

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.1/SR.56-60

Summary Records of the 56th to 60th Meetings of the First Committee

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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 underdeveloped 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 con-

cession 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

Saudi Arabian representative preferred that the amendment should be put to the vote after the adoption of one of the alternative proposals.

3. He proposed that, in accordance with rule 41 of the rules of procedure, the proposals should be voted on in order of their submission as follows: Sweden (A/CONF.13/C.1/L.4), Canada (A/CONF.13/C.1/L.77/Rev.3), India and Mexico (A/CONF.13/C.1/L.79), Soviet Union (A/CONF.13/C.1/L.80), Colombia (A/CONF.13/C.1/L.82 and Corr.1), Peru (A/CONF.13/C.1/L.133 and Add.1 and 2), United Kingdom (A/CONF.13/C.1/L.134), Greece (A/CONF.13/C.1/L.136), Italy (A/CONF.13/C.1/L.137), United States (A/CONF.13/C.1/L.159/Rev.2).

4. Mr. KRISPIS (Greece) withdrew the Greek proposal (A/CONF.13/C.1/L.136).

5. Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam), invoking rule 41 of the rules of procedure, moved that the United States proposal be put to the vote first by roll-call. Although not fully acceptable it should gain the widest measure of support by its equitable provision concerning an exclusive fishing zone.

6. Mr. LOUTFI (United Arab Republic) saw no justification for that motion, and held that the rules of procedure should be strictly adhered to when there were several proposals on the same subject. He therefore asked that the proposals should be put to the vote in order of submission.

7. Mr. DEAN (United States of America), observing that rule 41 of the rules of procedure allowed the Committee to adopt any order of voting it saw fit, supported the Viet-Nam motion. His compromise proposal had been the outcome of careful preparation and common effort, and might be more expeditiously voted on first.

8. Mr. DREW (Canada), observing that both the previous speakers had supported their views by substantive considerations, pointed out that the Canadian proposal also had been the result of close study. In fact there was no difference of form between the two proposals which could justify a vote on one before the other. The Viet-Nam motion sought to anticipate the Committee's decision, but he urged the Committee to adhere to the order proposed by the Chairman.

9. Mr. TUNKIN (Union of Soviet Socialist Republics), deploring the Committee's tendency to waste more than half its time in procedural wrangling, saw no reason for giving priority to the United States proposal and departing from the rules of procedure. Every proposal had equal standing, and when there were several on the same subject the only reasonable criterion must be the order of submission. The United States proposal, bearing on both article 3 and article 66, had even less claim to priority.

10. Mr. GARCIA ROBLES (Mexico) was astonished at the Viet-Nam motion, which sought by a procedural device to restrict the power of governments to express their views through their representatives. He strongly opposed the motion and asked that it be put to the vote by roll-call.

11. He also asked for a roll-call vote on the Canadian proposal.

A vote was taken by roll-call on the motion of the representative of Viet-Nam.

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

In favour: Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Austria, Belgium, Brazil, China, Cuba, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Haiti, Honduras, Israel, Italy, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Pakistan, Portugal.

Against: Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, Czechoslovakia, Ecuador, Ghana, Guatemala, Hungary, Iceland, India, Indonesia, Iran, Iraq, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Nepal, Panama, Peru, Philippines, Poland, Romania.

Abstaining: Union of South Africa, Bolivia, Cambodia, Costa Rica, Finland, Holy See, Ireland, Japan, Republic of Korea, Nicaragua, Norway, Paraguay.

The motion was rejected by 38 votes to 31, with 12 abstentions.

12. Mr. PETREN (Sweden) withdrew his proposal (A/CONF.13/C.1/L.4) because it was in substance identical with the Italian proposal (A/CONF.13/C.1/L.137).

13. The CHAIRMAN stated that the Committee would now proceed to vote on the proposals before it, so that he could no longer admit any new amendments or observations on substance.

14. Mr. BING (Ghana) moved that, in accordance with rule 39 of the rules of procedure, the two paragraphs in the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) be put to the vote separately, because it appeared from the general discussion that most delegations supported either one or the other and it would be very regrettable if the whole proposal were rejected because part of it failed to obtain a majority. Moreover, the two paragraphs referred to entirely different matters. If his motion were adopted, paragraph 2 would be put to the vote whether paragraph 1 was adopted or not.

15. Sir Reginald MANNINGHAM-BULLER (United Kingdom) opposed the Ghana representative's motion, which might place delegations in difficulties when they had to decide on a composite proposal.

16. Mr. PONCE Y CARBO (Ecuador) supported the motion because of the right of delegations to decide separately on the different parts of a proposal must be safeguarded.

17. Mr. GROS (France) saw no advantage in a divided vote on the Canadian proposal. It would also be a breach of the tacit understanding that had emerged

from the discussion that there was a link between the width of the territorial sea and that of a contiguous zone where exclusive fishing rights could be exercised. It was precisely the conjunction of those two elements which had represented the compromise.

18. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the motion because it would be more appropriate to vote separately on two paragraphs which dealt with wholly different issues.

19. The CHAIRMAN observed that, if the motion were carried, the Portuguese amendment (A/CONF.13/C.1/L.144/Rev.1) would be put to the vote after paragraph 1 of the Canadian proposal.

20. Mr. GARCIA AMADOR (Cuba) appealed to the Portuguese representative to withdraw his amendment, which had not been adequately discussed.

21. Mr. BOAVIDA (Portugal) withdrew his amendment.

22. The CHAIRMAN put the motion by the representative of Ghana to the vote.

A vote was taken by roll-call.

The Union of Soviet Socialist Republics, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Yugoslavia, Afghanistan, Albania, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, Czechoslovakia, Ecuador, Ghana, Guatemala, Hungary, Iceland, India, Indonesia, Iran, Iraq, Libya, Federation of Malaya, Mexico, Morocco, Nepal, Panama, Peru, Philippines, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic.

Against: United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Belgium, Bolivia, Brazil, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Haiti, Ireland, Israel, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, Union of South Africa.

Abstentions: Venezuela, Austria, Cambodia, China, Colombia, Costa Rica, Cuba, Denmark, Finland, Holy See, Honduras, Republic of Korea, Lebanon, Liberia, Nicaragua, Paraguay, Thailand, Turkey.

The motion was carried by 36 votes to 28, with 18 abstentions.

23. Mr. LIMA (El Salvador), explaining his vote, said that he had opposed the motion because, although he favoured an exclusive twelve-mile fishing zone, paragraph 2 of the Canadian proposal should be adopted on its merits and not by means of a procedural device.

24. Mr. ULLOA SOTOMAYOR (Peru) withdrew his proposal (A/CONF.13/C.1/L.133 and Add.1 and 2) because, despite the General Assembly's express instruction, the Conference had failed to study adequately the technical, biological and economic aspects of the law of the sea. His action should not be interpreted to mean that his government in any way retracted from the "Principles of Mexico on the Juridical Régime of

the Sea", adopted at the third meeting of the Inter-American Council of Jurists at Mexico City in 1956.

25. In reply to a question by Sir Reginald MANNINGHAM-BULLER (United Kingdom), the CHAIRMAN replied that the Committee's approval or rejection of any part of the Canadian proposal would not affect its freedom of action with regard to any other proposal.

26. Mr. BOCOBO (Philippines), explaining his vote, said that he had supported the division of the two paragraphs because, in his view, the Canadian proposal was a combination of good and bad.

27. The CHAIRMAN put paragraph 1 of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) to the vote.

A vote was taken by roll-call.

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

In favour: Greece, Haiti, Japan, Liberia, Norway, Sweden, Thailand, Turkey, Argentina, Cambodia, Canada.

Against: El Salvador, France, Federal Republic of Germany, Guatemala, Hungary, Iceland, India, Indonesia, Iraq, Lebanon, Libya, Luxembourg, Federation of Malaya, Mexico, Monaco, Morocco, Netherlands, New Zealand, Panama, Peru, Philippines, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Afghanistan, Albania, Australia, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Colombia, Cuba, Czechoslovakia, Dominican Republic, Ecuador.

Abstaining: Finland, Ghana, Holy See, Honduras, Iran, Ireland, Israel, Italy, Republic of Korea, Nepal, Nicaragua, Pakistan, Paraguay, Portugal, Spain, Switzerland, Republic of Viet-Nam, Yugoslavia, Austria, Bolivia, China, Costa Rica, Denmark.

Paragraph 1 of the Canadian proposal was rejected by 48 votes to 11, with 23 abstentions.

28. The CHAIRMAN put paragraph 2 of the Canadian proposal to the vote.

A vote was taken by roll-call.

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

In favour: Ecuador, El Salvador, Ghana, Guatemala, Iceland, India, Indonesia, Iran, Iraq, Ireland, Republic of Korea, Liberia, Libya, Federation of Malaya, Mexico, Morocco, Nepal, Norway, Panama, Peru, Philippines, Saudi Arabia, Thailand, Tunisia, Turkey, United Arab Republic, Uruguay, Republic of Viet-Nam, Yugoslavia, Afghanistan, Argentina, Burma, Cambodia, Canada, Ceylon, Chile, Costa Rica.

Against: Cuba, Czechoslovakia, Dominican Republic, France, Federal Republic of Germany, Greece, Haiti, Hungary, Israel, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Pakistan, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics,

United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Australia, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Colombia.

Abstaining: Denmark, Finland, Holy See, Honduras, Lebanon, Venezuela, Austria, Bolivia, China.

Paragraph 2 of the Canadian proposal was adopted by 37 votes to 35, with 9 abstentions.

29. Sir Reginald MANNINGHAM-BULLER (United Kingdom) submitted that as the only part of the Canadian proposal with any direct bearing on article 3 had been rejected, the Chairman should declare under rule 39 that the proposal had been defeated in its entirety.

30. The CHAIRMAN overruled the United Kingdom representative's submission.

31. He then put to the vote the proposal submitted jointly by India and Mexico (A/CONF.13/C.1/L.79).

A vote was taken by roll-call.

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

In favour: Argentina, Bolivia, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Czechoslovakia, Ghana, Guatemala, Hungary, India, Indonesia, Iran, Iraq, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Nepal, Panama, Philippines, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania.

Against: Australia, Austria, Belgium, Brazil, Canada, China, Cuba, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Haiti, Ireland, Israel, Italy, Japan, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Chile, Colombia, Costa Rica, Ecuador, Finland, Holy See, Honduras, Iceland, Republic of Korea, Paraguay, Peru, Republic of Viet-Nam.

32. Mr. PONCE Y CARBO (Ecuador) asked that his abstention should be registered as a vote in favour of the Indian-Mexican proposal.

33. The CHAIRMAN ruled that, under the rules of procedure, representatives were not entitled to change their votes after those had been cast and duly recorded.

34. Mr. SHUKAIRI (Saudi Arabia) suggested that representatives were perfectly entitled to rectify votes cast in error.

35. Mr. TUNKIN (Union of Soviet Socialist Republics) appealed against the Chairman's ruling on the Ecuadorian representative's request.

36. The CHAIRMAN put to the vote the appeal of the representative of the USSR.

A vote was taken by roll-call.

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

In favour: Ecuador, Hungary, Federation of Malaya, Peru, Philippines, Poland, Romania, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Czechoslovakia.

Against: Denmark, Dominican Republic, El Salvador, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Haiti, Holy See, Honduras, Ireland, Israel, Italy, Japan, Lebanon, Liberia, Luxembourg, Monaco, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Colombia, Costa Rica, Cuba.

Abstaining: Iceland, India, Indonesia, Iran, Iraq, Republic of Korea, Libya, Mexico, Morocco, Panama, Tunisia, Yugoslavia, Afghanistan, Cambodia, Ceylon, Chile, China.

The appeal was rejected by 48 votes to 17, with 17 abstentions.

The joint proposal by India and Mexico (A/CONF.13/C.1/L.79) was not adopted, 35 votes being cast in favour and 35 against, with 12 abstentions.

37. Mr. SIKRI (India) moved that the Indian-Mexican proposal should be reconsidered.

38. The CHAIRMAN said that the Indian representative's motion, though clearly in order, could not be put to the vote until the Committee had concluded voting on the various other proposals on article 3.

39. Mr. GARCIA ROBLES (Mexico) thought that, since rule 32 did not expressly prohibit a motion such as that submitted by the Indian representative, the motion, should be put to the vote forthwith.

40. Sir Claude COREA (Ceylon) supported the Mexican representative's opinion that the motion for reconsideration should be put to the vote immediately. It would be extremely difficult for the Committee to take any decision on any other proposal bearing on article 3 until the final fate of the Indian-Mexican proposal had been decided.

41. The CHAIRMAN stressed that he had not rejected the Indian representative's motion as out of order, but rule 38 precluded the Chair from receiving it.

42. He put to the vote the USSR proposal (A/CONF.13/C.1/L.80).

A vote was taken by roll-call.

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

In favour: Guatemala, Hungary, Iceland, India, Indonesia, Iraq, Libya, Federation of Malaya, Mexico, Morocco, Nepal, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Afghanistan, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Ecuador.

Against: El Salvador, France, Federal Republic of Germany, Greece, Haiti, Holy See, Ireland, Israel, Italy, Japan, Lebanon, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic.

Abstaining: Finland, Ghana, Honduras, Iran, Republic of Korea, Philippines, Venezuela, Cambodia, Chile.

The USSR proposal was rejected by 44 votes to 29, with 9 abstentions.

43. Sir Reginald MANNINGHAM-BULLER (United Kingdom) formally withdrew the United Kingdom proposal on article 3 (A/CONF.13/C.1/L.134).

44. Mr. SCERNI (Italy) withdrew the Italian proposal (A/CONF.13/C.1/L.137) in favour of that submitted by the United States (A/CONF.13/C.1/L.159/Rev.2).

45. Mr. PETREN (Sweden) said that, in those circumstances, he would reintroduce the Swedish proposal (A/CONF.13/C.1/L.4).

The meeting rose at 6.20 p.m.

FIFTY-SEVENTH MEETING

Saturday, 19 April 1958, at 8.50 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.78, L.79, L.81, L.82 and Corr.1, L.83, L.84, L.131, L.134, L.138 to L.140, L.141/Rev.1, L.145, L.149, L.152, L.153, L.159/Rev.2) (continued)

Voting on article 3 (continued)

1. Mr. URIBE HOLGUIN (Colombia) said that he wished to make a slight amendment to his delegation's proposal (A/CONF.13/C.1/L.82) (as amended orally at the 55th meeting), replacing the words "twelve miles broad" in article 1, paragraph 1, by the words "not exceeding twelve miles".

2. Mr. CARMONA (Venezuela) supported that amendment.

3. The CHAIRMAN ruled that no amendment could be made to a proposal during the conduct of voting.

4. Mr. URIBE HOLGUIN (Colombia), supported by Mr. GARCIA ROBLES (Mexico), appealed against

the ruling, and asked for a roll-call vote on the appeal.

A vote was taken by roll-call.

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

In favour: Panama, Peru, Romania, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Colombia, Czechoslovakia, Ecuador, Hungary, Federation of Malaya, Mexico.

Against: Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Philippines, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Austria, Belgium, Bolivia, Brazil, Cambodia, Canada, Ceylon, Cuba, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Ghana, Greece, Haiti, Holy See, Honduras, Iceland, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Liberia, Luxembourg, Monaco.

Abstentions: Poland, Tunisia, United Arab Republic, Uruguay, Yugoslavia, Afghanistan, Argentina, Chile, China, Costa Rica, Finland, Guatemala, India, Indonesia, Iraq, Lebanon, Libya, Morocco.

The CHAIRMAN'S ruling was upheld by 47 votes to 17, with 18 abstentions.

At the request of the representative of Colombia a vote was taken by roll-call on the Colombian proposal relating to article 3 (A/CONF.13/C.1/L.82 and Corr.1) as amended at the 55th meeting.

Ecuador, having been drawn by lot by the CHAIRMAN, was called upon to vote first.

In favour: Ghana, Guatemala, Hungary, India, Indonesia, Iraq, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Nepal, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Colombia, Czechoslovakia.

Against: El Salvador, France, Federal Republic of Germany, Greece, Haiti, Holy See, Ireland, Israel, Italy, Japan, Republic of Korea, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Austria, Belgium, Bolivia, Brazil, Cambodia, Canada, China, Costa Rica, Cuba, Denmark, Dominican Republic.

Abstentions: Ecuador, Finland, Honduras, Iceland, Iran, Philippines, Chile.

The Colombian proposal was rejected by 42 votes to 33, with 7 abstentions.

5. The CHAIRMAN explained that the Swedish proposal (A/CONF.13/C.1/L.4) had been reintroduced by the representative of Sweden in place of the Italian

amendment (A/CONF.13/C.1/L.137), which had been withdrawn at the previous meeting.

6. In reply to a question by the representative of the Union of South Africa, he said that the rejection of the Swedish proposal would not entail automatic rejection of paragraph 1 of the United States proposal (A/CONF.13/C.1/L.159/Rev.2).

The Swedish proposal (A/CONF.13/C.1/L.4) was rejected by 49 votes to 16, with 14 abstentions.

7. Mr. GARCIA ROBLES (Mexico) reminded the Committee that at the preceding meeting, the Chairman had ruled that the representative of Ecuador was not entitled to correct his vote after the result of the voting had been announced. When the Chairman's ruling had been challenged, he (Mr. Garcia Robles) had abstained from voting, because the Ecuadorian representative's request for a correction of his vote had been made before the announcement of the results. In that connexion, he quoted General Assembly resolutions 901 (IX) and 983 (X) on the question of the correction of votes.

8. Mr. DREW (Canada) moved that the United States proposal (A/CONF.13/C.1/L.159/Rev.2) be voted on in two parts, the part beginning with the words "provided that" in paragraph 2 and ending at the end of that paragraph to be put to the vote first.

9. Mr. GARCIA ROBLES (Mexico) proposed, as an amendment to the Canadian motion, that the United States proposal be voted on in three parts: first, paragraph 1; second, paragraph 2 down to and including the words "territorial sea"; and third, paragraph 2 from the words "provided that", down to the end of the proposal. The reason for his amendment was that the first part of paragraph 2 of the United States proposal covered the same ground as paragraph 2 of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3), which the Committee had already adopted.

10. Mr. AGO (Italy) opposed the motion, on the ground that the United States proposal would lose its meaning if divided into parts. He recalled, in that connexion, that he had originally submitted a proposal in connexion with article 1, but had withdrawn it in favour of the United States proposal which, he believed, offered an acceptable compromise solution.

11. Mr. DEAN (United States) also opposed the motion for division. The United States proposal represented a compromise solution arrived at after careful consideration and consultation. His delegation was not prepared to support any proposal establishing the breadth of the territorial sea at six miles unless it included the other essential elements of the United States proposal.

12. Mr. BARTOS (Yugoslavia) supported the motion for division of the proposal, as provided for in the rules of procedure. The risk that parts of a proposal would be accepted and others rejected was one which all sponsors of proposals had to face. It was for the Committee, as a democratic assembly of sovereign States, to decide which parts of the United States proposal it chose to accept or to reject.

A vote on the Mexican amendment to the Canadian motion for division of the United States proposal was taken by roll-call.

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

In favour: Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Colombia, Czechoslovakia, Ecuador, Ghana, Guatemala, Hungary, Iceland, India, Iraq, Jordan, Republic of Korea, Libya, Federation of Malaya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yugoslavia, Afghanistan, Albania.

Against: Brazil, China, Costa Rica, Cuba, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Haiti, Honduras, Ireland, Israel, Italy, Japan, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, Spain, Sweden, Switzerland, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Bolivia.

Abstentions: Cambodia, Chile, Finland, Holy See, Indonesia, Iran, Lebanon, Nepal, Philippines, Thailand, Uruguay.

The amendment was rejected by 39 votes to 33, with 11 abstentions.

At the request of the United States representative, a vote on the Canadian motion for division of the United States proposal was taken by roll-call.

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

In favour: Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Czechoslovakia, Ecuador, Ghana, Hungary, Iceland, India, Indonesia, Jordan, Republic of Korea, Libya, Federation of Malaya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Afghanistan.

Against: Argentina, Australia, Austria, Belgium, Bolivia, Brazil, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Haiti, Honduras, Ireland, Israel, Italy, Japan, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, Spain, Sweden, Switzerland, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam.

Abstentions: Cambodia, Chile, Finland, Guatemala, Holy See, Iran, Iraq, Lebanon, Nepal, Philippines, Thailand, Uruguay, Venezuela.

The motion was defeated by 40 votes to 30, with 13 abstentions.

At the request of the United States representative, a vote on the United States proposal (A/CONF.13/C.1/L.159/Rev.2) was taken by roll-call.

The Union of Soviet Socialist Republics, having been

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

In favour: United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Austria, Belgium, Bolivia, Brazil, Cambodia, China, Cuba, Denmark, Dominican Republic, France, Federal Republic of Germany, Greece, Haiti, Honduras, Ireland, Israel, Italy, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, Spain, Switzerland, Thailand, Turkey, Union of South Africa.

Against: Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Colombia, Czechoslovakia, Ecuador, El Salvador, Ghana, Guatemala, Hungary, Iceland, India, Indonesia, Iraq, Jordan, Republic of Korea, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic.

Abstentions: Chile, Costa Rica, Finland, Holy See, Iran, Japan, Nepal, Philippines, Sweden.

The proposal was rejected by 38 votes to 36, with 9 abstentions.

13. Mr. SIKRI (India) recalled that the result of the voting on the joint Indian and Mexican proposal (A/CONF.13/C.1/L.79) had been 35 in favour to 35 against, and that the representative of Ecuador had later attempted to revise his vote on that proposal. He moved that the joint proposal be reconsidered under rule 32 of the rules of procedure, and drew attention to rule 53, which provided that decisions of committees should be taken by a simple majority.

14. Mr. GROS (France) spoke against the motion to reconsider the joint Indian and Mexican proposal. Rule 32 applied to the Conference rather than to its committees. There would be ample opportunity for the Indian representative to move reconsideration of his proposal in plenary meeting.

15. Mr. BHUTTO (Pakistan) also spoke against the motion. It was extremely unlikely that a proposal on which the votes in Committee had been equally divided would command the necessary two-thirds majority in plenary meeting. So far as the Ecuadorian representative's vote on the joint proposal was concerned, the Chairman had made a ruling on the subject, and that ruling had been upheld by the Committee.

At the request of the representative of India a vote on the Indian motion to reconsider the joint Indian and Mexican proposal was taken by roll-call.

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

In favour: Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Colombia, Czechoslovakia, Ecuador, Ghana, Hungary, Iceland, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Nepal, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Afghanistan, Albania, Argentina.

Against: Canada, China, Costa Rica, Cuba, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Haiti, Honduras, Ireland, Israel, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Austria, Belgium, Bolivia, Brazil.

Abstentions: Cambodia, Chile, Finland, Guatemala, Republic of Korea, Liberia, Philippines.

The motion was defeated by 39 votes to 36, with 7 abstentions.

The meeting rose at 11.30 p.m.

FIFTY-EIGHTH MEETING

Monday, 21 April 1958, at 10.30 a.m.

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

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

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.6, L.13, L.54, L.55, L.57, L.63, L.78, L.81, L.82 and Corr.1, L.83, L.84, L.131, L.134, L.138 to L.140, L.141/Rev.1, L.145, L.149, L.153) (continued)

1. Mr. SHUKAIRI (Saudi Arabia) said that his delegation's proposal (A/CONF.13/C.1/L.153) was intended for the contingency of the Committee's failing to reach agreement on the delimitation of the territorial sea. Although such agreement had not yet been reached, he thought that all possibilities had not been exhausted. Accordingly, he withdrew his proposal, but reserved the right to resubmit it in the plenary Conference.

Voting on article 66

2. Replying to Sir Gerald FITZMAURICE (United Kingdom), Mr. URIBE HOLGUIN (Colombia) said that the zone referred to in his delegation's proposal relating to article 66 (A/CONF.13/C.1/L.82 and Corr.1) would extend for a distance of twelve miles from the outer limit of the territorial sea; if, for example, the breadth of the territorial sea was fixed at three miles, the zone would have a breadth of fifteen miles.

3. Mr. GARCIA AMADOR (Cuba) remarked that, if the words "regulating and controlling fishing" in subparagraph (c) of the Colombian proposal related to regulation and control of fishing for the purpose of conservation of the living resources of the sea, that subparagraph fell within the competence of the Third Committee and should not be considered by the First Committee.

4. Mr. URIBE HOLGUIN (Colombia) said that his proposal related to article 66, which had been assigned to the First Committee and which included the regulation and control of fishing in the contiguous zone. The decisions of individual committees on related subjects would have to be co-ordinated by the General Committee.

5. The CHAIRMAN concurred in the Colombian representative's view.

6. Mr. BOCOBO (Philippines) feared that if the Colombian proposal were adopted, the Philippine proposal (A/CONF.13/C.1/L.13) would be out of order.

7. The CHAIRMAN stated that the voting on the Colombian proposal would not prejudice the Committee's decision on other proposals relating to the rights of the coastal State within the contiguous zone.

8. Replying to Mr. DEAN (United States of America), Mr. URIBE HOLGUIN (Colombia) stated that the Colombian proposal for the inclusion of an article on general compulsory jurisdiction or arbitration (A/CONF.13/BUR/L.5), submitted to the Plenary Conference, was intended to cover the matters dealt with in sub-paragraph (c) of the article proposed by his delegation.

9. Replying to further questions on that sub-paragraph of the Colombian proposal, he explained that the phrase "exercise for a period of not less than thirty years" meant exercise of rights during each of the preceding thirty years. The phrase "nationals and aliens" meant national and alien vessels; he would have wished to amend the wording of his proposal to that effect, but the Chairman had previously ruled against amendments at that stage.

10. Mr. GOHAR (United Arab Republic) moved that the Colombian proposal should be voted on in two parts, the division occurring at the end of paragraph (b).

11. Mr. URIBE HOLGUIN (Colombia) opposed the motion for a division of the proposal.

12. There being no further speakers on the motion for division, under rule 39 of the rules of procedure the CHAIRMAN put the motion to the vote.

The motion was rejected by 29 votes to 24, with 16 abstentions.

At the request of the Colombian representative, a vote on the Colombian proposal (A/CONF.13/C.1/L.83 and Corr.1) was taken by roll-call.

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

In favour: Colombia.

Against: France, Federal Republic of Germany, Ghana, Greece, Haiti, Holy See, Iceland, India, Iran, Ireland, Israel, Italy, Japan, Liberia, Luxembourg, Federation of Malaya, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Thailand, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics,

United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Australia, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, China, Costa Rica, Cuba, Czechoslovakia, Denmark.

Abstentions: Guatemala, Honduras, Indonesia, Jordan, Republic of Korea, Libya, Mexico, Morocco, Panama, Peru, Philippines, Saudi Arabia, Tunisia, Turkey, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Afghanistan, Argentina, Bolivia, Burma, Chile, Dominican Republic, Ecuador, El Salvador, Finland.

The proposal was rejected by 49 votes to 1, with 27 abstentions.

13. Mr. GASIOROWSKI (Poland) said that his delegation's proposal (A/CONF.13/C.1/L.78), in addition to including a reference to security in article 66, had the effect of deleting the reference to infringements of regulations within the territory or territorial sea of the coastal State which appeared in the International Law Commission's text. The intention was to make provision for action to deal with possible infringements within the contiguous zone, in keeping with the text of article 47 as adopted by the Second Committee.

14. Mr. AGO (Italy) withdrew his delegation's amendment (A/CONF.13/C.1/L.138) in favour of the Polish proposal.

15. Mr. GARCIA SAYAN (Peru) withdrew the Peruvian amendment (A/CONF.13/C.1/L.139), for the reasons which he had given at the 56th meeting when he withdrew his proposal relating to article 3.

16. Mr. KATICIC (Yugoslavia) said that since paragraph 2 of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) concerning article 3 had been adopted at the 56th meeting, he did not consider that it was necessary to vote on point 1 of his own delegation's amendment to paragraph 2 of article 66 (A/CONF.13/C.1/L.54). He therefore proposed that only the amendment to paragraph 1 and point 2 of the amendment to paragraph 2 should be voted on.

17. Mr. GARCIA ROBLES (Mexico) withdrew his delegation's proposal (A/CONF.13/C.1/L.141/Rev.1) for the reason given by the representative of Yugoslavia.

18. The CHAIRMAN then put the Polish proposal (A/CONF.13/C.1/L.78) to the vote.

The Polish proposal (A/CONF.13/C.1/L.78) was adopted by 33 votes to 27, with 15 abstentions.

19. The CHAIRMAN said that in view of the adoption of the Polish proposal no vote would be necessary on the Yugoslav amendment to paragraph 1 (A/CONF.13/C.1/L.54) or on the Korean proposal (A/CONF.13/C.1/L.84).

20. Mr. BOCOBO (Philippines) said that since the Polish amendment had been adopted, he would withdraw his own delegation's similar proposal (A/CONF.13/C.1/L.13). The proposal made in the same document that a reference to immigration should be added could be considered jointly with any other proposal

having the same effect. It would therefore not be necessary to take a separate vote on the Philippine proposal.

21. The CHAIRMAN put to the vote the proposal submitted by the delegation of Ceylon (A/CONF.13/C.1/L.55) that the words "fiscal or sanitary" in article 66, paragraph 1 (a) should be replaced by the words "fiscal, immigration or sanitary".

The Proposal was adopted by 39 votes to 15, with 20 abstentions.

Point 2 of the Yugoslav amendment to paragraph 2 (A/CONF.13/C.1/L.54) was adopted by 52 votes to 3, with 19 abstentions.

Article 66 as a whole, as amended, was adopted by 50 votes to 18, with 8 abstentions.

Voting on article 1

22. Mr. KRISPIS (Greece) withdrew his delegation's amendment (A/CONF.13/C.1/L.63).

23. Mr. OLDENBURG (Denmark) withdrew his delegation's amendment to article 1 (A/CONF.13/C.1/L.81) in favour of the United Kingdom amendment (A/CONF.13/C.1/L.134). He also withdrew Denmark's amendment to article 2 (A/CONF.13/C.1/L.81).

24. Mr. URIBE HOLGUIN (Columbia) withdrew his delegation's amendment to article 1 (A/CONF.13/C.1/L.78) in favour of the United Kingdom amendment.

25. Mr. STAR BUSMANN (Netherlands) said that although paragraph 2 of the International Law Commission's draft of article 1 referred to conditions limiting the sovereignty exercised by a State over its territorial sea, there were no such reservations in article 2, which might thus give the impression that no limitations applied under article 2. That was not correct, since installations on the seabed of the territorial sea might interfere with the right of innocent passage, referred to in articles 16 and 17. The sovereignty over the air space referred to in article 2 was also subject to certain rules of international law.

The Netherlands amendment to article 1 (A/CONF.13/C.1/L.83) was rejected by 49 votes to 6, with 18 abstentions.

The United Kingdom proposal for article 1 (A/CONF.13/C.1/L.134) was adopted by 61 votes to 1, with 8 abstentions.

26. Mr. KATICIC (Yugoslavia) withdrew his delegation's amendment (A/CONF.13/C.1/L.57).

27. The CHAIRMAN said that the United Kingdom proposal having been adopted, no vote would be necessary on the Turkish proposals (A/CONF.13/C.1/L.145). He added that the International Law Commission's text of article 1 had been replaced by the United Kingdom text just adopted.

The meeting rose at 1 p.m.

FIFTY-NINTH MEETING

Monday, 21 April 1958, at 2.25 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.6, L.82 and Corr.1, L.83) (continued)

1. Mr. GARCIA AMADOR (Cuba), speaking on a point of order, said the Committee should consider the situation which had arisen in consequence of the adoption at the 56th meeting of paragraph 2 of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3). Paragraph 2 of the Canadian proposal dealt only with fishing rights in the contiguous zone and had nothing to do with the territorial sea or with any other subject assigned to the First Committee. The paragraph was, however, relevant to certain decisions taken in the Third Committee. He therefore proposed that the First Committee, instead of submitting paragraph 2 direct to the plenary Conference, should either refer paragraph 2 of the Canadian proposal to the Third Committee for consideration in the light of the articles adopted by that committee, or arrange a joint meeting of the First and Third Committees, or ask the General Committee to decide what action should be taken by the First and Third Committees with respect to that paragraph. He emphasized that paragraph 2 had been adopted by a very small majority.

2. The CHAIRMAN thought that the Committee was free to choose any one of the courses proposed. He, personally, would prefer the third.

3. Mr. ROBERTSON (Canada) said that, according to rules 22, 30 and 53 of the rules of procedure of the Conference, the point of order raised by the representative of Cuba should have been raised before the Canadian proposal was put to the vote. The proposal of the Cuban representative was therefore out of order.

4. The CHAIRMAN ruled that the Cuban representative's proposal was in order.

5. Mr. TUNCEL (Turkey) pointed out that, as the composition of the First Committee was identical with that of the Third Committee, it would be useless either to refer paragraph 2 of the Canadian proposal to the Third Committee or to arrange a joint meeting of the two committees. Nor would it be advisable to apply to the General Committee for guidance, in view of the manner in which the States represented on that committee had voted on the proposal. He emphasized that the decision taken by the First Committee on paragraph 2 of the Canadian representative's proposal might be a basis for reconciling opposing points of view when the proposal came before the plenary Conference.

6. Mr. SHUKAIRI (Saudi Arabia) said that the question raised by the representative of Cuba was not a point of order since the Committee had already voted on article 3 to which the Canadian proposal had been submitted as an amendment. Questions relating to that proposal could now be discussed only if the Committee decided by a two-thirds majority vote to do so.

7. Mr. MUHTADI (Jordan) agreed with the representative of Saudi Arabia. The question raised regarding that part of the Canadian proposal which had been adopted was one that could be settled by the Drafting Committee.

8. Mr. GUTIERREZ OLIVOS (Chile) felt that it would be wiser to leave the question of the co-ordination of proposals adopted by the First Committee with those adopted by the other committees to be settled by the Conference in plenary meeting.

9. Mr. BING (Ghana) pointed out that the Third Committee had waited until the First Committee had reached a decision on article 3 before proceeding with the discussion of the articles which would be affected by the decision on article 3. Since the Third Committee was now discussing the articles in question he felt that the First Committee should await the outcome of such discussions before taking any further action regarding the Cuban representative's proposal.

10. Mr. LOUTFI (United Arab Republic) greatly deprecated the discussion regarding a decision which had been taken at an earlier meeting. There was no appeal against that decision, and he therefore urged the Cuban representative to withdraw his proposal.

11. Mr. GARCIA ROBLES (Mexico) felt that such problems as those raised by the adoption of paragraph 2 of the Canadian proposal could be solved by the Drafting Committee.

12. Mr. GARCIA AMADOR (Cuba) said that he would accede to the request of the representative of the United Arab Republic and withdraw his proposal, since the General Committee would automatically have to solve various problems of co-ordination.

Voting on article 2

13. Mr. VERZIIL (Netherlands) withdrew his delegation's amendment to article 2 (A/CONF.13/C.1/L.83).

14. Mr. CAICEDO CASTILLA (Colombia) withdrew that part of his delegation's amendment which referred to article 2 (A/CONF.13/C.1/L.82 and Corr.1).

15. Mr. GROS (France) withdrew his delegation's amendment to article 2 (A/CONF.13/C.1/L.6).

In the absence of any objection, article 2 of the International Law Commission's draft was adopted.

Explanations of votes

16. Mr. AMADO (Brazil) said that the fears he had expressed in the general debate (4th meeting) had been proved to be well-founded. The three-mile limit had been rejected and the twelve-mile limit had received greater support than he had thought it would. The

result of the voting had shown that States considered that they must first protect their own interests, but in so doing they had ignored those of the smaller nations which had traditionally fished in the zones contiguous to their territorial seas.

17. The adoption of the revised United States proposal (A/CONF.13/C.1/L.159/Rev.2) would have given the fishermen of some other countries a certain amount of hope; by contrast, the terms of paragraph 2 of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3), while protecting Canadian fishermen from the large fishing trawlers of their neighbours, ignored the rights of European fishermen who had been fishing in the waters off the coasts of Canada for centuries.

18. Although Brazil had a very long coastline, it could not support the various proposals put forward by the other Latin American States. He hoped very much that conciliatory efforts would be made in the plenary Conference and that the Conference would terminate in a spirit of harmony.

19. Mr. SØRENSEN (Denmark) said that his delegation had voted in favour of the revised United States proposal in a desire to contribute to a fair compromise solution, although that proposal did not give entire satisfaction to his delegation.

20. The position of Denmark remained that an extension of exclusive fishing rights beyond six miles should be admitted only in those cases where the vital economic interests of the coastal population required it.

21. Lastly, Denmark could not accept any final obligation which would adversely affect its interests in North Atlantic waters unless all other countries interested in those waters accepted corresponding obligations.

22. Mr. MUÛLS (Belgium) said that his delegation had voted in favour of the revised United States proposal because it represented a commendable compromise offer. If a compromise solution was not arrived at, however, the Belgian Government considered that the three-mile rule remained intact.

23. The Count de TOVAR (Portugal) said that his country viewed with grave concern the tendency reflected in the votes in favour of the twelve-mile fisheries zone proposed by Canada and against the protection of historic fishing rights. For several centuries, Portuguese fishermen had been fishing cod off the coasts of North America. Cod was a staple food for many inhabitants of Portugal; it was not a product for export. Those Portuguese activities, conducted in the high seas and not in Canadian waters, had not prevented Canada from increasing its catch from year to year.

24. His delegation would have been prepared to accept a compromise solution regarding the extension of the territorial sea and the recognition of a contiguous zone for purposes of fisheries on the understanding that the legitimate and vested interests of those who had been traditionally fishing in the waters concerned would be protected. Unfortunately, those concessions had not satisfied the advocates of an exclusive fisheries zone who claimed for their countries the right to exclude foreign fishermen, even if it meant depriving foreign populations of their essential food.

25. Mr. PONCE Y CARBO (Ecuador) said that his delegation had been unable to support the revised United States proposal because that proposal subordinated the recognition of a fisheries zone to the safeguarding of an alleged right to fish on the part of foreign undertakings having fished in the waters in question for a certain period. The recognition of that right to fish would, in Ecuador's case, have rendered the contiguous fisheries zone meaningless; United States fishing vessels had been fishing off the coasts of Ecuador, including the coasts of the Galapagos Islands, for over five years.
26. In addition, the United States proposal contained a provision on unconditional arbitration which was totally unacceptable to the Ecuadorian delegation.
27. His delegation had voted against paragraph 1 of the revised Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) which, because it provided for a territorial sea of six miles, conflicted with Ecuadorian legislation. His delegation had, however, voted in favour of paragraph 2 of the Canadian proposal, which acknowledged the exclusive rights of the coastal State in the contiguous zone and thus represented an important improvement where protection of the rights of the coastal State was concerned. The text of the joint Mexican and Indian proposal (A/CONF.13/C.1/L.79) did not conflict with Ecuadorian legislation, but, as his delegation preferred the Soviet Union proposal (A/CONF.13/C.3/L.80) in view of its wider scope, it had decided to abstain from voting on the proposal by Mexico and India, in order to vote immediately afterwards in favour of the Soviet Union proposal. However, in view of the need for placing on a firmer basis the idea of a fishing zone adopted by the Committee as a result of the Canadian proposal, his delegation had asked the Chairman, at the proper time, for permission to record its vote in favour of the Mexican and Indian proposal. The Chairman had ruled against that request, and consequently his delegation's abstention stood. Therefore, he had subsequently voted for the Soviet Union proposal, which did not conflict with Ecuadorian legislation either.
28. His delegation had been unable to vote in favour of the Colombian proposal (A/CONF.13/C.1/L.82 and Corr 1), because, although its paragraph 1 was not in conflict with Ecuadorian legislation, its paragraph 2 conflicted with that legislation.
29. His delegation had voted against the Swedish proposal (A/CONF.13/C.1/L.4) because it provided for a territorial sea of six miles, a limit at variance with that laid down by Ecuadorian legislation.
30. Mr. PETREN (Sweden) said that his delegation had abstained when the revised United States proposal was put to the vote because it was opposed to any idea of adding a so-called fisheries zone to the territorial sea. In the plenary Conference, however, if the choice was between a twelve-mile territorial sea, a twelve-mile unrestricted fisheries zone and a twelve-mile fisheries zone with proper safeguards for legitimate vested interests, his delegation would choose the last alternative and vote in favour of the revised United States proposal. He emphasized, however, that the Swedish Government's position with respect to the breadth of the territorial sea would remain unaffected.
31. Mr. CARMONA (Venezuela) said that his delegation had viewed with sympathy the Canadian and United States efforts to reach a compromise. It had not been able to vote in favour of the proposals made by the United States and Canada because Venezuelan law provided for a territorial sea of twelve miles and it was not possible for the Venezuelan delegation to accept any provision stipulating some other limit.
32. Mr. BARTOS (Yugoslavia) said that in his delegation's opinion article 3, paragraph 1, of the International Law Commission's draft was a correct statement of existing international law. The International Law Commission had recognized that it was for the coastal State to determine the breadth of its territorial sea within a maximum limit of twelve miles. His delegation had therefore voted against all proposals which would have fixed a breadth for the territorial sea without recognizing the delimitation made by the various States.
33. His delegation had voted against all amendments which would have limited the exclusive fishing rights of the coastal State because the Government and people of Yugoslavia, and in particular the inhabitants of the country's coastal areas, considered that foreign interference in the matter of fisheries off their coasts would be intolerable.
34. His delegation hoped that a compromise solution would be arrived at. If, however, no solution obtained the necessary two-thirds majority, his government would maintain its position that, as stated by the International Law Commission, there was no uniform ruling of international law with regard to the delimitation of the territorial sea and that each State had the right to determine the breadth of its territorial sea up to a limit of twelve miles.
35. Mr. AYCINENA SALAZAR (Guatemala) said that his country had established the breadth of its territorial sea at twelve miles in 1934 without any objection from any other country. His delegation had therefore voted against the revised United States proposal, which established a territorial sea of six miles and, in addition, provided for a system of general arbitration incompatible with the provisions of the Constitution of Guatemala.
36. Again, his country could not recognize historic fishing rights in its territorial waters. Nevertheless, his delegation appreciated the remarkable efforts made by the Government of the United States in introducing proposals which entailed sacrifices by its people.
37. His delegation had voted in favour of paragraph 2 of the revised Canadian proposal on the understanding that it provided for a twelve-mile fisheries zone for the benefit of those countries which claimed a territorial sea of less than twelve miles.
38. Mr. ROBERTSON (Canada) said that, in view of the remarks made by the representatives of Brazil and Portugal, he wished to explain the position of his delegation. The provisions contained in the revised United States proposal safeguarding fishing rights could not be accepted by the younger States which had to protect their coastal fisheries. To give but one example, under the United States proposal, United States fishermen

would have their right to fish in waters off Canada protected in perpetuity without any limit as to the number or size of ships engaged, or as to the size of the catch, simply because United States fishermen had long been operating in those waters. On the other hand, Canadian fishermen would have been excluded in perpetuity from fishing off the coasts of the United States where they had not been engaged in fisheries to any appreciable extent.

39. Canada had shown, by its contributions to technical assistance schemes and, to the Colombo Plan, that it was not exclusively concerned with its own interests.

40. The representative of Portugal had given a somewhat exaggerated description of the situation. Only a small proportion of the Portuguese catch of cod was taken within twelve miles of the Canadian coast. The bulk of the catch came from the Grand Banks, which were many hundreds of miles away from the coasts of Canada. The limitation agreed by the Committee would not therefore have the disastrous effects suggested.

41. Many new countries of Africa and Asia wished, like Canada, to protect their coastal fishermen working with limited means against competition by well-organized fishing fleets coming from across the oceans. The provisions which the Committee had adopted on the contiguous fisheries zone would no doubt compel those large fishing fleets to adjust their techniques so as to be able to fish in deeper waters, possibly at greater cost. It was not proposed to take away their livelihood. The coastal State could not be expected to underwrite present fishing methods and existing costs for the benefit of those foreign fishing fleets.

42. Mr. GARCIA SAYAN (Peru) said that his delegation had voted for those proposals which were nearest to the position of his country, or which indicated some progress towards it compared with the opinions which were furthest removed from the Peruvian point of view. But the votes cast by his delegation left intact the position of his country, which for more than ten years had been exercising its jurisdiction over a maritime zone of 200 miles for the purpose of the conservation and utilization of the resources of the sea. In so doing, it based itself on legal, scientific and economic grounds, some of which were peculiar to Peru and others common to the Latin American coastal States of the South Pacific.

43. Mr. QUADROS (Uruguay) said that his delegation had been gratified to note the concessions made by some delegations and hoped that all delegations would work together in a true international spirit to arrive at a compromise solution.

44. Mr. GUTIERREZ OLIVOS (Chile) reserved his delegation's right to explain on a later occasion the votes it had cast on the various proposals concerning article 3.

45. Mr. LIU (China) said that his delegation had supported the three-mile limit at the Conference for the Codification of International Law held at The Hague in 1930. In view, however, of the growing tendency to extend the breadth of the territorial sea, his delegation did not regard that rule as immutable. His delegation considered that rules of international law had to be

modified to meet changing circumstances. But those changes, to be generally applicable, had to be accepted by the overwhelming majority of States.

46. His delegation had been prepared to support the original Canadian proposal which had maintained the traditional limit of three miles while safeguarding the rights of coastal States with regard to fishing and natural resources. However, in the light of subsequent developments in the proceedings and in the hope of securing the largest measure of agreement, his delegation had supported the revised United States proposal which had taken into account all the legitimate interests involved.

47. Mr. AGO (Italy) said that one of the previous speakers had interpreted the International Law Commission's text of article 3 as permitting States to extend the territorial sea up to twelve miles. His delegation could not accept any interpretation of the International Law Commission's text that strayed from the explicit language of that Commission. It was clear from the International Law Commission's text that any extension of the territorial sea beyond three miles was only valid *vis-à-vis* States which did not object to the extension.

48. Mr. BARTOS (Yugoslavia) speaking on a point of order, said that he had never stated that his Government had the intention of extending the breadth of its territorial sea in the manner suggested. He had merely referred to a right.

49. Mr. AGO (Italy) said that his delegation noted with satisfaction the statement made by the Yugoslav representative. His delegation could not accept interpretations of the International Law Commission's views which were at variance with the text adopted by that Commission and the commentaries thereto.

50. Mr. OLAFSSON (Iceland) said that his delegation had voted against paragraph 1 of the Canadian proposal because, at that stage, the coastal State's exclusive fishing rights up to twelve miles had not yet been voted upon. His delegation had always made it clear that if those exclusive fishing rights were recognized, it would not press for an extension of the territorial sea.

51. His delegation had voted in favour of paragraph 2 of the Canadian proposal because that paragraph acknowledged the exclusive fishing rights of the coastal State in the contiguous zone.

52. His delegation had abstained from voting on all proposals on the breadth of the territorial sea except the Soviet Union proposal because that proposal recognized the right of the coastal State to extend its jurisdiction in some cases beyond twelve miles; at that stage, the proposal submitted by Iceland concerning special cases had not yet been adopted by the Third Committee.

53. His delegation had voted against the revised United States proposal because it perpetuated the so-called historic right of foreigners to fish in the coastal waters of a State; his delegation could not accept that the rights of the coastal State should be subordinated to so-called historic fishing rights.

54. Mr. DEAN (United States of America), speaking

on a point of order, said that the provision in his delegation's revised proposal safeguarding the right to fish of those who had been engaged in fishing activities for five years referred to the outer six miles beyond the six miles of territorial sea. He pointed out that foreign fishermen, and in particular Mexican and Canadian fishermen, fished off the coasts of the United States of America. He hoped that all delegations would bear in mind the various implications of the different proposals; for example, he believed that the cost of transporting Saudi Arabian oil would increase if a six-mile territorial sea was established.

55. Mr. SHUKAIRI (Saudi Arabia) said that the possible implications of the breadth of the territorial sea for Saudi Arabian oil were a matter exclusively for his Government. He added that most of the statements made by the representative of the United States of America did not come within the scope of an explanation of vote or of a point of order.

56. Mr. BOCOBO (Philippines) said that his delegation had abstained from voting on the United States proposal concerning the breadth of the territorial sea because the boundaries of the Philippines as laid down in the Treaty of Paris of 10 April 1898 between the United States of America and Spain, as well as in the Constitution of the Philippines, covered a much wider sea area than was enclosed by a line drawn twelve miles from the coast.

57. Mr. SHAHA (Nepal) said that his delegation, recalling the failure of the Conference for the Codification of International Law held at The Hague in 1930, had from the very beginning of the Conference adopted a cautious attitude towards the question of the breadth of the territorial sea. It very much appreciated the action of some of the great maritime Powers in introducing conciliatory proposals which entailed sacrifices for them. He had voted in favour of the proposal by India and Mexico, because it provided a real basis for agreement, but he had abstained from voting on the other proposals because, as a land-locked country, Nepal was only indirectly interested in the question of the breadth of the territorial sea.

58. His delegation thought that the Conference could not be said to have failed even if it did not succeed in reaching agreement on that question. It was a problem which affected numerous interests and there would probably have been a better chance of success if, before the Conference, attempts had been made to ascertain through the diplomatic channel the degree of agreement on the question which existed among the various States.

59. Mr. PFEIFFER (Federal Republic of Germany) said that, in the opinion of his delegation, the extension of the territorial sea beyond three miles and the establishment of an exclusive fisheries zone were new principles which could not be incorporated into international law otherwise than by a convention. His delegation had voted for the revised United States proposal because it was the only one which to some extent took account of the fishing rights and interests of States other than coastal States.

60. If the United States proposal were ultimately not adopted, his delegation would reserve its attitude to-

wards the question of the breadth of the territorial sea and the question of the exclusive fisheries zone.

The meeting rose at 6.40 p.m.

SIXTIETH MEETING

Tuesday, 22 April 1958, at 10.20 a.m.

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

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

ARTICLE 11 (DRYING ROCKS AND DRYING SHOALS) (A/CONF.13/C.1/L.62, L.67, L.115)

1. Sir Gerald FITZMAURICE (United Kingdom) said that his proposal on article 11 (A/CONF.13/C.1/L.62) was intended purely for clarification. Drying rocks or shoals, being formations submerged in water for one-half of every twenty-four hours, clearly had no territorial sea of their own. That inference had to be drawn from the International Law Commission's draft of article 11 and also from the definition of islands in article 10.

2. Mr. VERZIIL (Netherlands) said that his proposal (A/CONF.13/C.1/L.67) also was intended for clarification. Article 9 had been ambiguously worded and had given rise to two widely differing interpretations within the Committee; the Netherlands delegation had therefore felt obliged to vote against it. The same difficulty might arise in connexion with article 11. Where the territorial sea was extended owing to the presence of a drying rock or shoal within it, as provided in article 11, and another drying rock or shoal existed within the territorial sea so extended, the coastal State might claim a further extension, and so on. He therefore wished to make certain that the territorial sea could not be extended more than once on that ground.

3. Mr. DEAN (United States), introducing his proposal (A/CONF.13/C.1/L.115), objected to the use of the terms "rocks" and "shoals" as irrelevant and vague. The term "shoals" was frequently applied to rises in the seabed permanently submerged in water; it was certainly not intended that such rises should be used for establishing the starting point or baseline of the extension of the territorial sea. Moreover, those terms as used in the article did not exclude formations deposited artificially. Article 10 as adopted by the First Committee at its 52nd meeting spoke of an island as a "naturally formed" area of land; a similar phrase should be employed in article 11, if only for the sake of consistency. He also regarded the phrase "points of departure" in article 11 as inadequate, since a low-tide elevation, if extensive, could not be a point; moreover, the phrase was confusing, for it might be interpreted to relate to the determination of the outer limit of the territorial sea, not to that of the baseline.

4. Mr. FRANCOIS (Expert to the secretariat of the Conference) said that all the proposals on article 11

corresponded entirely to the intentions of the International Law Commission. With regard to the Netherlands proposal, he pointed out that the words "as measured from the mainland or an island" in the International Law Commission's draft covered the contingency envisaged by the Netherlands representative.

5. He could not accept the Netherlands representative's criticism of article 9 as ambiguous. The text corresponded to that adopted at The Hague Conference in 1930 by the Committee on Territorial Waters¹ and its meaning had never been challenged; it was exactly what the Netherlands proposal on that article had intended to convey (A/CONF.13/C.1/L.67).

6. Mr. VERZIJL (Netherlands), having regard to the remarks made by Mr. François, withdrew his proposal (A/CONF.13/C.1/L.67). He was pleased to note that, although his proposal on article 9 had been rejected, its substance was nevertheless implicit in the text of the article as adopted.

The United States proposal (A/CONF.13/C.1/L.115) was adopted by 25 votes to 5, with 27 abstentions.

7. The CHAIRMAN invited the Committee to vote on the United Kingdom proposal (A/CONF.13/C.1/L.62) on the understanding that the drafting changes necessitated by the adoption of the United States proposal would be made by the Drafting Committee.

The United Kingdom proposal was adopted by 50 votes to 1, with 7 abstentions.

Article 11, as amended, was adopted.

ARTICLE 12 (DELIMITATION OF THE TERRITORIAL SEA IN STRAITS AND OFF OTHER OPPOSITE COASTS); ARTICLE 14 (DELIMITATION OF THE TERRITORIAL SEA OF TWO ADJACENT STATES) (A/CONF.13/C.1/L.6, L.60, L.63, L.97, L.101, L.108, L.116, L.117, L.120 to L.129, L.146)

8. Mr. KATICIC (Yugoslavia) introduced his proposal to delete the words "and unless another boundary line is justified by special circumstances" in paragraph 1 of articles 12 and 14 (A/CONF.13/C.1/L.60). At its 58th meeting the Committee had adopted with reference to article 66 a Yugoslav proposal (A/CONF.13/C.1/L.54) for the delimitation of contiguous zones between two States which were adjacent or the coasts of which were opposite each other. The words in question did not appear in that proposal, and the same principle should apply to articles 12 and 14. The granting of a right to establish an unspecified boundary line other than the median line would cause confusion and encourage States to claim special circumstances for reasons of self-interest. He would, however, consider withdrawing his proposal if the Norwegian proposal (A/CONF.13/C.1/L.97), which covered the same point, were put to the vote first and adopted.

9. Mr. PFEIFFER (Federal Republic of Germany) introduced his proposals (A/CONF.13/C.1/L.121, L.129) to insert the words "historic rights or" before the words "special circumstances" in paragraph 1 of articles 12 and 14, and pointed out that the principle of equi-

distance did not apply in the case of *longa possessio*, or historic rights recognized in international law. Such rights had the same legal value as those acquired by an explicit agreement. Furthermore, his proposals met the desire for flexible application expressed by the International Law Commission in paragraph 7 of its commentary on article 14. He would, however, withdraw them if paragraph 1 of the Norwegian proposal (A/CONF.13/C.1/L.97) were adopted.

10. Mr. KRISPIS (Greece) said that, as a general principle, his delegation preferred the status of the high seas to that of the territorial sea, and that of the territorial sea to that of internal waters. If the word "baseline" in article 12 were used without the qualifying adjective "normal" — the normal baseline being the low-water mark — the territorial sea might in some cases consist only of a narrow strip of sea, the rest being regarded as internal waters. He was prepared, however, to withdraw his proposal (A/CONF.13/C.1/L.63) relating to paragraph 1 of article 12 in favour of that submitted by Portugal (A/CONF.13/C.1/L.101), which covered the same point.

11. The CHAIRMAN recalled that the Cambodian proposal (A/CONF.13/C.1/L.117) had been withdrawn.

12. Mr. BOAVIDA (Portugal) pointed out that, in so far as his proposal dealing with article 12 (A/CONF.13/C.1/L.101) sought to delete the phrase "and unless another boundary line is justified by special circumstances", it was identical with the Yugoslav proposal (A/CONF.13/C.1/L.60). The second object of his proposal was to replace the words "on the baselines from which the breadths of the territorial seas of the two States are measured" by the words "on the low-water line along the coasts of those States". The purpose of that part of the proposal, which corresponded to the Greek proposal (A/CONF.13/C.1/L.63), now withdrawn, was to simplify the procedure required and to enable mariners to draw the median line on their charts without reference to the domestic law of the States concerned. That part of his proposal which concerned article 12, paragraph 4, was intended solely to improve the drafting of the International Law Commission's text.

13. Mr. URIBE HOLGUIN (Colombia) was prepared to withdraw his proposal (A/CONF.13/C.1/L.120) in favour of the Yugoslav proposal (A/CONF.13/C.1/L.60) if it were put to the vote first, or of the Norwegian proposal (A/CONF.13/C.1/L.97) if the first and second sentences of paragraph 1 of the latter were put to the vote separately.

14. Mr. STABELL (Norway) pointed out that, as the International Law Commission itself admitted in paragraph 7 of its commentary on article 12, paragraph 1 of that article and article 14 did not provide for cases where two States opposite or adjacent to each other had adopted different breadths for their territorial seas. The main purpose of his proposal (A/CONF.13/C.1/L.97) was to provide for such cases; he was willing to yield on all other points it might raise.

15. None of the three main proposals which the Committee had considered with regard to the extension of the territorial sea had provided for a uniform breadth;

¹ See L.O.N.P. 1930.V.14, p. 133.

all would leave to the coastal State a choice between different breadths below a certain maximum. It was illogical to accept a rule which failed to provide for the very probable event that two adjacent States might have adopted different breadths for their territorial seas. Article 12 would operate unreasonably where, of two opposite States, one had a territorial sea of three and the other of six miles : if the distance between those States were ten miles, the second State could extend its territorial sea so as to comprise stretches of sea closer to the coast of the first State. But the article would operate absurdly if the distance between the two States were eight miles ; for then the first State would be entitled to a territorial sea of four miles, more than it would normally claim, while the second would have two miles less than it claimed. The first sentence of paragraph 1 of his proposal would obviate such situations, both for opposite and for adjacent States.

16. His proposal sought to combine the provisions of articles 12 and 14 because the problems dealt with in the two articles were so closely interrelated as in some cases to be practically indistinguishable — for instance, where two States had a common land frontier which met the sea at the head of a deep bay. He had avoided any unnecessary changes in the original texts of the articles. The words “failing agreement” seemed to him more appropriate than the mandatory phrase “shall be fixed by agreement” followed immediately by words postulating failure to obtain agreement ; but he would not insist on that point. Similarly, he preferred the wording of the second sentence of paragraph 1 of his proposal to the less precise reference to “special circumstances” in the International Law Commission’s draft.

17. If his proposal were adopted, the Drafting Committee might have to make some consequential changes in the wording of article 66 as adopted. He accepted the Colombian representative’s suggestion of a division of vote on his proposal ; the first and second sentences of paragraph 1 should be voted on separately, as also should paragraphs 2 and 3, both of which, while reasonably close to the International Law Commission’s text, sought to introduce slight drafting changes.

18. Replying to Sir Edward SNELSON (Pakistan), Mr. STABELL (Norway) explained that the words “prescriptive usage” in his proposal meant an historical title vested in one of the interested States giving it a right to extend its territorial sea beyond the median line. He would not, however, insist on that wording if it was considered insufficiently clear.

19. Mr. GARCIA ROBLES (Mexico) suggested that the second sentence of paragraph 1 of the Norwegian proposal might be more acceptable if drafted in general terms corresponding to the wording of paragraph 7 of the International Law Commission’s commentary on article 12, to the effect that the foregoing provision should not apply where the States concerned had territorial seas of different breadths.

Mr. Gutierrez Olivos (Chile), Vice-Chairman, took the Chair.

20. Mr. KRISPIS (Greece), introducing his delegation’s amendment to article 12, paragraphs 2 and 3 (A/

CONF.13/C.1/L.63), referred to paragraph 4 of the International Law Commission’s commentary on article 12. He could not understand what practical grounds there could be for changing the status of the enclosed portions of sea from high seas to territorial sea. The change might enable the States concerned to exclude other States from fishing in those waters, but that result would not be acceptable to his delegation. It saw no reason to justify any departure from the general rule, and therefore proposed the deletion of paragraphs 2 and 3.

21. Mr. DEAN (United States of America) said that his delegation also proposed (A/CONF.13/C.1/L.116) the deletion of paragraphs 2 and 3 for the reasons given by the representative of Greece.

22. Mr. SÖRENSEN (Denmark) said that his delegation had always maintained that there was no limitation under international law whereby enclaves could be included in the territorial sea only if they were not more than two miles in breadth. However, his delegation’s amendment to article 12 (A/CONF.13/C.1/L.122), whereby the words “more than two miles in breadth” in paragraph 2 would be replaced by the words “wider than the double breadth of the territorial sea” and the words “not more than two miles in breadth” in paragraph 3 would be deleted, was proposed on the assumption that the Conference would adopt a fairly narrow breadth for the territorial sea. If it did not, the amendment might result in the inclusion of vast areas of the high seas in the territorial sea of coastal States. Denmark maintained its traditional right to consider that the enclaves in its own waters belonged to the territorial sea ; but they might be so considered under some such rule as that proposed by Mexico (A/CONF.13/C.1/L.124). He accordingly withdrew the Danish amendment to article 12, paragraphs 2 and 3.

23. Mr. TUNGEL (Turkey) saw no point in including in article 12 a provision which might overlap the provisions on innocent passage in article 17.

24. Mr. GARCIA ROBLES (Mexico) said that his delegation had proposed (A/CONF.13/C.1/L.124) to substitute the words “six miles” for “two miles” in paragraph 3 of article 12. Some of its reasons had already been stated by the representative of Denmark. He believed that the International Law Commission, in suggesting a two-mile limit, had meant to propose somewhat more than half the breadth of the traditional three-mile limit for the territorial sea. The debates in the First Committee, the synoptic table prepared by the Secretariat (A/CONF.13/C.1/L.11/Rev.1), and the vote on the Indian-Mexican proposal (A/CONF.13/C.1/L.79) had all shown that the three-mile limit was no longer a generally-accepted rule. The International Law Commission had recognized in its draft article 3 that the territorial sea might have a breadth of twelve miles ; and his delegation therefore proposed half that distance, six miles, as the breadth of the enclave that might be declared territorial sea.

25. Mr. URIBE HOLGUIN (Colombia) said that his delegation’s amendment to paragraph 3 (A/CONF.13/C.1/L.120) was mainly a drafting amendment ; para-

graph 3 should state that the rules contained in paragraph 2 — and not the first sentence of that paragraph — were applicable to the cases in question, since situations in law were governed by rules or principles, not by sentences. That criticism also applied to paragraph 3 of the Norwegian amendment. However, he thought that question could be dealt with by the drafting committee and accordingly he withdrew his amendment.

26. Mr. DEAN (United States of America) said that his delegation proposed (A/CONF.13/C.1/L.116) to replace the word “demarcation” in paragraph 4 by the word “delimitation”, and he hoped that the representative of Norway might consider making the same change in paragraph 4 of his amendment. The word “delimiting” had been used in the text of article 72 as adopted by a large majority in the Fourth Committee at its 33rd meeting, and that article was very closely related to articles 12 and 14.

27. The CHAIRMAN asked if there were any additional explanations of amendments to article 14.

28. Mr. BOAVIDA (Portugal) withdrew his delegation's amendment (A/CONF.13/C.1/L.101).

29. Mr. GUITIAN (Spain) withdrew his delegation's amendment (A/CONF.13/C.1/L.126) and asked that it might be considered by the drafting committee.

30. Mr. RUEDEL (France) withdrew his delegation's amendment (A/CONF.13/C.1/L.6), the point of which was dealt with in other amendments.

31. Mr. URIBE HOLGUIN (Colombia) said he would withdraw his delegation's amendment (A/CONF.13/C.1/L.127) if the Norwegian amendment were voted on in parts.

32. Mr. TUNCEL (Turkey) said that the International Law Commission's draft of article 14 was based on the assumption that there would be a uniform width of the territorial sea, but that assumption was no longer valid. The representative of Norway had not explained how the median line would be drawn where adjacent States had territorial seas of unequal breadth. The Turkish amendment to article 14 (A/CONF.13/C.1/L.128) therefore proposed that it should be drawn with reference to the broader of the two territorial seas.

33. Mr. YOKOTA (Japan) said that since his delegation's proposal for a new article 14 A (A/CONF.13/C.1/L.130) related to disputes arising out of articles 5 and 7 he would explain if after the Committee had dealt with articles 12 and 14.

34. The CHAIRMAN, speaking as the representative of CHILE, said that the text of article 17 of paragraph 4, as adopted by the First Committee at its 34th meeting, had gone beyond the International Law Commission's proposal. It was thus the more necessary to clarify the legal status of straits between coasts that belonged to a single State. The International Law Commission's proposal that an area of sea enclosed in such a strait could not be included within the territorial sea if it were more than two miles broad set an arbitrary limit for which there was no justification in current international law. Moreover, he did not consider that the

special situation provided for in paragraph 3 was likely to lead to serious international problems, though it might be important for the internal law or international agreements of the coastal State. His delegation had therefore proposed (A/CONF.13/C.1/L.123) the deletion of paragraph 3 or, if that were not approved, an additional provision relating to the special case dealt with in paragraph 3.

35. Mr. KRISPIS (Greece) supported the Yugoslav amendment to article 12 paragraph 1 (A/CONF.13/C.1/L.60), for the reasons given by the representatives of Yugoslavia and Norway. He added that, if the Conference rejected that amendment, the work of some organs of the United Nations would be increased.

36. Sir Gerald FITZMAURICE (United Kingdom) said that he appreciated the arguments of some representatives in favour of deleting the reference to special circumstances from article 12, paragraph 1, but his delegation had doubted the wisdom of doing so. The International Law Commission's draft would be improved, for example, by the adoption of the Norwegian amendment. It was admittedly a weakness that there was no definition of special circumstances so that their existence might be disputed. Nevertheless, special circumstances did exist which, for reasons of equity or because of the configuration of a particular coast, might make it difficult to accept the true median line as the actual line of delimitation between two territorial seas. There might be a navigation channel, for instance, which was not in the middle of a strait but to one side of it, or went from one side to the other; or the situation might be complicated by small islands. His delegation therefore felt that it would be too rigid to specify that the median line must be adhered to regardless of special circumstances. He hoped that the representative of Yugoslavia and his supporters would give careful consideration to that point.

37. The Portuguese amendment to paragraph 1 (A/CONF.13/C.1/L.101) did not take account of the provision in article 5 that the territorial sea might be measured from straight baselines and not from the low-water line.

38. He considered that the Norwegian amendment to paragraph 1 (A/CONF.13/C.1/L.97) greatly improved the text, though he had some reservations about the second sentence, referring to prescriptive usage. He had not at first been convinced that articles 12 and 14 ought to be combined; but, having listened to the explanation of the representative of Norway, he agreed that there might be a need to apply the provisions of article 12, paragraphs 2 and 3, relating to enclaves, to two adjacent as well as to two opposite States. Clearly such a case might arise where two States adjoined on the shore of a bay and were thus both opposite and adjacent. He thought a drafting change was necessary in paragraph 3 of the Norwegian amendment, since the preceding paragraph referred to bilateral agreement, which could not apply to a single State.

39. He disagreed with the reasons put forward by the representative of Mexico for proposing (A/CONF.13/C.1/L.124) a limit of six miles. The International Law Commission's text of article 3 did not recognize twelve miles as the standard measurement of the territorial

sea, but as an absolute maximum. Hence, a six-mile limit based on the assumption that a territorial sea of twelve miles was normal would be unacceptable to the United Kingdom.

40. In the Portuguese amendment to article 12, paragraph 4 (A/CONF.13/C.1/L.101), the word to be inserted between the words "large-scale" and "charts" should be "navigational" rather than "sailing".

41. With regard to the Chilean proposal relating to paragraph 3 (A/CONF.13/C.1/L.123), he did not see how the same purpose would be served by deleting the paragraph as by inserting the additional text proposed as an alternative. His delegation would find it difficult to accept the alternative, which might have the effect of removing any limit on the width of straits that might become part of the territorial sea of one or two States. There must be some such limit, and he did not think the moderate limit of two miles proposed by the International Law Commission should be exceeded.

42. Mr. TUNCEL (Turkey) said that, although he would be prepared to accept the Yugoslav and Portuguese proposals to delete the reference to special circumstances, the Fourth Committee had adopted a text for article 72 which included such a reference. He believed that Yugoslavia intended to reinstate in the Plenary Conference its original proposal (A/CONF.13/C.4/L.16) to delete that reference from the text adopted for article 72. He deprecated the holding of plenary meetings before the First Committee had finished its work, so that the smaller delegations could not hear the discussion of the reports of other committees. He hoped that the General Committee would be able to remedy that situation.

43. He supported the Chilean proposal relating to article 12, paragraph 3 (A/CONF.13/C.1/L.123), but preferred the insertion of the additional text to the deletion of paragraph 3, since States possessing such straits would prefer to have some guarantee of their legal status. If the territorial sea of one State was wider than that of the other, the result might be to establish a zone as part of the high seas, which might lead to disputes and be greatly to the disadvantage of the coastal State. The safeguards for international navigation provided under article 17, paragraph 4, were sufficient, and it was necessary also to safeguard the security of the coastal States. If a crime were committed in an enclave of high seas where commercial or fishing vessels could anchor, the coastal State would have no jurisdiction.

44. Mr. STABELL (Norway) emphasized that his delegation's proposal contained two main substantive amendments: the first would apply the rule of the median line where States with opposite or adjacent coasts had territorial seas of different breadths; and the second would delete the reference to special circumstances. He agreed with the representative of the United Kingdom that a uniform application of the median line method of delimitation might have unfortunate results in a few cases, but so might any other general rule.

45. The merging of articles 12 and 14 was merely a matter of drafting; the substance of the two articles was so similar that they would be better combined.

46. The proposals by Portugal and Yugoslavia to delete the reference to special circumstances would meet his

delegation's wishes. He did not much mind whether the second sentence of paragraph 1 of the Norwegian proposal were adopted or, alternatively, the reference to special circumstances were deleted. However, whether the relevant sentence in the Norwegian proposal were adopted or not, in some cases a State might be entitled by historical title or prescriptive usage to go further in delimiting its territorial sea from that of neighbouring or opposite States than the median line would allow. Historic title or prescriptive usage might affect the application of many of the articles on the law of the sea, and for that reason he would prefer to see the reference to it in the Norwegian proposal maintained.

47. Apart from the substantive changes he had referred to, the aim of the Norwegian proposal had been to adjust the International Law Commission's text only as far as was necessary to merge articles 12 and 14.

48. In reply to the representative of Mexico, he said that the principle of prescriptive usage applied only to the line of delimitation between the territorial seas of two opposing or adjacent States.

49. In reply to the representative of Turkey, he said that a median line could be drawn to any length from the point where the land frontier ended. It was a mathematically defined line, beyond which neither of the two adjacent States could establish their territorial seas. There was no point in drawing it beyond the limit of the territorial sea.

The meeting rose at 12.50 p.m.

SIXTY-FIRST MEETING

Tuesday, 22 April 1958, at 3 p.m.

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

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

ARTICLE 12 (DELIMITATION OF THE TERRITORIAL SEA IN STRAITS AND OFF OTHER OPPOSITE COASTS); ARTICLE 14 (DELIMITATION OF THE TERRITORIAL SEA OF TWO ADJACENT STATES) (A/CONF.13/C.1/L.60, L.63, L.97, L.101, L.116, L.121, L.123, L.124, L.129, L.146) (continued)

1. Mr. STABELL (Norway), in reply to the remarks made by the United Kingdom representative at the previous meeting, said that a drafting change was necessary in paragraph 3 of the Norwegian proposal (A/CONF.13/C.1/L.97) to clarify its meaning. The paragraph should be revised to read: "The principle of the preceding paragraph shall also be applicable. . . ."

2. Mr. BOAVIDA (Portugal) accepted the United Kingdom representative's suggestion that the word "sailing" should be replaced by the word "navigational" in the Portuguese amendment to article 14 (A/CONF.13/C.1/L.101).

3. It had been suggested that the International Law Commission's text of article 12, paragraph 2, would produce absurd situations in cases in which two States