United Nations Conference on the Law of the Sea

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Summary Records of the 1st to 5th Meetings of the Third Committee

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume V (Third Committee (High Seas: Fishing: Conservation of Living Resources))*

SUMMARY RECORDS OF THE THIRD COMMITTEE

FIRST MEETING

Wednesday, 26 February 1958, at 4.50 p.m.

Acting Chairman: Prince WAN WAITHAYAKON (Thailand)

Election of the Chairman

1. Mr. GARCIA ROBLES (Mexico) nominated Mr. Sucre (Panama).

2. The ACTING CHAIRMAN said that as there was only one candidate the Committee might wish to elect Mr. Sucre by acclamation. Unless he received any proposal to the contrary, he would assume that that procedure was generally acceptable.

Mr. Sucre (Panama) was elected Chairman by acclamation.

The meeting rose at 4.55 p.m.

SECOND MEETING

Friday, 28 February 1958, at 4.25 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Election of the Vice-Chairman

1. Mr. MONACO (Italy) nominated Mr. Krispis (Greece).

2. The CHAIRMAN, after recalling rules 51 and 53 of the rules of procedure, said that as Mr. Krispis was the only candidate, he assumed the Committee would have no objection to electing him by acclamation.

Mr. Krispis (Greece) was elected Vice-Chairman by acclamation.

Election of the Rapporteur

3. Sir Gerald FITZMAURICE (United Kingdom) nominated Mr. Panikkar (India).

4. The CHAIRMAN said that as there was again only one candidate, he assumed the Committee would have no objection to proceeding in the same way as for the election of the Vice-Chairman.

Mr. Panikkar (India) was elected Rapporteur by acclamation.

The meeting rose at 4.30 p.m.

THIRD MEETING

Monday, 3 March 1958, at 3.20 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Organization of the work of the Committee

1. Mr. LIMA (El Salvador) said that there was a close connexion between some of the articles in the International Law Commission's Report (A/3159) which had been assigned to the Third Committee — especially article 60 relating to fisheries conducted by means of equipment embedded in the floor of the sea — and article 68 concerning the natural resources of the continental shelf. According to the subdivision made in the commentary to article 60, sedentary fisheries were to be regulated by article 68, which was to be studied by the Fourth Committee. However, that article also fell within the purview of the Third Committee. Although, as a result of the proposal of the Mexican delegation (A/CONF.13/L.2, para. 9) adopted by the General Committee, it had been agreed that representatives might allude to articles referred to other committees, that was not sufficient in the present instance. The General Committee should authorize the Third Committee to study article 68 in so far as it related to its programme of work.

2. Mr. GARCIA AMADOR (Cuba) agreed with the representative of El Salvador. There was a danger that the Third Committee would be deprived of its right to study a question which concerned it. It was a problem of emphasis and of deciding what were the natural resources of the continental shelf. Although that was primarily an issue for the Fourth Committee, it might be found advisable to hold a joint session of the Third and Fourth Committees for the discussion of article 68. The same method might be used for any other problems of a similar nature that arose during the Conference.

3. The CHAIRMAN recalled that the possibility of joint meetings or inter-committee groups had been foreseen in the General Committee.

4. Mr. MELO LECAROS (Chile) pointed out that, although the Third Committee had been given a particular subject to study, the articles in the International Law Commission's report relating to that subject had not been specifically mentioned. He agreed with what had been said by the representatives of El Salvador and Cuba, but he doubted whether it was within the Third Committee's competence to solve the problem they had raised. He suggested that the matter be referred to the General Committee, or taken up directly with the Fourth Committee.

5. Mr. CASTAÑEDA (Mexico) said that it would be better to make no change for the time-being in the agreed organization of the Conference's work, but to consult with the General Committee on the problem

arising from the overlapping of articles 60 and 68. On the other hand, it was difficult to foresee how the general debate might develop, and therefore the possibility of a joint meeting should be left open. The Committee might be in a better position to come to a decision on procedure during the discussion of article 60.

6. The CHAIRMAN said that the consensus seemed to favour keeping to the agreed organization of the Conference's work. That, however, did not rule out the suggestion by the representative of El Salvador, or the possibility of joint meetings.

7. Mr. RUIZ MORENO (Argentina), speaking to a point of order, urged that the Third Committee should take a decision on the two important points, whether article 68 should be studied by the Third Committee and whether there should be joint meetings.

8. The CHAIRMAN said that he believed that that matter had already been decided. The Third Committee could not alter the rules of procedure or its programme of work. On the other hand, the General Committee had agreed that representatives should be free to allude to articles which had been referred to other Committees. Hence the Third Committee could study an article which had been referred to the Fourth Committee.

With reference to the Argentine representative's point of order, he ruled that the Third Committee could not alter the rules of procedure by assigning to itself articles other than those which had been referred to it.

9. Mr. LIMA (El Salvador) said that he had not wished to suggest any change in the rules of procedure, but to refer the problem to the General Committee. He supported the Mexican representative's suggestion to leave the procedural decision until article 60 was under discussion.

10. The CHAIRMAN said that the remarks of the representative of El Salvador were in accord with the Chair's ruling and the general feeling of the Committee.

The meeting rose at 4 p.m.

FOURTH MEETING

Wednesday, 5 March 1958, at 3.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159)

General debate

STATEMENTS BY U KHIN (BURMA), MR. LIMA (EL SALVADOR) AND MR. OZORES (PANAMA)

1. U KHIN (Burma) said the International Law Commission had rendered the entire world a great service in drafting the articles concerning the law of the sea (A/3159).

2. The delegation of Burma was in general agreement with the terms of articles 49 to 60 which had been referred to the Committee. It felt, however, that there might be some danger in considering any one aspect of the law of the sea in isolation from the other branches of the subject. In particular, the questions of fishing rights and the conservation of living resources were so intimately bound up with matters being discussed by the Fourth Committee (Continental shelf) that it would be undesirable for the two committees to work without mutual consultation. The representative of Burma on the Fourth Committee would raise the question of fishing rights and conservation of living resources on the continental shelf at the appropriate time. It would be preferable, however, if interconnected questions were discussed at joint meetings of the two committees as envisaged in rule 50 of the rules of procedure of the Conference. Accordingly, his delegation proposed that joint meetings of the Third and Fourth Committees should be arranged at an early date.

3. Mr. LIMA (El Salvador) said the International Law Commission had produced a masterly draft concerning the law of the sea. In the Sixth Committee of the General Assembly at its eleventh session, he had praised those articles for their high scientific value. Nevertheless, as he had said then, some of the draft provisions, although based on existing international practice, did not sufficiently reflect developments in the domestic law of many countries or recent social, political, economic and technical developments, and hence could not be accepted internationally as satisfying modern conditions. Many delegations had emphatically supported the views of his delegation.

4. The provisions of articles 52, 54, 56 and 57 all represented a progressive development of international law, and to that extent the delegation of El Salvador welcomed them. It was not, however, able to agree entirely to the form or scope of those articles. In particular, article 54, paragraph 2, granted the coastal State the right to participate in the regulation of fishing activities in areas of the high seas on an equal footing with other States whose nationals engaged in fishing in those areas. Article 51, on the other hand, provided that " a State whose nationals are engaged in fishing in any area of the high seas . . . shall adopt measures for regulating and controlling fishing activities in that area ". In other words, what was regarded as a duty incumbent upon States engaged in fishing was put forward merely as an optional right in the case of the coastal State. Such a distinction was not consistent with the principles of the law. In the event of disagreement, the coastal State would be placed in an inferior position before the arbitral commission. Accordingly, his delegation would be unable to accept the principle of compulsory arbitration (article 57) unless some clause was added stipulating expressly that in cases of disagreement the special interests of the coastal State would take precedence over those of the States engaged in fishing in the areas in question.

5. With regard to the general question of fishing rights, the definition of the meaning of the expression " high seas " would depend on whatever the First Committee

decided concerning the breadth of the territorial sea. It had been said in the First Committee that the question of the territorial sea was governed to some extent by considerations of military security. It seemed desirable that no such considerations should influence the work of the Third Committee. He proposed, therefore, that in the first stage of its deliberations the Third Committee should omit all reference to the territorial sea proper, and instead endeavour to determine the breadth of the zone within which a State might claim exclusive fishing rights on the basis of special economic circumstances. The International Law Commission had given consideration to a proposal for the establishment of such a zone (A/3159, p. 38). The principle of a zone of exclusive fishing rights was a new one and deserved recognition in international law. He added that in his own country legislation had been enacted reserving a twelve-mile zone for fishing by Salvadorian nationals exclusively.

6. His delegation also favoured the principle of abstention referred to in the commentary on the International Law Commission's draft article 53 ; the acceptance of that principle would enable States to enter into regional agreements on conservation and to regulate the exploitation of the living resources of the sea. The International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 had recognized that the principle of abstention should not apply to the coastal State. The delegation of El Salvador was fully prepared to support the principle of abstention on that basis. As the International Law Commission had not put forward any concrete proposals concerning the principle of abstention, he thought the question might be referred to a special working group whose conclusions would then be discussed by the Committee.

7. Mr. OZORES (Panama) said that the important provision recognizing the special interest of the coastal State (article 54, paragraph 1) should be drafted in more precise terms. Moreover, there was a contradiction between the language used in that provision as it stood and article 66. The maritime belt adjacent to the territorial sea was not really an " area of the high seas " but the contiguous zone. If it was proposed to assimilate the contiguous zone to the high seas in so far as fishing was concerned, that intention should be stated clearly.

8. He agreed with the representative of El Salvador that the unilateral regulation of fishing on the high seas, provided for in article 51, was inconsistent with the provisions of article 54, paragraph 2.

9. Lastly, he felt that difficulties would arise in connexion with the compulsory arbitration clause (article 57) ; the opposition of certain countries to the acceptance of that principle was justified and should not be disregarded.

The meeting rose at 4.15 p.m.

FIFTH MEETING

Monday, 10 March 1958, at 3 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. LUND (NORWAY), MR. PANIKKAR (INDIA), MR. INDRAMBARYA (THAILAND), MR. CHEN (CHINA) AND MR. LLOSA (PERU)

1. Mr. LUND (Norway) emphasized the importance of Norway's fishing industry, and pointed out that Norwegian fishermen participated not only in the coastal fisheries, but also in the deep-sea fisheries of the North Sea, the North Atlantic Ocean, and the Arctic and Antarctic Oceans.

2. Norway had adopted laws to prevent overfishing and to create a rational utilization of fishery resources. His Government regarded international co-operation in scientific research and conservation as imperative and welcomed all efforts to create efficient international machinery to handle conservation problems in all fishing areas. It had taken an active part in the work of the International Council for the Exploration of the Sea, which had led to the establishment of international machinery for the conservation of the stocks of fish in the North Sea and the north-east Atlantic through the 1946 Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish. Norway had also acceded to the 1949 International Convention for the North-West Atlantic Fisheries and the 1946 International Convention for the Regulation of Whaling. A convention had also been concluded, but had not yet been ratified, between Norway and the USSR on co-operation in scientific research in connexion with the living resources of the sea.

3. Referring to chapter II, paragraph 31 of the report of the International Law Commission covering the work of its eighth session (A/3159), he said that his delegation would like some clarification of the exact relationship between the proposed articles and existing international conventions. He was not sure whether, as was suggested in that paragraph, the problem could be solved by a mere reference to the general rules of international law.

4. There were three kinds of conservation agreements in force at the present time : first, agreements or conventions on specific regulatory measures ; secondly, agreements or conventions on specific measures, combined with an international commission empowered to recommend amendments which became binding in accordance with a prescribed procedure ; thirdly, conventions which did not contain any specific regulatory measures but provided for an international commission having the power to recommend specific regulations. The two last-mentioned types of agreement were the most common and, in his opinion, the most suitable.

5. His delegation wished to know whether under the new draft articles States which had acceded to a con-

vention that established machinery for the handling of conservation problems would be debarred from initiating arbitration proceedings, or whether the proposed articles should be interpreted as permitting such action if there was disagreement between those States with regard to special types of regulations. In the latter case, the system proposed would have an important influence on existing conventions. If, however, the arbitration system suggested was meant to come into effect only when no agreement existed, the legal applicability of that system would be considerably limited. His delegation was of opinion that the proposed articles should be interpreted with such a limitation, and felt that definite rules on that point should be included in any general convention.

6. Referring to articles 52 and 53, he said that his delegation considered that it was reasonable to demand the accession of all States to any regulatory measures introduced, provided they were based upon generally accepted principles such as, for instance, those worked out in the general conclusions of the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955.[1] It would be an abuse of the freedom of the seas if a State neglected to take conservation measures based on such principles. Such a State should, however, have the right to settle by arbitration procedure any dispute that might arise. His delegation fully supported the view expressed by the majority of the International Law Commission that the proposed arbitration procedure must be regarded as an integral and inseparable part of the new system.

7. The Norwegian delegation accepted article 52 in principle, but must reserve its position on article 55 as long as it did not know what would be the breadth of the territorial sea. Moreover, it could not agree to any encroachment on the freedom of the high seas which might result from a State's adopting unilateral measures of conservation, unless other interested States had the right to test by arbitration whether such conservation measures conformed to the prescribed criteria. He noted that the other articles of the draft law did not give any guidance on the complicated problems of enforcement connected with article 55 and agreed, in that connexion, with the comment of the United Kingdom Government reproduced in document A/CONF.13/5 (section 17), to the effect that it was very important to consider problems of enforcement before such articles were adopted.

8. Norway felt that any arbitral commission set up should have clear and exhaustive general rules upon which to base its decisions. According to article 58 the main criteria for such decisions was to be scientific evidence and scientific findings. The wording of that article and of article 55 was rather vague.

9. At the 1955 International Technical Conference on the Conservation of the Living Resources of the Sea, it had been demonstrated that very detailed and extensive investigations would often be necessary in order to determine the need for conservation measures, and that further development of maritime research would be required to provide sufficiently reliable scientific evidence. The technical and economic conditions of the fishing industries of the countries wishing to take such measures must also be borne in mind. In a system of general compulsory arbitration the arbitrators must bear in mind the relative importance of the fish stocks to be conserved, the fishermen concerned and the consumers.

10. The conditions under which a decision on the findings of an arbitral commission might be revised should also be closely examined in order to ensure that the whole machinery of arbitration was adjustable to changing conditions.

11. In conclusion, the Norwegian delegation regarded international co-operation and a positive attitude towards the creation of a satisfactory international system for the conservation of the resources of the sea as having decisive importance for the future of the fishery nations and the world's food supply.

12. Mr. PANIKKAR (India), after paying a tribute to the International Law Commission, said that his Government felt that the draft articles on the law of the sea should be examined against the background of the conditions prevailing at present in fisheries throughout the world.

13. Fishing as a world industry had been developed by a comparatively small group of nations whose geographical situation, technological achievements and industrial enterprise had combined to make available to the community of nations the products of the sea in a form which contributed largely to the world's food supply. Modern fishing methods had been adopted by certain countries which in the past had relied on frail equipment, and the operations of such countries now extended beyond their territorial sea in a more intensive exploitation of fish stocks outside, but adjacent to, their own waters.

14. India's sea fishing industry was an important one, and was the sole occupation of more than a million people. It contributed in an important measure to the country's economy and was a major source of food. India's potential fish requirements greatly exceeded present supplies, and his Government was therefore greatly interested in the successful outcome of the Conference.

15. The Government of India was in broad agreement with articles 49 to 60, but reserved its right to suggest amendments on points of detail.

16. Referring to his Government's comments on articles 49 to 56 (A/Conf.13/5, section 9), he said that, although his Government had stated that the basis of articles 51, 52, 53 and 56 was not acceptable, it realized that those articles were drafted along the lines of existing international fisheries conventions. Should the measures mentioned in those articles be acceptable to countries predominantly concerned in high-sea fishing, he felt they could be generally accepted.

17. The Indian Government did not think that articles 54 and 55 protected the interests of coastal States, especially those of the under-developed areas with their expanding populations and increasing dependence on the sea for food. A coastal State should be entitled to adopt conservation measures to protect the living resources of the sea within a reasonable belt of the high

[1] Report of the International Technical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2).

seas contiguous to its coast, but not to adopt such measures in seas contiguous to the coast of another country merely because its nationals had engaged in the past in fishing in such areas.

18. His Government realized that geographical conditions might sometimes make it difficult to decide on the correct status of a coastal State in respect of any particular resources of the sea, but suggested that a distinction might be drawn between areas of the high seas which were within a belt of about one hundred miles from the territorial sea of a coastal State and those which did not come within such a belt. It should be possible to recognize what might be called the " coastal high seas ".

19. A point which required further clarification in the articles before the Committee related to the conservation of resources which extended from the territorial sea to the high seas. In such a case, the conservation measures adopted by one State alone might turn out to be inadequate or ineffective. The old-established fisheries in coastal waters must be adequately protected and free from restrictions which might seem necessary for the sake of a new fishery developed in the high seas.

20. His Government considered, first, that a coastal State had a pre-emptive right to take conservation measures in specific areas and for specified fisheries within coastal belts extending to one hundred miles ; secondly, that when such measures were taken by a coastal State other States could approach that State for the purpose of negotiating the adoption of similar measures ; thirdly, that any measure adopted by the coastal State for the preservation of living resources should be applicable equally to the nationals of the coastal State and to the nationals of other States that might be fishing or might wish to fish in that area ; and lastly, that if a coastal State had not adopted any measures for the conservation of living resources, any State fishing or interested in fishing in areas adjacent to the coastal State might approach the coastal State with a view to the adoption of suitable measures in those areas.

21. In formulating the foregoing principles, the Indian Government had been guided by the consideration that a coastal State had naturally a more vital interest in the preservation of the living resources of its " coastal high seas " inasmuch as its nationals were more dependent on the resources thereof for food. It also felt that measures adopted by a coastal State could be more appropriately enforced by that State than by any other State, and that the enforcement of conservation measures by any State or States other than the coastal State might lead to political, legal and other disputes between the States concerned.

22. It was in the light of such general principles that the Government of India had in 1956 assumed the right to establish conservation zones in areas of the high seas adjacent to the territorial waters of India, up to a distance of one hundred nautical miles ; to take conservation measures in such zones and, subject to any international agreement or convention to which India was or might become a party, to take steps to regulate fishing in the said areas purely for the sake of conservation. His Government felt that such measures should be based on appropriate scientific findings and that there should be no discrimination against foreign fishermen.

23. Articles 57, 58 and 59 were acceptable to the Indian delegation, which also noted with satisfaction that in article 60 the International Law Commission had found it necessary to protect the interest of established fisheries conducted by means of equipment embedded in the floor of the sea. His delegation considered, however, that article 60 should be amended to provide that non-nationals could not participate in such fisheries on an equal footing with nationals of the coastal State.

24. In view of the importance attached by his Government to article 48 on pollution of the high seas and its effects on the conservation of marine resources, he hoped that the Third Committee would have an opportunity to examine that article in the light of the conclusions reached by the Second Committee.

25. Mr. INDRAMBARYA (Thailand) said fish was a necessity second only to rice for the people of his country. Fish resources being less abundant in tropical waters than in those of the northern hemisphere, Thailand was interested in reserving coastal fishing, in co-operation with its neighbours, for its own nationals. His delegation therefore preferred a twelve-mile limit for purposes of fisheries.

26. Mr. CHEN (China) said the draft articles on fisheries were generally acceptable to his delegation. In particular, his delegation considered that the provisions of article 56 would facilitate the adoption of conservation measures. Without those provisions, it would be exceedingly difficult for such measures to be adopted because a State might have no interest in protecting the fishery resources of another State.

27. With regard to article 57 on the settlement of disputes, his delegation did not agree to the establishment of two different systems for the two cases covered by paragraphs 2 and 3. There was no logical reason for that difference. To enable the arbitral commission to arrive at a decision acceptable to all the States concerned, it was desirable that every State or group of States concerned in the dispute should name one or two members of the Commission ; the membership could, of course, be increased if necessary.

28. Mr. LLOSA (Peru) said the Chairman of his delegation had already explained in the general debate in the First Committee at its 5th meeting the position of Peru with regard to the new trends in international law.

29. With regard to the articles on fisheries, it was necessary to dispel the inaccurate impression that persisted with regard to the position of Peru and certain other countries which upheld the inherent right of the coastal State to the conservation and utilization of the living resources of the sea off its coasts.

30. In its draft, the International Law Commission had not given sufficient recognition to the rights of the coastal State. The reluctance of the International Law Commission to do so was particularly surprising inasmuch as it had not hesitated to adopt articles concerning bays and baselines which had the effect of converting into " internal waters " maritime areas which had so far always been regarded as part of the high seas. Similarly, the articles on the continental shelf also constituted an innovation in international law in that they would have the effect of denying to States other than

the coastal State the right to make use of sea areas where that right had so far never been denied to them.

31. The action taken by the countries of the South American Pacific in proclaiming their sovereignty and jurisdiction, for purposes of conservation and utilization of the living resources of the sea, over the maritime zone specified in the Declaration of Santiago of 1952, had been described as unilateral. And yet, the pronouncements by virtue of which the United States and the United Kingdom had first proclaimed their sovereignty over the continental shelf had also constituted unilateral acts; more than that, they had initiated a veritable chain reaction of measures by other States in several matters connected with the law of the sea.

32. The Peruvian delegation had no objection to the recognition of coastal States' rights over the continental shelf, but would draw attention to the fact that recognition constituted evidence of the evolution of international law in the light of new situations and new factors; it was an admission of the validity of certain unilateral acts of States. It had been stated that the sovereignty over the continental shelf was explained by its close geological links with the adjacent coasts. Similar arguments applied to the inherent rights of the coastal State with regard to the conservation and utilization of the living resources of the sea. Marine vegetable and animal life was not spread uniformly over the immense sea areas of the globe, but was restricted to sea areas close to the coasts or to areas where the sea was comparatively shallow; those areas represented only a very small percentage of the total extent of the oceans. The abundance of marine fauna in certain areas was intimately connected with the availability of food in the form of animal or vegetable matter. The discharge of rivers contributed in a great measure to the growth of ocean flora and fauna; thus the land continually fertilized the oceans. It had been estimated by a distinguished United States biologist, Mr. Marr, that in 1947 the Mississippi had discharged 141,000 tons of soluble phosphates daily into the sea; and that writer had concluded that the utilization of the living resources of the sea was the only way of compensating for those losses.

33. In the light of those facts, there was no doubt that the coastal State was the most legitimate claimant to the resources of the seas near its coasts. It was estimated that Peruvian rivers discharged some 500 million tons of silt annually into the Pacific Ocean and so made a substantial contribution to the feeding of ocean plant life. In addition, the guano annually dropped into the sea by the birds living on the islands and headlands of the Peruvian coast — estimated at 30 million — represented some 200 thousand tons of natural fertilizer of high nitrogen content. The birds fed on the anchovies abundant in the area. The rich fish stocks of the seas opposite its coasts compensated Peru for the aridity of its coastal regions. A state of dynamic equilibrium existed with regard to the different species of flora and fauna present in those seas. Any material change in the environment resulted in the death of large numbers of anchovies consequent upon a decrease in the plankton on which they fed. The decrease in the number of anchovies had in its turn an effect on the guano-producing birds, which, deprived of their natural food, died in great numbers or migrated southwards.

34. Over-fishing could have similar catastrophic results. It was an undeniable fact that in certain areas of the world intensive and uncontrolled fishing by powerful fleets using modern technical equipment had exhausted rich fishing banks in a few years. That problem had been noted in respect of the Pacific halibut fisheries and the Norwegian prawn fisheries (*Pandalus borealis*) by the well-known expert Edward Stuart in an article entitled "Some theoretical Considerations on the 'Overfishing' Problem".[1]

35. It had been contended that no single State was entitled to appropriate the living resources of the sea which because of their mobility were not respecters of man-made boundaries. That contention had contributed to creating the false impression that marine species were to be found wandering in the immensity of the oceans. In fact, all the scientific evidence showed that the majority of those species remained concentrated in definite areas, usually near the coasts, where there was an abundance of food; those areas constituted well-known fishing banks. Thus, trawler fishing in the North Sea covered the superjacent waters of the continental shelf extending as far as Iceland and the Faroe Islands. Again in the Pacific Ocean, the yellowfin tuna and skipjack were fished in several different areas separated by immense distances. The fish stock in each of those areas differed from that living in the others.

36. The complex ecological system constituted by the various co-existing species of marine flora and fauna extended well beyond the narrow limits of the territorial sea. It was therefore essential to recognize the inherent right of the coastal State to the conservation and utilization of the living resources of the sea near its coasts and of the sea beyond. For many centuries, the inhabitants of the coastal areas of Peru had drawn from the sea the bulk of the fats and proteins lacking in their otherwise poor diet. There existed abundant evidence that those populations had fed almost exclusively on shell-fish, fish and sea birds both in pre-Inca times and after the Spanish conquest. In the face of that exploitation from time immemorial by the populations of Peru, the comparatively recent claims made by other countries could not prevail. Those countries had only entered the region following the depletion of fish stocks in their own areas, impelled by the growing needs of their industry.

37. The right of the coastal State was in no way opposed to the interests of the international community and did not preclude the utilization of the living resources of the sea by the nationals of non-coastal States. Nor was that right in any way inconsistent with international scientific co-operation; still less did it imply the right to adopt arbitrary conservation measures.

38. In any case, an important point to be borne in mind was that the large fishing undertakings which might be affected by the recognition of the coastal States' rights belonged only to a small minority of countries — not more than five or six out of the total number of States represented at the Conference. It had been argued that all States had an equal right to the resources of the sea. In practice, that equality did not

[1] *Journal of the International Council for the Exploration of the Sea*, Höst and Sons, Copenhagen, Volume 1930, pp. 3 *et seq.*

exist because of the unequal economic resources of States; the large maritime countries could fish in all the waters of the globe and in effect deny to other States the possibility of fishing even in their own waters.

39. The Peruvian delegation was therefore unable to accept the draft articles on fisheries and conservation, because they failed to accord due recognition to the rights of the coastal State.

The meeting rose at 5.15 p.m.

SIXTH MEETING

Wednesday, 12 March 1958, at 3.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. TSURUOKA (JAPAN), MR. RIGAL HAITI), MR. KRYLOV (UNION OF SOVIET SOCIALIST REPUBLICS), MR. HERRINGTON (UNITED STATES OF AMERICA) AND MR. KASUMA (INDONESIA)

1. Mr. TSURUOKA (Japan) said that the Committee's responsibility was very great, for fish constituted an important source of wholesome and cheap food. Japan had a great interest in the success of the Conference and in the clarification of the law of the sea, for it was the world's leading fishing country, whose catch accounted for nearly 20 per cent of the world total. Almost 90 per cent of the animal protein content of the Japanese population's diet came from fish. Moreover, the fishing industry gave employment to many Japanese, and marine products formed an important item in Japan's list of exports. Naturally, then, Japan had a strong interest in the maintenance and increase of the productivity of the living resources of the sea. For that purpose, the Japanese Government was applying a rational policy of exploitation and was collaborating with other countries.

2. Commenting on the draft articles prepared by the International Law Commission, he said it was a recognized principle of international law that regulatory measures affecting fishing on the high seas were only valid if based, firstly, on conclusive scientific data and, secondly, on the consent of the countries concerned. The practice of States confirmed that principle. He was pleased to observe that the draft articles recognized in most cases that a scientific basis was one of the necessary conditions for the adoption of measures of conservation; he added, however, that the notion of conservation itself might need more thorough scientific study.

3. On the other hand the articles, by recognizing a special position for coastal States, departed from the rule that regulatory measures governing fishing on the high seas were valid only in respect of nations consenting thereto. It was hard to understand the reasons for that departure. The mere geographical position of a coastal State did not by itself constitute evidence of an interest in the conservation of the living resources, or proof of superior scientific knowledge. Furthermore, it was contrary both to the principle of the freedom of the high seas and to universal international custom relating to rules governing fishing on the high seas to give coastal States the right to regulate such fishing unilaterally, even if only on a provisional basis pending an arbitral award.

4. If a coastal State was interested in the conservation of living resources in neighbouring waters, and if the necessity of conservation measures was based on scientific findings, it would surely have no difficulty in working out an agreement with the country interested in conserving the same resources. It might be objected that such an agreement would not be easy to reach; in fact, however, past international disputes over fisheries had nearly all arisen in cases where a country had claimed to impose its own rules in the absence of a really sound scientific basis. Where such rules had a scientific basis, bilateral and multilateral conventions had been concluded and put into operation.

5. It might be argued that political or other reasons justified the special position of coastal States, and unfortunately some countries had taken it upon themselves to regulate fishing in the high seas unilaterally. They had gone so far as to discriminate against foreign fishermen on the high seas, either by arresting them or by seizing their ships. Such action showed that there was a great danger in giving coastal States the right to regulate fishing on the high seas unilaterally, on political or other grounds, which in themselves had nothing to do with the true conception or the conservation of the living resources of the sea.

6. Mr. RIGAL (Haiti) said that the States participating in the Conference were not classed according to wealth, size of population or stage of development; all were treated as sovereign equals.

7. Commenting on the articles prepared by the International Law Commission, he said that the provisions defining an island (article 10) failed to deal with the case of land areas surrounded by water but not permanently above high water mark. Secondly, the definition of "high seas" (article 26, para. 1) meant little so long as the breadth of the territorial sea had not itself been defined. It would be consistent with sound practice to embody all definitions in a separate defining clause; the codification proper should be concerned exclusively with detailed rules and contain the provisions relating to their observance.

8. Subject to those remarks, Haiti supported the draft as a whole. The breadth of the territorial sea should not be settled arbitrarily by the coastal State; in his delegation's opinion it should be fixed at six miles.

9. Mr. KRYLOV (Union of Soviet Socialist Republics) said that his delegation was wholeheartedly in favour of the principle of the conservation of the living resources of the high seas and considered that the solution of the problem of the international regulation of fishing on the basis of the composition and size of fish stocks in any area of the high seas should be sought through international co-operation. He noted that it was universally recognized that the coastal State had an exclusive right to regulate fishing in its territorial waters.