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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-

thirds majority at a plenary meeting. Progress was being made, and it was hoped that a generally acceptable text could be introduced at the next meeting. He proposed, therefore, that consideration of the eleven-power proposal should be adjourned until the next meeting.

2. Mr. HERRINGTON (United States of America) supported that proposal.

3. Mr. WALL (United Kingdom) thought that it would certainly facilitate the consultations to which the representative of Ecuador had referred if the Committee were informed of the intentions of the sponsors of the nine-power proposal (A/CONF.13/C.3/L.71). As a co-sponsor, he intended to introduce that proposal.

4. Mr. CORREA (Ecuador) agreed that his motion to adjourn should not be put to the vote until the Committee had heard the representative of the United Kingdom.

5. Mr. WALL (United Kingdom) pointed out first of all that paragraph 1 of the nine-power proposal repeated the greater part of paragraph 1 of draft article 55 adopted by the International Law Commission, but amended the conditions at the end of that paragraph. Thus, sub-paragraph (*a*) of paragraph 1 in the joint proposal did not speak of " a reasonable period of time ", but sub-paragraph (*b*) of paragraph 1 provided that the intended measures should be notified twelve months before they were to be given effect. That period was necessary to allow the States concerned to take any necessary measures to meet the new situation. The same period of twelve months was established in paragraph 3 of the joint proposal. The notification procedure was the same as that laid down in article 53.

6. Since the scope of article 54 was general, it would, on reflection, perhaps be advisable to delete from the first line of paragraph 1 of the joint proposal the words " of paragraph 1 ".

7. In sub-paragraph (*a*) of paragraph 2 in the joint proposal, the words of article 55 " an urgent need for measures " had been replaced by the words " a need for measures ", since urgent measures were the subject of paragraph 4 of the joint proposal. Moreover, that change met the observations made at the previous meeting by the Mexican representative.

8. In sub-paragraph (*c*) of paragraph 2, the words " in form or in fact " had been inserted because there could be measures which were in fact discriminatory, such as prohibition of a particular type of gear not used by the fishermen of the coastal State.

9. Sub-paragraph (*d*) of paragraph 2 was new. The sponsors of the proposal willingly recognized the merits of the arguments in favour of methods of conservation intended to preserve the food resources of coastal populations; but those arguments would not apply to uninhabited coastal territories, like those of the Antarctic continent.

10. Paragraph 3 of the nine-power proposal differed in two respects from the text adopted by the International Law Commission: First, it provided for a period of twelve months, for the reasons already mentioned. Secondly, it specified that the introduction of the measures should be left in abeyance pending the arbitral decision, which was also referred to in the draft articles 57 and 58 adopted by the International Law Commission. It was, indeed, essential that an external, independent and technical body should approve unilateral measures before they took effect. That was a point to which the sponsors of the joint proposal attached considerable importance.

11. At the previous meeting, the representative of El Salvador had maintained that the joint proposal conflicted with the provisions of articles 51 and 53. To that he would reply that those articles dealt with measures of conservation already taken by the coastal States, if necessary in co-operation with other States, and it was quite proper that newcomers in the fishing zones should conform to those measures. Article 55, on the other hand, concerned measures of conservation taken unilaterally by a coastal State in a fishing zone used by fishermen of several States; it was thus reasonable that the interests of those States should be protected.

12. Paragraph 4 was intended to benefit States not scientifically able to conform to the requirements of paragraph 2.

13. In conclusion, he emphasized that the sponsors of the nine-power proposal had wished to establish a balance between the interests of coastal States and those of other States.

14. The CHAIRMAN put to the vote the motion of Ecuador to adjourn consideration of the nine-power proposal (A/CONF.13/C.3/L.66). He pointed out, however, that adoption of the motion would mean postponing consideration of the other proposals relating to article 55.

The Ecuadorian motion was adopted by 39 votes to one, with 24 abstentions.

15. After a procedural discussion on whether consideration of article 57 should be started at the current meeting, Mr. CASTAÑEDA (Mexico), supported by Mr. GARCIA AMADOR (Cuba), moved that the meeting should rise.

The motion was adopted by 31 votes to one, with 34 abstentions.

The meeting rose at 9.20 p.m.

TWENTY-SEVENTH MEETING

Friday, 11 April 1958, at 10.40 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 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.33, L.36, L.42 and Rev.1, L.45, L.46, L.66/Rev.1 and L.71) (continued)

1. Mr. CORREA (Ecuador) wished to explain the revised proposal (A/CONF.13/C.3/L.66/Rev.1) which the authors of the original eleven-power proposal (A/CONF.13/C.3/L.66) were submitting in a spirit of compromise and in the hope of providing a text

for article 55 which the Committee could adopt unanimously.

2. In the first place, he recalled that the eleven Powers had originally suggested the deletion from paragraph 1 of the International Law Commission's text of article 55 of the condition that a coastal State could only adopt unilateral conservation measures after prior negotiation with the other States concerned. There was no objection to the conduct of negotiations simultaneously with the application of conservation measures, but it had been believed that the insistence on prior negotiation with the other States concerned placed an undue restriction on the rights of the coastal State. However, as many delegations had expressed the view that prior negotiation was indispensable, and as the eleven Powers could not accept the possibility of negotiations being protracted indefinitely, the revised proposal recognized the condition of prior negotiation, subject to a time-limit of six months. If agreement had not been reached at the end of six months, then the coastal State would be at liberty to adopt unilateral conservation measures.

3. Secondly, the eleven Powers had originally proposed the deletion, from the Commission's text of paragraph 2, of the first of the three conditions determining whether unilateral conservation measures adopted by the coastal State were valid as to other States. It had been held that that condition was far too strict, since under-developed countries would, for technical reasons, be unable to bring forward scientific evidence as to the urgent need for conservation measures. On the other hand, as a number of delegations had attached great importance to the first of the three conditions, the eleven Powers were now proposing a new text for sub-paragraph (*a*) of paragraph 2, in which the need for conservation measures was no longer to be demonstrated by "scientific evidence", but by "existing knowledge of the fishery".

4. Thirdly, the original text of the eleven-power proposal had given rise to some doubt whether it was intended that unilateral conservation measures adopted by a coastal State should remain in force until disputes with other States concerned had been settled. To eliminate all possible doubt, it was now proposed that the conservation measures should remain in force pending a settlement. Nothing had been said of the method of settlement, for it was as yet unknown what decision the Committee would take in regard to article 57.

5. Lastly, the paragraph 3 proposed in the original eleven-power proposal, which provided for special consideration of the fishing interests of the coastal State if restrictions were imposed on the intensity of fishing, had been deleted from the revised proposal. That did not imply that the eleven Powers intended to withdraw the paragraph in question. On the contrary, they would resubmit it during consideration of article 49.

6. Mr. GARCIA AMADOR (Cuba) wished to be the first to congratulate the eleven Powers on their efforts to produce a text of article 55 acceptable to all delegations.

7. He supported the new amendment to paragraph 1, in that it introduced precision where the International Law Commission had failed to do so; the proposed text of sub-paragraph (*a*) of paragraph 2, because it was wholly in keeping with the general tenor of article 55; and the proposed text of paragraph 3, subject to the decisions which the Committee might reach on paragraph 2 of article 58 and on article 59.

8. With regard to the paragraph 3 proposed in the original eleven-power proposal (A/CONF.13/C.3/L.66) and which had been deleted from the revised proposal, he said that his delegation would, as at previous conferences, display the greatest possible sympathy for the fishing interests of the coastal State, when the Committee came to consider article 49.

9. Mr. MELO LECAROS (Chile) commended the revised eleven-power proposal to the Committee, though he felt obliged to state that, being a compromise, it did not fully satisfy his country's aspirations.

10. He attached the highest importance to the provisions of the paragraph 3 proposed in the original eleven-power proposal, and would state his arguments in favour of them during the discussion of article 49.

11. Mr. WALL (United Kingdom) regarded the revised eleven-power proposal as unacceptable.

12. The crux of the proposal, in his view, was contained in sections 2 and 3. He took exception to the proposed new text of sub-paragraph (*a*) of paragraph 2 on the grounds firstly, that it was inconsistent with the provisions of sub-paragraph (*b*) of paragraph 2 of the International Law Commission's text, and secondly, that the combination of those two conditions would give rise to inequality between States in the application of unilateral conservation measures.

13. Many States whose fisheries had not yet been scientifically investigated could not show that conservation measures were based on appropriate scientific findings, and could not therefore take any unilateral conservation measures at all. Further, the inequality would be intensified by the proposed new text of paragraph 3. Since the Committee had not yet discussed article 57, it was not yet known whether any time-limit would be imposed for the settlement of disputes. On the other hand, if conservation measures were to remain in force pending the settlement of disputes, and if no time-limit were set for the settlement of disputes, some States would be able to keep conservation measures in force indefinitely, whereas others, for the reasons already stated, would not be able to adopt them at all.

14. In that respect, he regarded the nine-power proposal (A/CONF.13/C.3/L.71) as distinctly preferable. According to the latter proposal, there were to be two separate sets of conditions for determining the validity of unilateral conservation measures. In the first place, any coastal State which considered that conservation measures were urgently required might request a provisional decision which would be based on the existing state of knowledge of the fishery, without any requirement of strictly scientific findings. The criterion of scientific findings would only be applied in the second stage — i.e., in the final decision. These two separate sets of conditions opened the way for any State, however limited its technical resources, to initiate conservation measures.

15. Mr. THURMER (Netherlands) said that, though he appreciated the efforts made by the eleven Powers to produce a generally acceptable text, his delegation

could not support sections 2 and 3 of the revised proposal. Further, since the text of the revised proposal was closer to the International Law Commission's text, he proposed that in accordance with the rules of procedure the nine-power proposal (A/CONF.13/C.3/L.71) be voted upon first.

16. Mr. LUND (Norway) said that his delegation would vote against the revised eleven-power proposal. As he had stated repeatedly, although his country recognized the interests of the coastal State under special conditions and in special circumstances, it could not agree that conservation measures taken by a coastal State should be binding on other States without a decision by an impartial arbitral body. The revised proposal was unsatisfactory; first, because it did not state whether arbitral decisions must necessarily be accepted; and secondly, because it required that unilateral conservation measures should remain in force pending the settlement of disputes. His experience showed that it was rarely necessary to adopt conservation measures hastily, and that in most cases no serious depletion of fish stocks could occur during the period needed for negotiation.

17. Mr. HERRINGTON (United States of America) asked first if paragraph 3 in the revised eleven-power proposal was intended to replace the corresponding paragraph in the International Law Commission's text.

18. Mr. CASTAÑEDA (Mexico) explained that adoption of paragraph 3 in the revised proposal would not imply either rejection or acceptance of the corresponding paragraph in the International Law Commission's text, since the Committee had not as yet completed its consideration of the articles relating to arbitration.

19. Mr. HERRINGTON (United States of America) observed that his delegation's attitude to article 55 depended on the acceptance by the Conference of a system for settling disputes within a reasonable period of time. With that reservation, he could state that the revised eleven-power proposal was generally acceptable to his delegation. The proposal to substitute the words "six months" for the words "a reasonable period of time" established the element of urgency, which was the only justification for the existence of article 55. With regard to the proposed new text of sub-paragraph (*a*) of paragraph 2, which modified the requirement of scientific evidence, he regarded it as undesirable in principle, but recognized that some States would have difficulty in producing scientific evidence. Likewise, his delegation believed that, in general, agreement would be reached on necessary conservation measures during the six months provided for negotiations, and it was likely, therefore, that recourse would be had to article 55 only on rare occasions. He was, therefore, prepared to accept paragraph 3 in the revised proposal.

20. He had noted the objections of the United Kingdom representative to the proposal, but he was nevertheless prepared to support it, subject to a few minor modifications, since it appeared to offer the best compromise that could be reached.

21. Mr. GANDJI (Iran) expressed approval of the revised eleven-power proposal, though, like the United Kingdom representative, he doubted the wisdom of combining in a single paragraph the two conditions expressed respectively in sub-paragraph (*a*) of paragraph 2 of the revised proposal and in sub-paragraph (*b*) of paragraph 2 of the International Law Commission's text. It was better for the under-developed countries to be allowed to initiate conservation measures even if they were based only on the existing state of knowledge of the fisheries, than not to be able to initiate any conservation measures at all.

22. Mr. RUIVO (Portugal) could not support the revised eleven-power proposal in its present form. His main objection was that it did not insist on arbitration prior to the adoption of unilateral conservation measures, and this gave too much latitude to the coastal State. His delegation believed that the adoption of unilateral measures without reference to existing regional boards would lead ultimately to the complete breakdown of existing international fishery organizations.

23. The revised proposal, in his view, was not a compromise at all, but represented a very radical evolution of existing practice. If the authors of the revised proposal were intent on achieving some development of international law, the nine-power proposal (A/CONF.13/C.3/L.71) represented the final concession which his government was prepared to make in recognizing the special interest of the coastal State.

24. Mr. ASANTE (Ghana) was in general agreement with the terms of the revised eleven-power proposal, though he was disappointed to find that the International Law Commission's text of sub-paragraph (*b*) of paragraph 2 remained side-by-side with the new proposed text of sub-paragraph (*a*). As he understood paragraph 2, all the three conditions mentioned therein would have to be fulfilled before unilateral conservation measures adopted by the coastal State could be regarded as valid as to other States. He would ask how an under-developed country like his own could provide the necessary scientific evidence to demonstrate the need for conservation measures.

25. Mr. OLAFSSON (Iceland) was unable to regard the revised eleven-power proposal as entirely satisfactory. It was, however, a commendable attempt to produce a generally acceptable text and, for the reasons given by the representatives of Ecuador and the United States, his delegation would vote in favour of it.

26. Mr. ALLOY (France) recalled that in the general debate (8th meeting) his delegation had emphasized its attachment to the principle of freedom and equality of all States in the high seas. In a spirit of conciliation, he had given careful consideration to the revised eleven-power proposal, but had come to the conclusion that it would accord undue latitude to the coastal State, if the conservation measures adopted by the latter in areas of the high seas were made obligatory for other States, prior to an arbitral decision.

27. Like the Portuguese representative, he said that the proposals contained in the nine-power proposal (A/CONF.13/C.3/L.71) represented the final concession which his government was prepared to make.

28. Mr. LACLETA (Spain) regarded the revised eleven-power proposal as unacceptable. He shared the French representative's anxiety lest, if unilateral conservation

measures adopted by a coastal State were to come into force before arbitration, the interests of States fishing away from their own shores would be seriously limited.

29. Like the United Kingdom representative, he believed that the two conditions expressed respectively in sub-paragraph *(a)* of paragraph 2 of the revised eleven-power proposal, and sub-paragraph *(b)* of paragraph 2 of the International Law Commission's text, should be clearly separated, and the text of the nine-power proposal was in that respect infinitely preferable.

30. Mr. CASTAÑEDA (Mexico) wondered if delegations had sufficiently appreciated the new elements introduced into the revised eleven-power proposal. For instance, the suggestion to replace the words "a reasonable period of time" by the words "six months" in paragraph 1 represented a considerable departure from the original proposal to delete the reference to prior negotiation altogether.

31. Secondly, he would agree to a certain extent with the United Kingdom representative's statement that there was a discrepancy between the proposed new text of sub-paragraph *(a)* of paragraph 2 and the International Law Commission's text of sub-paragraph *(b)*, and that the retention of the requirement of scientific findings placed the under-developed States at a disadvantage in comparison with States whose technical resources were larger. That was regrettable, but inevitable. On the other hand, he could not accept the United Kingdom representative's contention that the provisions in the nine-power proposal would afford any better protection to the interests of the under-developed countries. Under paragraph 4 of the nine-power proposal, a coastal State considering that conservation measures were urgently needed was not empowered to take such measures immediately, but only to request a provisional decision under the procedure of article 57. Was it, he asked, likely that an arbitral commission would give a decision in favour of the coastal State, if the application to adopt conservation measures were not supported by scientific findings?

32. His delegation's objection to the Commission's text was that by the time the need for conservation measures was urgent, the depletion of the living resources would have already reached critical proportions. Before that point was reached, however, certain danger signals usually appeared and measures should then be taken to prevent the creation of an urgent situation. Furthermore, if the use of a certain type of fishing equipment or explosives had sharply depleted a certain stock in another area of the high seas, conservation measures would obviously be necessary, even in the absence of urgent need, to prohibit the introduction of such practices in the area of the high seas adjacent to the territorial sea of the coastal State concerned. The co-sponsors had drafted paragraph 2 of their proposal accordingly. The new paragraph 3 was, of course, basic.

33. He explained that the co-sponsors of the revised eleven-power proposal had taken suggestions made at previous meetings and the text of the nine-power proposal into account in their draft, and in his view the revised text represented the absolute minimum that could be accepted.

34. He felt that the Soviet proposal (A/CONF.13/C.3/L.42/Rev.1), by adding yet another requirement to be complied with by coastal States, would add unduly to their already heavy burdens. He would therefore vote against it.

35. Mr. NARAYANAN (India) paid a tribute to the co-sponsors of the revised eleven-power proposal for taking into account the objections raised against their original text. The revised version followed the Commission's draft more closely and yet protected the legitimate interests of coastal States. The amendment to paragraph 1 was a great improvement. The new sub-paragraph *(a)* of paragraph 2 was also acceptable, particularly as the knowledge of a given fishery in some countries might be confined to the size of catch landings.

36. He agreed with the United Kingdom representative that there was some inconsistency between the new sub-paragraph *(a)* of paragraph 2 and sub-paragraph *(b)*, but felt that that would be to the advantage of the conservation régime. If both sub-paragraphs were retained, one would be complementary to the other.

37. The new paragraph 3 would serve to allay the fears of certain delegations concerning the enforcement of unilateral conservation measures.

38. His delegation would therefore vote for the revised eleven-power proposal as a whole, providing that suitable arbitration provisions were embodied in the convention.

39. Mr. CIEGLEWICZ (Poland) said that he would be unable to vote for the revised eleven-power proposal, since the new paragraph 3 would undermine international co-operation in fisheries research and the entire system of regional conventions endorsed by the International Technical Conference on the conservation of the Living Resources of the Sea held in Rome in 1955. A large measure of success had been achieved under those conventions in enforcing conservation measures and regulating fisheries in the northern hemisphere.

40. Mr. GOHAR (United Arab Republic) said that he would vote for the revised eleven-power proposal, which was a substantial improvement on the original version. He felt that the anomaly to which the United Kingdom representative had referred could be overcome by replacing the words "scientific findings" in sub-paragraph *(b)* of article 2 by the words "scientific principles". Findings would have to be based on a study of a specific stock, whereas "principles" would make it possible to reach decisions by comparing stocks in different areas of the high seas.

41. Mr. WALL (United Kingdom) said that the difficulties to which he had referred were best overcome in the nine-power proposal. He was confirmed in that belief by the Mexican representative's admission that the eleven-power proposal would give rise to a certain amount of inequality. Under the procedure suggested in the eleven-power proposal, the inhabitants of small coastal communities in an under-developed country who suddenly found that the local stocks on which they depended for their livelihood had been exhausted would be unable to take any measures because, without facilities to collect scientific evidence, they would be unable to prove why those stocks had disappeared. He pointed out in passing that the difficulty could be only

partly overcome by the suggestion made by the representative of the United Arab Republic. Under the nine-power proposal, however, a coastal State faced with a similar situation could, for example, close the area concerned for certain seasons of the year.

42. Mr. LACU (Argentina) said that his delegation would vote for the revised eleven-power proposal, particularly as the stipulation of a six-month period had removed the element of uncertainty in the original version. He felt that the discrepancy between the new sub-paragraph (*a*) of paragraph 2 and sub-paragraph (*b*) should not create difficulty in practice, and agreed that the two ideas could complement one another, especially if the word "or" were added to the end of the new sub-paragraph (*a*).

43. Mr. OZERE (Canada) appreciated the spirit of compromise evident in the revised eleven-power proposal, which struck a balance between the interests of the coastal States and non-coastal States. His delegation accepted the proposal in principle, on the understanding that it would not affect the Commission's arbitration articles, which would be discussed later.

44. His delegation fully understood the doubts of certain non-coastal States concerning the proposal which of necessity favoured the coastal States, but it should be borne in mind that the rights of non-coastal States would be amply protected in the arbitration articles. He expressed the hope that the same consideration would be shown by the coastal States during the discussion of those articles as was being shown at the present time by the non-coastal States.

45. Mr. MALLIN (Ireland) said that his delegation would vote for the revised eleven-power proposal, on the understanding that the arbitration procedure contained in articles 57 and 58 would be adopted.

46. The contradiction to which the United Kingdom representative had referred was more apparent than real, as the new sub-paragraph (*a*) of paragraph 2 merely provided for the adoption of urgent measures which would eventually be referred to arbitration, and at that time scientific evidence would have to be produced in support of them.

47. Mr. LLOSA (Peru) said that at the 24th meeting his delegation had stated that in a spirit of compromise it would support the original eleven-power proposal (A/CONF.13/C.3/L.66) subject to the reservation it then had indicated. He had further stated that if that proposal was rejected or substantially altered, his delegation would maintain its traditional position of principle in defence of the legitimate interests of coastal States. That had now happened, and his delegation would therefore be obliged to vote against the revised eleven-power proposal.

48. Mr. MICHIELSEN (Belgium), referring to his delegation's statement on the freedom of the high seas during the general debate (7th meeting), said that exclusive fishing and hunting rights were a mediaeval concept which had long been rejected. Although some representatives had said that the principle of the freedom of the high seas had been invented by the great maritime Powers for the protection of their interests, it was precisely that principle that offered the only means of protecting the interests of small maritime States such as Belgium. Furthermore, it was unrealistic to say that States were in general divided into two groups, each with different interests, for the fishermen of all countries had for many years fished the North Sea side by side.

49. The claims of small States should be satisfied as far as possible, but it should be made perfectly clear that any right thus granted was in the nature of an exception to the general rule and must be carefully defined in order to safeguard the freedom of the high seas. A simple, clear and unequivocal definition was all the more necessary in view of the statement that had been made to the effect that the new principle was only the beginning of a new trend. The appropriate definition was to be found in the nine-power proposal, and he would therefore vote against the eleven-power proposal.

50. Mr. RIGAL (Haiti) said that to allow coastal States to adopt conservation measures on the pretext of urgency before they were notified to other States concerned would undermine the freedom of the high seas and the principle of the equality of States. Under paragraph 3 of the eleven-power proposal, the coastal State would be the sole judge of the urgency of any situation, and its adoption of unilateral conservation measures would in effect confront the arbitral commission with a *fait accompli*. The nine-power proposal, on the other hand, recognized that the coastal State had not merely a right but an obligation to adopt conservation measures, and also described the procedure in accordance with which its rights should be exercised. That proposal would ensure that the freedom of the high seas was respected, and would grant the coastal State certain rights without limiting the freedom of action of any arbitral commission. His delegation would therefore vote for it.

51. Mr. THURMER (Netherlands) proposed, in accordance with the second sentence of rule 40 of the rules of procedure, that the nine-power proposal (A/CONF.13/C.3/L.71) should be put to the vote first.

52. Mr. CORREA (Ecuador) opposed the proposal on the basis of the last sentence of rule 40.

53. The CHAIRMAN put the proposal of the Netherlands representative to the vote.

The proposal was rejected by 32 votes to 24, with 16 abstentions.

54. Mr. SOLE (Union of South Africa) proposed that the revised eleven-power proposal should be voted upon paragraph by paragraph.

55. Mr. CORREA (Ecuador) opposed the proposal on the basis of rule 39 of the rules of procedure, and pointed out that the provisions of the eleven-power proposal were all closely interrelated.

56. The CHAIRMAN put the proposal of the representative of the Union of South Africa to the vote.

The proposal was rejected by 38 votes to 13, with 14 abstentions.

57. The CHAIRMAN put to the vote the revised eleven-power proposal.

The revised eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) was adopted by 39 votes to 22, with 4 abstentions.

58. Mr. TSURUOKA (Japan) announced that his delegation had agreed to associate itself with the Swedish delegation as co-sponsor of the proposal contained in document (A/CONF.13/C.3/L.36) concerning article 55.

59. Mr. CASTAÑEDA (Mexico) moved that, in accordance with the third sentence of rule 40 of the rules of procedure, the joint Swedish-Japanese proposal should not be put to the vote.

60. The CHAIRMAN put to the vote the motion of the Mexican representative.

The motion was adopted by 41 votes to 4, with 23 abstentions.

61. Mr. CORREA (Ecuador), supported by Mr. LACU (Argentina), moved that the Committee should also refrain from voting on the nine-power proposal (A/CONF.13/C.3/L.71) for the same reason. In any event, most of its substance was covered by the eleven-power proposal which the Committee had just adopted.

62. Mr. WALL (United Kingdom) opposed the motion and pointed out that certain parts of the nine-power proposal were not covered by the eleven-power proposal. He therefore suggested that the Committee could vote on the nine-power proposal paragraph by paragraph, and said that the co-sponsors would agree to the addition of the words "within six months" after the words "have not led..." in sub-paragraph (*a*) of paragraph 1.

63. The CHAIRMAN put to the vote the motion of the Ecuadorian representative.

The motion was adopted by 25 votes to 20, with 19 abstentions.

64. Mr. KRYLOV (Union of Soviet Socialist Republics) explained that the USSR proposal (A/CONF.13/C.3/L.42/Rev.1) was concerned not only with the conservation, but also with the reproduction of the living resources of the sea. It would not be applicable in all cases.

The Soviet proposal was rejected by 21 votes to 16, with 20 abstentions.

65. Mr. LUND (Norway) requested the Committee to vote on sub-paragraph (*c*) of his delegation's proposal (A/CONF.13/C.3/L.46) which had not been incorporated into the nine-power proposal. However, in view of the Committee's decisions at the current meeting, it would be better to reword the text to read: "That the measures do not apply to the seas adjacent to the coasts of uninhabited territories." He explained that the desire to enable coastal States to protect the interests of their coastal populations engaged in fishing local stocks did not extend to seas adjacent to uninhabited areas. It would not in practice be difficult to determine which areas were uninhabited, and Antarctica was a case in point. It was not his delegation's intention that the proposal should apply to stretches of coast between even sparsely populated points. Any dispute that arose in that connexion could be decided by the arbitral commission.

66. Mr. CHRISTENSEN (Denmark) said that his delegation's fears that the Norwegian proposal would apply to Greenland, which was sparsely populated, had been allayed by the Norwegian representative's explanation. He would therefore vote in favour of the proposal.

67. Mr. KASUMA (Indonesia) said that it would be extremely difficult to apply the Norwegian proposal in certain parts of the world, particularly Indonesia, which contained a large number of uninhabited islands. His delegation would therefore be unable to support the proposal.

68. The CHAIRMAN put to the vote the revised text of sub-paragraph (*c*) of the Norwegian proposal (A/CONF.13/C.3/L.46).

The revised text of sub-paragraph (c) of the Norwegian proposal was adopted by 17 votes to 14, with 24 abstentions.

69. The CHAIRMAN put to the vote article 55 as amended.

Article 55, as amended, was approved by 27 votes to 22, with 8 abstentions.

The meeting rose at 1.30 p.m.

TWENTY-EIGHTH MEETING

Friday, 11 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)*

ARTICLES 57 TO 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.1, L.3, L.5, L.14, L.19, L.36, L.59, L.61, L.64, L.67)

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

1. Mr. ALVAREZ (Uruguay) said that his delegation approved of the formula for the peaceful settlement of disputes which was defined in the Commission's draft article 57, for it regarded it as being the essential guarantee of the effective working of the system elaborated by the Commission. Further, that formula took due account of two categories of essential interests: the interests of the State party to a dispute, to which it gave the right to choose the mode of settlement it considered most appropriate; and the interest of both the State party to a dispute and the community in not leaving indefinitely without a solution — because of the harm which would ensue — an international dispute which could not be settled because the agreement of one State was lacking.

2. The delegation of Uruguay considered that the formula proposed by the Commission would be still more satisfactory if it were amended as indicated in the joint proposal submitted by Greece and the United States of America (A/CONF.13/C.3/L.67), which

would simplify the system envisaged, and increase the participation of States in the arbitration.

3. However, in order the better to stress the fact that States party to a dispute have the right to choose the method of peaceful settlement which seemed to them most appropriate, Uruguay proposed that paragraph 1 of article 57 be worded as follows: "Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall be resolved by the method of peaceful settlement on which the parties to the dispute agree, and failing agreement, the dispute may at any time, at the request of a State party to the disagreement, be submitted for settlement to a special commission of five members."

4. In conclusion, he recalled that Uruguay had always considered recourse to compulsory arbitration, at the suit of one of the parties, as being one of the fundamental bases of peaceful co-existence between States, as witnessed by the various arbitration conventions signed between Uruguay and other countries.

5. Mr. GOLEMANOV (Bulgaria) declared that on grounds of principle his delegation could not subscribe to the rule of compulsory arbitration. The undertakings involved in article 57 would be very sweeping, and might have unforeseeable implications. Furthermore, positive international law offered a variety of means for the pacific settlement of disputes between States, and it was hard to see why the International Law Commission gave preference to arbitration rather than negotiation, inquiry, mediation or other peaceful means. Political and economic factors being involved in any dispute, it was preferable to leave it to States to choose the means of settlement best suited to the prevailing political circumstances and most likely to prove successful.

6. The Conference was primarily called upon to codify the existing rules of international maritime law and to enunciate a number of new rules of substantive law. In view, however, of the opinions expressed by many delegations, the Bulgarian delegation was prepared to agree to the convention's containing provisions on the procedure for settling disputes, provided that they were in no wise based on the principle of compulsory arbitration. His delegation accordingly gave unreserved support to the Soviet Union proposal (A/CONF.13/C.3/L.61) and would subscribe to any amendment on similar lines.

Mr. SUCRE (Panama) resumed the Chair.

7. The CHAIRMAN observed that there were ten proposals in connexion with article 57 and that they fell into the following three groups: three proposals that disputes be settled by the means of pacific settlement listed in Article 33 of the Charter; two proposals that disputes be referred to the International Court of Justice; and five proposals accepting, with major or minor amendments, the draft article 57 adopted by the International Law Commission. He hoped that the sponsors of proposals of similar tenor would try to merge them in order to facilitate the Committee's task.

8. Mr. HULT (Sweden) said that the purpose of his delegation's proposal concerning article 37 (A/CONF.13/C.3/L.36) was to give the Secretary-General of the United Nations an extra month in which to consult the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization. His delegation was, however, prepared to withdraw the amendment, on the understanding that it would be brought to the attention of the drafting committee. It also withdrew the part of its proposal (A/CONF.13/C.3/L.36) which concerned article 58.

9. Mr. INDRAMBARYA (Thailand) also withdrew his delegation's amendments to articles 57, 58 and 59 (A/CONF.13/C.3/L.19).

10. The CHAIRMAN thanked the representatives of Sweden and Thailand, and hoped that their example would be followed by others.

11. Mr. LEE (Republic of Korea) said that his delegation's proposal (A/CONF.13/C.3/L.64) came in the first group of proposals described by the Chairman in that it left States free, within the limits of the general rules governing the pacific settlement of disputes, to choose the means of settlement they deemed most appropriate. His delegation was prepared to seek common ground with the sponsors of similar proposals.

12. Mr. LUND (Norway) said that his delegation fully shared the view of the majority of the International Law Commission, as set out in its commentary on the conservation of the living resources of the high seas in its report on the work of its eighth session (A/3159, pp. 33 and 34, paras. 17 and 18).

13. Mr. CASTAÑEDA (Mexico) observed that the right of a coastal State to take conservation measures on the high seas was subject to the conditions laid down in article 55. Though there was no means of enforcing it, respect for those conditions was none the less a legal and moral obligation deriving from the very nature of international law. Disputes of an infinitely graver nature than those connected with fisheries were solved by means of peaceful settlement freely chosen according to the circumstances. There was absolutely no need to impose a particular means of settlement which, by its very inflexibility, was likely to give rise to more serious problems than the minor ones it sought to solve.

14. The Mexican amendment (A/CONF.13/C.3/L.1) in no way ruled out compulsory arbitration, where appropriate, and more especially in cases where the parties were bound by an arbitration treaty, as were those States which, like Mexico, had ratified the Pact of Bogotá of 1928. At the same time, the amendment permitted recourse to the International Court of Justice, whose Statute had been accepted by a large number of States.

15. In its laudable anxiety to achieve perfection, the International Law Commission had gone a little too far. To realize that, one need only reflect upon the scant response which the International Law Commission's draft on arbitral procedure, despite the high technical standard of the text, had elicited in the General Assembly,[1] or, again, upon the fact that the

[1] Cf. *Official Records of the General Assembly, Tenth Session, Sixth Committee,* 472nd meeting.

Geneva Convention of 1929 on the Pacific Settlement of International Disputes, as revised by the United Nations, had been ratified by only a dozen countries.

16. While agreeing on the need to see that conservation measures were based on valid scientific criteria, he did not think that such a consideration justified going as far as to adopt such rigid provisions as those proposed by the International Law Commission.

17. Mr. BOLINTINEANU (Romania) said his delegation could not accept the International Law Commission's text, nor, indeed, any of the amendments advocating the adoption of a compulsory arbitration system for that would accord neither with the principles of contemporary international law nor with the practice of States in the peaceful settlement of disputes. Whereas international judicial tribunals like every court of justice were bound to apply the existing rules of law, the functions of the proposed arbitral commission would go beyond those of mere jurisdiction, and would give it a legislative authority to lay down rules of law in a field where they were still in the embryonic stage.

18. Moreover, the proposed system did not belong to the realm of general law. In practice, in conformity with the principles of international law, States were showing a marked tendency to reject any attempt to create an international jurisdiction whose competence they would be obliged to recognize; thus, the number of those which accepted the compulsory jurisdiction of the International Court of Justice was limited and was decreasing every year. In that connexion, he would refer to the study by Professor Waldeck in the *British Year Book of International Law, 1955/56.*

19. It was therefore clear that in a field so new and so specialized as that of rules for the conservation of natural resources, no specific means of settling disputes — in the case in point, compulsory arbitration — could be imposed on States *a priori*. It would even be better not to devote a special article to the settlement of disputes in the matter under discussion.

20. For all those reasons, the Romanian delegation gave full support to the Soviet Union proposal (A/CONF.13/C.3/L.61) which, in pursuance of recognized principles of international law, left the States concerned entirely free to choose the most suitable mode of settlement for each dispute.

21. Mr. QUARSHIE (Ghana) said he thought that the best means of safeguarding international peace was to choose the simplest way of settling disputes. Since the object was to give the parties a means of settling their disputes easily and hence rapidly, it would not be proper to impose upon them such a long and complicated procedure as that envisaged by the International Law Commission. To ensure the swift settlement of disputes, a simpler procedure such as that provided for under article 73 would therefore seem preferable.

22. Mr. SHELDOV (Byelorussian Soviet Socialist Republic) pointed out that the question of the conservation of the living resources of the high seas involved considerable economic interests. If, then, like the International Law Commission, the Committee considered it indispensable to set up a procedure for the settlement of disputes, that procedure must be equitable. Yet, in point of fact, the procedure advocated by the International Law Commission failed to take sufficient account of the interest of States and infringed their sovereignty.

23. Like the representative of Mexico, he too would recall that at the Tenth and Eleventh Sessions of the General Assembly several delegations — including that of the Byelorussian Soviet Socialist Republic — had pointed out that in the field of arbitration the International Law Commission had deviated to a considerable extent from the general principles of international law. The advisability of inserting in the law of the sea provisions deriving from principles to which most delegations had not subscribed was therefore open to serious doubt.

24. It must not be forgotten that the basis of arbitration was the free consent of the parties. Thus, while it was true that The Hague Conventions of 1899 and 1907 on the pacific settlement of international disputes did contain clauses on arbitration, the latter was still contingent upon the agreement of the parties. Yet, in several respects article 57 as formulated by the International Law Commission departed from the traditional concept. Thus, under paragraph 1, it was enough for any one of the parties to a dispute to request the application of the arbitral procedure and the other parties were obliged to submit to it. Moreover, paragraph 3 provided that if the parties to a dispute fell into more than two opposing groups they should not be consulted on the choice of the members of the arbitral commission; it even seemed that they would have no right to representation on that commission, which would be in effect only a variant of the International Court of Justice with special competence in the matter of fisheries.

25. That was why the Byelorussian delegation could not accept the draft of article 57 as adopted by the International Law Commission. For the same reasons, it could only support those amendments which advocated a procedure in harmony with the present rules of international law. The amendments submitted by Mexico (A/CONF.13/C.3/L.1) and the Soviet Union (A/CONF.13/C.3/L.61) between which there was little difference, prescribed a procedure in conformity with the United Nations Charter, the Statute of the International Court of Justice and the international agreements in force, and one which safeguarded the interests of all States. Those amendments therefore merited general support.

26. Mr. HERRINGTON (United States of America) said he thought that after adopting provisions concerning the obligations of States on the high seas, particularly with regard to respect for measures of conservation taken by other States, the Conference must lay down a procedure assuring States of a rapid settlement of their disputes. Of course, there must be ample room for negotiation but, for cases where circumstances so required, provision must be made for a system of inquiry, criteria must be laid down and time-limits set. Realizing the importance of those considerations, the International Law Commission had proposed a procedure to guarantee the objective settlement of disputes. The United States delegation favoured that procedure, but thought it could be improved in certain respects.

That was the purpose of the amendments which it had submitted jointly with other delegations (A/CONF.13/C.3/L.67 and A/CONF.13/C.3/L.68).

27. In paragraph 1 of the joint amendment submitted by Greece and the United States (A/CONF.13/C.3/L.67), the change in the style of the commission was designed to accent its primary role, which was to ascertain the facts; whereas, to streamline the machinery, its membership was reduced to five.

28. With the same aim of simplification, paragraphs 2 and 3 of the International Law Commission's text had been merged into a single paragraph (paragraph 2) covering both bilateral and multilateral disputes.

29. Paragraph 3 of the joint amendment was new material. Since in most cases there were more than two parties to disputes, any State party to a proceeding was empowered to name one of its nationals as a member of the special commission, with the right to participate in the proceedings but without the right to vote, in contradistinction to paragraph 2 of the International Law Commission's text, whereby only one national could be nominated as a member by each side.

30. Paragraph 4 of the joint amendment was similar to paragraph 4 of the International Law Commission's text, and paragraph 5 was self-explanatory; paragraph 6 contained directives to the special commission, and paragraph 7 defined the way in which decisions would be taken.

31. Mr. REGALA (Philippines) pointed out that in its draft the International Law Commission had provided methods for the peaceful settlement of disputes in two places, viz., in article 57, for cases arising under articles 52, 53, 54, 55 and 56, and in article 73. With all due respect to those who had drafted the report of the International Law Commission, it would nevertheless seem therefore to have left a vacuum regarding the settlement of disputes that might arise out of a conflict or difference of interpretation in connexion with the early articles of the draft: the régime of the high seas, the régime of the territorial sea, collisions of vessels on the high seas, the right of innocent passage, etc. There should be a procedure similar to that for the settlement of disputes under article 57, or article 73 (continental shelf), for the settlement of such disputes. It was worthy of note, in that connexion, that careful study of the International Law Commission's commentary on each of the said articles failed to reveal any statement regarding the reason for the omission. The Philippine delegation would be prepared to support any proposal to the effect that the procedure provided in article 73 should become applicable to all disputes. If that were not possible, his delegation would also be prepared to support the application of article 57, limited to disputes involving fishery rights between coastal States and non-coastal States.

32. Mr. KRISPIS (Greece) said, with reference to the points raised by the representative of the Philippines, that the procedure of arbitration provided for in article 57 did not exclude the possibility of recourse to the International Court of Justice, in accordance with the Statute of the Court, or to any arbitral commission of the choice of the parties. The functions of the special commission of article 57 would, in fact, be different from those of the International Court of Justice. The International Law Commission had wished to give the special commission not only a judicial, but also a quasi-legislative character.

33. Mr. REGALA (Philippines) expressed surprise that, if that had been its intention, the International Law Commission should have seen fit to suggest the procedure laid down in article 73.

34. Mr. QUARSHIE (Ghana) agreed with the observations made by the representative of the Philippines. He could not see the point of laying down for fishing matters a procedure which lacked simplicity and was not such as to lead to a quick solution.

35. Mr. HERRINGTON (United States of America) pointed out that the questions which arose in matters of fishing were of a highly technical and scientific kind. If a dispute were brought before the International Court of Justice, it too would have to call in specialists. The solution proposed by the International Law Commission was a sensible one.

36. Mr. OZERE (Canada) considered that the International Law Commission had sought, by the procedure it had established in article 57, to make the settlement of disputes which might arise in matters of fishing simple and easy. Referring to Article 33 of the Charter, he said that intervention by the Security Council, as provided for in paragraph 2 of that article, did not necessarily lead to a quick solution. The same was true of recourse to the International Court of Justice: As proof of that, it was enough to recall how long and difficult had been the settlement of certain cases submitted to the Court — for example, the dispute between the United Kingdom and Norway in 1951. The simplicity of the procedure established in article 73 was only apparent. It was on the question whether recourse to arbitration should be compulsory or not that delegations differed in their opinions.

37. Mr. QUARSHIE (Ghana) still thought that the procedure provided for in article 57 was not simple. Moreover, it did not provide, to the same degree as did recourse to an impartial and independent tribunal, an assurance that the decision taken would be equitable.

38. Mr. KRISPIS (Greece) pointed out that the text of paragraph 1 of article 57, like that of paragraph 1 of the amendment proposed by Greece and the United States of America (A/CONF.13/C.3/L.67), clearly allowed for solving the disputes by agreement between the parties, who were also completely free to lay the matter before the Security Council or the International Court of Justice, in accordance with the Charter and the Statute. It was when agreement had not been reached that one of the parties could submit the matter to an arbitral commission for settlement.

39. Mr. POPOVIC (Yugoslavia) said that if the parties to a dispute could not agree to a settlement, it should be submitted to an arbitral commission, whose members should have the confidence of the parties and should be chosen in such a way that the commission would be an expression of their will. That was why the provisions concerning arbitration should be formulated so as to facilitate agreement between the parties on the choice

of arbitrators. The provisions of paragraph 2 of article 57 of the International Law Commission draft would not have such a result.

40. An arbitral commission set up under the provisions of paragraph 3 of that article would be more of a tribunal. It would be preferable, in the cases provided for in that paragraph, for each of the parties to a dispute to appoint two members, and to choose, by mutual agreement, a fifth member to act as chairman.

41. It was because there did not exist any supranational political authority, nor any international court able to exercise jurisdiction over States without their consent, and because in consequence no State could summon another to appear before a tribunal for the settlement of a dispute between them, that the Yugoslav delegation considered it preferable that in matters of arbitration rules should be established which would leave the parties completely free to choose the arbitrators, determine their powers and establish the procedure to be followed. It was with that idea in mind that it had proposed its amendment to article 57 (A/CONF.13/C.3/L.14), for the wording of which it had taken as a model the clauses relating to arbitration in the peace treaties concluded after the Second World War.

42. Mr. KRYLOV (Union of Soviet Socialist Republics) agreed in essentials with the remarks made by the representatives of the Byelorussian Soviet Socialist Republic and Mexico. He had listened with great interest to the representative of Ghana, who had complained of the complicated nature of the procedure envisaged in article 57 of the International Law Commission's draft. In his opinion also, that procedure was too rigid; and it was regrettable that the International Law Commission should have emphasized the compulsory nature of arbitration.

43. In the matter of arbitration, three points arose: the constitution of the organ entrusted with making an arbitral award; the competence of the members of the organ; and — the most delicate point — the law to be applied by the arbitrators. That law could be based upon treaties, upon practice, or upon the principles observed by civilized nations. He could not see what law the arbitral commission mentioned in article 57 could apply. The law which the Conference was endeavouring to establish was so new that a system of arbitration as complicated as the one proposed could hardly function satisfactorily. By contrast, the procedure suggested by Mexico in its amendment (A/CONF.13/C.3/L.1), was extremely simple, and the Soviet delegation would support it.

44. He would point out that the Charter of the United Nations contained no clause making recourse to arbitration or to the International Court of Justice compulsory. He failed to see why, in the matter of fishing, it was necessary to confer on such recourse a compulsory character which the authors of the Charter had not seen fit to accord. His delegation could not support the text of article 57 in the International Law Commission's draft, nor that proposed by Greece and the United States of America (A/CONF.13/C.3/L.67). At the present moment, when maritime law was in the process of formation, it was essential to exercise extreme caution and to avoid any over-complicated systems. There was danger in not leaving the parties to a dispute complete freedom of choice with regard to the arbitrators asked to give a ruling.

45. Mr. QUARSHIE (Ghana) observed that the method of settlement consisting in setting up an arbitral commission was itself a method of peaceful settlement. He could not see why parties, once having failed to find a solution by one method of peaceful settlement, would then have recourse to an arbitral commission, which was merely another method of peaceful settlement.

46. Mr. KRISPIS (Greece) maintained that the Mexican proposal was superfluous, since the provisions of Article 33 of the Charter were compulsory for parties to any dispute. Replying to the representative of Ghana, he pointed out that there was a difference between "another method of peaceful settlement" mentioned at the end of paragraph 1 of article 57 and the arbitral commission, recourse to the latter being compulsory.

47. Mr. QURESHI (Pakistan) said that the disputes to be settled were concerned with the conservation of fisheries. That presented problems of two kinds: problems concerning fishing gear and problems connected with the fishing seasons, which were extremely technical matters. For that reason, the Pakistani delegation had always advocated, particularly during the discussions on articles 51 to 55, that methods of conservation should be based upon scientific knowledge. That could not be otherwise, and it was therefore necessary to devise special methods for dealing with them. Whatever one might say, arbitration was a less lengthy and less costly method than recourse to courts of law. Arbitration was also the method provided for in all economic transactions.

48. Once one accepted the fact that the application of certain provisions was compulsory, one had to admit that arbitration was also compulsory. All agreements involving contractual obligations included an arbitration clause. Moreover, it was clear that, given the extremely technical nature of the problems involved, arbitration was necessary, and that recourse to the Security Council — which was in no way equipped to deal with such matters — was inadvisable.

49. It was hardly likely that a dispute on a matter of fishing would be "likely to endanger the maintenance of international peace and security", which was the prerequisite for the application of the provisions of Article 33 of the Charter. As a matter of fact, the same Article 33 included recourse to arbitration among the possible means of settling disputes.

50. Once one accepted the rules, one must in all logic accept the obligations they involved. Compulsory recourse to an arbitral commission did not constitute an obligation in the true sense of the word, since such recourse was not imposed by a third party.

51. Mr. WALL (United Kingdom) stated that his delegation supported the text of the International Law Commission's draft and the amendment submitted by Greece and the United States of America (A/CONF.13/C.3/L.67). The procedure which they provided for was in fact speedy and effective, which was what was needed when dealing with matters of such vital interest as the conservation of fish.

52. Mr. RIGAL (Haiti) pointed out that the Fourth Committee had already adopted the text of the International Law Commission's draft article 73, which compelled parties to a dispute to have recourse to the International Court of Justice. Since the committees set up by the Conference were nothing more than parts of a whole, it was inappropriate that, article 73 having been adopted by one committee, another committee should lay down in another article — article 57 — a procedure providing for recourse to some other body. He therefore suggested the deletion of article 57, which not only failed to serve any useful purpose, but might even be a source of difficulties, while the procedure it envisaged was both long and costly.

The meeting rose at 10.50 p.m.

TWENTY-NINTH MEETING

Saturday, 12 April 1958, at 10.20 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)*

ARTICLES 57 to 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.1, L.3, L.5, L.14, L.19, L.36, L.59, L.61, L.64, L.67) (continued)

1. Mr. ALVAREZ AYBAR (Dominican Republic) said that at the previous meeting of the Committee, the representative of Haiti had said that, since the Fourth Committee had adopted article 73 of the International Law Commission's draft, it was no longer necessary for the Third Committee to adopt article 57. Article 73, however, only referred to disputes concerning the continental shelf, and, if the suggestion of the Haiti representative were accepted, it would be necessary for the Fourth Committee to reopen its discussion of article 73 in order to insert a reference to fishing disputes in that article.

2. The Committee seemed to be divided into three main groups over the question of the settlement of disputes. There were those who believed that disputes should be settled by the methods of pacific settlement provided for in Article 33 of the United Nations Charter. Others favoured using the machinery provided by the International Court of Justice. Others, again, accepted article 57 of the International Law Commission's draft, with or without the joint amendment to that article proposed by Greece and the United States of America (A/CONF.13/C.3/L.67).

3. All groups of opinion seemed to agree that the settlement procedure might fall into two stages. At the outset of a dispute, States might agree to seek a solution by a method of peaceful settlement of their own choosing — and the International Law Commission's draft article 57 did not exclude that possibility. The second stage occurred if and when the first method of settlement had failed, and consisted in referring the dispute to a final court. It had been suggested that, if disputes were to be settled according to the provisions of Article 33 of the United Nations Charter, the Security Council might act as the final court. The other alternative which had been mentioned was the International Court of Justice. It was clear, however, that neither the Council nor the Court would be qualified to give decisions on highly technical disputes, and would thus have to refer them to a specialized body of experts.

4. He felt, therefore, that the International Law Commission's draft article 57, which provided for the setting up of a special arbitral commission, was the simplest and best method for settling disputes relating to the conservation of living resources, and he would support it as amended by the joint proposal of Greece and the United States of America.

5. Mr. LIMA (El Salvador) said that his government had maintained as a general principle of its foreign policy the idea of compulsory arbitration for the settlement of disputes other than those which the political constitution of El Salvador forbade submitting to such arbitration. The disputes envisaged in article 57 were not, in the opinion of his delegation, those which the constitution forbade submitting, and he would therefore support the International Law Commission's draft article 57.

6. He had observed two trends of opinion in the Committee over the question of settlement of disputes — that which accepted the International Law Commission's draft article 57 and that which preferred the provisions of Article 33 of the United Nations Charter.

7. He was prepared to accept the joint proposal of Greece and the United States of America (A/CONF.13/C.3/L.67), but since the special interest of the coastal State in the living resources of an area adjacent to its territorial sea had been accepted by the Committee, he felt that a reference to that interest should be included in the provisions referring to arbitration. He hoped, therefore, that the Greek and United States delegations would agree to the insertion of the words " and take into consideration the special interest of the coastal State " at the end of the first sentence of paragraph 6 of their proposal. His proposed addition did no more than clarify the terms of paragraph 6, the first sentence of which included a reference to " these articles ", which he took to include article 54.

8. He felt that his proposed addition to the joint proposal was necessary, since, in the event of a dispute between a fishing State and a coastal State, the latter's special interest should be taken into account by the arbitral commission.

9. Mr. GARCIA AMADOR (Cuba) said that the question of the settlement of disputes was a matter of substance, and not merely of form, and was essential to the whole body of articles before the Committee.

10. The right of a coastal State to take unilateral measures of conservation was inseparable from its obligation to have recourse to arbitration procedure of the kind provided for in the International Law Commission's draft article 57.

11. Some representatives had disagreed with that idea on the grounds that it was incompatible with modern international law. Their arguments, however, did not take account of developments in the past twenty-five

years, in the course of which a large number of treaties had been concluded containing provisions for compulsory arbitration similar to that proposed by the International Law Commission in its draft article 57.

12. Nor could Article 33 of the United Nations Charter be used as an argument in support of the view that modern international law recognized voluntary arbitration only. That article gave States the right to choose the method of arbitration, but the article formed part of a whole and should be read in the context of the whole of chapter VI of the Charter. There was no doubt that, although given a choice of methods, States were under the obligation to settle their disputes by one of the methods mentioned in the Charter article.

13. Reference had also been made to the unfavourable reception which the General Assembly had given, at its Tenth Session, to the proposals on arbitral procedure submitted by the International Law Commission.[1] In fact, that opposition, although general at the beginning of the Assembly's discussions, had later given way to a compromise view which accepted the proposals in principle, although considering them too rigid for certain kinds of disputes. His own delegation, which had at first supported the proposals, later came to associate itself with the compromise view, since it believed that the system proposed by the International Law Commission, although not perfect, was the best available.

14. Disputes over conservation measures concerned areas of the high seas which were not under the exclusive jurisdiction of any State. The "special interests" of the coastal State did not give it any exclusive right, since other States might also have an interest in the area of special interest to the coastal State. Accordingly, coastal States should not have exclusive competence to determine the procedure applicable to the settlement of disputes concerning conservation.

15. If it were decided that disputes should be settled by the methods of pacific settlement provided for in Article 33 of the United Nations Charter, certain difficulties might arise. The parties to the dispute would first have to agree on their method of settlement — for example, arbitration; having done that, they would have to agree on the arbitrators, and several other procedural matters would have to be dealt with. By the time all the preliminaries had been settled a long period would have elapsed, in the course of which the unilateral measures taken by the coastal State would have been continuing in force. The measures which the coastal State had adopted, in perfect good faith, might prove to be inadequate, mistaken, or opposed to the conditions laid down in article 55. Was the Committee prepared to grant the coastal State the power to take such measures without a collateral guarantee that that power could not be abused?

16. The representative of the Dominican Republic had referred to the adoption of article 73 by the Fourth Committee. That committee, in adopting article 73, had rejected the idea of leaving disputes to be settled in conformity with the provisions of Article 33 of the United Nations Charter, and had adopted the International Law Commission's draft text. He felt that the Third Committee would do well to follow that example in relation to article 57.

17. Mr. O'HALLORAN (New Zealand) said that the International Court of Justice had been mentioned as a possible alternative to the proposed arbitral commission for the settlement of disputes. In general, multilateral treaties should make provision for the reference of disputes to the International Court of Justice, but the Court would not be the best place for the settlement of detailed technical disputes concerning conservation measures. For one thing the preparation of the documents for submission to the Court would involve a considerable amount of additional work by the parties.

18. New Zealand had always found arbitration to be a satisfactory solution for practical, as distinct from legal, disputes. There was a considerable advantage in having technical disputes adjudicated by a body of experts. His delegation, therefore, preferred the procedure for setting up the arbitral commission proposed in the International Law Commission's draft article 57. This provision seemed elaborate, but would ensure that all parties could have full confidence in the arbitral body.

19. With regard to the suggestion that the parties should be free to refer the case to the arbitral body by agreement, he pointed out that there could be no certainty that the parties would in fact agree. A further dispute would then arise. He considered that proper provision should be made in the document which the Conference was preparing for the reference of disputes to an impartial body, unless the parties agreed on another method of settlement.

20. Some of the articles relating to conservation created new rights and obligations in relation to fishing on the high seas. States engaged in fishing there would have no inducement to become parties to a convention embodying these articles unless they were assured that disputes could be referred to an impartial body.

21. He would therefore accept the International Law Commission's draft article 57 and any of the proposed amendments which tended to simplify the procedure laid down in that article.

22. Mr. GANDJI (Iran) said there should be provision for an arbitration procedure in the articles before the Committee. He agreed with the representative of Pakistan that the articles relating to conservation were technical in nature, and were of more interest to fishermen than to governments.

23. He therefore accepted the International Law Commission's draft of article 57 in principle, together with the joint proposal submitted by Greece and the United States of America (A/CONF.13/C.3/L.67). The Commission's draft did not contradict Article 33 of the United Nations Charter, for article 57, paragraph 1, contained an important proviso allowing the parties to choose another mode of settlement.

24. He hoped that the delegations of Greece and the United States would consider the addition of a new paragraph 8 at the end of their proposed amendment, in the following terms: "8. A. State can appeal from

[1] *Official Records of the General Assembly, Tenth Session, Sixth Committee,* 472nd meeting.

the final decision of the special commission to the International Court of Justice. Pending the decision of the International Court of Justice, the decision of the special commission will be complied with."

25. Mr. LUND (Norway) said that he agreed with the principles embodied in the International Law Commission's draft article 57 and with the joint proposal submitted by Greece and the United States (A/CONF. 13/C.3/L.67), which improved the Commission's text. He felt, however, that paragraph 6 of the joint proposal was more closely related to article 58 than to article 57, and that it would thus be better to delete that paragraph from the amendment.

26. The representative of El Salvador had proposed that a reference to the "special interest" of the coastal State should be inserted in paragraph 6 of the joint proposal. The arbitral commission, however, would in any case have to be guided by the articles which had been adopted by the Committee, and those articles already included a reference to the special interest of the coastal State.

27. Mr. OLAFSSON (Iceland) said that the conservation system adopted by the Committee would be neither effective nor serve its intended purpose unless provision were made for adequate and simple procedures for the peaceful settlement of disputes. The reference of such disputes to the International Court of Justice, which would have to call on the services of fisheries experts, was obviously not the answer. Article 57, on the other hand, was a step in the right direction and it had been improved by the joint proposal (A/CONF.13/C.3/L.67), and particularly by paragraph 3 thereof. His delegation would therefore vote for that proposal.

28. Mr. LOOMES (Australia) said that the conservation system approved by the Committee made it essential to establish a system of compulsory arbitration especially designed to meet the requirements of the fisheries articles. The arbitral body must consist of experts capable of dealing with technical questions; that requirement automatically excluded the International Court of Justice, whose compulsory jurisdiction was not, in any event, accepted by all countries. Nor could disputes be settled solely by reference to Article 33 of the Charter of the United Nations, as in the last resort they would be examined by the Security Council, which was not qualified to deal with fisheries questions. His delegation would therefore oppose the Mexican proposal (A/CONF.13/C.3/L.1) and the Soviet proposal (A/CONF.13/C.3/L.61). It would however, support article 57 as amended by the joint proposal.

29. Mr. MALLIN (Ireland) said that his delegation supported article 57 as amended by the joint proposal. The time-limit specified in that proposal was particularly welcome as it would ensure rapid decisions, and the special commission referred to was admirably constituted to deal with scientific and technical matters.

30. The view that a provision along the lines of article 73 — as adopted by the Fourth Committee — could be used in place of article 57 was unrealistic, as fisheries disputes related to essentially temporary matters, whereas decisions obtained under article 73 would be of a permanent nature. What was required was a relatively inexpensive, simple, *ad hoc* procedure under which, for example, disputes arising out of the adoption of new conservation measures based on new knowledge about a particular stock could be settled expeditiously.

31. Mr. LACU (Argentina) reaffirmed the views he had expressed in the Fourth Committee during the debate on article 73, which, he pointed out, had been adopted by a very small majority. The Committee should think twice before adopting provisions on compulsory arbitration, a principle which had been accepted by only a small minority of States attending the Conference. In his view, the ideal of compulsory arbitration must be sacrificed to a realistic solution acceptable to all States.

32. Mr. SCHERMERS (Netherlands) said that it was perfectly clear, particularly from the Pakistani representative's remarks, that the settlement of fisheries disputes in accordance with Article 33 of the Charter would lead to considerable delay. The main objections to that procedure were first, that the Security Council was not qualified to deal with fisheries questions; secondly, that one of the parties to a dispute might not be a member of the Council; and thirdly, that the great Powers had the right of veto. His delegation would therefore vote against the Mexican proposal (A/CONF. 13/C.3/L.1).

33. An arbitration system similar to that proposed in article 57 was clearly necessary; but, he pointed out that, owing to some confusion in paragraphs 2 and 5 with respect to the three-month period, his delegation had proposed an amendment (A/CONF.13/C.3/L.59). A better and simpler procedure had since been suggested in the joint proposal (A/CONF.13/C.3/L.67), and his delegation would withdraw its amendment in favour of that proposal on condition that, if it were adopted, the drafting changes to which he had referred would be made.

34. Mr. CHRISTENSEN (Denmark) agreed that an arbitration procedure was an essential part of the conservation system. His delegation had been prepared to support the Commission's draft, but would vote for the joint proposal, which was an improvement.

35. Mr. PIRKMAYR (Federal Republic of Germany) recalled that his delegation had expressed its willingness to support articles 51 to 53 on condition that provision was made for an arbitration system for the peaceful settlement of disputes along the lines of article 57, as an essential element of the over-all conservation system. The joint proposal improved the text of article 57, and his delegation would vote for it.

36. Mr. CASTAÑEDA (Mexico) said that the purpose of his delegation's proposal (A/CONF.13/C.3/L.1) was merely to simplify the complicated procedure proposed in article 57. It would not, as the Pakistani representative had assumed, require the application of Article 33 of the Charter and the subsequent reference of disputes to the Security Council.

37. Referring to the Cuban representative's observations, he agreed that the obligations of coastal States

under article 55 were legally binding and that any States which failed to comply with them would be responsible before the international community. But the obligations imposed by article 57 could not be enforced, owing to the absence of international enforcement machinery. Furthermore, he pointed out that even under the Charter, only the decisions of the Security Council pursuant to Articles 41 and 42 of the Charter could be enforced, and were therefore binding.

38. His views on compulsory arbitration had, moreover, been confirmed by the Cuban representative who had said that very few States had been in favour of the International Law Commission's draft on arbitral procedure. Even among the twenty-one Latin-American countries, bound together by friendship and a common heritage, only eight had accepted the compulsory arbitration clause of the Pact of Bogotá. Compulsory arbitration procedure accepted by a small number of States on a regional basis was admittedly successful but was obviously too rigid to be capable of world-wide application. The Mexican proposal simply recognized the fact that the overwhelming majority of countries opposed compulsory arbitration, and in his opinion very few States would find it possible to ratify a convention that contained provisions similar to those in article 57.

39. Mr. AYCINENA SALAZAR (Guatemala) said that his delegation was unable to accept the compulsory arbitration system outlined in article 57 for the reasons he had explained in the Fourth Committee during the debate on article 73. His delegation did not oppose compulsory arbitration as such, but at the present stage of international law it was an ideal rather than a practical proposition. He would support the Mexican proposal (A/CONF.13/C.3/L.1) in the hope that it would enable as many States as possible to ratify the convention.

40. Mr. ALVAREZ (Uruguay) said that his delegation would have nothing against accepting the compulsory jurisdiction of the International Court of Justice. His delegation was prepared to support any proposal to establish — on the basis of automatic compulsory arbitration, without restriction, and at the suit of one of the parties — a common system of arbitration for all questions relating to the application of the convention or conventions produced by the Conference.

41. The discussion had shown clearly that the problems dealt with in articles 49 to 60 called for a special method of peaceful settlement — essentially one which was speedy and effective, and which would make it possible to reach definite solutions. Those considerations in themselves justified the proposal submitted by Uruguay (A/CONF.13/C.3/L.31).

42. Those delegations which preferred the methods of pacific settlement provided in Article 33 of the Charter of the United Nations had indicated that the International Law Commission's draft article 57 offered no guarantee of impartiality in respect of the appointment of members of the arbitral commission, nor as regards its decision; that it was too rigid and too heavy, and might result in friction more serious than the problems it was supposed to solve; and that it prevented exploration of all available means of settlement.

43. However, while some of the criticisms directed against draft article 57 might be justified, it must not be forgotten that the application of any of the methods of pacific settlement of disputes mentioned in Article 33 would also involve risks, and, above all, required one fundamental prerequisite: the agreement of the parties concerned. It was quite possible that such agreement might not be forthcoming during an indefinite period, with resultant damage, direct and immediate, to the living resources it was desired to protect. Moreover, in the case of a dispute between States of unequal power, it was to be feared that might would prevail over right.

44. Therefore in spite of criticisms which might be levelled against the system outlined in article 57, the delegation of Uruguay supported the system of peaceful settlement of disputes provided for in the International Law Commission's draft article 57 with the amendments proposed by the delegations of Greece and the United States of America (A/CONF.13/C.3/L.67).

45. Mr. WALL (United Kingdom) stated that his delegation's support in principle of articles 57, 58 and 59 was based on the view that the arbitration system they outlined was a vital part of the fisheries articles. Whatever system was eventually adopted must meet the requirements of expertness, impartiality and expedition in operation. For that reason he was prepared to accept article 57 and the joint proposal (A/CONF.13/C.3/L.67), which was to some extent an improvement, since it referred to special rather than arbitral commissions and replaced the dual system by a simpler single system. He inquired, however, why in the joint proposal the number of the independent members of the special commission had been increased to five; qualified experts were scarce.

46. Under the terms of paragraph 5 of the joint proposal the time-limit could be extended indefinitely, and he therefore suggested that the following sentence should be added to the end of the paragraph: "The special commission shall in any event reach a decision within eight months in all."

47. He also suggested the establishment of a permanent panel of experts from among whom the members of special commissions could be selected.

48. Mr. ALLOY (France) agreed with the Cuban representative that the procedure under Article 33 of the Charter could cause endless delay; that would do irreparable damage to stocks of fish and undermine the effectiveness of conservation measures. The need for a simple and expeditious procedure was satisfied by article 57 which his delegation supported. The joint proposal improved the wording of the Commission's text and was more flexible, but he agreed that the period of five months referred to in paragraph 5 might be too long in view of the harm that could be caused to stocks in that time, and he suggested that it could be reduced to three or four months.

49. Mr. OZORES (Panama) said that his delegation had never shared the concern expressed by others concerning compulsory arbitration for the peaceful settlement of disputes. In the case under consideration article 57 provided means for the settlement of disputes relating to areas of the high seas over which no State could claim to exercise sovereign rights. He was there-

fore prepared to support article 57 as well as the joint proposal which simplified the Commission's text. The Philippine proposal (A/CONF.13/C.3/L.5) should also be taken into consideration.

50. Mr. HULT (Sweden) said that his delegation had accepted the principle contained in article 57 in the belief that some system of compulsory arbitration was vital. He would also support the joint proposal.

51. Mr. KRISPIS (Greece), referring to the Mexican proposal, said that only in the case of matters falling under chapter VII of the Charter could the Security Council give decisions; under chapter VI, the Council had recommending powers only. Clearly, therefore, as fishing disputes were unlikely to constitute threats to or breaches of the peace or acts of aggression, the Security Council would be powerless to do anything but make recommendations. The General Assembly could, it was true, deal with fisheries disputes under Article 14 of the Charter, but it, too, could do no more than make recommendations. The need for a rapid and compulsory arbitration system could be met only by article 57 as amended by the joint proposal.

52. Mr. RUIVO (Portugal) agreed that the provisions relating to conservation were closely linked to those dealing with arbitration. His delegation would accordingly support article 57 as well as the joint proposal, together with the oral amendment submitted by the United Kingdom representative. He also welcomed the suggestion of establishing a permanent panel of experts; that would certainly avoid delay in the recruitment of qualified personnel.

53. Mr. PANIKKAR (India) reaffirmed his delegation's support of the principle of compulsory arbitration as an essential part of the fisheries articles. An arbitration system was necessary as legitimate differences of opinion would certainly arise in connexion with the articles which the Committee had approved. A reference of such disputes to the Security Council or to the International Court of Justice was impractical since those bodies were qualified to deal only with political and juridical questions. A glance at the report of the Rome Conference of 1955,[1] or at the terms of article 55, paragraph 2, however, was enough to show that scientific and technical experts were required to deal with certain fisheries disputes. His delegation would therefore support article 57 as in the International Law Commission's draft.

54. Mr. TREJOS FLORES (Costa Rica) said that the objections of States to compulsory arbitration with respect to matters falling within their domestic jurisdiction could not apply to the articles under consideration. Surely, international law did not confer upon States the right to adopt conservation measures in the high seas that would be binding on all other States. That right was completely new and had been set down for the first time in history. He therefore failed to understand why States should be reluctant to accept compulsory arbitration for the settlement of disputes arising out of the exercise of that right. In his opinion, the acceptance of compulsory arbitration was an indispensable condition for the recognition of that extraordinary right by other States.

55. An additional argument in favour of compulsory arbitration was that the effect on stocks of the adoption of unsound conservation measures would be just as bad as the failure to adopt any measures at all. Accordingly, it was essential to establish an effective and expeditious system that would make it possible to determine the soundness of and need for conservation measures.

56. For that reason his delegation accepted the principle contained in article 57 and would vote for the joint proposal. He suggested that the fears and objections of some States concerning compulsory arbitration could be overcome by adding the words "in accordance with Article 33 of the United Nations Charter" to the end of paragraph 1 of the joint proposal. That would make it abundantly clear that arbitration was an extraordinary procedure which should be used only as a last resort, and would leave the parties free to choose the best method for the settlement of their dispute.

The meeting rose at 1 p.m.

THIRTIETH MEETING

Saturday, 12 April 1958, at 3.40 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 57 to 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/.L.1, L.3, L.5, L.14, L.59, L.61, L.64, L.67)

Vote on article 57

1. The CHAIRMAN suggested that the amendments to article 57 should be voted on in the following order: the Soviet proposal (A/CONF.13/C.3/L.61), the Mexican and Korean proposals taken together (A/CONF.13/C.3/L.1, and A/CONF.13/C.3/L.64), the Yugoslav proposal (A/CONF.13/C.3/L.14), the Greek and United States delegations' joint proposal (A/CONF.13/C.3/L.67), the Netherlands proposal (A/CONF.13/C.3/L.59), the Philippine proposal (A/CONF.13/C.3/L.5) and the French proposal (A/CONF.13/C.3/L.3).

2. Mr. LEE (Republic of Korea) and Mr. CASTAÑEDA (Mexico) agreed that their proposals should be put to the vote jointly.

3. Mr. HERRINGTON (United States of America), reporting on the informal consultations that had been held on the sub-amendments, put forward at the previous meeting, to the joint proposal by the Greek and United States delegations, said that the co-sponsors could not regard the suggestion of the representative of El Salvador to include a phrase in paragraph 6 concerning the special interests of the coastal State as

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

involving a significant change in substance. They felt, however, that it would raise many objections on the ground that it might change the over-all balance of the article, and it was agreed that the phrase was already implicitly included in this paragraph as it stood. It was therefore hoped that the amendment would not be pressed. They also considered that the Iranian suggestion for allowing an appeal to the International Court of Justice from a decision of the special commission was difficult for many delegations to accept without considerable discussion and delay, and they hoped that it too would not be pressed. With regard to the United Kingdom suggestion for the establishment of a panel of experts, they had felt that the Secretary-General's action might be limited by such a clause. They also could not accept the Philippine amendment (A/CONF.13/C.3/L.5), since they believed that the wording of their proposal already covered that point.

4. The co-sponsors had, however, felt able to accept the Costa Rican suggestion (to add the words "in accordance with the provisions of Article 33 of the Charter of the United Nations" at the end of paragraph 1), the United Kingdom, French and Portuguese suggestion (to add the words "by a period not to exceed three months" at the end of paragraph 5), and the Norwegian suggestion (to delete the last sentence of paragraph 6).

5. Mr. KRYLOV (Union of Soviet Socialist Republics) reiterated his delegation's view that the Conference should follow established rules with regard to arbitration, such as those laid down in the United Nations Charter and the Statute of the International Court of Justice, and should not attempt to set forth a new procedure. He shared the Mexican representative's view that those who favoured the Greek and United States delegations' proposal displayed lack of faith in the principle of compulsory jurisdiction.

6. The CHAIRMAN put the proposal of the Soviet Union (A/CONF.13/C.3/L.61) to the vote.

The proposal was rejected by 38 votes to 14, with 9 abstentions.

7. Mr. AGUERREVERE (Venezuela) said he would support the proposals of Mexico and the Republic of Korea because their purpose was to ensure that difficulties would be settled immediately on a basis of full confidence in the international community. The object of referring to Article 33 of the Charter was to bring the disputing parties together; he would, however, suggest that a paragraph be added to the effect that, if the interested States could not reach agreement, it should be compulsory to set up a special commission with powers to investigate and make recommendations only. The text would then follow the International Law Commission's draft, but would eliminate immediate and compulsory recourse to the International Court of Justice.

8. Mr. CORREA (Ecuador) would vote for the proposals of the Republic of Korea and Mexico because their flexibility had the great merit of enabling States to settle disputes by the most appropriate means at hand. It must be borne in mind, however, that the proposals left some gaps and could not meet all exigencies. On the other hand, the compulsory arbitration proposed by the International Law Commission entailed certain dangers, and some countries would find it difficult to ratify a convention in those circumstances. The convention which would result from the Committee's work would include a principle that was in the vanguard of modern thought, and it was most important not to include any provisions — such as compulsory arbitration — which would make States reluctant to ratify it. Moreover, the principle of compulsory arbitration placed countries with under-developed scientific capacities at a disadvantage.

9. Mr. LLOSA (Peru) supported the proposals of the Republic of Korea and Mexico. It was surprising that there should be any objection to a legal effort to strengthen the principles of the United Nations Charter at a conference convened under United Nations auspices. It was the moral duty of all States to do everything in their power to strengthen the authority of the United Nations organization; accordingly, the reference to Article 33 of the Charter was not only desirable, but necessary.

10. He also endorsed the Venezuelan representative's suggestion, which he regarded as a kind of scientific guarantee for the settlement of disputes which might arise. The proposal should, however, indicate the need for the Food and Agriculture Organization of the United Nations (FAO) or some other impartial organization to study the scientific questions raised in a dispute during the proceedings.

11. Mr. AGUERREVERE (Venezuela) agreed with the Peruvian representative's suggestion.

12. Mr. CASTAÑEDA (Mexico) accepted the Venezuelan and Peruvian sub-amendments.

13. The CHAIRMAN put the proposals of the Republic of Korea and Mexico (A/CONF.13/C.3/L.64 and A/CONF.13/C.3/L.1) as amended by the Venezuelan and Peruvian delegations, to the vote.

The proposals were rejected by 32 votes to 19, with 12 abstentions.

14. Mr. POPOVIC (Yugoslavia), speaking on his amendment (A/CONF.13/C.3/L.14), said that his delegation was in favour of arbitration, but of such arbitration as would really amount to a friendly way of settling disputes. The difference between the procedures proposed by the International Law Commission and in the Yugoslav proposal was that the former was not really concerned with the peaceful settlement of disputes, the outcome of which would be doubtful since there was no means of forcing the losing party to comply with the decision. The method of settling disputes contemplated in paragraph 3 was not really that of arbitration at all. The Yugoslav proposal was based on the precedents of certain peace treaties and in that connexion he quoted article 5 of the 1952 Brussels International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions and Other Incidents of Navigation.

The Yugoslav proposal (A/CONF.13/C.3/L.14) was rejected by 37 votes to 3, with 19 abstentions.

15. Mr. SOLE (Union of South Africa) suggested a slight change in the amended text of paragraph 1 of the joint proposal submitted by Greece and the United States. If the last phrase were to read "to seek a solution by other methods of peaceful settlement *such* as are provided in Article 33 of the Charter of the United Nations", the reference to Article 33 would no longer exclude any other methods on which the parties might agree.

16. Mr. WALL (United Kingdom) suggested that the words "not more than" should be inserted before "five members" in paragraph 1. Serious disputes might need consideration by all five members, but it might not be necessary to take more than three scientists from their work in the case of less important disputes.

17. Mr. HERRINGTON (United States of America) with reference to the suggestion of the South African representative, observed that Article 33 of the Charter took into account all methods of settling disputes.

18. With regard to membership of the arbitral commission, it had been pointed out that, since legal, administrative and scientific experts would serve on the commission, it would be better to extend its composition to five.

19. Mr. TREJOS FLORES (Costa Rica) agreed that Article 33 of the Charter was all-embracing.

20. Mr. SERBETIS (Greece) endorsed the United States representative's replies to the South African and United Kingdom representatives.

21. Mr. POPOVIC (Yugoslavia) thought that the sponsors of the joint proposal had been mistaken in basing their text on paragraph 2 of the International Law Commission's draft and not on paragraph 3. He could see no reason why the Secretary-General of the United Nations should nominate all the members if agreement could not be reached on the appointment of one member or on that of the chairman. It would be better for each party to appoint its own members, to appoint the chairman jointly and to leave it to the Secretary-General to appoint the chairman if they could not agree.

22. Mr. SCHERMERS (Netherlands) said he had come to the conclusion that, by virtue of the clause in paragraph 1 of the joint proposal reading "unless the parties agree to seek a solution by another method of peaceful settlement", parties to a dispute would be free to agree that the dispute should be settled by an arbitral commission consisting of less than five members. That being so, he was able to accept the joint proposal.

23. Mr. LLOSA (Peru) said that, although he was opposed to the arbitration clauses proposed by the Greek and United States delegations it should be observed that in the first sentence of the joint text the term "special commission" was used and in other sentences the word "commission" was not qualified by any adjective, whereas in the text for the article submitted by the International Law Commission the term "arbitral commission" which was completely clear, was used consistently throughout.

24. If all the members of the arbitral commission were appointed by the Secretary-General of the United Nations, as the joint proposal suggested should be done in certain circumstances, the Secretary-General would in effect be the sole arbitrator. Why should the chairman of the arbitral commission not be appointed by the President of the International Court of Justice?

25. Mr. GARCIA AMADOR (Cuba) said it was not correct to say that if all members of the arbitral commission were appointed by the Secretary-General he would in fact be the sole arbitrator. It was as incorrect as stating that members of an arbitral commission who were appointed by a government and who in fact served continuously in a personal capacity acted as representatives of the government that had appointed them.

26. Mr. CASTAÑEDA (Mexico) asked for a vote by roll-call on the joint proposal by Greece and the United States (A/CONF.13/C.3/L.67) with the amendments accepted by its sponsors during the discussion.

A vote was taken by roll-call.

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

In favour: Pakistan, Panama, Philippines, Portugal, Spain, Sweden, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Argentina, Australia, Belgium, Brazil, Canada, Ceylon, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, El Salvador, Finland, France, Federal Republic of Germany, Greece, Honduras, Iceland, Iran, Ireland, Israel, Italy, Japan, Liberia, Netherlands, New Zealand, Norway.

Against: Peru, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Guatemala, Haiti, Republic of Korea.

Abstaining: Thailand, Tunisia, United Arab Republic, Venezuela, Burma, Ecuador, Ghana, India, Indonesia, Mexico.

The joint proposal submitted by Greece and the United States of America (A/CONF.13/C.3/L.67), as amended, was adopted by 38 votes to 14, with 10 abstentions.

27. Mr. CASTAÑEDA (Mexico) said he had not voted against the proposal because he was not opposed to arbitration, Mexico being a party to several agreements providing for arbitration. But he had not voted for the proposal because he was convinced that the arbitration clauses proposed would be so mandatory and rigid that States would not be willing to ratify any convention containing them. By adopting the joint proposal, the Committee had nullified all the other draft articles on which it had agreed. He had asked for a roll-call vote in order that later it might be possible to compare the list of States which had not ratified the instrument containing the text with a list of States who had voted for the joint text.

28. Mr. GOLEMANOV (Bulgaria) said he had voted against the proposal because his country could not accept the compulsory arbitration proposed by the two

delegations. He regretted that the Committee had not adopted the Mexican delegation's realistic proposal.

29. Mr. KRYLOV (Union of Soviet Socialist Republics) said he had voted against the text because it was unrealistic. He was in favour of providing for arbitration in article 57, but he was opposed to the compulsory form of arbitration proposed by the two delegations.

30. Mr. LEE (Republic of Korea) said he had voted against the text because the States which became parties to it would be compelled to submit every dispute in which they were involved to arbitration, and he thought that the States which were parties to a dispute should be free to agree on whatever method of settlement they thought most suitable.

31. Mr. POPOVIC (Yugoslavia) said he had voted against the proposal, not because Yugoslavia, which was a party to several arbitration agreements, was opposed to arbitration, but because the text proposed provided for something which was not really arbitration.

32. Mr. SCHERMERS (Netherlands), Mr. MARTIN (Philippines) and Mr. ALLOY (France) withdrew the proposals of their delegations regarding article 57 (A/CONF.13/C.3/L.59, A/CONF.13/C.3/L.5 and A/CONF.13/C.3/L.3 respectively).

33. The CHAIRMAN explained that the adoption of the text proposed jointly by Greece and the United States of America had implied the rejection of the draft text of article 57 adopted by the International Law Commission; the former had accordingly replaced the latter.

The meeting rose at 5.15 p.m.

THIRTY-FIRST MEETING

Monday, 14 April 1958, at 10.15 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)*

ARTICLES 58 and 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.3, L.15, L.61, L.64, L.68, L.69) (continued)

1. Mr. KRYLOV (Union of Soviet Socialist Republics) withdrew his delegation's proposal (A/CONF.13/C.3/L.61) in so far as it related to article 58, but reserved his delegation's right to submit the whole proposal in plenary session.

2. Mr. LEE (Republic of Korea), having regard to the Committee's decisions on article 57, withdrew his delegation's proposal (A/CONF.13/C.3/L.64) in so far as it related to article 58.

3. Mr. ALLOY (France), in view of the Committee's decisions on previous articles, withdrew his delegation's proposal regarding article 58 (A/CONF.13/C.3/L.3).

4. The CHAIRMAN ruled that the Committee's decisions on article 57 implied that it had rejected the Mexican proposal (A/CONF.13/C.3/L.1) in so far as it related to article 58.

5. Mr. HERRINGTON (United States of America) said that his delegation had joined the delegations of Greece and Pakistan in sponsoring the text they had submitted for article 58 (A/CONF.13/C.3/L.68) because of the considerations he had expressed at previous meetings on the need for a satisfactory procedure for settling international disputes over fisheries. His delegation was of opinion that suitable criteria should be laid down in article 58 to indicate the limits of the jurisdiction of the special commissions to which article 57 related; to make it clear to States which were about to become parties to the international instrument containing the articles with which the Third Committee was dealing exactly what obligations they were about to undertake; to show those who had to select the members of the special commissions what legal, scientific and other technical qualifications the persons they chose should have; and, of course, to provide guidance for the commissions themselves. The International Law Commission's comments on article 58 showed that it had recognized that it was important that such criteria should be laid down. All the criteria set out in paragraph 1 of the three-power proposal (A/CONF.13/C.3/L.68) had been taken from the International Law Commission's commentary on article 58, with the exception of that contained in sub-paragraph *(a)* *(i)*, which the sponsors of the proposal thought should be added to the criteria laid down by the Commission. Paragraph 2 of the text they had proposed was in substance exactly the same as paragraph 2 of the Commission's text for the article.

6. Mr. WALL (United Kingdom), while prepared to vote in favour of the three-power proposal, would be grateful if the sponsors would consider deleting sub-paragraph *(a)* *(i)* of paragraph 1. He did not consider that section really necessary and feared it would have a regrettable restrictive effect since in the case of disputes concerning nationals of a State fishing for a stock of fish which a second State considered had an effect on another stock of no interest to the first State it might furnish grounds for arguing that the articles under consideration did not cover such disputes.

7. Mr. HERRINGTON (United States of America) replied that sub-paragraph 1 *(a)* *(i)* of paragraph 1 was intended to cover such disputes. He asked whether the United Kingdom representative's objections would disappear if the words "fishing or otherwise" were inserted before the words "concerned with"?

8. Mr. LUND (Norway) said that in principle he was in favour of the three-power proposal, but he too hoped that the sponsors would agree to delete sub-paragraph *(a)* *(i)*, concerning which he felt certain doubts.

9. Mr. SERBETIS (Greece) saw no objection to the deletion of that portion of the text, because he recognized that it might cause difficulties in certain circumstances.

10. Mr. SCHERMERS (Netherlands) was in favour of the principle of the three-power proposal, but would