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Summary Records of the 21st to 25th Meetings of the Third Committee

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were enacted, they would have to be notified to the proper authorities forthwith.

48. Mr. CHEN (China) and Mr. SERBETIS (Greece) said that the United States representative had dispelled their delegations' doubts about the proposal, which they could now support.

49. Mr. KASUMA (Indonesia) supported paragraph 1 of the six-power proposal, but agreed with those representatives who had opposed the provision of a seven-month time limit.

50. Mr. TREJOS FLORES (Costa Rica) fully supported the views expressed by the Peruvian and Ecuadorian representatives. Ignorance of the law was no excuse. Newcomer States should make all necessary investigations before fishing any area, and take the necessary steps to adapt their domestic legislation to the requirements of any conservation measures which thus came to their notice; if they were unable to do so, they should not be given the privilege of fishing for seven months without complying with the restrictions.

51. Mr. Lund (Norway) thought it was only reasonable, when introducing conservation measures, to give other States time to adapt their national legislation and to inform their fishermen. It might be assumed that all States had accepted the general principle of conservation; there was therefore no danger of abuse of conservation measures during the proposed seven-month period.

52. Mr. GARCIA AMADOR (Cuba) said he would be obliged to abstain from voting on the seven-month time-limit, because paragraph 1 of article 53 was closely connected with paragraph 2, in which reference was made to "a reasonable period of time", and in which it was stated that, subject to paragraph 2 of article 58, the measures adopted would remain obligatory pending the arbitral decision. It would be difficult to vote for or against a specific time-limit until a decision had been taken on paragraph 2.

53. The CHAIRMAN put to the vote the phrase "no later than 7 months" in paragraph 2 of the six-power proposal (A/CONF.13/C.3/L.55).

The phrase was adopted by 25 votes to 12, with 19 abstentions.

54. The CHAIRMAN put the remainder of paragraph 2 to the vote.

Paragraph 2 of the six-power proposal (A/CONF.13/C.3/L.55) was adopted by 47 votes to none, with 10 abstentions.

Paragraph 1 of the six-power proposal (A/CONF.13/C.3/L.55) was adopted by 52 votes to none, with 1 abstention.

55. Mr. PIRKMAYR (Federal Republic of Germany), explaining his delegation's vote, said that, although the proposal seemed to meet many of the difficulties which had arisen in connexion with article 53, he reserved his right to vote in a different sense at a later stage, in view of the close interdependence of the two paragraphs.

56. The CHAIRMAN opened the discussion on the Italian proposal (A/CONF.13/C.3/L.24).

57. Mr. PANIKKAR (India) did not consider that the proposal should be examined by the Third Committee, since it related closely to article 29.

58. Mr. PIRKMAYR (Federal Republic of Germany) observed that article 29 dealt with the granting of nationality to ships, whereas in the context of article 53 conservation measures were to be applicable to ships having a nationality. He could therefore support the Italian proposal, but thought it would be wiser to leave it to the Drafting Committee to decide precisely where the amendment should be inserted.

59. Mr. HERRINGTON (United States of America) recalled the Committee's decision, in connexion with another article, to refer to the secretariat the question of appropriate changes in all the articles on fishing. That procedure should be followed in the case of the Italian proposal too.

60. Mr. QURESHI (Pakistan) shared the Indian representative's doubts. There might be some controversy over the question of whether small fishing boats were covered by the term "national ships"; the International Law Commission's text was therefore more appropriate.

61. Mr. PAROLETTI (Italy) said that the purpose of his delegation's amendment was to avoid the strict interpretation of the word "nationals", since the citizens of the newcomer countries might use fishing vessels of other nationalities. It would be advisable to apply the legal status conferred by a flag in respect of conservation measures. However, he agreed with the United States representative that the matter might best be settled by the Drafting Committee.

62. The CHAIRMAN put the principle contained in the Italian proposal to the vote.

The principle contained in the Italian proposal (A/CONF.13/C.2/L.24) was adopted by 37 votes to 6, with 11 abstentions.

63. The CHAIRMAN put paragraph 1 of article 53, as a whole and as amended, to the vote.

Paragraph 1 of article 53, as amended, was adopted by 32 votes to 7, with 13 abstentions.

The meeting rose at 1.30 p.m.

TWENTY-FIRST MEETING

Wednesday, 2 April 1958, at 10.10 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLE 56 (COMPETENCE OF NON-COASTAL STATES)
(A/CONF.13/C.3/L.3, L.24, L.30, L.33, L.36, L.39)

1. Mr. LIENESCH (Netherlands) reminded the Committee that his delegation had withdrawn the suggestion

that article 56 be deleted contained in the first alternative of its proposal (A/CONF.13/C.3/L.39).

2. Mr. RUIVO (Portugal) said that the Netherlands delegation's action had affected the attitude of his own delegation. The latter considered that article 56 was quite unnecessary having regard to the form in which article 52 had been adopted. Interference by a State in decisions on conservation measures in any zone should be correlated with the action of that State, through its fishermen, in respect of stocks fished in such a zone. It was dangerous to admit any other criteria in that regard. Now that the Netherlands proposal had been withdrawn, the Portuguese delegation would be obliged to vote against all other proposals.

3. Mr. HULT (Sweden), introducing his delegation's proposal to delete the words "not adjacent to its coast" from paragraph 1 (A/CONF.13/C.3/L.36), observed that, under the International Law Commission's text all States should be able to fish on an equal footing on the high seas. That principle should also be applicable to conservation measures. The proposed deletion would give all States interested in the conservation of marine resources the same rights.

4. Mr. MELO LECAROS (Chile) said he would vote against the Swedish proposal. A new and more realistic division of the high seas into areas adjacent and non-adjacent to the coast had now been added to the older concepts of the territorial sea, the high seas and the contiguous zone. It would be unwise to delete the phrase which defined the scope of the whole article. Moreover, the International Law Commission's text should not be changed before a decision had been taken on the provisions of articles 54 and 55.

5. Mr. WALL (United Kingdom) thought that two possible situations were covered by article 56. In the first place, if two States were fishing the same stocks in widely different parts of the ocean and one of them failed to take the necessary conservation measures, the fishing of the other State would be affected. That situation was provided for in the amended text of article 52, and article 56 was therefore superfluous in that connexion. There was also the possibility, however, that the article was meant to relate to consuming and non-fishing States. If so, the Swedish amendment would be appropriate.

6. Mr. OZERE (Canada) agreed that the original aim of the International Law Commission, as expressed in paragraph 1 of the commentary, was now largely fulfilled by article 52. It was, however, somewhat exaggerated to extend its provisions to consumer interests, since nearly all States were consumers of marine resources. Furthermore, if the Swedish amendment were adopted, the resulting text would be very similar to article 54, paragraph 2, of the International Law Commission's draft.

7. Mr. CHEN (China) observed that there was yet a third situation to which article 56 might apply. One country might be fishing adult living resources in one area and another might be catching young fish of the same species in another area. The first State could not adopt conservation measures without consulting the second.

8. Mr. LIMA (El Salvador) agreed with the Chilean representative that the adoption of the Swedish amendment would alter the whole spirit of the International Law Commission's text. The Commission had been concerned with the interests of fishing States, of coastal States, even if they did not fish, and of non-coastal and non-fishing States. Article 56 related to the latter category. If the proposal were adopted, the coastal States, whose rights were dealt with in articles 54 and 55, would also be included and the text would be confused.

9. Mr. HULT (Sweden) pointed out that his proposal would also cover the situation of a country which fished in its internal waters resources fished by other States on the high seas.

10. Mr. OZERE (Canada) recalled that the articles applied only to fishing on the high seas, and not to territorial or internal waters.

11. Mr. PANIKKAR (India) considered that the inclusion of article 56 was essential, since it took into account situations not covered by other provisions. He could not vote for the Swedish amendment, but preferred the International Law Commission's text. However, he agreed with the Swedish representative that situations might arise in which migratory fish stocks might be harvested both in territorial waters and on the high seas by different methods and that both the States concerned would be equally interested in conservation measures.

12. Mr. LLOSA (Peru) thought the debate had shown the confusion which existed concerning the real meaning and correct interpretation of article 56. He considered that the Swedish proposal was unnecessary, since its adoption would convert article 56 into a provision parallel to article 54, paragraph 2.

13. Mr. HERRINGTON (United States of America) agreed with the United Kingdom representative that the wording adopted for article 52 covered the situation of two States fishing the same stock in different areas. He also agreed with the representative of El Salvador that the effect of the Swedish amendment would be to extend the provisions of article 56 to both adjacent and non-adjacent areas, but considered that the interests of coastal and non-coastal States would be covered whether the amendment were adopted or not.

14. Mr. KASUMA (Indonesia) said that the Swedish proposal changed the purpose of the International Law Commission's text — namely, to protect the special interests of non-fishing and non-coastal States — by making it cover a general situation; it would therefore create confusion. His delegation preferred the original draft.

15. The CHAIRMAN put the Swedish proposal regarding paragraph 1 of article 56 (A/CONF.13/C.3/L.36) to the vote.

The proposal was rejected by 32 votes to 9, with 18 abstentions.

16. The CHAIRMAN invited the Committee to consider the Japanese proposal (A/CONF.13/C.3/L.33).

17. Mr. LIMA (El Salvador) suggested that consideration of the Japanese proposal should be postponed, because it was intended to replace articles 54 and 55 as well as article 56, and should be discussed in connexion with all three.

18. Mr. TSURUOKA (Japan) agreed to that procedure.

19. Mr. KRYLOV (Union of Soviet Socialist Republics), introducing the joint proposal submitted by Poland and the USSR (A/CONF.13/C.3/L.30), said that its main purpose was to stress the principle of equality, as set forth in article 54, paragraph 2. He agreed with the United States representative that the provision related to coastal and non-coastal States alike. The important point was not so much the area fished, as the uniform application of conservation measures in the interest of world fishing as a whole.

20. Mr. OZERE (Canada) observed that the effect of the joint proposal would be much the same as that of the Swedish amendment. He would therefore vote against it.

21. Mr. LIMA (El Salvador) agreed. Moreover, the joint proposal extended a new right to non-fishing and non-coastal States by allowing them to take part in research organizations and conservation systems on an equal footing. Although that might be justified on the general basis of the equality of States, there seemed to be no reason for extending that right, which properly belonged to coastal States. His delegation preferred the original text.

22. Mr. GARCIA AMADOR (Cuba) suggested that the words "not adjacent to its coast" should be included in the joint proposal after the words "high seas", in order that it might be similar in scope to the International Law Commission's text. He agreed with the representative of El Salvador that a new right had been extended to non-coastal and non-fishing States and did not consider that such States could participate directly in any system of regulation. He therefore suggested that the reference to such systems should be deleted.

23. Mr. KRYLOV (Union of Soviet Socialist Republics) accepted the Cuban amendments to his proposal.

24. Mr. WALL (United Kingdom) observed that it was difficult to take a decision on the joint proposal without having a perfectly clear idea of the Committee's understanding of the situations which article 56 was meant to cover. Moreover, the proposal added nothing to articles 53 and 54. If it was regarded from the point of view of consumer States, their powers and authority were extended. He did not think, however, that such States should take part in organizations dealing directly with fish stocks. In any case, he would be obliged to abstain from voting owing to the prevailing uncertainty.

25. Mr. RUIVO (Portugal) said he would vote against the joint proposal, since non-fishing and non-coastal States could hardly make any useful contribution to research organizations in the areas concerned. His country's experience of regional fishing bodies had shown that research directly affected legislative and

conservation measures and administration, which could not very well be entrusted to the States referred to in article 56. Moreover, the matter was amply covered by articles 52 and 54.

26. Mr. LLOSA (Peru) said he would vote against the joint proposal, as it only served to give consumer States excessive rights and would create confusion and disputes. He would vote for the International Law Commission's text of article 56.

27. The CHAIRMAN put the proposal submitted by Poland and the USSR (A/CONF.13/C.3/L.30) to the vote.

The proposal was rejected by 34 votes to 11, with 17 abstentions.

28. Mr. ALLOY (France) thought that if a State whose nationals did not fish in an area of the high seas not adjacent to its coast requested a State whose nationals did fish there to take conservation measures in that area, the request should have a scientific basis. That was why his delegation had proposed the addition in paragraph 1 of the words "at the same time mentioning the scientific findings which in its opinion makes such measures necessary" after the words "the necessary measures of conservation" (A/CONF.13/C.3/L.3).

29. Mr. PAROLETTI (Italy) supported the proposal.

30. Mr. QURESHI (Pakistan) also supported it, and proposed the addition of the words "and also indicating its special interest" at the end of the French delegation's text.

31. Mr. LLOSA (Peru) said he would vote against the French proposal because its adoption would virtually nullify the Commission's text. A State whose nationals did not fish in a given area of the high seas and which wished to request another State whose nationals did fish there to take conservation measures there, would hardly be able to ascertain what were the scientific findings, if any, which made such measures necessary. He was opposed to laying down the new requirement proposed by the French delegation; it had not been recommended by the Commission.

32. Mr. LIMA (El Salvador) said he would vote for the French amendment and for the addition proposed by the representative of Pakistan. If a State whose nationals did not fish in an area of the high seas was of the opinion that it should request a State whose nationals did fish in that area to take conservation measures there, there must be a difference of opinion between the two States, as the latter State obviously held that conservation measures were not needed in that area. It was only right that a State which made such a request should give scientific reasons for it. He asked whether the French representative would agree to use the term "scientific reasons" instead of "scientific findings".

33. Mr. LIENESCH (Netherlands) thought that the French delegation's valuable proposal made the article much more explicit. It was only right that a State making a request of the kind under discussion should give its reasons for doing so; the basis of such a request should be largely scientific. If the State did not give its

reasons, it would scarcely be possible to discuss the merits of the request. He would not vote against the addition proposed by the representative of Pakistan, but thought it unnecessary, since the very fact of a State's making a request would show that it had a special interest.

34. Mr. ALLOY (France) accepted the change advocated by the representative of El Salvador. His delegation agreed that the addition proposed by the representative of Pakistan was unnecessary, because the use of the words "a special interest" in the first part of the Commission's text indicated that the State making the request would have to explain its special interest.

35. Mr. RIGAL (Haiti) said he would vote for the French amendment with the addition proposed by the representative of Pakistan, since it tended to make the text more explicit and would help to promote the freedom of the high seas, and in particular, the freedom of fishing on the high seas. No State, whether a coastal State or not, should have greater fishing rights on the high seas than any other State.

36. Mr. OBIOLS-GOMEZ (Guatemala) considered the French amendment unnecessary, and would vote against it. No State would make use of the right described in article 56, unless it had scientific reasons for doing so. Nor would it do so if it did not have a special interest in the area concerned.

37. Mr. GANDJI (Iran) said he would vote in favour of the French proposal, and, although he agreed with the Netherlands representative about the proposal by the Pakistani representative, he would vote for that proposal too.

38. The CHAIRMAN put to the vote the French proposal concerning article 56 (A/CONF.13/C.3/L.3), as amended at the suggestion of the representative of El Salvador with the addition proposed by the representative of Pakistan.

The proposal as amended was adopted by 35 votes to 6, with 15 abstentions.

39. Mr. GARCIA AMADOR (Cuba) said he had abstained from voting on the text which the Chairman had put to the vote. He would, however, have voted for the text without the Pakistani addition, which he did not think the French representative had agreed to incorporate in his delegation's proposal.

40. Mr. PAROLETTI (Italy) had little to add to what he had said during the discussions on articles 51 and 52 regarding his delegation's proposal in respect of article 56 (A/CONF.13/C.3/L.24). He asked the Chairman to put the proposal to the vote in the form of a recommendation to the Drafting Committee.

In that form the Italian proposal was adopted by 30 votes to 4, with 20 abstentions.

41. Mr. LIENESCH (Netherlands) said that the amendments to article 56 in the second alternative (the only one which still stood) of his delegation's proposal (A/CONF.13/C.3/L.39), involved little more than a drafting change. Their adoption would make the text more complete and its meaning clearer.

The second alternative in the proposal submitted by the Netherlands (A/CONF.13/C.3/L.39) was adopted by 21 votes to 3, with 34 abstentions.

Paragraph 1 of article 56 as amended was approved on first reading by 45 votes to 2, with 14 abstentions.

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.26, L.33, L.36, L.37, L.41 to L.46)

42. Mr. ALLOY (France), observing that articles 54 and 55 were interdependent and that their subject (rights of coastal States) was very important, proposed that the Committee should start with a general debate on them taken together.

It was so agreed.

43. Mr. RIGAL (Haiti) said that the International Law Commission's text for the two articles consisted largely of a statement of principles rather than a series of precise draft rules such as the Conference had been called to draw up. He suggested, for example, that the text would be improved if the first sentence of article 54 were amended to read "Every coastal State shall contribute to the maintenance of the productivity of..." and the second sentence to read "Every coastal State shall participate on an equal footing in..."

44. Mr. HULT (Sweden), after referring briefly to his statement at the Committee's 7th meeting during the general debate on the articles referred to the Committee, said that his delegation's proposal for the deletion of articles 54 and 55 (A/CONF.13/C.3/L.36) was based on the principle of the freedom of fishing on the high seas coupled with the principle that the fish in the sea were a resource common to all who used it. If his delegation's proposals were adopted, all States would be on an equal footing so far as rights in respect of fishing on the high seas were concerned. It was therefore proposing the deletion of all reference to the rights which the Commission had proposed should be mentioned in the two articles as belonging to coastal States. It considered that those two articles were ambiguous. Every coastal State might have a special interest in one or more areas of the high seas, but it might have such an interest in an area of the high seas far distant from its coast; Norway, for instance, had a special interest in the stock of cod off the coasts of Greenland. Did the articles cover that special interest? It was not clear to him whether articles 54 and 55 applied only to the area of the high seas directly opposite a coastal State or whether they applied both to that area and to areas which lay at an angle to the general line of its coast.

45. Mr. ALLOY (France), referring briefly to what he had said on the subject of articles 54 and 55 at the Committee's 8th meeting during the general debate, said that a change in favour of coastal States had been taking place during the past few years; his delegation was prepared to agree to the text under discussion being worded so that those who subscribed to it would in effect be accepting that change, provided the principle of freedom of fishing on the high seas was affirmed first. The only change proposed by his delegation to article 54 was the substitution of the words "within

two years” for the words “within a reasonable period of time” (A/CONF.13/C.3/L.3). But it could not subscribe to the Commission’s text for article 55, because, as he had said at the Committee’s 8th meeting, it would give the coastal State the right to take unilaterally conservation measures in respect of stocks of fish in the high seas and his delegation was of the opinion that if conservation measures seemed necessary in any area, all the States concerned should discuss their advisability on a basis of equality.

46. The CHAIRMAN announced that there were no more names on his list for the general debate.

47. Mr. CORREA (Ecuador) thought it would be a mistake for the Committee to start immediately to deal seriatim with the numerous proposals relating to articles 54 and 55. Those proposals overlapped in several instances. He suggested, therefore, that further consideration of the articles be deferred until the following day; that, in the meantime, the sponsors of the proposals should meet to consider reducing their number by combining some of them; and that representatives should be given an opportunity to continue the general debate at the next meeting.

It was so agreed.

The meeting rose at 12.40 p.m.

TWENTY-SECOND MEETING

Thursday, 3 April 1958, at 3.5 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.26, L.33, L.36, L.37, L.41 to L.46) (continued)

1. Mr. MELO LECAROS (Chile), introducing the joint proposal submitted by Chile, Costa Rica, Ecuador and Peru (A/CONF.13/C.3/L.41), said that its purpose was to establish the coastal State’s right, deriving from geographical considerations, to regulate and control the conservation of the living resources of the sea in a zone contiguous to the territorial sea. If conservation measures were to be effective, it was necessary not only to lay down certain standards, but also to empower the coastal State to enforce them. It was not reasonable to suggest that the fishing States should themselves prescribe the standards with which their nationals would have to comply, in distant areas of the high seas, where their fishing fleets carried out unrestricted fishing from motives of profit. Although inspectors sometimes accompanied fishing fleets, it was not true that the latter normally took with them an authority capable of ensuring compliance with the regulations in force. There was even some doubt about the national allegiance of certain large fishing fleets which had arrived off the Chilean coast. Any fishing country could pass fishing laws that would apply

anywhere on the high seas, but conservation measures could be effectively implemented and supervised only by a State geographically placed to do so, in other words, by a coastal State.

2. Moreover, coastal States had a right to adopt conservation measures to protect their maritime resources—measures that would be to the benefit of all mankind as well as to that of the coastal States themselves. In many cases, the fisheries off its shores were vital to the people of the coastal State; that was certainly true of Chile, which had a comparatively small area of productive land but stood eighth on the list of fishing countries by catch per head of population. It would be useless to ask such a country to take conservation measures if better-equipped fishing fleets from other countries were still entitled to come and rob the sea of wealth that was not theirs. In those circumstances, there was a natural law which took precedence over any formal law, and that natural law should be reflected in articles 54 and 55. The Conference had been asked to consider not only the legal, but also the economic aspects of the problems referred to it. In seeking a solution for conservation problems, that must be the first consideration.

3. Paragraph 2 of the four-power proposal (A/CONF.13/C.3/L.41) made it plain that there was no intention of claiming exclusive fishing rights over a broad area of the high seas, since it included a clause providing for non-discrimination against foreign fishermen. The effect would be to conserve the living resources of the sea for all who were willing to co-operate in the work of conservation. An additional guarantee was provided in paragraph 3, which stipulated that the regulations concerned should be based on objective scientific findings; hence they could never be arbitrary.

4. Having briefly described the contents of paragraphs 4, 5 and 6, he concluded by emphasizing that the proposal as a whole was intended to fulfil the aims of the joint declaration which his country had signed with Ecuador and Peru in Santiago in 1952 and to which Costa Rica had subsequently adhered. That declaration referred to the principle of sovereignty as the legal concept which justified the introduction of conservation measures. He was not sure that the Conference could find any other principle on which such measures could properly be based. The substance of the four-power proposal must be approved, either as it stood or in some other appropriate form, if the Conference was to lay down just, realistic and lasting provisions on the conservation of the living resources of the sea.

5. Mr. POPOVIC (Yugoslavia), introducing his delegation’s proposal that articles 54 and 55 should be replaced by a single new article (A/CONF.13/C.3/L.13), said that many delegations had drawn attention to the economic importance for coastal States of conserving 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 said, in the second sentence of paragraph 18 of its report,¹ that when formulating conservation programmes

¹ United Nations publication, Sales No.: 1955.II.B.2.

account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast. The International Law Commission had also recognized the interest of the coastal State, in paragraph 1 of article 54, and that interest had likewise been recognized by the domestic legislation of many States. Some of the amendments put forward in the Committee, however, aimed at abolishing the rights of the coastal State; that showed the need for coastal States which had not done so to take the necessary measures to protect their interests within the limits of current international law.

6. The text of paragraph 1 of article 53 as adopted by the Committee (20th meeting) made the conservation measures in question applicable to the coastal State even in the high seas adjacent to its territorial sea provided it did not adopt unilateral measures. Paragraph 2 of his delegation's proposal recognized the coastal State's right to take unilateral measures in that area, but did not preclude the adoption of conservation measures in collaboration with other interested States. Since the second part of paragraph 2 provided that the coastal State could not discriminate against foreign fishermen, the coastal State would clearly have to take measures that would be acceptable to fishing States. The first part of paragraph 2 specified that the width of the maritime belt for regulating and controlling fishing activities should not exceed 100 miles, but his delegation would accept any breadth which proved acceptable to a majority of the Committee.

7. Mr. LEE (Republic of Korea) introduced his delegation's amendments to articles 54 and 55 (A/CONF.13/C.3/L.45). He did not consider that the International Law Commission's draft of the two articles went far enough in protecting the legitimate interests of the coastal State in the exploitation and conservation of fishery resources in coastal waters. It was essential that the coastal State be given the exclusive right of controlling and regulating fishing activities in adjacent waters where the fishery resources were vital to its people's livelihood. The coastal State should have a prior claim to the use of those resources where, with the object of conserving them, it had made sacrifices by restraining its own fishermen. That principle had been recognized in such international fishery conventions as the International Convention for the High Seas Fisheries of the North Pacific Ocean, which related to certain species of fish in the high seas adjacent to the coasts of Canada and the United States of America, and under which unilateral conservation measures were to be taken only by the coastal States, an obligation to abstain from fishing being simultaneously imposed upon non-coastal States. The Korean delegation was in general agreement with the conditions listed in article 55 with the object of preventing the arbitrary exercise of such powers. The deletion of sub-paragraph (a) was proposed because his delegation considered that the conditions there set forth were covered by the proposed new paragraph 2 of article 54. The insertion of the word "unduly" had been proposed in order to make the criterion of whether or not there was discrimination against foreign fishermen more flexible.

8. Only minor amendments were proposed to paragraph 3 of article 55, since it was closely related to the

problem of the settlement of disputes, which was to be discussed later, and he would confine himself to saying that if the parties to the dispute allowed themselves to be guided by the principles laid down in the proposal there would be a better chance of solving such disputes satisfactorily. He emphasized that recognition of the right of coastal States to regulate and control fishing in the waters off their shores would be in the interest not only of those States, but of the whole international community, since it was the only way in which the efficacy of conservation measures could be assured.

9. Mr. ALLOY (France) said that his delegation, having discussed the matter with other delegations, was now prepared to substitute the words "within twelve months" for the words "within two years" in its proposal concerning paragraph 3 of article 54 (A/CONF.13/C.3/L.3).

10. Mr. HUTCHISON (United Kingdom) and Mr. SCHERMERS (Netherlands), speaking for the sponsors of the four-power proposal (A/CONF.13/C.3/L.43), signified their readiness to replace paragraph 3 of that proposal by the following text: "3. In the present paragraph 3, which would then become paragraph 4, replace the words 'agreement within a reasonable period of time' by the words 'agreement on conservation measures within twelve months'."

The meeting rose at 3.45 p.m.

TWENTY-THIRD MEETING

Tuesday, 8 April 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 (A/3159) (continued)

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.33, L.36, L.37, L.41, L.42 and Rev.1, L.43 to L.46, L.60) (continued)

1. Mr. CORREA (Ecuador) recalled that in the general debate at the 9th meeting he had congratulated the International Law Commission on having made it possible for the question of the rights of coastal States to be discussed. But he had also said that those rights were not fully covered by articles 54 and 55 of the Commission's draft.

2. The Commission's text of paragraph 1 of article 54 laid down that the coastal State "has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea". The text went on, in paragraph 2 of article 54 and paragraph 1 of article 55, to indicate two rights which flowed from that "special interest": the right to take part on an equal footing in research and regulation in any area adjacent to its territorial sea, and the right to take unilateral measures of conservation, "provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time".

3. He felt that the right to take part in research and regulation, as proclaimed in paragraph 2 of article 54, was not sufficiently explicit. To make the right to adopt unilateral measures dependent upon a failure of negotiations was also unsatisfactory. It was not reasonable that coastal States should be prevented from taking such measures while negotiations were in progress, since there might be cases in which, despite the good intentions of all concerned, the negotiations were long drawn out, with consequent impairment of the coastal States' interests. It should be possible for coastal States to adopt measures while negotiations were in course, and those measures should be valid until an agreement was reached. He therefore felt that the proviso that a coastal State could adopt unilateral measures only after negotiations had failed should be deleted.

4. In general, the provisions of articles 54 and 55 were incomplete, and afforded no guarantee that underdeveloped coastal States would be able to protect their interests. For that reason, Ecuador had joined with Chile, Costa Rica and Peru in submitting an appropriate amendment (A/CONF.13/C.3/L.41) to articles 54 and 55.

5. He appealed to all representatives to seek the best possible compromise between conflicting interests. Nearly all the States represented at the Conference were coastal States, and hence it could not be argued that the authors of the four-power amendment were defending minority interests.

6. Mr. LLOSA (Peru) said that he had already stated in the general debate (5th meeting) the reasons why Peru could not accept the International Law Commission's draft articles relating to fishing and the conservation of living resources—namely, that those articles did not adequately recognize the rights of coastal states or give them sufficient protection against predatory operations by large fishing fleets.

7. In mentioning the "special interest" of coastal States in article 54, the International Law Commission had given expression to the views of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955, and to those of many individual States. But in article 55 the Commission had laid down conditions which virtually nullified the right to take unilateral conservation measures granted to coastal States by that same article. As it stood, article 55 safeguarded not the interests of coastal States, but those of States exploiting resources which did not belong to them. Such States would always be able to find pretexts for not heeding the rights of the coastal States, the majority of which were small underdeveloped countries which would not even be protected by the arbitral procedure referred to in paragraph 3 of article 55, the effectiveness of which was doubtful.

8. If, for example, a coastal State were to complain that its stocks of fish were being depleted, it might well be told that that was due to biological factors and not to over-fishing. It would be asked to give precise details of the decline in the stocks, which were in most cases impossible to establish. Even if they were eventually obtained, the damage to the resources would already have been done. In effect, therefore, the large fishing

Powers would be able to ignore the claims of coastal States.

9. His delegation had described on an earlier occasion the scientific, historical, social and economic grounds on which the relevant rights of coastal States rested. He found the arguments which had been advanced against the granting of those rights extremely unconvincing.

10. It had been asserted, first, that freedom to fish was an essential part of the freedom of the seas. But freedom of fishing had never been accepted either *de facto* or as a principle of international law.

11. Grotius' arguments had also been invoked in support of the notion of freedom of fishing. He would remind the Committee that Grotius had not been writing a work on international law but a treatise to vindicate the claims of the Dutch East India Company, by whom he had been retained, to freedom of navigation and trade. Grotius had also argued from the false premiss that the living resources of the sea could never be exhausted. Even Grotius, however, had admitted the possibility that fishing might be prohibited if it could be shown to be leading to the exhaustion of supplies of fish. The coastal States were now, two hundred years later, upholding that thesis.

12. It had also been argued that the great fishing Powers, whose fleets ranged far beyond the bounds of their own seas, were contributing to the welfare of humanity by ensuring that there was always a sufficient supply of fish for world consumption. The same humanitarian aim could be achieved simply by allowing coastal States to exploit their resources themselves. If it were further argued that the fishing industries of some coastal States were not sufficiently developed to enable them to do that, the answer was surely to help the industries concerned to expand, or at least to give the coastal State a share of the profits derived from the fish harvested from its own sea.

13. Finally, it had been said that the right of all coastal States to equality of access to the riches of the sea must be respected. But no such equality in fact existed, for differences in economic strength allowed some States to exploit the seas on a vast scale while preventing others from doing so even in their own waters.

14. For all those reasons, Chile, Costa Rica, Ecuador and Peru had moved the four-power amendment to articles 54 and 55 just introduced by the representative of Ecuador (A/CONF.13/C.3/L.41). The amendment provided the minimum degree of regulation necessary to protect coastal States from the predatory activities of large fishing fleets. The area of sea adjacent to their territorial seas in which coastal States had a right to adopt measures of conservation and regulation had not been specified in paragraph 1, since presumably it would not be the same for every State. Paragraph 3 provided a safeguard that measures of conservation and regulation would not be adopted arbitrarily, but solely on the basis of scientific investigations.

15. Paragraph 4 guaranteed the coastal State a fair share of the total catch of fish from its waters. That was a principle which had been embodied in many conventions relating to conservation, and was justly derived from the principle of abstention upheld by some delegations.

16. He called on the large fishing Powers to abandon their traditional positions, which were not in harmony with the present-day spirit of international co-operation, and urged the small States to ponder carefully before coming to a decision on a question which could affect their entire economic future.

17. Mr. KRYLOV (Union of Soviet Socialist Republics) said that two trends had become apparent in the Committee with regard to articles 54 and 55. One group of States had advanced arguments in favour of the rights of coastal States, based purely on their geographical proximity to the living resources of the sea. Another group had denied that coastal States had a "special interest" in the resources. He felt that neither attitude was likely to promote a solution to the twofold problem of the rational use of the resources and international regulation.

18. Migration of fish as a result of exploitation occurred both in the high seas and in territorial seas. For that reason a coastal State should be entitled to take part in conservation operations even when not fishing the area of sea concerned. It should also have the right to take unilateral measures, even though subject to certain conditions. For example, if a coastal State was fishing a certain stock, and had made both efforts and sacrifices to increase the size of the stock, while other States were simply fishing it without making any attempt at conservation, then the former undoubtedly had the right to adopt unilateral measures.

19. The only feasible solution was to find a compromise which would guarantee the right of the coastal State to take unilateral measures for the conservation of stocks of fish when it was the sole State intending to apply such measures.

20. His delegation was therefore prepared to reconsider its proposal (A/CONF.13/C.3/L.42) concerning articles 54 and 55. Paragraphs 1 and 2 of article 54 of the International Law Commission's draft would then stand. He was also prepared to accept the Commission's draft for article 55, subject to the addition to paragraph 2 of sub-paragraph (d) as drafted by the Soviet Union delegation in document A/CONF.13/C.3/L.42/Rev.1.

21. Mr. WALL (United Kingdom) said that some of the proposed amendments related to articles 54 and 55 combined. He felt that the Committee's work would be simplified if the two articles were considered separately.

22. Both referred to the rights of the coastal State. He recalled that in the general debate (7th meeting) he had said that the coastal State had a special interest in fish close to its shore, since its fishermen did not normally go far afield. The United Kingdom was prepared to recognize the coastal State's "special interest" in that sense, and would consider any proposals for special rights emanating from that special interest.

23. The exercise of rights by the coastal State should be subject to the establishment of satisfactory machinery for the settlement of disputes.

24. He was unable to support any proposals entailing the deletion of articles 54 and 55 or demanding unduly extensive rights for coastal States.

25. He supported the International Law Commission's draft for article 54 with the addition proposed in the

amendment submitted by the Netherlands, Portugal, the United Kingdom and the United States (A/CONF.13/C.3/L.43). The United Kingdom amendment to article 55 (A/CONF.13/C.3/L.44) had been put forward in a spirit of compromise.

26. Mr. HERRINGTON (United States of America) pointed out that, when it was maintained that the coastal State alone had the right to regulate fishing in areas of the high seas adjacent to its territorial sea, that meant in effect that an obligation was laid on that State to promulgate the regulations in question. But many States took little part in fishing on the high seas, and did not carry out research on stocks of fish or take measures of conservation in their coastal waters. Was it desirable to require them to undertake such responsibilities? For if they did not, and the principal fishing States were precluded from doing so, the result would be that there would be no conservation measures at all.

27. Such measures were, however, essential; it was also necessary that the coastal State should have the opportunity of taking part in them where they related to the waters off its coasts. Both those needs were provided for in articles 54 and 55.

28. He supported the principle of the special interest of the coastal State laid down in article 54, and would vote against any proposal seeking to delete it.

29. With regard to article 55, his delegation's attitude would depend on what the discussion revealed about the kind of situation that was envisaged. He would vote against any amendments to article 55 which sought to eliminate either recourse to the arbitral procedure contemplated in article 57 or the other conditions laid down by the International Law Commission.

30. Mr. LUND (Norway) was obliged to refute the suggestion that the major fishing Powers carried on their activities regardless of the need for conserving resources. Norwegian fishermen had developed deep-sea fishing as a necessary supplement to their coastal activities. Similarly, any State with a sea-coast would eventually become interested in deep-sea fishing. In his opinion, the best solution would be to establish appropriate bodies, in which the coastal States could be represented, to deal with conservation problems in each region of the world. He doubted whether articles 54 and 55 were really necessary, since arbitration was already provided for under other articles. He recognized that coastal States had special rights and interests and that in some regions it might be necessary to introduce unilateral measures; but such measures should be limited in scope, and should not be arbitrary.

31. Mr. NARAYANAN (India) said that articles 51 to 53 and article 56, which guaranteed the interests of the principal fishing countries, had already been adopted by the Committee, which had thus recognized the conditions required for fishing the high seas. Articles 54 and 55 were of the greatest importance and should be retained—if possible with greater emphasis on the interests of the coastal State.

32. In addition to fishing fleets operating on a world-wide scale, there was a multitude of small indigenous fishermen producing substantial supplies of food from coastal waters. That was what made the retention of articles 54 and 55 so important; if they were deleted

the balance of the articles dealing with fishing would be destroyed, and he would accordingly also oppose any attempt to delete the reference to the special interest of coastal States. Those States were clearly interested in maintaining the resources to be found at their threshold. The major fishing countries, with their technical advantages, could fish elsewhere, but many coastal States were entirely dependent for their supplies of fish on the high seas adjacent to their territorial sea.

33. He did not think that the opposition to article 54 was strong. With regard to article 55, he was glad that an attempt was being made to find a formula which would provide for the introduction of unilateral measures only in cases of real need. Articles 54 and 55 should be adopted, together with provision for a reliable arbitral procedure. He would support all amendments which sought to establish the special interest of coastal States.

34. The CHAIRMAN proposed that the general debate be declared closed.

It was so agreed.

Vote on article 54

35. Mr. TSURUOKA (Japan), referring to the Japanese proposal relating to articles 54, 55 and 56 (A/CONF.13/C.3/L.33), explained that its object had been to replace articles 54, 55 and 56 by a single text designed to ensure the best implementation of the notion of conservation of the living resources of the sea. It took into account both scientific data and the interests of coastal as well as non-coastal States. However, as article 56 had now been adopted, he would withdraw the proposal and associate his delegation, as a co-sponsor, with the Swedish proposal (A/CONF.13/C.3/L.36), in so far as the latter related to articles 54 and 55.

36. Mr. PIRKMAYR (Federal Republic of Germany) said that he too was prepared to withdraw the relevant part of his proposal (A/CONF.13/C.3/L.4), and he requested that the Federal Republic of Germany be associated as a co-sponsor of their joint proposal with Sweden and Japan.

The joint amendment proposed by Sweden, Japan and the Federal Republic of Germany (A/CONF.13/C.3/L.36) was rejected by 43 votes to 6, with 9 abstentions.

37. Mr. KRYLOV (Union of Soviet Socialist Republics) said that, as he had stated at the morning meeting, he had no amendment to propose to article 54 at that stage.

38. Mr. CORREA (Ecuador) announced that the authors of the four-power proposal (A/CONF.13/C.3/L.41) were engaged in discussions with other delegations holding similar views for the purpose of consolidating the latter's amendments with the joint proposal, and that it was hoped that a new joint proposal could be submitted at the following meeting.

The meeting rose at 5.5 p.m.

TWENTY-FOURTH MEETING

Wednesday, 9 April 1958, at 2.45 p.m.

Chairman : Mr. Carlos SUCRE (Panama)

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

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.33, L.36, L.37, L.41, L.42 and Rev.1, L.43 to L.46, L.60, L.65, L.66 and L.71) (continued)

Vote on article 54 (concluded)

1. Mr. OLAFSSON (Iceland) said that it was most important that an effective system of conservation of the living resources of the sea should be established. That was a matter not only of common sense but, as far as his country was concerned, also of self-preservation.

2. The articles of the International Law Commission's draft relating to the conservation of living resources were intended to apply to the area of the seas beyond the limits of territorial jurisdiction. As yet, however, the Conference had not reached agreement on the extent of such jurisdiction.

3. Iceland was in a position such that the area of coastal jurisdiction had to be sufficiently large if the "optimum sustainable yield" (cf. article 50) of fish were to be secured. If the area of jurisdiction were limited to three miles, his country would be unable to accept the International Law Commission's draft articles relating to conservation. The fixing of a larger area would, however, make those articles on the whole acceptable.

4. It had been said that limitations on fishing in certain areas should apply both to the coastal population, which was dependent on such fishing, and to other States also engaged in fishing in those areas. In the case of the areas off Iceland's coast, the total yield was not sufficient to allow of unlimited fishing. Conservation measures would have to be applied there, and Iceland would also need preferential rights over fishing in those areas.

5. He hoped that the principles embodied in the amendment which Iceland had submitted in the First Committee to article 66 (A/CONF.13/C.1/L.131) would prove acceptable.

6. He accepted the first two paragraphs of the International Law Commission's draft article 54, which had been drawn up after careful consideration of the report of the Rome Conference of 1955.¹ He also accepted the eleven-power amendment to article 54 (A/CONF.13/C.3/L.65).

7. The International Law Commission's draft article 55 did not draw the conclusions which followed from paragraph 1 of its draft article 54. He therefore supported the eleven-power amendment to article 55

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

(A/CONF.13/C.3/L.66), especially the new paragraphs which that amendment proposed.

8. Mr. GARCIA AMADOR (Cuba) said that his country had been among the first to give support at an international level to the idea of the special interest of the coastal State. At the same time, he opposed unjustified claims by coastal States which ignored the legitimate interests of other States. The purpose of international law was to protect the rights and interests of all States.

9. The Mexican representative had spoken of fishing imperialists, and had said that the rules which had long been in effect for their benefit had become obsolete. Would it not, however, be equally unjustifiable if international law were to go to the other extreme and serve exclusively the rights of the coastal State? Before 1945, only a few States had concerned themselves with measures of conservation. It was only since 1945 that a spate of extravagant claims relating to conservation had been made.

10. There were some cases in which the coastal State concerned either did not fish at all in the waters in question or fished on such a small scale that it could not possibly claim a "special interest". Other States, however, had been fishing in the area uninterruptedly over a long period of time, and in such a case it was those States which could legitimately claim the "special interest". The special interest of the coastal State was thus a relative — and not an absolute — concept. Other situations, which had been cited in support of the claims of coastal States, would be seen on closer analysis to have no bearing on the problem of conservation. It had been said, for example, that indiscriminate and large-scale fishing of anchovetas by foreign States in the south Pacific was exhausting the stock. Figures showed, however, that fleets of foreign ships caught a yearly average of 3,000 tons of anchovetas, while the Peruvian commercial fishing boats caught 100,000 tons and the guano bird consumed 2,500,000 tons of the species.

11. He supported the International Law Commission's draft of articles 54 and 55, which the Commission had drawn up after coming to the conclusion that the traditional system of treaties governing conservation measures was not in fact sufficient to guarantee conservation.

12. The Commission's draft articles recognized the special interests and rights of coastal States, but also laid down conditions to prevent abuse, since the Commission had been guided by the realization that the areas under discussion were areas of the high seas.

13. Mr. LLOSA (Peru) said he had never stated in the Third Committee that the stocks of anchovetas off the coasts of Peru were at present endangered by the action of foreign fishing fleets. There was, however, a danger that they might be threatened by over-fishing in the future.

14. Mr. REGALA (Philippines) said that the joint proposal submitted by the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60) was intended to clarify article 54. That article recognized the coastal State's special interest in conservation, and article 55

gave them the right to adopt unilateral measures of conservation in certain circumstances.

15. It was clear, therefore, that they should have a preferential right to fish in any area mentioned in article 54, paragraph 1, but the burden was on the coastal State to prove first that the fishing in such an area was carried on mainly by its inhabitants.

16. Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam) said that many coastal States derived their livelihood from fishing, which was in many cases coastal fishing because many of the States in question did not possess the necessary equipment for deep-sea fishing. The purpose of the joint proposal (A/CONF.13/C.3/L.60) was to ensure equality; the proposed preferential right to fish would merely compensate for a *de facto* inequality.

17. Mr. WALL (United Kingdom) said that, far from clarifying the text of article 54, the joint proposal introduced a new principle. It referred to economics rather than to conservation. Economic questions were to be dealt with in later provisions, under the heading of exclusive fishing rights; the proposal did not mention exclusive fishing rights, but it stipulated preferential rights. If such preferential rights were claimed by the United Kingdom, for example, with its fifty million inhabitants, other nations would be excluded from fishing on its coasts. He was opposed to both the form and the substance of the amendment.

18. Mr. LIMA (El Salvador) agreed with the United Kingdom representative. If the joint proposal were discussed in the context of article 54 it might not be accepted, purely as a result of misunderstanding.

19. Mr. REGALA (Philippines) and Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam) agreed that discussion of their joint proposal should be postponed.

20. Mr. LEE (Republic of Korea) withdrew that part of his proposal (A/CONF.13/C.3/L.45) which referred to article 55.

21. However, he maintained the part relating to article 54; he considered that discussion of that part should be deferred until the joint proposal by the United States of America and Canada (A/CONF.13/C.3/L.69) could be discussed.

22. Mr. CORREA (Ecuador) said that the right granted to the coastal State under article 54, paragraph 2, was far from complete. The International Law Commission merely gave the coastal State the right to take part on an equal footing in any system of research and regulation. The eleven-power proposal (A/CONF.13/C.3/L.65) laid on the fishing nations an obligation to enter into negotiations with the coastal State with a view to joint conservation measures, and made it impossible for them to put any measures into force without its agreement. The proposal was in effect a guarantee of the special right of the coastal State.

23. Mr. AGUERREVERE (Venezuela) expressed support for the eleven-power proposal.

24. Mr. LEE (Republic of Korea) said that the purpose of his delegation's proposal (A/CONF.13/C.3/L.45) was to affirm the competence of the coastal State to regulate fishing in the area in question, especially in

cases in which that State was dependent on its fisheries. Since, under article 55, paragraph 2, the measures adopted by the coastal State were to be based on scientific findings, there would be some guarantee against their being of an arbitrary nature.

25. Mr. GARCIA AMADOR (Cuba) said that, under article 51, a State engaged in fishing in any area of the high seas where the nationals of other States were not so engaged had the duty to adopt regulatory measures. If the eleven-power proposal were adopted, that duty might cease to be effective for it would be qualified by conditions. If negotiations as provided for in article 55 gave no result, the non-coastal State could, under article 51, take measures which would be applicable to its own nationals only. Besides, one important purpose of article 51 was that conservation measures should be adopted as soon as the need existed. If nationals of other States were to fish free of controls, the first to be harmed would be the coastal State. He had no objection to the proposal, but thought it should be reconciled with article 51 and with the spirit of the whole text.

26. Mr. ANDERSON (Australia) said the sponsors of the eleven-power proposal (A/CONF.13/C.3/L.65) had not conveyed their intentions clearly. Presumably, they wished to say that the coastal State had the right to establish conservation measures. He would suggest that they might consider inserting in the third line after the word "area" a phrase such as "other than those adopted by the coastal State(s)".

27. Mr. HERRINGTON (United States of America) asked for clarification. Did the sponsors of the eleven-power proposal mean that States whose nationals were engaged in fishing in any area of the high seas should not enforce conservation measures against their own fishermen, or against nationals of other States?

28. Mr. OZERE (Canada) also asked for particulars concerning the purpose of the proposal. Article 51 already benefited the coastal State if its nationals engaged in fishing in the area in question; even if they did not, conservation measures were to its advantage. Furthermore, article 52 provided for negotiations; and article 54, paragraph 2, gave the coastal State the right to take part in any system of regulation. The sponsors should reconsider their proposal.

29. Mr. LIMA (El Salvador) said that the eleven-power proposal filled a gap in the International Law Commission's draft. If measures taken by a fishing State were harmful to the coastal State, the latter's only redress was that contemplated in article 53. The proposal offered a safeguard against possible harmful measures in that it required the concurrence of the coastal State.

30. Mr. QURESHI (Pakistan), while sympathizing with the purpose of the proposal, said it conflicted with several articles. The proposal would prevent fishing nations from applying measures promptly to their own nationals, and the delay might be harmful to the coastal State.

31. If the fishing State had taken measures applicable to its nationals under article 51 and the coastal state had taken measures under article 55, there was some doubt as to which measures would have priority. He

felt that the sponsors should revise the text of the proposal.

32. Mr. CORREA (Ecuador) said that, in deference to the comments expressed, the sponsors would accept the suggestion made by the Australian representative.

33. Mr. WALL (United Kingdom) said that the modification would not solve the difficulty; the text would still not provide for the cases where the coastal State had taken no conservation measures.

34. Mr. CORREA (Ecuador) said that the eleven-power proposal made it mandatory for the fishing States to obtain the approval of the coastal State.

35. Mr. LACU (Argentina) thought that the purpose of the proposal was to take into account the interests of the so-called non-coastal States, and to compel the coastal State to enter into negotiations with a view to conservations measures.

36. Mr. HERRINGTON (United States of America) said that one implication of the proposal as it stood was that, if a fishing State entered an area adjacent to the coastal State where there were no conservation measures in force, the fishing State would be unable to adopt conservation measures regulating its own fishermen.

37. Mr. CASTAÑEDA (Mexico) considered that the situation envisaged by the proposal was that which would occur when a State applied certain conservation measures to its nationals under article 51, while at the same time the coastal State enforced measures applicable to its own nationals; there would thus be two régimes in the same zone. He considered that the regulations of the coastal State should prevail, and that no other State should be free to adopt the other measures without the coastal State's consent.

38. Mr. CORREA (Ecuador) suggested that the text of the proposal should be amended by substituting the words "which are opposed to those adopted by" for the words "without the concurrence of".

39. Mr. HERRINGTON (United States of America) said that article 53 covered the very situation referred to by the Mexican representative.

40. Mr. LIMA (El Salvador) pointed out that article 53 dealt with measures taken under articles 51 and 52, and not with those taken by the coastal State.

41. Mr. GARCIA AMADOR (Cuba) said that in its revised version the proposal was acceptable. Its purpose was to avoid a conflict between two sets of measures of conservation. But it still did not deal with the problem of the obligation of fishing States under article 51; would the measures taken by such States under that article be subject to the consent of a coastal State which had itself taken no measures? The proposal should be supplemented by a clause dealing with that hypothesis.

42. Mr. WALL (United Kingdom) pointed out that articles 51, 52 and 53 did not debar the coastal State from taking action in the same way as the so-called non-coastal State. Conceivably, the fishing State might

have adopted stronger measures than the coastal State and it would be unfortunate if the latter were to oblige the former to adopt the less stringent measures. He thought the proposal was potentially harmful in that it might retard the conservation of living resources.

43. Mr. HERRINGTON (United States of America) said that article 51 of the International Law Commission's draft covered the case of a single State fishing an area of the high seas, whether it was a coastal State or not, and article 52 covered the case of two or more fishing States. The two articles did not deal with the case of coastal States which did not engage in fishing, and it was clear that article 54 was meant to cover their case.

44. The beginning of article 53 should therefore be altered to read: "If, subsequent to the adoption of the measures referred to in articles 51, 52, and 54, nationals of other States..." That amendment would solve the problem of the non-fishing coastal State in a simple manner.

45. Mr. OLAFSSON (Iceland), associating himself with the suggestion which had been made earlier by the Canadian representative, moved that the vote on the eleven-power proposal should be postponed until the next meeting.

The motion was rejected by 32 votes to 6, with 25 abstentions.

The eleven-power proposal (A/CONF.13/C.3/L.65) was adopted by 30 votes to 28, with 7 abstentions.

46. Mr. LACLETA (Spain) said that his delegation's amendment to article 54 (A/CONF.13/C.3/L.37) imposed a limitation on the excessively vague phrase "any area of the high seas adjacent to its territorial sea"; secondly, his delegation proposed a specific period in lieu of the "reasonable period of time" mentioned in the International Law Commission's draft.

47. He withdrew his delegation's amendment to article 55 of the International Law Commission's draft (A/CONF.13/C.3/L.37) and associated himself with the nine-power amendment to that article (A/CONF.13/C.3/L.71).

The Spanish proposal concerning article 54 (A/CONF.13/C.3/L.37) was rejected by 33 votes to 4, with 23 abstentions.

48. Mr. WALL (United Kingdom) said that, although his delegation accepted paragraphs 1 and 2 of the International Law Commission's draft article 54, it considered them incomplete. The new paragraph 3, as proposed in the four-power amendment to article 54 (A/CONF.13/C.3/L.43), was intended to supplement the first two paragraphs of that article.

49. Paragraph 3 of the International Law Commission's draft article 54 was not relevant to the first two paragraphs; the articles new paragraph 3 in the four-power amendment was designed to remedy that defect.

50. Mr. AGUERREVERE (Venezuela) said that the amendment proposed in the second paragraph of the four-power proposal concerning article 54 (A/CONF.13/C.3/L.43) seemed to be in contradiction with the eleven-power proposal (A/CONF.13/C.3/L.65), which

had just been approved; he moved that that particular amendment should not be voted on.

51. Mr. ALVAREZ (Uruguay) said that he could not agree. The eleven-power amendment referred to measures adopted by the coastal State, while the four-power amendment referred to a situation where no such measures existed and where the coastal State desired the State fishing in the area to adopt conservation measures.

The Venezuelan motion was rejected by 29 votes to 21, with 9 abstentions.

The four-power proposal (A/CONF.13/C.3/L.43) was adopted by 35 votes to 4, with 27 abstentions.

52. The CHAIRMAN suggested that no vote was needed on the Italian proposal concerning article 54 (A/CONF.13/C.3/L.24) in view of the Committee's decision at its 20th meeting.

53. Mr. CUSMAI (Italy) agreed.

54. Mr. LLOSA (Peru) said that his delegation had collaborated with the sponsors of the eleven-power amendments to articles 54 and 55 (A/CONF.13/C.3/L.65 and A/CONF.13/C.3/L.66) in a constructive spirit, in order that a formula might be reached which took account both of the rights of coastal States and of the interests of other States and which would prove acceptable to a large majority of States that recognized the rights of coastal States for different reasons.

55. His delegation, in the same spirit of co-operation and compromise, was in fundamental agreement with the formula which had been arrived at. That formula, replacing the original amendment by Chile, Costa Rica, Ecuador and Peru to article 54 (A/CONF.13/C.3/L.41), was embodied in the eleven-power amendment (A/CONF.13/C.3/L.65) which had just been adopted. He wished, however, to express reservations regarding paragraph 1 of the International Law Commission's draft article 54, which had not been modified by the new eleven-power amendment, and in which the reference to the "special interest" of the coastal State should, he thought, be replaced by a reference to its "special right".

56. His delegation wished to add that, if the formula embodied in the new eleven-power amendments to articles 54 and 55 were not approved, it would firmly uphold its traditional position as expressed in the original proposal of Chile, Costa Rica, Ecuador and Peru (A/CONF.13/C.3/L.41).

Article 54 of the International Law Commission's draft, as amended, was adopted by 54 votes to 2, with 10 abstentions.

Vote on article 55

Mr. Krispis (Greece), Vice-Chairman, took the chair.

57. Mr. CORREA (Ecuador) said that although article 55 gave the coastal State the right to adopt unilateral measures of conservation, it laid down the condition that that State could only do so if negotiations had not led to an agreement within a reasonable period of time. The period might be indefinitely prolonged. The purpose of the eleven-power proposal (A/CONF.

13/C.3/L.66) was to ensure that during such a period the measures adopted by the coastal State would remain in force.

58. Mr. O'HALLORAN (New Zealand) said the proposal reflected a sense of conflict between coastal States with limited resources and States that had distant-water fishing fleets. But there was not necessarily such a conflict. He recognized the special position of coastal States; but other needs had to be considered, too. The movements of fish stocks and the many influences which affected their productivity made it desirable that all nations concerned should take conservation measures by agreement. Even article 55 did not go quite far enough in placing the emphasis on the initial steps of consultation, negotiation and, if possible, agreement. He would support amendments stressing the priority of those steps. He accepted the suggestion that coastal States should, in the absence of agreement, prescribe conservation measures for particular stocks of fish, on the condition, however, that those measures had been endorsed finally or provisionally by an impartial expert body. The final responsibility for regulating the interests of the nationals of other States should not be left to the coastal State. He would like to see an article adopted which would recognize the interests of the coastal State while maintaining a just balance between the interests of that State and of the world committee as a whole.

59. Mr. KRYLOV (Union of Soviet Socialist Republics) said his delegation could not agree with the proposal that the conditions concerning prior negotiation should be omitted from article 55.

60. Mr. LUND (Norway) said that conservation measures should be built on agreement, failing which recourse should be had to arbitration.

61. Mr. ALVAREZ (Uruguay) expressed his delegation's support of the eleven-power proposal (A/CONF.13/C.3/L.66), and wished to make a few comments on the views put forward by various delegations during the discussion. With regard to the problem of the attribution to the coastal State of the competence to adopt unilateral measures of conservation, it was necessary to take an equitable view both of the interests of the State which engaged solely in fishing in areas of the high sea adjacent to its territorial sea and of those of the State which also did so in areas of the high seas adjacent to the territorial sea of other States. In both cases, it might be a question of vital interests of actual livelihood, which was something quite distinct from the notion of profit. Those interests should be respected. But it must be acknowledged, if one wished to be fair, that States which engaged in fishing only in areas of the high seas adjacent to their coasts generally possessed inadequate economic and technical means, and were therefore obliged to restrict their activities to those areas, and that it was necessary to give their needs a certain priority over the needs of those other States, which possessed the means to go to other areas. Unless such a priority were accorded, they would be condemned to economic stagnation. He therefore really could not believe that, as some delegations had asserted, equality of treatment would be a just solution; each State was in a different situation, so that really equal treatment

would consist of treating in the same way those that were in the same situation, and in a different way those which were in a different situation. Those considerations should be borne in mind, as well as factors of a technical or scientific character. The best solution would not be one in which the problem was considered solely from the strictly scientific and technical point of view, but one which, while not forgetting those factors, took into account the fact that a large number of coastal countries had a very special interest in the areas of the high seas adjacent to their territorial sea — an interest which, even if there were no fishing, existed as a potential interest, because in those areas lay their security not only in the present, but in the future, owing to the fact that they did not possess any other wealth, or only to a limited extent.

The meeting rose at 6 p.m.

TWENTY-FIFTH MEETING

Thursday, 10 April 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 (A/3159) (continued)

ARTICLE 55 (COMPETENCE OF COASTAL STATES)
(A/CONF.13/C.3/L.4, L.13, L.19, L.33, L.36, L.42, L.45, L.66, L.71) (continued)

1. Mr. QURESHI (Pakistan) recalled that the Committee had made the provisions of article 51 subject to the rights and interests of coastal States, and had endorsed the principle of consultation and negotiation between States interested in conservation. It had further specified time-limits within which agreement had to be reached, and decided that if no agreement was possible, recourse could be had to the procedure specified in article 57. It had, in short, accepted and approved the principles of justice, mutual agreement and international co-operation set forth in articles 51, 52 and 53.

2. The eleven-power proposal (A/CONF.13/C.3/L.66), on the other hand, sought to eliminate completely the principle of negotiation between States and, if adopted, would empower all coastal States to adopt and enforce conservation methods without consulting the other States concerned. The adoption of the proposal would, moreover, create complete chaos in high-seas fisheries if the fifty or so coastal States which shared common seas such as the Mediterranean were to adopt conservation methods without reference to other States concerned with the conservation of the same stocks. Similar confusion would be created even with respect to countries which faced the open sea. He noted in that connexion that the Committee had already approved the principle that, to be effective, conservation measures should apply to stocks of fish and not to geographical areas alone; in any event, co-operation between States sharing common seas was essential if conservation measures were to be based on scientific and not on other considerations.

3. The legitimate interests of the coastal States were already protected in paragraph 1 of article 55, and the coastal State itself would in the first instance be the judge of what constituted a "reasonable period of time", and would decide each case on its merits. Even a very under-developed coastal State that considered its interests threatened by ships of a developed State fishing intensively the waters adjacent to its territorial sea could, in a matter of hours, call upon the flag State of those ships to negotiate conservation measures within a specified but reasonable period of time. If no agreement was reached, the coastal State could enforce suitable conservation measures based on scientific and impartial findings.
4. A distinction should also be made between fishing rights and the right to enforce conservation measures, since the appropriate place to mention any fishing rights claimed by coastal States was article 49 and not article 55.
5. As the representative of a coastal State, he was keenly interested in the protection of his country's rights and interests, which he felt were better safeguarded by article 55 in its present form than by the eleven-power proposal.
6. Mr. CIEGLEWICZ (Poland) said that the eleven-power proposal as a whole, and in particular that part which related to paragraph 1 of article 55, reflected a trend that was completely at variance with the principle of the equality of all States in the matter of fishing on the high seas. His delegation would therefore vote against it.
7. Mr. HERRINGTON (United States of America) said that the changes which the eleven-power proposal sought to introduce into paragraph 1 of article 55 would completely reverse the policy and practice which had been advocated by the International Law Commission and so far endorsed by the Committee. If the prior negotiation requirement were omitted, the fishing State could not be notified of conservation measures in force, and would be unable to comply with them. Such a proposal would therefore create more difficulties than it would solve.
8. Furthermore, if the reference to urgent need were deleted in paragraph 2 of article 55, the adoption of unilateral conservation measures by the coastal State — instead of being an exception — would become the general rule; that would be quite inconsistent with the Committee's decisions on articles 51, 52 and 53.
9. The first part of section 3 of the eleven-power proposal raised the question of the preferential interests of the coastal State which, in his opinion, should be examined when the Committee considered the joint proposal submitted by the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60) on the same question.
10. The second part of section 3 of the eleven-power proposal was acceptable.
11. Generally speaking, the effect of the proposal as a whole would be to change the entire approach to the problem of the conservation of the living resources of the high seas, and his delegation would therefore be unable to vote for article 55 if the eleven-power proposal were adopted.
12. Mr. CASTAÑEDA (Mexico) said that his delegation attached the greatest importance to the principle embodied in paragraph 1 of article 54, which the Committee had already approved. By itself, however, that principle meant nothing, for it simply provided a basis for the elaboration of a body of law. The special interest of the coastal State referred to in that article seemed to lend itself to two different interpretations: the first by the coastal States, and the second by the fishing Powers — namely, countries whose nationals fished far afield. Apparently, the view of the fishing Powers was that the principle should be recognized, but should at the same time be hedged about by so many conditions as to render it illusory.
13. While he agreed with the Cuban representative that a balance must be struck between the opposing views of the two groups, he would lay the greatest stress on the need for consistency. The Committee could not recognize the special interest of coastal States and then deny them the legal means of protecting that interest. Article 55 in its present form would merely frustrate the efforts of States trying to exercise their rights under article 54, for those rights would remain a dead letter if the requirement of prior negotiations, which could drag on indefinitely, were maintained.
14. The Committee would certainly be contradicting itself if it stated, in one and the same article, that the coastal State could adopt conservation measures for which there was an urgent need, but only if negotiations had not led to an agreement. If the need was really urgent, the stock of fish in question might well have been exhausted when the coastal State was eventually permitted to adopt conservation measures. In certain cases, moreover, it would be very difficult to prove "urgent need", and the coastal State would be in the best position to detect any danger signals that indicated the need for the adoption of such measures. The first part of section 3 the eleven-power proposal (A/CONF.13/C.3/L.66) did not refer to the preferential rights of coastal States, but merely covered the case of small coastal communities which depended on fishing for their livelihood. In any event, that question would arise very seldom in practice.
15. Mr. RUIVO (Portugal) said that the special rights of the coastal State should not be such as to hamper the rational exploitation of the living resources of the high seas. He understood the fears of some coastal States which felt that their vital interests were involved, but he pointed out that other interests, just as legitimate, had to be taken into account. Some countries, for example, were compelled to fish far from home in order to support large populations, but it should be borne in mind that they had contributed considerably over the years to the development of rational fishing techniques and conservation methods.
16. It was true that unilateral conservation measures were generally justified and satisfied an urgent need, but in a few cases they were arbitrary and were adopted for political reasons or to eliminate competition. If coastal States were allowed to adopt unilateral conservation measures without having first to enter into negotiations, the position of certain countries with legitimate interests in the stocks concerned would be adversely affected, international co-operation would be

undermined, and the efforts of regional fishing boards rendered nugatory.

17. It had been argued that protracted negotiations could result in over-fishing, but surely that danger would be eliminated by the specific time-limit specified in the nine-power proposal (A/CONF.13/C.3/L.71). Freedom of fishing would be seriously jeopardized if coastal States were given a free hand to adopt conservation measures without allowing other States concerned to have recourse to arbitration or regional fishing boards. His delegation would therefore vote against the eleven-power proposal (A/CONF.13/C.3/L.66).

18. Mr. LUND (Norway) noted that the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 and the International Law Commission alike had emphasized that problems relating to conservation should be solved primarily on a basis of international co-operation. He therefore suggested that States which feared over-fishing in the waters adjacent to their territorial sea should set up conservation systems as soon as possible in consultation with all other States concerned and with the advice of the Fisheries Division of the Food and Agriculture Organization (FAO). The regulation of fishing for conservation purposes required long research and careful study, and it was therefore of great importance to establish appropriate machinery which would ensure that urgent situations did not arise.

19. Mr. GARCIA AMADOR (Cuba) pointed out that, contrary to what had been implied by other speakers, paragraph 1 of article 55 would enable the coastal State to exercise its rights as soon as "a reasonable period of time" had elapsed. It was therefore impossible to assert that negotiations would be protracted and even go on indefinitely.

20. In the past, international law had admittedly been partial to the fishing States, but that was no reason why the situation should now be reversed completely in favour of the coastal States, as was apparently the purpose of the addition which, in the eleven-power proposal, it was sought to make to paragraph 1 of article 55. The crux of the matter in that respect was the procedure for the settlement of disputes which the sponsors proposed to establish. They had, however, failed to give any indication of their views on that point. The Mexican delegation had, it was true, submitted a proposal on the subject (A/CONF.13/C.3/L.1), but the exhaustion of the remedies possible under Article 33 of the United Nations Charter and the conclusion of bilateral and multilateral negotiations would cause interminable delay; meanwhile, in accordance with the eleven-power proposal, the conservation measures adopted by the coastal State would remain in effect.

21. Paragraph 2 of the eleven-power proposal omitted any reference to the requirement of urgency. That requirement was fundamental; and the system proposed by the Commission was based on the concept of the urgent need for conservation measures. The Commission had decided that only when agreement with other States was impossible and when international machinery for negotiations had broken down could the coastal State, as an exceptional measure, adopt unilateral conservation measures *erga omnes* in areas of the high

seas containing stocks of fish to which it could not claim an exclusive right. The Rome Conference of 1955 had decided, on the basis of scientific evidence, that the paramount consideration should be the need for conservation. In general, however, there was no real need to adopt measures for the conservation of the vast majority of stocks of fish, and therefore the Rome Conference had concluded that such measures were justified only by the existence of a real and not a potential danger of the exhaustion of such stocks. Scientists at times found it difficult to determine whether any particular stock was in danger, and it was therefore hard to understand how the sponsors of the eleven-power proposal could foresee the need for conservation measures or say that the existence of certain danger signals would require their adoption.

22. He recalled that at the Rome Conference the Mexican and Cuban delegations had co-sponsored a proposal, supported by most of the Latin American delegations, including those which had now sponsored the eleven-power proposal, to the effect that if agreement could not be reached, the coastal State could adopt conservation measures based on technical or scientific evidence — provided that there was an imperative need to conserve the stock concerned. The word "imperative" had been replaced by the word "urgent" in the Commission's text, and it was surprising that the sponsors of the eleven-power proposal now sought to delete what they had supported at Rome.

23. The new paragraph 3 proposed by the sponsors of the eleven-power proposal appeared to contradict subparagraph (c) of paragraph 2 of article 55. In any event, it was impossible for any State to claim exclusive or preferential rights in respect of conservation measures in areas of the high seas. The representative of Mexico had attempted to explain the contradiction by stating that the new paragraph 3 related only to coastal communities; yet it was hard to see how, when restrictions were imposed on the intensity of fishing, the interests of those communities could be given special consideration in any other way than by discrimination against foreign fishermen on the basis of regulations different from those applicable to the coastal State. The Committee should not allow the concept of exclusive or preferential rights to be insinuated into article 55 in the guise of conservation measures.

24. The Mexican representative had also stated that although the special interest of the coastal States had been recognized it had been interpreted in such a way as to deprive it of all meaning. Yet the Commission's draft stated explicitly that the coastal State could exercise its rights to adopt any conservation measures that were really justified and non-discriminatory. In other words, the Commission's text would not attenuate — but safeguard — the rights of the coastal State, which could refer any dispute to arbitration and, if its case was sound, would receive a favourable decision. What the Mexican representative had in substance requested was that the coastal State should be allowed a free hand to adopt any conservation measures it chose.

25. The new paragraph 4 of article 55 in the eleven-power proposal (A/CONF.13/C.3/L.66) was acceptable.

26. Mr. POPOVIC (Yugoslavia), speaking in support of the eleven-power proposal, observed that, while nearly all delegations agreed that the coastal State had a special interest in fishery conservation in areas of the high seas adjacent to its territorial sea, there was some difference of opinion on the steps which the coastal State might take to protect its special interest. In attempting to resolve that difference, the Committee should bear two considerations in mind: In the first place, different States were at different levels of technical and economic development. The small and under-developed countries could, for technical reasons, exploit only a very small area of the high seas adjacent to their territorial sea, and it was essential that they should be given wide powers to protect their special interests in that area. In such cases, equality of rights as between the coastal State and any other States concerned was inadmissible.

27. Secondly, the amendment which the Committee had already accepted (20th meeting) to paragraph 1 of article 53 had considerably extended the application of the terms of that article, with the result that conservation measures adopted in accordance with it would apply to any area of the high seas in which a protected stock of fish might appear. His delegation had voted in favour of the new text of paragraph 1 of article 53 in the hope that the rights of the coastal State would be adequately protected in articles 54 and 55. If that were not to be so, he would ask the Committee to reconsider its draft of article 53.

28. Mr. WALL (United Kingdom) said that his delegation opposed sections 1 and 2 of the eleven-power proposal for the same reasons as those given by the New Zealand and Cuban representatives.

29. With regard to section 3 of the proposal, he recalled that during the general debate (7th meeting) his delegation had stated that, when the intensity of fishing was such that some measure of control was required, it would not be unreasonable to recognize the special interest of the small-boat communities. A provision to that effect was in fact included in many of the existing conservation conventions. He believed, however, that the words "special consideration" used in the eleven-power proposal were synonymous with "preference" or even "exclusive fishing rights" and, while his delegation would be prepared to consider the matter of preference in another context, he took the view that it was not relevant to article 55.

30. Passing to the new paragraph 4 proposed in section 3, he said that in the International Law Commission's text of article 55, emphasis had been placed on the stock of fish to be conserved rather than on geographical considerations. The proposal to adopt the principles of geographical demarcation as defined in articles 12 and 14, when the coasts of different States were involved, placed the emphasis rather on the geographical aspect of fishery conservation. Having observed that in the North Sea, for instance, it would be extremely difficult to draw demarcation lines as envisaged in articles 12 and 14, he said that his delegation preferred the International Law Commission's text.

31. Mr. LLOSA (Peru) claimed that the new text of

article 55 proposed by the eleven Powers represented the logical outcome of article 54. In the latter article, the Committee had recognized the special interest of the coastal State in the maintenance of the productivity of the living resources in areas of the high seas adjacent to its territorial sea and, unless article 55 empowered the coastal State to take effective steps to protect that interest, article 54 would remain a dead letter.

32. He took exception to the Cuban representative's statement that, while the International Law Commission's text was biased in favour of the large fishing States, the eleven-power proposal was designed to shift the balance in favour of the coastal States. On the contrary, the purpose of that proposal was to find a golden mean between the two extremes.

33. He recalled that the issue which at present divided the Committee had already arisen during the Rome Conference of 1955,¹ and that on that occasion neither the group which held that the coastal State alone should be entrusted with conservation measures in areas near its coast nor the group which believed that the coastal State should refrain from adopting any conservation measures for high seas fisheries without the agreement of other States concerned had been able to obtain a majority. Thus, ever since the Rome Conference, world opinion on the extent of the interest and responsibility of the coastal State had been equally divided, and it was one of the chief aims of the present conference to seek a formula which would enable the coastal State to prevent the depredation of fisheries in areas adjacent to its territorial sea by the large fishing States. At the present rate of technical development, such depredation could in the very near future attain unforeseeable limits, with the result that an entire fishing stock might be exhausted in a few years, or even a few months. In that event, the coastal State could not possibly wait until agreement on conservation measures had been reached with the large fishing States concerned.

34. He emphasized his delegation's belief that, while the coastal State should as far as possible avoid taking unilateral conservation measures, it should be empowered to do so without delay in cases of emergency. That was the substance of the eleven-power proposal, and his delegation would vote for it.

35. Mr. LIMA (El Salvador) agreed with the theoretical and legal arguments advanced by the Mexican representative in support of the eleven-power proposal.

36. For his part, he would confine himself, first, to examining the practical effects of the International Law Commission's draft of article 55 and those of the eleven-power text. In his view, the insistence laid on prior negotiations in the Commission's text was pointless. If the conservation measures were reasonable, then prior negotiation was unnecessary. If, on the other hand, the other States concerned claimed that the conservation measures were unreasonable, then there could be no agreement, and in that case likewise there was no purpose in negotiation.

37. The Commission's text stated that unilateral measures adopted by the coastal State would only be

¹ *Report of the International Technical Conference of the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No.: 1955.II.B.2) paras. 44 and 45.

valid as to other States if scientific evidence showed that there was an urgent need for them. He asked who would decide whether the need was urgent. If a coastal State adopted conservation measures, then clearly it regarded them as urgent, and it was unnecessary, therefore, to refer to "an urgent need" in the text of article 55. The eleven-power proposal was logical, and was designed to state expressly the right of a coastal State to exercise unilateral conservation measures without delay when the need arose.

38. Secondly, dealing with the time for the introduction of conservation measures not accepted by the other States concerned, he noted that under the nine-power proposal (A/CONF.13/C.3/L.71) the introduction of the measures would be left in abeyance pending the arbitral decision. His delegation, on the other hand, took the view that the conservation measures should remain in force pending an arbitral decision, and that view was reinforced by an examination of the texts of articles 51 to 53 which the Committee had already adopted. Paragraph 2 of article 53 stated that conservation measures adopted by a fishing State should remain obligatory pending the arbitral decision. If that were the case, he would ask why conservation measures adopted by the coastal State should remain in abeyance pending the arbitral decision. It was proper, surely, that conservation measures taken by all States should be subject to the same procedure.

39. In sum, his delegation believed that the eleven-power proposal (A/CONF.13/C.3/L.66) was preferable in all respects to the nine-power proposal (A/CONF.13/C.3/L.71), and would vote for the former.

40. Mr. LOOMES (Australia) was unable to support the eleven-power proposal, feeling as he did that a reasonable balance should be maintained between the interests of the coastal State and international fishing interests as a whole. The maintenance of such a balance demanded first, prior negotiations between the coastal State and other States concerned; secondly, the exchange of scientific information; and thirdly, a reasonable time for the negotiations to take place.

41. To allay the fear apparently entertained by the Mexican representative that negotiations might be protracted indefinitely, he would be quite prepared to support an amendment setting a definite time-limit for negotiations. In general, on the other hand, his delegation believed that the International Law Commission's text was preferable to that contained in either the nine-power proposal or the eleven-power proposal.

42. Mr. PANIKKAR (India) recalled that in the general debate (5th meeting) his delegation had expressed its approval in principle of the International Law Commission's text of articles 54 and 55. In detail, however, he felt that article 55 might be improved so as to accord a greater degree of respect to the special interests of the coastal State. With regard to the need for prior negotiations, his delegation was wholeheartedly in favour of co-operation and negotiation on the application of conservation measures, and felt that the real cause of much of the recent argument in the Committee was the inclusion of the phrase "within a reasonable period of time" in the Commission's text of paragraph 1. If those words were replaced by others

indicating a fixed period of time, it might, he believed, be possible to reconcile the two points of view expressed in the eleven-power and nine-power amendments, so that the final text of article 55 could be adopted by a large majority. If it were not possible to reconcile the two points of view, his delegation would vote in favour of the eleven-power proposal (A/CONF.13/C.3/L.66), paragraphs 1 and 2 as proposed therein being preferable to the corresponding paragraphs in the International Law Commission's text.

43. According to the Commission's text of paragraph 2, unilateral measures adopted by the coastal State would be valid as to other States only if three requirements were fulfilled. The second and third requirements were preserved in the text of the eleven-power proposal, while the first — "that scientific evidence shows that there is an urgent need for measures of conservation" — had been omitted. His delegation believed that the omission was wholly justifiable, since there were some areas where serious difficulties would arise in providing scientific evidence to show that there was an urgent need for conservation measures.

44. Mr. OZORES (Panama) believed that a possible solution might be to combine the most satisfactory elements of the International Law Commission's text and of that proposed by the eleven Powers. On the one hand, he regarded paragraph 1 of the International Law Commission's text as unsatisfactory, and preferred the text of the eleven-power proposal, which did not insist on negotiations prior to the adoption of unilateral conservation measures by the coastal State. On the other hand, he was disappointed to find no reference in the eleven-power proposal to recourse to the procedure contemplated by article 57 and, in that respect, he regarded the International Law Commission's text as preferable.

45. He would therefore propose that a coastal State should be empowered to take unilateral conservation measures without prior negotiations with the other States concerned, and that the measures adopted should remain obligatory pending an arbitral decision as envisaged by article 57.

The meeting rose at 1 p.m.

TWENTY-SIXTH MEETING

Thursday, 10 April 1958, at 8.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLE 55 (COMPETENCE OF COASTAL STATES)
(A/CONF.13/C.3/L.66, A/CONF.13/C.3/L.71)
(continued)

1. Mr. CORREA (Ecuador) said that, acting on a suggestion by the Rapporteur, the sponsors of the eleven-power proposal (A/CONF.13/C.3/L.66) had been holding consultations in order to produce a text likely to gain a majority in the Committee and a two-