United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.1/SR.6-10

Summary Records of the 6th to 10th Meetings of the First Committee

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

Copyright © United Nations
2009

which had originally been valid and had remained so for a very long time — namely, that territorial waters comprised a belt of sea strictly limited in breadth. In those circumstances, some States might consider that the passage of warships ought to be subjected to certain conditions. Matters would, however, be very different if the territorial sea came to embrace anything like the areas which had been the subject of some recent claims. The effect in many cases, and in many areas of the world, would be to place impediments upon legitimate naval movements for which there could be no reason or justification.

38. He did not wish to make any specific comment on article 66 at the present stage. The point to which his government attached importance was that whatever rights the coastal State might be entitled to exercise within the contiguous zone, the status of the waters concerned would not thereby be changed. They were, and would remain, high seas. The contiguous zone was not part of the territorial sea of the coastal State. It was not under its sovereignty or even, in the proper sense, under its jurisdiction. The legal consequences of that fact implied a limitation both on the character and on the scope of the rights which could be exercised in the contiguous zone, and also on the manner of exercising those rights.

39. In conclusion, he hoped that it would be possible for all representatives to deal with the articles before the Committee from a largely technical and non-political point of view, with the object of introducing into them such improvements as seemed desirable in order to fit them to serve as a basis for a really satisfactory regime of the territorial sea, which would be clear and precise in its terms and generally acceptable, and which would reduce, if not eliminate, the possibilities of friction between the nations of the world.

The meeting rose at 12.55 p.m.

SIXTH MEETING

Thursday, 6 March 1958, at 10.30 a.m.

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

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. PETRÉN (SWEDEN), MR. VERZIJL (NETHERLANDS), MR. BOAVIDA (PORTUGAL), MR. MONACO (ITALY) AND MR. AYCINENA SALAZAR (GUATEMALA)

1. Mr. PETREN (Sweden), after paying a tribute to the work of the International Law Commission, recalled the wording of Article 13 of the United Nations Charter, and emphasized the difference between the " progressive development " of international law and its " codification ". In practice, the development of law and its codification could not easily be separated. Certain changes were almost always brought about involuntarily in codifying law, whereas the development of law must necessarily take existing law as a base. Any conventions which might be drafted by the Conference, whether they related to the codification or to the development of law, would therefore necessarily be of a mixed nature, containing both old rules of law and new ones. Those two kinds of law had not at all the same legal effect. The old rules, if they were based on customary law, bound all mankind independently of the new conventions to be concluded, whereas the new rules, which would come into being only through the conventions, would bind only those States which signed and ratified those conventions. Other States would not be bound to recognize or observe them.

2. The Swedish delegation therefore felt that the Conference should proceed with caution, and should not depart too radically from existing law. It would be useless to draft conventions that would have no chance of ratification and would bind only a small number of States, which would have to recognize the old rules where other States were concerned. The Swedish delegation recognized that opinion was far from unanimous as to the content of existing law. So far as the problem before the Committee was concerned, however, there was one principle which seemed to be unchallenged: that was the great principle of freedom of the seas, which must be upheld in the interest of all mankind.

3. Turning to the question of the territorial sea, he emphasized that its breadth must be fixed by international law. If States were free arbitrarily to extend their territorial sea, the fundamental rule that no State might subject any part of the high seas to its sovereignty would be violated. Although the International Law Commission had dealt with the breadth of the territorial sea in article 3 of its draft, that article was a description of the present situation rather than a draft law.

4. It was true that international practice in respect of the breadth of the territorial sea was not uniform. Doubtless, it was also true that international law did not permit the territorial sea to be extended beyond twelve miles; and it might be added that even the claims of certain States to have extended their territorial sea up to twelve miles had met with serious objections. It was also true that certain States had refused to recognize any extension of the territorial sea beyond three miles. The question whether that refusal was sound in law had not been decided by the International Law Commission, but it would have to be settled if a rule was to be laid down on the breadth of the territorial sea.

5. It was plain that the Commission's comments on the subject could not be translated into a rule of law forthwith. If the extension by a State of the breadth of its territorial sea to between three and twelve miles was not considered a violation of international law, it followed that such a breadth must be recognized by other States; for a rule of international law granting one State the right to a territorial sea of a certain breadth necessarily implied for other States the duty to respect that breadth.

6. The question was whether such a rule existed in international law. In view of the frequent disputes which had arisen, there might be doubts about the matter. It was unnecessary, however, for the rule to lay down a uniform limit. As the Commission had stated, international practice itself was not uniform. The three-mile limit, for example, had enjoyed neither the general application nor the preponderant authority which its

supporters tended to attribute to it. As the International Court of Justice had stated in its judgement in the Anglo-Norwegian Fisheries case: " The delimitation of sea areas has always an international aspect: it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law." [1]

7. In the opinion of his delegation, an authentic legal rule on the breadth of the territorial sea existed. It did not fix the breadth at any definite figure, but gave States the right to adopt any breadth within a certain maximum. There was a rule of customary law which, while not absolutely precise, was founded on a practice followed by the majority of States — namely, that no individual delimitation of the territorial sea should exceed a certain maximum. Sweden had always maintained that the limit of four miles, which it had adopted in the eighteenth century, should be regarded as the traditional limit in the same sense as the three-mile limit adopted by certain States and the six-mile limit by others. While some States laid claim to greater breadths, the six-mile limit was the broadest that had been claimed by a number of States over a long enough period to secure general recognition in international practice. His delegation felt that in drawing up the new rules, the Conference should not exceed that limit, which had been sanctioned by international practice, although it considered that in special cases a greater breadth might be admitted. The Swedish delegation therefore intended to submit an amendment to article 3 worded as suggested by Mr. François in his first report to the International Law Commission on the regime of the territorial sea (A/CN.4/53) — namely " The breadth of the [territorial sea] shall be fixed by the coastal State, but may not exceed six marine miles."

8. He would deal with the question of baselines in a later statement. Furthermore, he reserved his delegation's position on the question of the special interests of certain coastal States or territories which could claim their economic conditions to be such as to make fisheries their main, if not their only source of inome.

9. Mr. VERZIJL (Netherlands), after paying a tribute to the work of the International Law Commission, said that in principle his government supported the Commission's draft and was ready to accept it as a basis for the final solution of the matters under discussion.

10. It was not surprising that a country, two citizens of which — Grotius and Bynkershoek — had so ably defended the principle of freedom of the seas and the limitation of the breadth of the territorial sea, should still defend that traditional principle which had so greatly helped international maritime trade. His government was convinced that the principle of freedom of the seas was a rule of law of the utmost benefit to all mankind. No derogation from that law was admissible unless it was based on the need of coastal States to protect certain vital and special interests in the contiguous zone, or to ensure that the resources of the sea were not depleted by unlawful fishing methods or by exploration or exploitation of a discriminatory nature.

11. The problem of the territorial sea had two aspects: the delimitation of the territorial sea, and the content of its juridical régime. There were few more positive and sure standards, or any more generally accepted, than that which vested full sovereignty over the territorial sea in the coastal State, provided that it granted ships of all States the right of innocent passage and limited the exercise of its penal and civil jurisdiction to exceptional cases. That, he believed, was a definite codification of positive customary rules. Such was not the case, however, where the internal limitation and the breadth of the territorial sea were concerned. The Conference might therefore wish to begin by endeavouring to reach agreement on the least difficult aspect — that of the content of the juridical régime of the territorial sea from the standpoint of the right of passage — which might have the advantage of making it easier to deal with the other aspect of the problem — that of the situation and precise delimitation of the territorial sea.

12. The question of baselines was more controversial, although the International Court of Justice had found a solution which the International Law Commission had proposed as the general rule. The Commission had not, however, been able to suggest any positive solutions to the problem of gulfs, bays and estuaries bordered by more than one State. He recognized that the Conference ought to be able to do so in view of the voluminous documentation submitted to it. Incidentally, he wished to draw attention to an error in part V, section 2, of the geographical and hydrographical study prepared by Commander Kennedy (document A/CONF.13/15); in the opinion of the Netherlands Government, the international boundary between the Netherlands and Germany at the mouth of the river Ems followed the *talweg* of that river, and not the line decribed in the document.

13. His delegation was convinced that the only just solution to the problem of the regime of gulfs, bays and estuaries bordered by two or more States was to proclaim the principle of the free access of foreign ships to every port situated on their coasts, whether the water area in question included a central part which must be regarded as the high seas, or as being placed under the undivided co-sovereignty of the coastal States, or whether it was divided up into distinct territorial maritime zones.

14. The hoary problem of the breadth of the territorial sea gave rise to the greatest divergence of opinion. But one thing was certain: The delimitation of its breadth was not a matter for the domestic jurisdiction of the coastal State exclusively. The International Court of Justice had made that abundantly clear in the Anglo-Norwegian Fisheries case. If the Conference accepted the other legal principles formulated by the International Court, it should accept its judgement in that case too.

15. In the opinion of the Netherlands delegation, the traditional rule of three marine miles was still in force, and no State was obliged to recognize a greater extent, except perhaps in a few cases where certain historic rights were involved. The fact that various States had extended their maritime sovereignty by unilateral action had never created for other States the obligation to agree to such extension. His government could therefore approach the question of extending the breadth of the territorial sea from one standpoint only — namely, the

[1] *I.C.J. Reports, 1951,* p. 132.

timeliness of a possible examination of the existing law in the direction of an expansion of the territorial sea, adopted by common agreement by the great majority of States. From that point of view, however, his delegation did not see any sufficient reason for extending the breadth of the territorial sea, in view of the fact that recognition of the specific interests claimed for coastal States in an area contiguous to the territorial sea had been given by the International Law Commission in a number of specific proposals pertaining to the régime of the high seas. His delegation supported the solution reached by the Codification Conference of The Hague in 1930 with respect to the general recognition of a contiguous zone for the protection of limited interests and would not, therefore, revive the suggestion the Netherlands Government had made in 1896 — namely, that it should be agreed to extend the breadth of the territorial sea from three to six miles; at the end of the nineteenth century the question of recognizing such a contiguous zone had not yet arisen.

16. His government could not support the idea of the special authority of the coastal State over the waters known as " epicontinental ", since there was not the slightest legal or logical connexion between the regime of the continental or submarine shelf and that of its superjacent waters. The latter were merely part of the high seas, although the coastal State had the right to protect its installations for the exploration or exploitation of the sea-bed in such areas.

17. His delegation was not satisfied with the drafting of certain of the articles, in particular those relating to the right of innocent passage, to which it would submit amendments at a later meeting. It would also be submitting amendments to articles 9, 11, 13 and 15 to 25. He would also revert to the question of the settlement of disputes, for which the International Law Commission had suggested two procedures.

18. Referring to certain statements made at earlier meetings in which departures from existing customary law had been defended as belonging to the progressive development of international law, he said it should be remembered that there were also retrograde movements which did not deserve the epithet " progressive ". His delegation was convinced that in many cases the recognized traditional principles of law were of much greater value to all members of the international community than were certain new tendencies, and its work at the Conference would be inspired by that belief.

19. Mr. BOAVIDA (Portugal) said that his delegation considered that the articles on the law of the sea adopted by the International Law Commission at its eighth session provided an excellent basis for the Conference's work. It felt, however, that the draft should be carefully revised so that its application resulted in an equitable delimitation of sea areas, in freedom of access by sea and air to the territorial seas of every State and in the largest possible measure of freedom of the sea for all nations.

20. There was no doubt that the coastal State was the only one which was empowered to undertake the delimitation of its own waters. But it was plain that such delimitation could not be carried out in disregard of the interests of other States or if it interfered with the waters of other States either by reason of the breadth of the territorial sea laid down or by reason of the choice of straight baselines. The articles must stipulate that free passage — practical access subject to the juridical régime of the high seas — must be permitted. A balance would also have to be struck between the two conflicting concepts of the freedom of the high seas and the needs of coastal States.

21. Even if it were possible to overcome most of the legal difficulties created by recognition of unilateral extensions of the territorial sea as valid in international law, one difficulty would remain — namely, that the freedom of the seas would be considerably restricted for all nations if the territorial sea was extended to at least twelve miles from the baseline. It would be absurd to lay down that all States had equal sovereignty and equal jurisdiction in defining their outer sea boundaries unilaterally and then to expect any one State to be governed, in respect of its own waters, by considerations of general interest and not exclusively by its sovereign rights. Such a principle would mean the end both of the international law of the sea and of the freedom of the seas.

22. States should recognize that it was in the interests of all to keep their territorial seas as narrow as possible. The problem was: How narrow should they be ? Careful study both of the general interest and of local conditions would be required before an answer could be given to that question. In view of the established right of innocent passage, it was incorrect to maintain that the freedom of the seas would not be curtailed by the existence of extensive territorial waters. His delegation also felt that the contiguous zone should be as small as possible.

23. With regard to the delimitation of bays, the Portuguese delegation suggested that where a river entered a bay, the estuary up to the tidal limit should be considered as part of the bay. He would refer to that and other questions at a later meeting.

24. Mr. MONACO (Italy) said that, unlike the rest of the draft articles before the Conference, those referred to the First Committee for consideration were a matter of codification rather than progressive development. The Committee's task was to crystallize rules which had developed over the centuries rather than to create new ones.

25. That work of codification should be undertaken with the collaboration and consent of all the interested States, including those which in the past had played no part in forming the relevant rules of customary international law. It was also essential to keep in mind the various interests at stake; it would be better not to codify the law at all than to do so in a manner which failed to ensure the harmonious co-existence of the more important interests involved.

26. With regard to the territorial sea, the two most fundamental interests to be considered were those of the freedom of the seas and of the freedom of navigation; for the territorial sea might be considered as a kind of exception to the high seas, for which the principle that the latter constituted *res communis omnium* was limited to the advantage of the coastal State. At one time, the delimitation of the territorial sea had been essentially governed by considerations of physical power, but new considerations — economic, social and

public health — were now coming increasingly into play. One of the consequences of that trend had been the appearance of new legal concepts, such as those of the contiguous zone and the continental shelf.

27. Although they were, in effect, extensions of the domain of the coastal State, the contiguous zone and the continental shelf had no legal connexion with the territorial sea and did not affect its traditional régime, which was aimed at reconciling the interests of the coastal State both with those of other States and with the freedom of the seas.

28. The coastal State was required to exercise sovereignty over its territorial sea with due regard for the freedom of navigation. The codification of the régime of the territorial sea must therefore safeguard the right of innocent passage and make provision for the legal status of ships in the territorial sea. Where the interests of the coastal State and those of navigation clashed, precedence had to be yielded to the latter; whenever a doubt arose, an interpretation favourable to the freedom of navigation should prevail. For the relevant rules of customary international law had been evolved not to safeguard the interests of the coastal State, but rather to protect ships navigating in the territorial sea.

29. He then drew attention to the fact that internal waters were not mentioned in the articles relating to the territorial sea, but were referred to in article 26, which defined the high seas. The Committee might wish to consider that point.

30. The settlement of other fundamental issues such as the contiguous zone and the continental shelf would depend to some extent on a satisfactory settlement of the breadth of the territorial sea; consequently, if the Conference was to achieve success, members of the Committee must make the greatest possible efforts at conciliation.

31. The Italian Code of Navigation of 1942 fixed the breadth of the territorial sea at six miles. An Italian law of 1912 established a breadth of seven miles for purposes of fisheries, while a law of 1940 laid down a twelve-mile limit for customs supervision. But the fact that Italian law fixed the breadth of the territorial sea at six miles was no obstacle to international agreement on a uniform breadth. It was clear that such international agreement could only be reached by a process of give and take — a process made somewhat easier by the existence of the well-known three-mile rule of customary law, which could well serve as a starting point in the quest for a compromise. The problem of the breadth of the territorial sea must be considered from a world-wide viewpoint. The concept of regionalism, which had served well in other contexts, was irrelevant in the case of the international law of the sea. By its very nature, the sea knew no boundaries, and should unite peoples rather than divide them by territorial grouping.

32. With reference to the provisions of article 5, paragraph 1, he said that it would be desirable to revert to the traditional assumption that every island had its own territorial sea. Only where an island was situated immediately off the coast, was separated from it by a narrow passage, and was surrounded by waters navigable only by small vessels, could straight baselines validly be drawn from it to the mainland.

33. The Italian delegation considered that article 15, on the meaning of the right of innocent passage, should specify that the term " ship " included fishing vessels. Moreover, foreign fishing vessels crossing the territorial sea with their catch should not be deemed to have infringed the customs regulations of a coastal State merely because they were not in possession of documents establishing the origin and destination of the fish which they were carrying to their home port.

34. The provision of article 24 that the coastal State could make the passage of warships through the territorial sea subject to previous authorization or notification was not, in the Italian delegation's opinion, in accordance with current international practice.

35. The idea of the contiguous zone, set forth in article 66, could give satisfaction to certain legitimate interests of the coastal State in sea areas beyond the territorial sea. The Italian delegation felt, however, that article 66 did not give adequate powers to the coastal State, in particular, for the enforcement of its customs, fiscal, public health and immigration regulations. It was essential that the coastal State should be in a position to take all appropriate measures to deal with any infringement of those regulations even if committed or discovered in the contiguous zone itself.

36. The Italian delegation, setting aside all political considerations, was willing to join other delegations in a common effort to ensure that the Conference achieved constructive results.

37. Mr. AYCINENA SALAZAR (Guatemala) said that, in proclaiming the sovereignty of the coastal State over the territorial sea, the International Law Commission's draft was in full agreement both with the opinions of legal writers and with the practice of States. That sovereignty was subject to the limitations recognized by international law, such as those relating to innocent passage and the freedom of trade and navigation. Guatemalan law, for its part, made it clear that the territorial sea of Guatemala was subject to his country's sovereignty, although it did not actually use that form of words.

38. With regard to the sovereignty of the coastal State over the air space above the territorial sea, proclaimed in article 2, he pointed out that the Guatemalan Civil Aviation Act of 1948 made provision for that sovereignty. The Guatemalan Constitution, however, guaranteed the freedom of maritime and air nagiation with certain limitations.

39. As to the thorny problem of the breadth of the territorial sea, it was doubtful whether a generally accepted rule had ever existed. The United Kingdom Government had admitted in its comments that there was uncertainty on the subject (A/CONF.13/5, section 17) and the Swedish Government had stated that there was no uniform measurement of the territorial sea applying equally to all States (A/CONF.13/5, section 16).

40. Article 3, paragraph 2, of the draft meant in fact that the International Law Commission considered that international law permitted an extension of the territorial sea by the coastal State up to a maximum of twelve miles. The Guatemalan delegation considered that, in the light of modern technical progress, the

breadth of the territorial sea should be fixed at twelve miles. That distance would be a satisfactory compromise between the two extreme opinions, which respectively advocated breadths of three miles and 200 miles.

41. As long ago as 1934, Guatemala had enacted legislation establishing a territorial sea of twelve miles without provoking protests from other States. Its coast-line was such that a breath of twelve miles did not create any serious problems. It was significant that the Government of Canada had advocated a territorial sea of twelve miles because of the inadequacy of the three-mile rule (A/CONF.13/5, section 2). The Government of India had also expressed the view that the maximum breadth of the territorial sea should be fixed at twelve miles, with the rider that, within that limit, each country should be at liberty to fix a practical limit (A/CONF.13/5, section 9).

42. It was also important to consider the problem of access to areas which could only be reached by crossing the territorial seas of other States. That problem already existed with a territorial sea of three miles; the adoption of a breadth of twelve miles would naturally increase the number of such cases, but would not unduly complicate the general problem.

43. It would be desirable to state explicitly that the draft articles related to the law of the sea in time of peace only.

44. With regard to bays, article 7, paragraph 2, provided that, where the closing line did not exceed fifteen miles, the waters should be considered internal waters. The Guatemalan delegation considered that distance inadequate, and suggested that a figure of twenty-four miles, equal to twice the breadth of the territorial sea, be substituted for it; he recalled that, in the earlier draft adopted at its seventh session,[2] the International Law Commission had tentatively suggested a closing line of twenty-five miles.

45. Paragraph 2 of the commentary on article 16 was not acceptable as it stood. A State wishing to erect installations for the exploitation of the seabed and subsoil of the territorial sea could place them in channels or sea lanes essential for international navigation if it could show that alternative routes were available.

46. With regard to article 19, he pointed out that Guatemalan law regarded lighthouse and beaconage dues as charges for specific services rendered.

47. The sanction specified in article 25 for non-compliance with the regulations of the coastal State appeared unduly light, even though the article referred to warships, which enjoyed a considerable measure of immunity under international law.

48. If a breadth of twelve miles was adopted for the territorial sea, the contiguous zone would lose much of its importance. Perhaps the most reasonable course would be to provide for a contiguous zone extending three miles beyond a twelve-mile territorial sea.

The meeting rose at 12.45 p.m.

---

[2] *Official Records of the General Assembly, Tenth Session, Supplement No. 9,* chapter IV.

SEVENTH MEETING

Friday, 7 March 1958, at 10.30 a.m.

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

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. SUBARDJO (INDONESIA), MR. SEN (INDIA), MR. ITURRALDE (BOLIVIA), MR. BAGHDADI (YEMEN) AND LUANG CHAKRAPANI (THAILAND)

1. Mr. SUBARDJO (Indonesia) said that the law of nations must take account of the fact that since the Second World War former dependencies and colonies in Asia and Africa had achieved the status of sovereign States. The Conference must bear in mind the customs, usages and practices of States; the heritage of international law left by the more advanced nations; and the fundamental change in relations between the older nations and the States which had recently acquired independence.

2. After paying a tribute to the excellent work done by the International Law Commission, he said that his delegation wished to reserve its opinion on certain matters covered by the draft articles, one of which was the breadth of the territorial sea. The deliberations of the International Law Commssion had amply shown that the three-mile limit was untenable. He recognized that it would be advisable to adopt a uniform limit, but emphasized that in drafting a uniform rule, due account must be taken of the economic and security needs of certain states. His delegation considered that provision should therefore be made for departures from the rule, if necessary, in special circumstances. A sensible approach to the question of the rights of coastal States over the living resources of the sea off their shores would greatly facilitate a solution of the problem. The conclusions reached by the International Law Commission concerning these rights were encouraging.

3. The tendency for certain States to claim jurisdiction over wide areas of the sea was not a mere encroachment on the freedom of the seas, but the inevitable consequence of the growing dependence of nations on the resources of the sea for their food. It might be argued with equal cogency that claims to a " contiguous zone " or the " continental shelf " were encroachments upon the sanctity of the high seas. It should be remembered that the doctrine of the freedom of the seas had been developed as a reaction against the claims of certain nations to entire oceans, to the exclusion of other nations. The claims of nations to increased areas (whatever form they might take) should likewise be considered as an attempt to correct a situation felt to be indefensible — namely, that resulting from the application of the principle of freedom of the seas in a manner which did not take sufficient account of the needs and interests of coastal States. Indonesia, as an island nation, wished to see that principle applied in the light of modern needs and conditions.

4. He associated himself with the views expressed at the fourth meeting by the representative of Denmark

regarding straight baselines and the passage of warships through straits which constituted an international highway between areas of the high seas.

5. Referring to the delimitation of the territorial sea around a group of islands or an archipelago, he said that his government regretted that the International Law Commission had been unable to draft a provision on that matter. The Indonesian Government hoped that the text of article 10 would be supplemented by the addition of a provision regulating the question for groups of islands as a single geographic or economic unit, and covering cases in which such groups were situated in the middle of an ocean. A sub-committee should be set up to consider that very important problem.

6. The problems with which the Conference was faced were much more difficult than those considered at The Hague Codification Conference of 1930, and representatives would accordingly have to show great tolerance and understanding of one another's interests if general agreement was to be reached.

7. Mr. SEN (India) expressed his delegation's appreciation of the work done by the International Law Commission. His government considered that the framing of an international law of the sea must be something more than a mere matter of expediency or the reiteration of existing rules of conduct. There was a significant principle underlying the Commission's draft: It attempted to give effect to the growing realization that the sea, like all other natural resources, must be appropriated to the use of mankind for the benefit of all. It was that general realization by nations which, in the past, had been more fortunate than others in the struggle against nature, that had made international life possible and lightened the task of improving conditions in the underdeveloped areas. However, the endeavour to make the ocean the common property of all nations inevitably raised the question of the special interests of particular coastal States. The Conference's efforts would be worthy of success if it sought to strike a delicate balance between the claims of humanity as a whole, and the special claims of particular areas of the world.

8. In the past, the high seas had been regarded as common highways of commerce and navigation. The importance of appropriating them to other needs of mankind was not so clearly appreciated, and he was thankful to the International Law Commission for having paid so much attention to the exploration, exploitation and conservation of the resources of the sea, which were much more important at the present time than the freedom of navigation.

9. Referring to the breadth of the territorial sea, he pointed out that neither The Hague Codification Conference of 1930 nor the International Law Commission had reached general agreement on that issue. The Conference must therefore devise a formula commanding the greatest possible measure of agreement among States. India had adopted the six-mile limit suggested by the special rapporteur appointed by the International Law Commission, in his report to its fourth session (A/CN. 4/53). There were various reasons why his government believed that six miles was the most appropriate breadth: among them were the increased speed of coastal vessels and the more effective supervision by coastal States of a wider area of the sea off their shores. He could not agree with the United Kingdom representative that the three-mile limit was a fact of international law; but neither could he agree that a breadth of more than twelve miles should be recognized. The International Law Commission, in article 3, paragraph 2, of its draft, confirmed that international law did not permit an extension of the territorial sea beyond twelve miles.

10. The Indian Government believed it might be worth considering whether the Conference should in fact recommend any definite breadth for the territorial sea. It might be wiser to leave the coastal State some measure of discretion to fix, within a certain limit — say, twelve miles — a breadth which it found convenient for its particular circumstances. An article drafted along those lines might stand a better chance of gaining unanimous support.

11. With regard to such problems as the right of innocent passage, bays, historic bays and merchant vessels plying within territorial waters, his government was in general agreement with articles 1 to 25, but would have some reservations to make on particular articles. Where there were oil-bearing areas under the bed of the sea, he suggested that the more advancd nations should help the under-developed countries to exploit them for the good of all.

12. Turning to the question of nuclear test explosions over the high seas, he said that some people contended that such explosions not only interfered with the freedom of navigation on the high seas, but also destroyed and contaminated the living resources of the sea and caused extensive pollution of the water. While the question of pollution was still an open one, some scientists asserting that it occurred and others that it did not, there could be no doubt that there was widespread apprehension about the harmful effects of the tests on vast areas of the ocean. His government's views were well known. It was opposed to all such test explosions. Whether they took place over the high seas or over land, the danger was the same. The peace of the world could never be established by rival Powers creating such frightful weapons. But the Indian delegation had not yet made up its mind whether the present conference was the proper forum for the discussion of nuclear explosions (wherever they might occur); that was a matter for consideration. It might be better to leave the problem where it had been examined in the past as part of the general problem of disarmament — namely, with the First Committee of the United Nations General Assembly.

13. Lastly, he stressed that no rule should be framed which the more powerful States could turn into a tool of oppression. The law must be so drafted as to ensure to every area of the world a proper enjoyment of the sea as a great reservoir upon which mankind could draw for endless ages to come.

14. Mr. ITURRALDE (Bolivia) said that the legal equality of all States, great and small, was a fundamental principle of the international community. The observance of that principle had led to the recognition of many new States by the community, and thence to a great increase in the membership of the United Nations. The vast empires of the past were giving way, under the influence of the principle of self-determination, to new independent States. Any attempt to cur-

tail the freedom of those States by the use of political or economic pressure would be doomed to failure.

15. In regard to land-locked countries, the present conference was a remarkable advance by comparison with earlier conferences on maritime questions. Land-locked countries had sometimes participated in such conferences — for instance, the one which had prepared the Barcelona Convention of 1921. But the present occasion was the first on which all the land-lacked countries had attended a maritime conference. Such an event would have been surprising only two decades ago, but now it surprised no one. It was a corollary of the freedom of the seas that all States, including land-locked States, should have the right of access to the sea.

16. Maritime States had a vital interest in such matters as the régime of the territorial sea, the exploitation of the continental shelf and the conservation of the living resources of the sea. Land-locked States, for their part, were concerned with such questions as the right of innocent passage and the right to operate merchant ships flying their flags. The General Assembly of the United Nations had recognized the justice of their claims by including a clause dealing expressly with them in resolution 1105 (XI).

17. The principle of freedom of the seas demanded that the right of transit should not be denied to States which had no alternative but to cross the territory of a neighbouring maritime State to reach the sea. That right was in effect an extension of the right of passage of foreign ships through the territorial sea of maritime States. It was more far-reaching, however because it was applicable at all times and in all circumstances. It had also a wider spatial extrusion, because it applied not only to the territorial sea but also to the internal waters, to the rivers and to the land domain of the transit State. For example, ships flying the flag of a land-locked State in accordance with article 28 of the International Law Commission's draft would have the right to use not only the territorial sea, but also the internal waters of maritime States to gain access to the high seas.

18. The Bolivian delegation therefore considered that whatever the breadth of the territorial sea, the right of innocent passage through it must not be curtailed. As the United Kingdom representative had pointed out at the fifth meeting, the right of innocent passage was an independent right in no way subordinate to any other right. In consequence, a maritime State could not, by unilateral legislative action, in any way curtail the right of passage recognized by international law and usage. That rule applied with equal force to the right of transit enjoyed by a land-locked State through the sea, land or air domain of the maritime State which provided its natural and necessary means of access to the sea.

19. Although Bolivia did not possess seaports, his delegation would contribute wholeheartedly to the discussions and co-operate in devising fair solutions to the problems to be examined by the Conference.

20. Mr. BAGHDADI (Yemen) said that, with regard both to the territorial sea and to the high seas, it was necessary to strike a balance between the sovereign rights of States and the interests of navigation. With regard to the high seas, the draft articles seemed to be mainly concerned with safeguarding the freedom of the seas. While that freedom commanded respect, it could not be exercised without limitation; new weapons were now being used which endangered the security of the whole human race. There could be no doubt that nuclear tests were impermissible on the high seas. Similarly, a maritime Power had no right to use the high seas in order to threaten another State by a display of naval force.

21. The codification of the international law of the sea had political implications, and it was impossible to consider the problems involved from a purely technical point of view, as had been suggested by some previous speakers. It was necessary to specify that the articles applied only in time of peace. An explicit provision must also be inserted to the effect that the articles did not apply to internal waters. As they stood, the articles contained only two incidental references to such waters.

22. With regard to the breadth of the territorial sea, the view of the United Kingdom representative that the three-mile rule stood unchallenged was clearly incorrect. International law was created by the practice of States, and even if at one time the three-mile rule had been a principle of international law, the practice of States had now deviated from it. Even if it were argued that no new uniform rule had yet been evolved, it could not be denied that the three-mile rule no longer held.

23. The territorial sea of Yemen was twelve miles broad, and his delegation favoured the adoption of the principle that States were at liberty to fix the breadth of their territorial sea themselves up to a maximum of twelve miles. That would have the advantage of rendering the provisions on the contiguous zone unnecessary. Those provisions were unsatisfactory, in that they made no reference to the important question of security. Paragraph 4 of the commentary on article 66 explained that the Commission had not recognized special security rights in the contiguous zone because of " the extreme vagueness of the term ' security ' " ; that argument was untenable, because there were references to " security " in other parts of the draft, and it had not been suggested that the term was in any way vague in those contexts.

24. With regard to the type of instrument to be drafted by the Conference, his delegation favoured a three-fold approach. First, the Conference could adopt a declaration laying down certain general principles, which might include the right of a coastal State to delimit its own territorial sea up to a maximum breadth of twelve miles. Secondly, a draft convention could be prepared containing those rules which were suitable for regulation by treaty. Lastly, the Conference could adopt resolutions on matters of detail.

25. The International Law Commission's commentaries frequently contained provisions which ought to have been placed among the articles. For example, the final sentence of paragraph 1 of the commentary on article 10 contained the basic principle governing islands situated in the territorial sea; the proper place for that provision was in the article itself.

26. Lastly, he drew attention to the fact that the draft included references to questions of jurisdiction and arbitration, which it would be desirable to separate from the substantive rules. For whereas States might be prepared to accept those rules, many would hesitate to

subscribe to provisions on compulsory arbitration or jurisdiction, particularly since many States Members of the United Nations had not accepted the compulsory jurisdiction of the International Court of Justice.

27. Luang CHAKRAPANI (Thailand) said that his country was vitally interested in all questions relating to the law of the sea because it possessed two long coastlines. The east coast, bordering the Gulf of Siam, was 1,600 miles long, and gave Thailand access to the South China Sea and the South Pacific Ocean. The west coast, bordering the Indian Ocean, was 460 miles long.

28. His delegation considered that the International Law Commission had been right in stating in article 3, paragraph 1, that international practice was not uniform with regard to the delimitation of the territorial sea. The States favouring the three-mile rule were mostly maritime States, which either possessed or had possessed powerful navies. Those States were, however, in a minority; the majority of States claimed a territorial sea more than three miles broad. In the opinion of his delegation, if the Conference was to succeed in solving the problem of the breadth of the territorial sea, States would have to refrain from making excessive claims and confine their territorial sea to a reasonable breadth of not more than twelve miles, in accordance with article 3, paragraph 2, of the draft.

29. The laws of Thailand did not stipulate how far the country's territorial waters extended. The position of his delegation was therefore a flexible one, and it was willing to accept a limit of six miles in a spirit of compromise. It would not attempt to put forward arguments on the legal issues involved, because it believed that agreement could only be reached through a process of give and take. A clash of conflicting views could only impair that process of negotiation and compromise.

30. His delegation was interested in the question of historic bays, because of the Bight of Bangkok, which contained the estuaries of several important rivers and was bounded by the coast of Thailand on three sides. It was 53 miles across the mouth and penetrated 50 miles inland. It constituted a historic bay, and Thailand regarded the waters within it as internal waters.

31. Thailand wished to reserve a further six miles beyond the six miles of territorial sea for the exercise of exclusive fishing rights and for purposes of conservation. His delegation was in general agreement with the recognition of the special rights of the coastal State in a contiguous zone of twelve miles measured from the coast.

32. Lastly, he expressed his country's great interest in the question of free access to the sea of land-locked countries, since Thailand had a common frontier in the north with Laos, which was land-locked. His delegation's view was that the question must be regulated by bilateral or multilateral treaties between the States concerned, and that it was desirable not to refer to legal rights in that connexion. Thailand had reached agreement with Laos on the question of access to the sea, and it was hoped that, whatever the outcome of the Conference, no real friction would ever arise between the two countries on that account.

The meeting rose at 1 p.m.

EIGHTH MEETING

Friday, 7 March 1958, at 3.30 p.m.

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

Proposal by Mexico (A/CONF.13/C.1/L.1)

1. Mr. GARCIA ROBLES (Mexico) submitted the following proposal (A/CONF.13/C.1/L.1) on behalf of his delegation:

" *The First Committee*

" *Decides* to set up a working party consisting of the representatives of . . . which shall be instructed to:

" (*a*) *Draw up,* with the help of the Secretariat, a summary table of the present practice and positions of the States represented at the Conference with regard to the breadth of the zones of the sea contiguous to their coasts over which they claim:

" (*i*) Sovereignty; or

" (*ii*) Special rights in specific matters, such as customs, fishing, health etc.;

" (*b*) *Use* as sources for the aforesaid summary table the relevant documents and publications of the United Nations, supplemented and brought up to date with information obtained from delegations attending the Conference concerning their respective countries;

" (*c*) *Submit* the result of its work to the Committee within a period not exceeding ten days."

2. If the Committee was to achieve anything, he said, it must know where it stood to begin with. The proposed summary table would provide the necessary information.

3. He emphasized the significance of the word " present " in paragraph (*a*) of the proposal; the data on which the International Law Commission had based its draft were valid only up to October 1956, and the position of some countries might have changed since then. The appointment of a working party would, of course, be without prejudice to any decisions which the Committee might subsequently reach.

4. With regard to the composition of the working party, he thought that it should consist of four members, one from each of the four principal geographical groups; Latin America, Asia and Africa, Western Europe and the Commonwealth, and Eastern Europe. It would be better not to include any of the permanent members of the Security Council, for custom required that if one of them was appointed, all the others must also have seats. In his opinion, the smaller the working party the better would be its chances of completing the work satisfactorily and expeditiously.

5. The CHAIRMAN proposed that consideration of the Mexican proposal be deferred. In the meantime, he would consult delegations informally about the composition of the working party.

It was so agreed.

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. MUHTADI (JORDAN), MR. TABIBI (AFGHANISTAN), AND MR. GROS (FRANCE)

6. Mr. MUHTADI (Jordan) expressed his complete agreement with the observations made by the representative of Saudi Arabia at the third meeting of the Committee.

7. It might seem strange that Jordan, whose only outlet to the sea was at Aqaba, should have much to say about the juridical status of the territorial sea; but more than half of the population of its hinterland were refugees from the coast of Palestine, which was the Kingdom's natural seaboard. By an irony of fate, those who had displaced the original Arab population of the Palestinian coast were now sharing with Jordan the short length of coast left to the latter country at the head of the Gulf of Aqaba; but he hoped that that situation would prove transient.

8. He intended to state his government's views on particular aspects of the problem referred to the Committee at a later stage; for the present, he would confine himself to a few basic principles which, in his opinion, applied to the discussion of any branch of international law.

9. It was already clear that among delegations to the Conference there were two divergent views on the breadth of the territorial sea. The great maritime Powers wanted a narrow belt of sea not exceeding three nautical miles in breadth. The smaller nations wanted a wider belt of 12 miles, or even more. The reasons for that disagreement were not far to seek. The great maritime Powers were mainly concerned with maintaining the freedom of the high seas which they could utilize to their advantage; the smaller nations were mainly concerned with the defence of their own shores. There were similar differences of opinion concerning the right of innocent passage, national fishing rights and the continental shelf. All those differences depended on the angle from which a particular aspect of the general problem was viewed.

10. That was not surprising, because problems of international law were rarely a matter of academic theory; they were concerned with practical rules which the majority of States must observe if there was to be any semblance of order in the family of nations. It was no wonder that when such rules were being framed all States, no matter what their size or pretensions, should be guided by their vital national interests. But divergent interests necessarily led to divergent views and conflict between the rights claimed.

11. He could not subscribe to the theory propounded by the United Kingdom representative that rights under international law were exclusively independent of one another. In his own opinion, the outstanding feature of all rights under international law was their interdependence and subordination one to another. Unless that basic fact were recognized, it would be difficult, if not impossible, to reconcile the different views held by delegations.

12. To take but one example, the right of the great maritime Powers to navigate the high seas for purposes of trade should certainly be subject to the right of other States to defend themselves; to his mind, it was axiomatic that the right of self-defence took precedence over the right to trade and profit. Wherever two rights clashed, it was only fair and reasonable that the more vital right should prevail for instance, the right of innocent passage should in certain circumstances yield before the overriding right of self-defence. That was not a novel situation peculiar to the domain of public international law, but one often met with in private municipal law also. It sprang from a basic principle of what might be termed natural law: that wherever two rights came into conflict, the more fundamental, essential and vital should prevail.

13. The Committee would therefore be well advised to be guided in its work not by the principle of independent, exclusive rights, but by that of interdependent, correlated rights; in other words, by a system of the preponderance of interests and advantages, not one of absolute interest or advantage. Only by the bold application of such rational principles could the Committee hope to achieve success in its difficult task.

14. Mr. TABIBI (Afghanistan) said that although, being land-locked, his country was not directly concerned with the problem of the territorial sea, he felt justified in speaking because the issues to be discussed by the various Committees were often interrelated. He had come to the Conference in the firm belief that, as the representatieve of a land-locked State, he could genuinely help those more immediately concerned with the territorial sea to reconcile their conflicting opinions. His delegation fervently hoped that the bitter experience of The Hague Codification Conference of 1930 would serve as a warning. Any fresh failure to reach agreement on the question of the breadth of the territorial sea would not only spell disaster for the present Conference, but would also nullify all the efforts of the United Nations to codify and develop international law. Doubt would be cast on rules long accepted as valid, and all the future work of the International Law Commission would be prejudiced. On the other hand a success achieved by the Conference would constitute the first major step towards fulfilment of the purpose laid down in Article 13, 1 (*a*) of the United Nations Charter.

15. With regard to the delimitation of the territorial sea, he hoped that traditional rules which had lost their original justification would not be over-zealously defended. On the other hand, the law of nations must never be subordinated to selfish interests. No solution could be satisfactory unless it recognized both the practical needs of present-day society and the supremacy of the rule of law.

16. As a land-locked country, Afghanistan was particularly concerned with the right of innocent passage. That right was a natural right, and had been recognized by such different authorities as Grotius and Thomas Jefferson; in 1792, it had been recognized by the French Revolutionary Convention. Its true nature had been accurately described by the representative of the United Kingdom at the fifth meeting.

17. Lastly, he wished to clarify a point made at the previous meeting by the representative of Thailand.

Speaking of the right of access to the sea enjoyed by land-locked countries, that representative had mentioned the treaties in force between Thailand and its neighbour, Laos, and had suggested that such matters should be regulated solely by bilateral or multilateral agreements between the countries directly concerned. The Conference was, however, bound to discuss the subject, since the rights of land-locked States were implicitly recognized in articles 15 and 27 of the International Law Commission's draft. Furthermore, however necessary regional agreements might be, it was in the vital interests of all States, whether land-locked or maritime, that the right of access be governed by provisions accepted by the entire international community.

18. Mr. GROS (France) said that the French delegation had originally thought that a general debate might not be necessary. The volume of documentation, the quality of the International Law Commission's draft and the ample comments on it submitted by governments had seemed to justify that conclusion. In view of some of the statements he had heard, however, he felt it advisable to clarify his government's position.

19. The question which threatened to frustrate the whole work of the Conference, as it had done at The Hague in 1930, was that of the breadth of the territorial sea. The French Government believed that the judgement of the International Court of Justice in the Anglo-Norwegian fisheries case had eliminated all doubt regarding the juridical nature of territorial waters. The Court had clearly stated that such waters were " appurtenant to the land territory ",[1] and that " it is the land which confers upon the coastal State a right to the waters off its coasts ".[2]

20. Those statements supported the traditional delimitation of the territorial sea, and what had been true a few years ago had not now become false. The territorial sea being but accessory to the land domain, the latter remained the sole point of departure and the sole justification for the territorial sea's existence; and since " land ", in that context, must be understood in relation to the State's needs for the exercise of its normal powers as a State, for which only a narrow zone was necessary, it followed that the breadth of the territorial sea should be restricted. Farther out, States were only prompted to act by special interests, which could be adequately safeguarded by rights less extensive than complete sovereignty.

21. In those circumstances, the French Goverment failed to see why the three-mile rule — which did not deny the coastal State's special jurisdiction in the contiguous zone — should have suddenly become the object of derision. It firmly believed that a breadth of three miles was reasonable, and would maintain that position at the Conference.

22. Some speakers had suggested that article 3 of the International Law Commission's draft recognized the legality of any limit up to twelve miles. In reality, however, the Commission had merely recognized that the practice of States in the matter varied, and that some claimed a belt somewhat wider than the traditional three miles. The question of legality had been intentionally left open, and any decision on it rested solely with the Conference.

23. None of the arguments advanced against the three-mile rule had any justification in law. The problems of the conservation of living resources and of the contiguous zone deserved consideration in their own right, and it would be wholly wrong to eliminate them by an unwarranted extension of the territorial sea.

24. In dealing with the problem of the territorial sea, the Conference should maintain a clear distinction between the question of delimitation and that of the content of the juridical régime. The French delegation supported the suggestion of the Netherlands representative that the Conference should first concentrate on the juridical régime.

25. The French delegation could not depart from its frequently stated position that the delimitation of the territorial sea was not a matter pertaining exclusively to the domestic jurisdiction of the coastal State. No State could extend its sovereignty over the high seas by unilateral declaration and insist that other States, which had not expressly recognized that act of annexation, were bound by it. The waiving of a rule of international law established in the interests of the community of nations could never be presumed.

26. Those who contended that such an attitude was outmoded could not disturb the legal validity of rules recognized by the highest judicial organ of the United Nations. Nor could anyone sharing the views of such authorities as Scelle, Lauterpacht, Jessup and François seriously be accused of wandering in an intellectual wilderness.

The meeting rose at 4.45 p.m.

[1] *I.C.J. Reports, 1951,* p. 128.

[2] *Ibid.,* p. 133.

NINTH MEETING

Monday, 10 March 1958, at 10.45 a.m.

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

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. WILSON (NEW ZEALAND), MR. KRISPIS (GREECE), MR. MARTÍNEZ MONTERO (URUGUAY), MR. CARMONA (VENEZUELA), MR. KATICIC (YUGOSLAVIA) AND MR. OHYE (JAPAN)

1. Mr. WILSON (New Zealand) said that New Zealand was particularly interested in the problems before the Conference. Its economy depended completely on unrestricted sea transport by the safest and most direct routes. Furthermore, its coastal features were such as might justify the use of straight baselines in delimiting the territorial sea; its main islands were divided by a strait only twelve miles wide at the narrowest point, and its continental shelf extended in some places more than forty miles from the shore. New Zealand had a substantial fishing industry, but was forced to place restrictions on the activities of its own fishermen in the

interests of conservation. It also administered scattered islands in the Pacific, the people of which depended on locally caught fish for their staple source of protein.

2. New Zealand must therefore assert and protect its interests as far as international law might allow and lack of effective international measures might necessitate. Owing to its isolation, any assertion of New Zealand's interests was unlikely to conflict seriously with the interests of other countries. Nevertheless, it was not his delegation's object to state special and individual claims, but rather to indicate the broad lines on which it hoped that the problems before the Conference would be approached. The aims of codification and progressive development could not be realized unless the new texts were built securely on the massive foundation of existing law.

3. In regard to the breadth of the territorial sea, the International Law Commission had been able to give only general guidance. It had, indeed, stated its opinion that an extension beyond twelve miles was unlawful; but within that extreme limit of legal possibility the Commission had not been able to make a definite recommendation. It had noted that the right to fix a three-mile limit was undisputed, and that — although international practice varied — the right to fix broader limits had not been sanctioned by the general acceptance of States.

4. In order to perform its task in a responsible and effective manner, the Conference must apply one cardinal rule: The maximum breadth of the territorial sea should never jeopardize the freedom of the high seas. Other speakers had aptly stressed that the historic right of coastal States over the narrow seas which washed their shores was merely an appurtenance of the land. There also seemed to be a welcome measure of recognition that no extension of interest in the submerged lands of the continental shelf might encroach upon the freedom of superjacent areas of the high seas. It had become apparent, however, that the disputed question of the breadth of the territorial sea could entirely overshadow the prospects of fruitful discussion.

5. The danger could only be averted by the exercise of restraint. There was no doubt that the traditional three-mile rule was the highest common factor of unchallenged practice. Consequently, whatever weight was attached to departures from that practice, the greatest weight should always be given to the authoritative traditional rule itself. There could certainly be no progress if the principle of freedom of the high seas were reduced to the status of an international servitude.

6. One disturbing feature of the situation was that some active opponents of the three-mile rule explained their positions in terms of a simple clash of interests between the great maritime Powers and others. Similarly, the whole body of received international maritime law had been portrayed as an instrument of the maritime Powers. Those seemed highly dangerous arguments. They would lend themselves to almost any assertion of national interest at the expense of the whole community of nations, and they struck at the very conception of codification and progressive development. Consequently there would be a better prospect of reaching agreement about the breadth of the territorial sea if every effort were first made to explore and resolve other problems.

7. The quality of the International Law Commission's draft could be attributed to that body's observance of three cardinal principles: respect for the received law; consciousness of the need to take account of new factors and interests; and recognition of the fact that nations were interdependent and that the resources of the sea were a common heritage.

8. The importance of respect for the received law, and the care with which it had been assembled by the Commission, could not be better exemplified than by reference to the Commission's proposals on the right of innocent passage. The rules relating to that subject clarified the nature of territorial sovereignty over coastal waters and invited contrast with the law of the high seas. The Commission had also recognized that the right of innocent passage was a condition precedent to the very existence of the territorial sea, and that in the narrow belt of the territorial sea there was a balance of rights and obligations between the coastal State and States whose ships exercised the right of passage. On the high seas the question of balancing those rights and obligations did not arise, as the right of navigation was unconditional. It was not enough, however, that the principle of freedom of the high seas should occupy its present central position in the Commission's draft. That provision would be illusory, and there would be a clear breach with existing law, if ill-judged encroachments on the area of the high seas were allowed.

9. The problem of avoiding such a breach was in part answered by the Commission's draft articles on conservation, which underlined the importance of increased measures of international collaboration to take account of new interests and to reap an optimum harvest from the sea. The Third Committee's study of that matter should assist the First Committee in reaching decisions. There might even be circumstances in which the real interests of coastal States were entitled to prevail over the freedom of the high seas; but, equally, it could not be overlooked that other States had a strong claim to share in high seas resources on which their citizens had long depended.

10. Whatever the balance of equities, sound decisions would not be reached through adherence to the thesis that the Law of the Sea was the creature of the great maritime Powers. Such an allegation was wholly at variance with the facts of New Zealand's own experience. Though not herself an important maritime power, New Zealand felt that she had an equal interest in preserving the laws and usages which had governed maritime commerce up to the present.

11. The outcome of the Conference might well depend on the support given to the last of the guiding principles underlying the International Law Commission's draft — namely, the principle of the interdependence of States. The ancient legal concept of the high seas as *res communis* was perfectly in harmony with the aims and interests of the United Nations. Far from being outmoded, the cardinal principles of the old maritime law of nations seemed startlingly modern and liberal in conception. Scientific and technological discoveries had revealed new sources of wealth, but modern developments in international co-operation had brought about an equally important change. Unless the United Nations principle of interdependence were kept in mind, the

prospects of the Conference would be seriously endangered.

12. Mr. KRISPIS (Greece) congratulated the International Law Commission on the outstanding work it had accomplished, as a result of which problems of international maritime law were being discussed under more favourable conditions than at The Hague Conference of 1930. The Commission's work, which embodied the views of eminent lawyers, was bound to influence both the theory and the practice of law, whatever the outcome of the Conference.

13. The numerous and complex problems before the Conference were of the greatest importance to Greece. It was not easy to differentiate between pure codification — a mere re-statement of law — and the adoption of new rules of law. That was particularly true of the vast field of international maritime law. An unsuccessful attempt at codification might well destroy agreement that was supposed to exist on specific matters. That had, perhaps, happened at The Hague Conference, in regard to territorial waters.

14. Article 3 of the Commission's draft differed from the others in not containing a legal provision, and had only been accepted after the defeat of many other proposals. Article 27 re-stated the existing law on the freedom of the high seas ; some States believed that it was wrong to include freedom to fish among the components of the general freedom, and had put forward large claims to fishing in vast areas. If they were right, the whole sea might eventually be divided up for fishing purposes, and in their opinion there was no legal obstacle to such division; but that was surely not a correct interpretation of existing law. In fact, the principle of freedom of the high seas had apparently originated in *jus communicationis*; neither Grotius nor any contemporary of his had given any thought to fishing, which at the time had been at a primitive stage. Changes in the *occasio legis* were not in themselves a ground for changes in the law, nor did the removal of the *occasio legis* in itself destroy the law. In either event, the law could only be amended through the proper machinery, which in the case of international law was convention or custom.

15. Any change in the rules concerning the territorial sea would inevitably affect those concerning the high seas; and to the question whether there was any reason for extending the territorial sea at the expense of the high seas, his delegation would unhesitatingly reply that the high seas had the prior claim because they served the entire world, and freedom to use them was constantly growing in importance owing to the expansion of maritime and air traffic and of fishing. Greece considered it vital not to undermine the freedom of the high seas in the name of the progressive development of law. If part of them were appropriated under various pretexts, there would be no limit to the encroachment. The freedom of the high seas would suffer even through approval of the Commission's draft articles. For example, adoption of the straight baseline system put forward in article 5, and of article 7, paragraph 3, would give States vast areas previously considered part of the high seas. His delegation would favour a length of no more than ten miles for the closing line of bays regarded as internal waters, as was advocated by some countries. Further encroachment on the high seas would result from article 12, paragraphs 2 and 3; his delegation therefore believed that those provisions should be deleted. It was also opposed to the concept of the contiguous zone (article 66), and could only consider such a provision if a very narrow breadth were accepted for the territorial sea.

16. Some of the provisions dealing with fishing on the high seas and the continental shelf were bound to affect the freedom of the high seas; but some were acceptable as constituting real progress. However, exclusive fishing rights conferring some kind of ownership over the fish might lead States to claim exclusive rights over fish spawned within their territorial sea and moving into the open sea.

17. Similarly, security considerations might encourage States, under the ridiculous fiction of the so-called territoriality of ships, to claim a territorial sea of unknown extent around their ships wherever they might be.

18. Although Greece was neither a great nor a prosperous Power, it did not regard as valid the criticism that some States which had the means exploited maritime resources a few miles off the coasts of poorer countries. Greece, as a champion of democracy, believed in equality of opportunity and in the need for the sea to be open to all. The same applied to freedom of navigation and freedom to lay submarine cables and pipelines.

19. One of the pretexts on which States were attempting to extend their claims over the territorial sea was a self-imposed and, they argued, inescapable duty to protect the living resources of the sea off their coasts. Such an attempt to enlarge State frontiers at the expense of the community was difficult to understand in an age when countries were becoming more and more interdependent. If the living resources of the sea really required protection against extinction, it must be undertaken by an international agency with limited legislative but broader administrative powers, and with some judicial powers — unless the task were entrusted to the International Court of Justice, which would be preferable. The international regulation of whaling could serve as a useful model.

20. The extension of the coastal State's rights for conservation purposes would lead to unacceptable consequences: for instance, the outer limit of the area in which they were exercised would never be definitely established if the decision were left to the unilateral judgement of the coastal State. In addition, unilateral conservation regulations made by the interested States would illegally affect the vested rights of other States whose nationals were accustomed to fishing in the area, as had been shown by the Onassis case. There was no validity in the argument that States not possessing a continental shelf should be compensated, for that lack was not the sole injustice in the distribution of wealth throughout the world.

21. For those reasons, Greece believed that the freedom of the high seas should be safeguarded as fully as possible, in the interests of the world and of the development of international relations and trade. It stood firmly for the three-mile limit of the territorial sea, although according to its own municipal law the breadth of Greek territorial waters was, in principle, six miles.

Nevertheless, though a poor country greatly dependent on the sea for food supplies, Greece was ready to amend that law and revert to the three-mile limit if general agreement were reached upon that breadth. If Greece extended its territorial sea to twelve miles, which according to article 3 of the Commission's draft would not be contrary to international law, it would be closing the whole of the Aegean Sea to the international community.

22. Whenever a coastal State exercised its right to board a foreign vessel in the cases enumerated in article 20 of the Commission's draft, it should proceed with the greatest circumspection and with due regard to the interests of navigation. The consul or representative of the country whose flag the ship flew should be invited to be present. Greek procedure accorded foreign vessels the most hospitable treatment, but such courtesy should not be left to the good will of the coastal State.

23. It would be preferable to leave the question dealt with in article 21 (arrest of ships for the purposes of exercising civil jurisdiction) to be regulated by the Brussels Convention of 1952 for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships. His delegation would raise that matter in the Second Committee.

24. His delegation had come to the Conference with an open mind and was prepared to compromise in order to reach agreement. If the Conference failed, there was a danger that the law of the sea would not have moved with the times.

25. Mr. MARTINEZ MONTERO (Uruguay) stressed Uruguay's maritime traditions and the importance of sea communications to its economic life. Uruguay hoped that the new rules to be formulated would safeguard the interests of all States and not merely reflect the views of a minority; but if the objectives of the Conference were to be attained, each State would have to make concessions and limit its demands to what was just and reasonable.

26. The most important provisions in the International Law Commission's draft were those relating to the geographical definition of the territorial sea. The rule formulated by Grotius which had never enjoyed universal recognition, was now only of historical interest. No law could remain static, and rules of customary law lost their binding force as soon as the factors that had brought about their acceptance no longer applied. That was precisely why the International Law Commission had laboured for eight years to prepare the draft now before the Conference. Unless the need for devising new rules to meet new requirements were duly recognized, all the efforts already made would prove vain.

27. The problem of the breadth of the territorial sea was inextricably linked with the facts of modern international life. One of those facts, long recognized, was that control and conservation measures benefited not only the coastal State, but the entire international community. As an example, he cited the measures taken by the Uruguayan Government to conserve the country's stocks of seals, which had been tragically depleted in the seventeenth and eighteenth centuries.

28. The Uruguayan economy depended predominantly on cattle, and the abundance of meat had influenced the feeding habits of the population. In the future, however, if the people's diet was to be properly balanced and export orders fulfilled, greater use would have to be made of fish, and the plan made could only be satisfactorily carried out if there were some generally-recognized rules governing fishing. That was why the Uruguayan Government — mindful of recent unpleasant incidents in the Pacific and the Caribbean, which seemed to suggest that no such rules existed — hoped that every effort would be made to create a new pattern in international life and to regulate conservation in an equitable manner.

29. Some argued that the need to conserve natural resources was not a sufficient reason for extending the territorial sea, because the importance of conservation was already sufficiently realized by all the States concerned. Unfortunately, the wealth of the sea needed protection not against States but against individuals. Nor could he accept the argument that a narrow territorial sea would give each coastal State a greater opportunity to exploit the high seas. The resources of the major maritime Powers were so vast that other States would soon find it extremely difficult to provide for their minimum needs.

30. It had also been stated that the acceptance of a broader territorial sea would hinder freedom of navigation. Respected authorities had shown, however, that even if the territorial sea were extended in every instance to the outer limit of the continental shelf the total area of the high seas would only be reduced by 7.1%. Consequently a modest relaxation of the three-mile rule would have virtually no adverse effect. In some parts of the seas, especially in certain inter-oceanic waters, an extension of the territorial sea would admittedly change the conditions, but due respect for the right of innocent passage would ensure that no State suffered inconvenience. Difficulties might arise in time of war, since the rules could obviously apply only in time of peace.

31. Those who argued that every mile added to the territorial sea would be an intolerable encroachment on the high seas should consider whether the freedom of the seas was not in fact being more seriously threatened by their own reluctance to seek a compromise.

32. He welcomed the International Law Commission's article 17, which authorized the coastal State in certain circumstances to suspend the right of passage through its territorial sea; and article 24, which confirmed that no foreign armed force might enter a State's territorial domain unless expressly permitted to do so.

33. Lastly, he pointed out an error in the Secretariat's memorandum concerning historic bays (A/CONF.13/1). It was suggested in paragraph 43 that the River Plate estuary was claimed as an historic bay solely by Argentina. In fact, the waters of that estuary washed the shores of both Argentina and Uruguay, and both had exercised full sovereignty over them since their independence.

34. Mr. CARMONA (Venezuela) said that his country's position with regard to the territorial sea had already been clearly stated at the Inter-American Specialized Conference held at Ciudad Trujillo in 1956, and had been reaffirmed at the eleventh session of the General

Assembly;[1] he would therefore confine himself to a brief summary of its views.

35. The régime of the territorial sea was clearly the crucial question before the Conference. It involved numerous issues of customary law and international practice which would certainly prove extremely difficult to co-ordinate and reconcile. The first problem was the exact nature of the rights enjoyed by a State in its territorial sea. At one stage, it had been contended that the coastal State enjoyed only limited powers in that zone, but today its sovereign rights were no longer seriously disputed. The difficulty still subsisting arose out of the International Law Commission's statement, borrowed from The Hague Conference of 1930, that sovereignty was exercised subject to the conditions prescribed " in these articles and by other rules of international law ". That was an excessively vague statement and nobody had successfully specified what those " other rules of international law " might be. The difficulty might be overcome by limiting the second paragraph of article 1 to the statement that " This sovereignty is exercised subject to the conditions prescribed in these articles."

36. The most serious differences of opinion centred round the question of the breadth of the territorial sea. The International Law Commission's draft merely recognized the lack of uniformity in the practice of States. Some countries with great maritime traditions still maintained that there was an international rule fixing the breadth of the territorial sea at three miles, but that opinion was now unacceptable to the majority of States. In practice, one group of countries claimed three miles, another four miles, another six, while yet other countries asserted that their territorial seas extended for nine or even twelve miles. The Venezuelan Government's views on that point were still the same as at the Inter-American Specialized Conference at Ciudad Trujillo — namely, that there could be no denying the lawfulness of the demand made by the majority of American States for an extension of their territorial sea. The classical three-mile rule was no longer consistent with reality, and legal rules had to develop at the same pace as modern technology. The question of the breadth of the territorial sea needed thorough revision in the light of modern economic and security requirements. Those were the considerations underlying the Venezuelan Act of 1956 on the territorial sea, continental shelf and protection of fisheries and air space, which laid down that the country's territorial sea was twelve miles broad. The Venezuelan delegation wished it to be clearly understood that it would never agree to the outmoded limit of three miles. It could not overlook either the new developments in legal thought or the overriding political interests of certain countries.

37. With regard to the question of straight baselines, the Venezuelan Government found the International Law Commission's proposals generally acceptable, but thought that the wording of article 5 was dangerously vague: It did not specify who would decide that an indenture was sufficiently deep to justify a special régime. The rules laid down by the International Court of Justice in the Fisheries case [2] applied solely to the facts under consideration at the time, and were binding only on the parties to the dispute. A more flexible rule adaptable to the special circumstances of each particular case would be more satisfactory.

38. Venezuela had no special interest in the problem of bays, as all its own bays were within the limits recognized by classical international law. It could not, however, view with indifference the position of countries which needed to protect their rights in bays or gulfs not at present of a historic character: Why should historic rights prevail in international law ? Venezuela could never accept the thesis that rights could be acquired by occupation in international matters. There should be no recognition of a prescriptive title to the detriment of new countries now in full process of development.

39. His government also believed that in areas where there was a chain of islands along a continental coast, the coastal State enjoyed certain special rights. He reiterated his government's view that the median line method of delimiting the territorial sea was wholely inappropriate, and that each case should be determined on its merits. Formulae of a general character would only give rise to unending disputes.

40. Lastly, his government had no objection in principle to the provisions regarding the generally recognized right of innocent passage through territorial waters. The question whether that right should be extended to warships should, however, be examined in greater detail.

41. Mr. KATICIC (Yugoslavia), after paying a tribute to the Commission for the vast amount of work it had accomplished, to governments for their helpful comments and to the United Nations Secretariat, said that his delegation had some reservations of principle concerning the phrase " other rules of international law " used in articles 1, 15 and 17. Those other rules should either be inserted in the text or specified in more precise terms ; if not, the phrase should be deleted.

42. The people of his country had long ago fought for the freedom of the seas against the claim to a *mare Adriaticum clausum,* and in past centuries the great scholars of international law had confirmed the legality of that stand. But it was precisely because Yugoslavia was so attached to freedom and equality for all nations on the seas that it recognized that unlimited freedom without obligations could easily be abused. The essential problem in balancing the interests of all nations against those of coastal States was, of course, that of determining the régime and breadth of the territorial sea.

43. On that point he was opposed to the thesis of the United Kingdom representative that the right of innocent passage existed independently side by side with the sovereignty of the coastal State. On the contrary, sovereignty was the rule and the right of innocent passage was the exception; it was the coastal State which investigates whether passage was innocent and, in the cases mentioned in article 17, decided whether or not restrictive measures should be taken. Once the sovereignty of the coastal State in its territorial sea had been

[1] See *Official Records of the General Assembly, Eleventh Session, Sixth Committee,* 493rd meeting.

[2] See *I.C.J. Reports, 1951,* pp. 127 et seq.

recognized, it was not possible to uphold that in doubtful cases the interests of navigation in that zone prevailed over the interests of the coastal State. In the Mediterranean, incidents had been caused by fishing vessels which, under the pretext of innocent passage, had fished in the territorial sea; some provision against such abuses of the right of innocent passage was essential.

44. His delegation greatly regretted that so far agreement on the breadth of the territorial sea had proved impossible. Nevertheless, it was obvious that some compromise must be reached in order, among other things, to define the obligations of coastal States and delimit the zones of their competence. The statement made by the Commission in article 3 of its draft might be of some help. The sea was a link between countries, and modern economic and technological developments made it more and more necessary to reconcile the major claims of sovereignty and of *jus communicationis*. His delegation would support any proposal leading to compromise on a reasonable and universal rule acceptable to a large majority, but it did not believe that the three-mile limit was a reasonable rule.

45. Greater flexibility would be obtained in negotiation on the breadth of the territorial sea if delegations would refrain at the outset from relying on juridical arguments. His government had reached the conclusion that in fact each country was the best judge of the width of its territorial sea. Consequently, if no uniform limit could be agreed on, States should at least be authorized to determine the breadth themselves within certain limits to be discussed; article 3 might serve as a starting point. Unfortunately, the insistence of certain States on the three-mile rule, which had not only been refuted by international practice but by the Commission itself, was as harmful as were the more extravagant claims. He hoped that in any event agreement could be reached independently of whether it expressed the existing law or was a decision *de lege ferenda*. The establishment of a contiguous zone was closely linked with the breadth of the territorial sea, since the extent of the former and the powers exercised in it by the coastal State would largely determine the decision on the latter. A maximum for the two together might therefore be laid down in any case, and would be a step towards unification.

46. If the coastal State was to determine the breadth of its territorial sea, it would also be under the obligation to do everything necessary to safeguard navigation, and that obligation should be stated explicitly. His delegation would therefore submit an amendment in that sense.

47. In principle, his government agreed with the system of straight baselines adopted in article 5 and had applied it in its municipal law to numerous islands and indentations. It had accordingly been gratified at the confirmation of that system by the International Court of Justice in the Anglo-Norwegian fisheries case.[3]

48. He welcomed the decision to discuss the contiguous zone in conjunction with the territorial sea because they had features in common and because the coastal State exercised sovereignty in those areas by reason of its being the coastal State. Technical and administrative progress and growing needs had imposed the inexorable necessity of a contiguous zone just as they had constrained States to enlarge their territorial sea. Thus it might be possible to amalgamate the two if a wide enough belt for the territorial sea were accepted, for it would then be possible to dispense with a contiguous zone. Yugoslavia with its territorial sea of six miles performed, in a contiguous zone of four miles, functions connected with security, police, customs, health, emigration and immigration, as well as undertaking the exclusive exploitation and regulation of fisheries; it was thus in the same position as other countries which supported an extension of the territorial sea or exclusive fishing rights in certain zones. That was why it proposed that article 66 be worded in a manner consistent with those interests, which would, moreover, make it possible to punish infringements of the regulations governing the contiguous zone.

49. He was glad to note that most of the statements made so far fell within the general framework of his own observations and that even the few contrary opinions offered hopes of an agreement provided that realities were taken into account in a conciliatory spirit. His delegation, convinced as it was of the need for finding a reasonable but precise definition of the rights and duties of coastal States, would do its utmost to contribute to a successful outcome.

50. Mr. OHYE (Japan) said that his delegation was ready to do its utmost to make the Conference a success. Japan, with a population of some 90 million, had very little arable area and meagre natural resources; consequently, its people depended heavily upon the sea for their livelihood. A vast number of them, mostly small-scale fishermen, were engaged in taking the Japanese catch of some 5 million tons a year, or nearly 20% of the world total. As the livestock industry was naturally restricted for geographical reasons, almost 90% of the country's requirements in animal protein came from the sea. In addition, the fishing industry was important to Japan's foreign trade because part of the fishery products was exported to pay for imported foodstuffs and raw materials. Shipping was one of Japan's most important industries, and though it had suffered seriously during the war, it had since so far recovered that the gross tonnage had reached some 4,500,000 tons at present. Thus, the Japanese Government was keenly interested in the law of the sea.

51. The régime of the territorial sea came within the domain of international law, and its breadth could only be determined by that law, so that the claims of individual States to fix the breadth unilaterally could have no legal validity; if such practices were permitted they would inevitably lead to anarchy. The International Court of Justice had expressed a similar opinion in its judgement on the Anglo-Norwegian fisheries case, when it had declared that: "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law."[4]

[3] See *I.C.J. Reports, 1951*, pp. 130 *et seq.*

[4] Ibid., p. 132.

52. The freedom of the high seas had been established for the welfare of mankind, and recent claims by coastal States over vast areas, extending in some cases to 200 miles or more, were inimical to the progress of the international community as a whole. That was also true of the extravagant claims to areas within large indentations as internal waters.

53. The Japanese Government held that the three-mile limit, which had been sanctioned in practice by a great majority of States, and was embodied in many international treaties, was an established rule under international law, and that extensions beyond that limit could not be regarded as generally recognized. The primary purpose of the Conference was codification and, although it must give due thought to the changes necessary for promoting the progressive development of international law, it should always bear in mind that any departure from existing rules must only be admitted if it contributed to that development and was in the interests of the entire community. The extension of the territorial sea would mean an encroachment upon the high seas, which were open to all nations, and such a course would run counter to the development of international law; hence he sincerely hoped that agreement would be reached on a uniform three-mile limit.

The meeting rose at 1.05 p.m.

TENTH MEETING

Tuesday, 11 March 1958, at 10.30 a.m.

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

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. DEAN (UNITED STATES OF AMERICA), MR. PERERA (CEYLON) AND MR. BARNES (LIBERIA)

1. Mr. DEAN (United States of America) said that the Conference afforded all nations of the world a new opportunity to bring order out of some of the chaos prevailing in regard to the law of the sea as well as to advance the development of international law. The Conference would have to tackle complex and sometimes controversial problems, which could only be solved by goodwill and co-operation on the part of all. The breadth of the territorial sea and the contiguous zone were the crucial issues, the settlement of which would constitute a milestone in the development of international law.

2. The United States with its immense coast-line, with its insular territories and with its large merchant fleet was keenly interested in the problems before the Conference. Its views derived from historic practice and from experience with rules which had stood the test of time; those views had been arrived at with due regard to common sense and to the sometimes conflicting requirements of stability and change.

3. The Committee should bear in mind that whatever was added to an individual State's territorial waters must inevitably be subtracted from the high seas, the common property of all nations. For example, if islands were treated as an archipelago and a twelve-mile belt was drawn round the entire archipelago according to the straight baseline system, then areas of the high seas formerly used by ships of all countries would be unilaterally claimed as territorial waters or possibly even internal waters. It would be a misnomer to describe such restrictions on the free use of the high seas as " progressive " measures. His delegation was ready to listen with understanding to the views of others, but hoped that the views of the maritime Powers would likewise receive full and fair consideration.

4. The United States position regarding the breadth of the territorial sea was determined by its consistent support of the universally recognized doctrine of the freedom of the high seas, no part of which could be unilaterally appropriated by any one State without the concurrence of the others. In an age of improved methods of transport and communication it was vitally important that the international sea highways and the superjacent air should not be brought under the restrictive control of individual States, however worthy their motives. That doctrine in its widest sense was the most equitable for all States, whether large or small, and was no mere historic relic. Freedom was perhaps of even greater importance to small States than to large ones, and many small States still adhered to the three-mile rule, which had originated in their desire for equal rights on the high seas.

5. He proceeded to discuss three of the freedoms of the high seas proclaimed in article 27 of the International Law Commission's draft: freedom of navigation, freedom of fishing and freedom to fly over the high seas.

6. Freedom of navigation meant essential liberty for maritime transport and communication unfettered by the requirement of consent by any foreign State. Fishing communities owed their livelihood, and many countries their economic strength, to that freedom. Merchant fleets did not only yield commercial profit ; they were also the only means of transporting essential commodities to their markets; consequently, freedom of the high seas was as important to sellers as to buyers. The question the Committee should ask itself was: Would a three-mile limit or a wider breadth ensure the maximum freedom of navigation consistent with modern requirements ? It was idle to contend that because of the existence of the right of innocent passage, freedom of navigation did not suffer by an extension of the territorial sea. His delegation attached the greatest importance to that historic right, which should form the subject of an express declaration to be adopted by the Conference; but the right in itself was a recognition of the fact that freedom of navigation was restricted by the coastal State's sovereignty over the territorial sea. If, as was argued, innocent passage was guaranteed as long as it was not inconsistent with the sovereignty and security of the coastal State, it was surely a qualified right in no way equivalent to the freedom of navigation exercisable on the high seas, a portion of which would inevitably be enclosed by the enlargement of the territorial sea.

7. One of the merits of the three-mile limit was that it was safest for shipping. If the territorial sea were extended to twelve miles numerous difficulties would be encountered. Many landmarks still used for visual piloting by small craft were not visible at a range of twelve miles; only 20% of the world's lighthouses had a range exceeding that distance; radar navigation was of only marginal utility beyond twelve miles; and many vessels (which frequently did not wish to enter the territorial sea) did not carry sufficient cable or appropriate equipment to anchor at the depths normally found outside the twelve-mile limit.

8. Economic dislocation would inevitably follow if merchant ships, in order to avoid extended territorial seas, had to make longer and more costly runs. And the higher costs would inevitably be borne by the countries depending upon seaborne commerce for their economic existence. In addition, any extension of the breadth of the territorial sea would mean an increase in the cost of patrolling the larger area. In the case of a country with a long coast-line, extension of the territorial sea from three to twelve miles would entail additional expenditure of perhaps hundreds of millions of dollars annually.

9. One further objection to extending the territorial sea was that, in time of war, a neutral State would have greater difficulty in safeguarding the broader belt of territorial waters against the incursions of ships of belligerents.

10. Turning to the freedom of fishing, he said that most coastal States denied fishing rights to others within their territorial sea. Hence, if that sea were extended, a vast and inexpensive source of food would be denied to the population of the world which was growing at an ever increasing rate.

11. There could be no doubt that unilateral extensions of the territorial sea, whether general or in specific areas, violated the existing rights of other States. He cited a recent case in the Far East, in which a State, by drawing an arbitrary line 115 miles long across a bay, had enclosed thousands of square miles of open sea and had claimed a territorial sea of twelve miles beyond that line.

12. He then referred to the third freedom — namely, freedom to fly over the high seas. It was important to remember that there was no right of innocent passage for aircraft to fly over the territorial sea unless the coastal State gave its consent. Consequently, any extension of that sea would diminish freedom to fly over the high seas. The Committee should consider carefully the effect of any extension of the territorial sea on flights over straits and other narrow seas.

13. The facts he had mentioned, and the effect in each individual instance of any encroachment on the high seas, should be carefully pondered both by the newly formed States and by the so-called great Powers. Rights created obligations, and States unable to provide adequately for the needs and safety of international navigation or to exert full sovereignty over a wider territorial sea would only suffer loss of national prestige.

14. The argument that the three-mile limit was obsolete because of the doctrine of hot pursuit was not valid, since that doctrine was equally relevant to a twelve-mile limit. Everything depended on where the pursuit began.

15. He was unable to endorse the view that article 3, paragraph 2, of the International Law Commission's draft allowed extensions of up to twelve miles. Such a limit would inevitably tend to become a minimum and would set in motion a trend towards ever greater extensions: in such a situation the States with large economic resources might be better able to fend for themselves than the others. It was unreasonable to expect States adhering to the three-mile rule to recognize a territorial sea four times as wide.

16. The legal case for the three-mile limit had been cogently put by a number of representatives, many of whom had referred to the ruling of the International Court of Justice in the Anglo-Norwegian fisheries case that the validity of the delimitation of the territorial sea with regard to other States depended upon international law, though the latter must, of course, be implemented by municipal law.[1] His government considered that the three-mile rule was established international law and that it was the only rule on which there had ever been anything approximating to common agreement. Unilateral claims to a wider territorial sea not only had no support in international law, but conflicted with the universally accepted principle of freedom of the seas. That fact had been recognized in article 3, paragraph 3, of the draft adopted by the Commission at its seventh session, which stated that " international law does not require States to recognize a breadth beyond three miles ".[2] His government further considered that there was no obligation on States adhering to the three-mile rule to recognize claims to a wider belt. For those reasons his delegation proposed that article 3 of the Commission's draft be amended to constitute an unequivocal declaration that the breadth of the territorial sea should not exceed three miles or one marine league. Subject to that important reservation, his delegation was in substantial agreement with most of the other articles of the Commission's draft relating to the delimitation of the territorial sea and the right of innocent passage.

17. He then proceeded to discuss the question of the contiguous zone (article 66). His government sympathized with the concern which in the past had led a number of coastal States to take unilateral action on the high seas to conserve stocks of fish off their coasts; at the same time, however, it believed that their needs could be fully satisfied by means other than extensions of their territorial sea which violated the rights and freedoms of all countries. In view of the need to protect the legitimate requirements of many countries, his government attached great importance to article 66, to the articles concerning conservation of the living resources of the high seas, to the problems of the continental shelf, and to the problems of land-locked countries.

---

[1] See *I.C.J. Reports, 1951*, p. 132.

[2] *Official Records of the General Assembly, Tenth Session, Supplement No. 9*, A/2934, p. 16.

18. Finally, he wished to clarify the position of his country in regard to nuclear tests on the high seas. The real danger lay in the possible use of nuclear weapons and not in some slight addition to the natural level of radio-activity. While the United States conducted its tests in a manner recognized as being consonant with international law, it should be remembered that his country had repeatedly, but as yet in vain, offered to enter into agreements for the effective control of nuclear weapons. The matter, which was of paramount importance to the whole world, should continue to be dealt with by the United Nations body specifically set up for the purpose, and he doubted whether the Conference could appropriately intervene in the delicate negotiations then proceeding.

19. Mr. PERERA (Ceylon) said that according to General Assembly resolution 1105 (XI) the task of the Conference was to examine the law of the sea with a view to drawing up one or more international conventions or other appropriate instruments. The General Assembly had, presumably, deliberately refrained from mentioning codification because, apart from the universally accepted principle of freedom of the high seas, there was hardly any rule that could be claimed to have acquired the status of a rule of international law. Hence there was wide scope for legislation by the Conference. Although the approach should be as objective as possible, the particular interests of individual countries could not be altogether ignored, and hence much patience and tolerance would be required if generally acceptable solutions of the main problems were to be found. Ceylon had a small fleet, but was completely dependent upon its export and import trade, so that it was keenly interested in the cause of international understanding and would do what it could to make its small contribution to the success of the Conference.

20. He paid a tribute to the work of the International Law Commission and its special rapporteur, but regretted the failure to reach agreement on the delimitation of the territorial sea. It was for the Conference to succeed where the Commission and The Hague Conference had failed. The delimitation of the territorial sea was a matter involving human interests and needs and the General Assembly had been right to stipulate that account should be taken of the technical, biological, economic and political aspects of the problem.

21. In the past, there had been much conflict of opinion concerning the nature of the sovereignty exercised by the coastal State over its territorial sea. One school of thought had equated it to territorial sovereignty and another had regarded it as limited in scope. It was gratifying that the Commission should now have made a definite pronouncement.

22. The important provision in article 15 on the right of innocent passage should remove some of the apprehensions of those who opposed an extension of the three-mile limit. The breadth of the territorial sea was, of course, the crucial issue. He had not been convinced by the arguments of the champions of the three-mile rule, which he regarded as illogical and untenable, and he would withhold judgement on the claims to extensions beyond twelve miles, which had not yet been substantiated. No one would dispute the universally accepted principle of freedom of the high seas, which was not only recognized by international law, but was in the interests of the whole community of nations. However, in the light of new requirements, it had for some time been apparent that some limitation of that right would be necessary, for the law was not static and had to be modified to meet changing needs. Extensions of the territorial sea were required for security reasons, for furthering commercial, fiscal and political interests and for the exclusive enjoyment of the living resources of the sea by the peoples of coastal States.

23. It was for those very reasons that the institution of territorial waters had gained universal recognition. But, in trying to determine how far they were entitled to encroach on the high seas in order to guarantee their national security, States had never found a truly common standard. Some authorities had originally advocated a distance representing two day's navigation. Others had suggested that the territorial sea should extend as far as the visual horizon. The most favoured theory, propounded by Grotius, had been that a State was entitled to claim as its own whatever area of the sea it could command by force of arms. That theory had given birth to the cannon-shot rule which, in its turn, was the basis of the widely publicized three-mile limit. The traditional limit had thus been determined solely by the chance circumstance that the range of ancient artillery had been three miles. In the middle of the twentieth century, when the range of missiles was constantly increasing, such a limit was therefore patently absurd. Nor was it rendered any more acceptable by the fact that many great maritime Powers advocated its retention, for those Powers themselves had sometimes been forced to claim a right of control in areas outside the three-mile zone. As an example, he cited the United States Tariff Act of 1922, by which the United States had claimed wide powers of arrest and search within twelve miles of its coast.

24. In trying to arrive at an equitable solution, the Committee should always bear the report of the International Law Commission in mind. The Commission's statement that the practice of States in the matter of delimitation was not uniform must obviously be accepted as correct. Consequently, the Conference's task was to formulate a new rule of law acceptable to the majority of the States represented and to embody it in a convention. Such a rule could only be devised, however, if all those present were determined to find a fair and reasonable solution. In his view, the reasonableness of any proposal could best be determined by the universally recognized democratic test of majority acceptance. Whatever views individual States might hold, it was to be hoped that the will of the majority would be respected. The principal question was what could properly be regarded as a fair and reasonable limit. There again, the International Law Commission's report supplied an answer, for the only logical inference that could be drawn from article 3, paragraph 2, was that an extension not exceeding twelve miles did not conflict with international law. That interpretation seemed to be confirmed by paragraphs 4, 7 and 8 of the relevant commentary. It was unfortunate that the representative of the United Kingdom should have sought to place an entirely different construction on article 3, paragraph 2, when he had maintained at the Committee's fifth meeting that the Commission had simply found

itself unable to take up a position on the matter. That view had been echoed by the representative of the United States, whose statement had, in many other respects, been admirable. In reality, however, the Commission had taken up an extremely clear position, as was amply shown by the wording of article 3. That article was wholly unequivocal, and the Commission deserved congratutions for not allowing itself to be hurried into making an erroneous statement.

25. Referring to the point made by the representative of France, at the Committee's eighth meeting, that no valid argument against the three-mile rule had yet been adduced, he said that modern technological developments in weapons were in themselves sufficient reason for revising an archaic principle. Furthermore, the speed of modern motor craft made a broader territorial belt indispensable as a precaution against smuggling and illegal immigration. Another important factor was the great growth of the populations of coastal States; for those with relatively less developed economies, the living resources of their coastal waters were a matter of vital concern. The highly developed countries, which always showed the greatest generosity in giving economic aid, should readily understand that point.

26. In conclusion, he stressed that a modest extension of the territorial sea would not seriously jeopardize the principle of freedom of the seas. There were sufficient expanses of sea for all to share. It was therefore the duty of the great Powers to recognize the growing needs of the smaller countries and to agree to a revision of the indefensible three-mile limit. If they did that, the success of the Conference would be assured; otherwise, history would place the responsibility for failure on those who had refused to move with the times.

27. Mr. BARNES (Liberia) said that the report of the International Law Commission was an illuminating and valuable document. As the product of extensive and careful study by eminent jurists, it represented a great step towards solving the problems arising from the use of the sea.

28. With regard to the juridical status of the territorial sea, the Liberian delegation considered that article 1 of the draft accepted the principle of assimilation of the territorial sea to other parts of the coastal State's territory and envisaged the exercise of full national jurisdiction over that belt of sea in the same manner as over the State's land domain, except that such jurisdiction was subject to the right of innocent passage of the merchant vessels of other States and to such other rights as might be conferred by custom and treaties. That principle seemed to be firmly established in contemporary international law.

29. The delimitation of the territorial sea was a question of great complexity, on which there was as yet no uniform rule acceptable to all coastal States. The diversity of the limits set seemed to have arisen from the particular needs of States at different times and in different parts of the world. In any event, the fact that the practice of States was not uniform could not be denied and had been expressly recognized by the International Law Commission. The only other fact that seemed universally accepted was that the breadth of the territorial sea could not be less than three miles, which was the limit that Liberia observed and accepted as a general rule of international law. Moreover, Liberia did no claim a plurality of territorial zones but adhered to the three-mile limit for all purposes. Its position in that matter was prompted by respect for freedom of the high seas and by the concept of effective jurisdiction over the territorial sea.

30. Claims to exercise national jurisdiction over larger areas would tend to impair the freedom of the high seas, over which no single State could claim exclusive dominion. The argument that the three-mile rule had outlived its usefulness would only be valid if it could be shown that the principle of freedom of the high seas — a principle intended to promote the common interest of all mankind — was similarly outmoded. The complicated situation prevailing called for a conciliatory approach, however, and although the principle of freedom of the high seas was paramount, other factors such as the geographical position of various States should also be taken into consideration.

31. The statement in article 3, paragraph 2, was open to various interpretations. Some contended that it was a tacit admission that the territorial sea could extend up to twelve miles, while others argued that the Commission had not intended to convey any such meaning. He hoped that the interpretation of that paragraph would not be left to conjecture and speculation.

32. With reference to article 18, he recalled that the corresponding article considered by The Hague Codification Conference of 1930 had contained a provision to the effect that a coastal State should not apply its rules and regulations in such a manner as to discriminate between foreign ships of different nationalities. The International Law Commission had omitted that clause on the grounds that cases might occur in which special rights were granted by one State to another by treaty and that, in the absence of express treaty provisions, other States could not claim similar treatment. The fact that treaties conferred benefits and imposed duties only on the signatories could not be disputed, but where a right, such as the right of innocent passage, was extended to every State by international law, it would be perfectly legitimate for parties to treaties to offer certain advantages to third States, making them dependent on the acceptance of corresponding duties. So long as a third State was free to accept or refuse such a conditional offer, it would be consistent with the basic principles of international law.

33. In harmonizing the domestic laws of different States in order to arrive at internationally acceptable and uniform rules for regulation of the use of the sea, due regard should be shown for rights of sovereignty. Certain universally enjoyed sovereign rights had to be respected and no State could claim to dictate conditions on which they could be exercised. Observance of those rights was essential, since national sovereignty was not only the cornerstone of international law, but also the perpetual guarantee of the supremacy of the rule of law over the rule of force in international society. Any failure to recognize those principles might spell disaster for the work of the Conference.

The meeting rose at 12.55 p.m.