and on the work of the Inter-

national Law Commission in particular. Therefore, in order to contribute to the success of the Conference, his delegation would vote in the Committee in favour of the United Kingdom proposal (A/CONF.13/C.1/L.134) and the United States proposal (A/CONF.13/C.1/L.159/Rev.1), but in so doing it would be sacrificing its ideals. He reserved its right to vote as it saw fit in the Plenary Conference.

33. Supporting the statements of the Italian and French representatives on the contiguous zone, he said that if the proposals for which his delegation intended to vote were not written into any convention, his government would reserve its right in regard to the laws governing that zone.

34. Mr. BARTOS (Yugoslavia) recalled that his country had adopted a six-mile limit for its territorial sea and a four-mile limit for its contiguous zone. Yugoslavia's exclusive fishing right in the contiguous zone had been recognized by international agreements, and maps attached to those agreements had been used by the International Court of Justice in the Anglo-Norwegian fisheries case to illustrate existing practices. The synoptic table prepared by the Secretariat (A/CONF.13/C.1/L.11/Rev.1) clearly proved that the three-mile limit was not a universal rule of law. He congratulated the delegations of Canada, the United Kingdom and the United States of America on now supporting the six-mile rule.

35. The interests of the smaller economically under-developed countries must be borne in mind, and each State should have the right to decide the breadth of its own territorial sea. That would not violate the freedom of the high seas any more than would the decisions reached regarding the continental shelf and the conservation of living resources.

36. His delegation would withdraw its proposal concerning article 3 (A/CONF.13/C.1/L.135), and would support the joint Indian-Mexican proposal (A/CONF.13/C.1/L.79), not to serve its own interests, which were not at stake, but to find a just, equitable and reasonable solution for the problem of the breadth of the territorial sea. Such a solution must guarantee the sovereignty of the coastal State. His government had not the slightest intention of extending its territorial sea beyond six miles, but he urged all members to support the joint Indian-Mexican proposal for the sake of those States to whom the breadth of twelve miles was of such great importance.

37. His delegation would support paragraph 2 of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) if each paragraph were put to a separate vote.

38. Mr. IOSIPESCU (Romania) said that the revised United States proposal (A/CONF.13/C.1/L.159/Rev.1) was wholly unrealistic and ignored the fact that a large number of States had already established a breadth greater than six miles. In so doing those States, far from violating the freedom of the seas, had merely used their own rights. The International Law Commission itself had considered that international law permitted extension of the territorial sea to twelve miles. To propose a closer limit would therefore infringe international law and the practice of States. The United States proposal had been introduced as a concession to other States. It meant, however, that States which now had a territorial sea of more than six miles would have to renounce their sovereignty over part of that sea and thus give up part of the territory of their State. It was unfair to prejudge the rights of States which had only recently achieved independence to establish the breadth of their territorial seas. He therefore considered that the United States proposal satisfied the interests of its sponsors to the detriment of other States. The Canadian proposal (A/CONF.13/C.1/L.77/Rev.3), was unacceptable for the same reasons.

39. He supported the USSR proposal (A/CONF.13/C.1/L 80), which provided that each State should determine the breadth of its territorial sea in accordance with established practice within the limits, as a rule, of three to twelve miles; and that historical and geographical conditions, economic interests, the interests of the security of the coastal State and the interests of international navigation must be borne in mind.

40. Mr. DEAN (United States of America) said that in view of the various oral suggestions made regarding the United States proposal (A/CONF.13/C.1/L.159/Rev.1), he would circulate a revised text at the next meeting.

The meeting rose at 12.45 p.m.

FIFTY-SIXTH MEETING

Saturday, 19 April 1958, at 2.45 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.3, L.78 to L.81, L.82 and Corr.1, L.83, L 84, L.131, L.133 and Add.1 and 2, L.134, L.136 to L.140, L.141/Rev.1, L.144/Rev.1, L.145, L.149, L.152, L.153, L.159/Rev.2) *(continued)*

Voting on article 3

1. The CHAIRMAN drew attention to the fact that the new revised text of the United States proposal (A/CONF.13/C.1/L.159/Rev.2) had been circulated.

2. In regard to the order of voting, he pointed out that the Portuguese amendment (A/CONF.13/C.1/L.144/Rev.1) applied both to the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3), and to the joint Indian and Mexican proposal (A/CONF.13/C.1/L.79). The Saudi Arabian amendment (A/CONF.13/C.1/L.152) applied to any proposal pertaining to article 3 and, in case the proposals based on a twelve-mile limit were rejected, that delegation had submitted a draft resolution on the subject (A/CONF.13/C.1/L.153). The