

# **United Nations Conference on the Law of the Sea**

Geneva, Switzerland  
24 February to 27 April 1958

Documents:  
**A/CONF.13/C.3/SR.36-43**

## **Summary Records of the 36<sup>th</sup> to 43<sup>rd</sup> Meetings of the Third Committee**

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

fishing the resource must have added to productivity by constructive conservation measures and must utilize the resource fully, and that any question concerning the fulfilment of those conditions should be settled objectively and rapidly through the procedure adopted by the Committee. Furthermore, it would not displace any State that had been fishing the resource, and would not interfere with a coastal State's fishing the resource in its coastal waters. The principle of abstention was essential to any complete set of articles on high seas fisheries conservation.

42. Mr. OZERE (Canada), speaking on the joint proposal (A/CONF.13/C.3/L.69), observed that the problem had been discussed at the 1955 Rome Conference,<sup>1</sup> where the abstention principle had been approved on the ground that, where opportunities existed for a country to develop or restore the productivity of resources, and where such development or restoration by the harvesting State was necessary to maintain productivity, conditions should be made favourable for such action.

43. The International Law Commission had stated in its commentary on article 53 that it lacked the necessary scientific and economic competence to study those exceptional situations adequately and had therefore refrained from making any definite proposal. It had recognized, however, that the principle reflected problems and interests which deserved recognition in international law.

44. The joint proposal was based on four main principles. First, the abstention should be invoked only where a resource was fully utilized, or where the entrance of new States into the fishery could not increase total yield without endangering the conservation of the resource. It would not apply to resources which were not exploited to their maximum sustainable limit; and therefore no nation could be denied access to unused or partially used resources. Secondly, it could be invoked only against new entrants who had not contributed to the development or maintenance of the resource. Thirdly, in view of the special interests of the coastal State, the abstention could not be invoked against that State in respect of fisheries adjacent to its territorial sea. Lastly, it could be invoked only subject to impartial arbitration under articles 57 and 58, to determine whether the necessary conditions existed.

45. The Canadian and United States delegations believed that adequate protection was provided for coastal and non-coastal States and that the principle was both equitable and essential to conservation. Although it might not be applicable to many fisheries at the present time, that did not mean that latent conditions for its application did not exist in a number of fisheries. As the United States representative had pointed out, conservation of salmon and halibut in the north-east Pacific would be difficult, if not impossible, without the protection embodied in the principle, and similar situations might arise at any time in other parts of the world.

The meeting rose at 1 p.m.

## THIRTY-SIXTH MEETING

Wednesday, 16 April 1958, at 8.45 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

#### PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS ON THE BASIS OF SPECIAL CONDITIONS (A/CONF.13/C.3/L.45, L.60, L.69, L.70, L.79) (continued)

1. Mr. MALLIN (Ireland) suggested that the vote on the proposals before the Committee should be deferred pending certain decisions on related questions in the First Committee.

2. Mr. KRYLOV (Union of Soviet Socialist Republics) said his delegation was sympathetic to the Icelandic proposal (A/CONF.13/C.3/L.79), as it was to all proposals motivated by special conditions and the needs of the populations of coastal States. The wording of the proposal, however, lacked clarity in several respects. The phrase "necessary distance from the coast", in particular, was extremely difficult to interpret as long as decisions on related matters had not been reached in the First Committee. Similarly, the expressions "exceptional circumstances" and "relevant local considerations" were excessively broad, and would be out of place in an international legal document. If the Icelandic proposal were put to the vote at present, he would, regretfully, be obliged to vote against it. He considered that the vote on the proposals before the Committee should be postponed, as had been suggested by the representative of Ireland.

3. Mr. CORREA (Ecuador) supported the Icelandic proposal. The case of Iceland was but one of a number of special cases in different parts of the world. Sympathy for those special cases had been expressed in the International Law Commission, in the Sixth Committee of the General Assembly, and during the general debate at the present Conference. It would be regrettable if, after the adoption of most of the articles of a general nature, countries which had no special interests of their own allowed their sympathy to slacken and failed to support proposals such as that submitted by Iceland. If the international instrument to be prepared by the Conference was to have true authority it had to be founded on a deep sense of justice. He appealed to the Committee to support the Icelandic proposal.

4. Mr. LLOSA (Peru) expressed sympathy with the Icelandic proposal, as with any other designed to meet the case of coastal States which, by reason of their geographical position, their economic dependence on the living resources of the sea and their efforts to conserve those resources, deserved special consideration in particular circumstances. Peru, being one of those countries, could not but support such proposals. He considered, however, that the principle of abstention was set forth most appropriately in paragraph 3 of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1). If restrictions had to be imposed on the intensity of

<sup>1</sup> cf. *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), para. 61.

fishing, it was only fair to give special consideration to the interests of neighbouring coastal States, which depended on fisheries for their subsistence and economy, and which incurred much effort and expense on scientific investigations and on conservation and control measures. The principle of abstention thus formulated was much more just than that set forth in the joint proposal submitted by Canada and the United States (A/CONF.13/C.3/L.69). In particular he failed to see the purpose of the provision at the end of paragraph 2 of the latter proposal to the effect that abstention should be required pending the arbitral decision, subject to paragraph 2 of article 58.

5. Mr. ANDERSEN (Iceland) asked for a postponement of the discussion on his delegation's proposal.

6. Mr. OZERE (Canada) was in favour of continuing the discussion on the proposals before the Committee, but thought that the vote should be deferred; the sponsors of those proposals might be inclined to modify their drafts in the light of the discussion and of decisions on related matters in the First Committee.

7. After a procedural discussion, Mr. CORREA (Ecuador) proposed that the second reading of the articles already adopted by the Committee should take place on April 18; the vote on proposals still before the Committee should be taken at a subsequent meeting.

*It was so decided.*

8. Mr. HERRINGTON (United States) wished to explain the meaning of paragraph 1 (a) of the joint proposal (A/CONF.13/C.3/L.69). When a stock of fish which qualified for abstention was found in the waters adjacent to the territorial sea of several States, and one or more of those States were not fishing and had never fished that stock, any such non-fishing State might nevertheless at any time begin to fish that stock by reason of its geographical position. It was not proposed that any coastal State should, because it had not in the past fished that stock, forgo fishing a stock of fish found in the waters adjacent to its coast. The co-sponsors of the joint proposal would be glad to modify the text of paragraph 1 (a) to make its meaning clear.

9. Mr. IZHEVSKY (Union of Soviet Socialist Republics) said that the joint proposal submitted by Canada and the United States conflicted with the fundamental principle of several articles adopted by the Committee—in particular, article 53. Under the proposal, one of the most extreme methods of regulating the size of fish stocks—that of limiting the yield—would be applied in the interests of certain States and to the detriment of others—a discriminatory practice.

10. Referring to the document entitled "The Economic and Scientific Basis of the Principle of Abstention" by Professor Richard van Cleve (A/CONF.13/3), he remarked that the author had made no attempt to establish an economic foundation for the principle of abstention. Furthermore, the biological foundations for determining fish stocks were by no means universally accepted by scientists; and the paper failed to provide any justification for its conclusion that the participation

of new States in fishing the stocks subject to regulation would endanger the measures for conserving the stock and, consequently, the stock itself.

11. Regulation of the yield was undoubtedly an effective method of maintaining an intensely fished stock. However, precisely because it might injure the economic interests of a State, that method should not be applied except on the basis of strong scientific evidence. In view of the statements made at the Rome Conference of 1955<sup>1</sup> concerning the principle of abstention, an attempt to introduce it as a principle of international law could not be considered justified. The scientific foundations of the principle required further thorough consideration by a special international conference.

12. Current knowledge of the biology of a number of principal oceanic fish species did not, as yet, reveal with certainty the causes of the fluctuation of stocks or of the rational limit of their utilization. Stocks of a number of fish species were diminishing, so that the question of the influence of utilization on the size of fish stocks had naturally assumed great importance. There were no real grounds, however, for holding utilization principally responsible for the reduction in the size of stocks of the species in question. Natural factors, which had frequently accounted for variations in the size of fish stocks, were entirely ignored by the supporters of the principle of abstention. Professor van Cleve's assumption that the influence of natural factors was relatively stable could not be accepted universally.

13. Only scientifically sound measures should be contemplated in fishing practice, and *a fortiori* in international collaboration in the conservation of fish stocks. He mentioned several such measures, but pointed out that the need for a limitation of yield, amounting in certain instances to complete temporary prohibition of fishing, arose in very rare cases only—e.g., with regard to easily fished stocks such as plaice, turbot, salmon, etc., in certain limited areas.

14. Any measures for the limitation of the fishing of stocks fished by more than one particular State should be developed and applied jointly by all the States concerned. The principle of abstention meant abstention from overfishing in cases where overfishing could be objectively proved. It was difficult to understand why that principle should apply only to newcomers or to those who were not fishing the stock regularly. Such an interpretation of abstention bore no relation to the scientific foundations of fishing or to the methods of regulating fish stocks undergoing development on an international scale.

15. The Soviet delegation was fully aware on grounds of experience of the effectiveness of measures of conservation of stocks and regulation of their utilization. It even appreciated the need, in certain cases, for unilateral measures designed to limit the utilization of a stock dependent on regulation and reconstitution measures. It could not be convinced, however, that fishing within the established limit should be exclusively by a State or States which had been fishing that stock for a long period of time.

<sup>1</sup> cf. *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), paras. 60 to 66.

16. As an example of good international collaboration on a scientific basis in the utilization of living resources, he mentioned the International Convention for the Regulation of Whaling, the parties to which established an annual whaling quota in which they were all entitled to participate within the prescribed period of time.

17. For the above reasons, the Soviet delegation would be unable to support the joint proposal submitted by Canada and the United States.

18. Mr. TSURUOKA (Japan) said that he did not consider that enough time remained for the Conference to give the necessary consideration to a legal innovation such as the idea of abstention. However, he wished to say that the system proposed by Canada and the United States (A/CONF.13/C.3/L.69) would in effect give a fishing monopoly to the coastal States, while other States would be excluded without compensation from fishing in particular areas of the high seas. That would be inequitable and at variance with the principles of equality of States before the law and the freedom of the high seas. It was not strictly true that the proposed exclusion of non-coastal States would be conditional. One of the so-called conditions was the need to take conservation measures, aimed at achieving the maximum sustainable yield; but that situation occurred so frequently that it could not justify the proposed departure from accepted practice. Nor could it be justified on the basis of the intensity of the fishing carried on by the coastal State. Statements made in Committee had given the impression that many coastal States wished to gain a privileged position because they were not yet sufficiently well equipped to be able to fish intensively; once they were able to do so they would have no reason to claim a preferential right, and yet the joint proposal suggested that such States should have the right to demand that other States should abstain from fishing.

19. He believed that scientific experts would not support the idea that there were in fact such cases as those suggested in the joint proposal submitted by Canada and the United States. If a few such cases did exist they should be governed by the provisions of article 53.

20. The Committee should consider carefully what countries would profit by the proposal and what countries would be the losers. Paragraph 1(c) of the proposal might have the effect of excluding countries which had agreed at an earlier stage to abstain from fishing. It would not be right to exclude countries that had previously been prevented from fishing in a particular region of the high seas either by violence or by measures taken by a coastal State in contravention of international law. There was no safeguard against that situation either in the joint proposal or in the proposal submitted by the Republic of Korea (A/CONF.13/C.1/L.45).

21. The latter proposal showed what dangerous developments there might be from the system advocated in the joint proposal submitted by Canada and the United States. Under the proposal submitted by the Republic of Korea the single fact that the coastal State had made sacrifices in its efforts to conserve the living resources and increase their productivity would be a sufficient excuse to require other States to abstain from

fishing in the area of the high seas adjacent to its territorial sea. Such a definition of "sacrifices" was so vague that it was bound to lead to abuses, since it was a widespread practice to impose some kind of limitation relating to the size of the fish, the mesh of the fishing nets, fishing seasons and so forth. The proposal of the Republic of Korea tended to give the coastal State a fishing monopoly simply by virtue of the fact that it carried on fishing in the waters in question. Moreover the Korean proposal went further than the joint proposal in that the latter required abstention only from States whose nationals were not fishing a particular stock, whereas the Korean proposal would exclude all other States, even if they were fishing in conformity with the measures adopted by the coastal State. The system proposed by Canada and the United States was all the more dangerous inasmuch as some countries seemed unwilling to accept the arbitration system provided in article 57.

22. If any country which had made sacrifices in order to exploit certain living resources of the sea could monopolize those resources, the fishing industries of new States still at an early stage of economic development would suffer, for they would be excluded from fishing in a number of areas throughout the world.

23. The doctrine of abstention was not in accord with the general principles of conservation, which could not justify the proposition that one State should be allowed to fish while others were excluded. According to that doctrine a small country like Japan, whose unproductive soil made it heavily dependent on fishing for the subsistence of its population, would be excluded from fishing in any part of the high seas adjacent to the territorial sea of coastal States—a contingency fraught with very serious economic and social dangers for his country.

24. Mr. LUND (Norway) said that, although he was not prepared to express the final view of his delegation on the joint proposal by Canada and the United States, it appeared to him that since the steps proposed were a type of conservation measure the problem could best be solved by negotiations among the States affected, with the possibility of recourse to the arbitration procedure provided for in article 57 if agreement could not be reached. He was not convinced that it was necessary to have any general rule relating to abstention.

25. Mr. HULT (Sweden) said that his country had nothing to gain or to lose under the terms of the joint proposal. However, his delegation was in principle opposed to any discriminatory measures and hence could not support the proposal. He believed that the problem should be dealt with by regional agreements.

26. Mr. THURMER (Netherlands) said that he could not agree that the coastal State should have an exclusive right to fish a certain stock. The joint proposal was in conflict with the principle of freedom of fishing on the high seas. His delegation considered that that principle had already been affected by the Committee's decisions more than was desirable or justifiable, and he was therefore opposed to the proposal of the Republic of Korea (A/CONF.13/C.3/L.45), the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) and the joint proposal (A/CONF.13/C.3/L.69).

27. Mr. ALLOY (France) said that he believed the Committee had already gone far enough in granting unilateral rights over the living resources of the sea to the coastal State. The system proposed by Canada and the United States was likely to lead to serious abuses. It was important to avoid any form of discrimination in conservation measures, and his delegation would therefore be unable to vote for the proposal in question.

28. Mr. RUIVO (Portugal) said that the articles already adopted provided sufficient safeguards for the legitimate interests of States co-operating in conservation measures. He agreed with other speakers that the system proposed by Canada and the United States was discriminatory and that it might lead to abuses. Not inconceivably, the proposed provisions might be extended to large fleets fishing on the high seas, which also made sacrifices in that they limited fishing in various ways and spent large sums on research. There was also a risk that the proposal might adversely affect the future exploitation of zones which were not at present fished, but might be in the future. His delegation would therefore be unable to vote for the joint proposal by Canada and the United States.

29. Mr. GANDJI (Iran) said that, in the light of the observations made at the previous meeting by the representatives of Canada and the United States, his delegation would be glad to vote for their joint proposal.

30. Mr. GOLEMANOV (Bulgaria) said that his delegation would vote against the joint proposal submitted by Canada and the United States. The proposal tended to discriminate against newcomers and opened the door to abuses. There was no scientific justification for the notion of abstention. The International Law Commission had referred to it in paragraphs (4) and (5) of the commentary on article 53, but had refrained from including any provision concerning abstention in the draft articles. The principle of abstention not only conflicted with the freedom of the seas but might also affect the rights of the coastal State already accepted by the Third Committee. His delegation would therefore vote against the proposal.

31. Mr. CIEGLEWICZ (Poland) said that his delegation supported the freedom of the high seas and the right of all nations to fish in the high seas. Consequently, it opposed the joint proposal submitted by Canada and the United States. All fishing nations knew that there might be occasions when it was necessary to abstain from fishing, but he did not consider that there was any biological justification for excluding one group of nations from fishing while allowing another group to continue to fish.

32. Mr. ANDERSON (Australia) said that his delegation was in favour of the joint proposal by Canada and the United States. In any case where there was disagreement concerning the existence of the situation described in the proposal, it was open to the States concerned to resort to arbitration under article 57. It was only just that if a State spent its resources on re-establishing a particular stock, other States should be prevented from entering the area and enjoying the benefit of what might represent years of work by the coastal State. The knowledge that it was protected in

that way would encourage the coastal State to improve its fisheries. Some of the countries which opposed the suggested system had in fact benefited from a very similar policy applied to seal stocks, but he saw no reason why the principle of abstention should be applied only to seals.

33. Mr. LACLETA (Spain) said that the joint proposal by Canada and the United States might constitute an indirect means of allowing some States to appropriate zones of the high seas. The legitimate object of the proposal could be achieved under the articles already adopted, so there was not need for any such discriminatory system. His delegation would therefore not support the proposal.

34. Mr. PANIKKAR (India) said that his delegation did not believe that abstention was a scientific question. The principle of abstention might operate to the advantage of coastal States wishing to develop their fisheries. The Committee agreed in supporting the principle of the freedom of fishing on the high seas and yet it had also agreed to limit that freedom to some extent by recognizing the special interests of the coastal State. The Committee might similarly recognize that the principle of abstention might encourage the coastal State to use modern scientific methods in developing its coastal fisheries. There were many instances in India where there was a very close connexion between the stocks in the inshore waters and those in the offshore waters, and any conservation measures adopted would have to recognize that connexion. His delegation supported the special interests of the coastal State with regard to conservation measures, and would accordingly support the joint proposal by Canada and the United States.

35. Mr. MESECK (Federal Republic of Germany) said that he could not support the joint proposal because it conflicted with the principle of the freedom of the high seas.

36. Mr. WALL (United Kingdom) said that, unlike some of the speakers, he did not think the proposal of Canada and the United States would help the coastal State to solve any problem that could not be solved in other ways. The general problems of the less-developed coastal States had been dealt with in article 55, which allowed the coastal State to take unilateral measures to protect its off-shore fisheries. The joint proposal, however, might prejudice the position of the coastal State if its provisions were extended to deep-sea fishing. Deep-sea fishing States, such as the United Kingdom, would then be able to take part in maximum intensity fishing and exclude coastal States. It was likely that countries carrying out intensive fishing and conducting conservation and research programmes would be the larger industrialized countries, rather than the less-developed coastal States whose position had received special consideration at the present Conference.

37. A similar situation already existed in the whaling industry in the Antarctic Ocean. The fishing was intensive and any increased fishing would not increase the yield. As the operation involved expensive factory ships, the participants all came from the industrialized countries. Would it be right that that group of countries

should permanently exclude any other country from taking part in whaling in the Antarctic Ocean?

38. The cod-fishing in the north Atlantic had not yet reached the same level of intensity as whaling, but it might well do so in future. If that happened, cod fisheries would become the monopoly of a group of States which included his own country and Iceland. In that case, Iceland, which was the coastal State, would not gain anything from the arrangement, since it did not have the major share of the catch.

39. He believed that there were very serious economic considerations involved in the proposal under discussion. The coastal States should examine carefully the real meaning of the proposal before them. He thought that the implications of the proposal were too far-reaching and he hoped that the authors would reconsider it before it was voted upon.

40. Mr. ANDERSON (Australia) said that, in view of the reference to the coastal State in the opening words of the joint proposal he could not understand how the representative of the United Kingdom could maintain that the proposal would not further the interests of the coastal State.

41. Mr. WALL (United Kingdom) said that the opening words of the proposal included the phrase "alone or with the nationals of one or more other States." The position of a coastal State fishing together with other States would be similar to the situation of Iceland with regard to cod-fishing; in other words, the coastal State might only be a partner in the monopoly, possibly with a very small share of the proceeds.

42. Mr. INDRAMBARAYA (Thailand) said that he believed the observations of the representative of India applied to the fish in the coastal waters of Thailand; he would, therefore, support the joint proposal of Canada and the United States.

The meeting rose at 10.50 p.m.

### THIRTY-SEVENTH MEETING

Thursday, 17 April 1958, at 10.25 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)

DRAFT RESOLUTION PREPARED BY A WORKING GROUP COMPOSED OF THE REPRESENTATIVES OF AUSTRALIA, MONACO AND NEPAL (A/CONF.13/C.3/L.85)

1. Mr. DE LA PRADELLE (Monaco), speaking as a member of the working group, said that its main desire had been that the Committee should reach a unanimous decision on its resolution. The observations made at the 35th meeting had been duly taken into account and States would not now be asked to change their methods considerably in order to achieve euthanasia for marine fauna. The resolution allowed for the differing capacities of States and merely called for improvement in the

methods by which whales and seals were hunted. He was sure that the religions and philosophies of participating States endorsed that small measure of consideration for animals from which mankind profited so greatly.

2. Mr. SHAHA (Nepal) hoped that the Committee would adopt the draft resolution unanimously.

3. Mr. ANDERSON (Australia) said that, as the only member of the working group who represented a whaling nation, he wished to commend the draft resolution to all other countries engaged in that industry.

*The draft resolution (A/CONF.13/C.3/L.85) — based on the Nepalese proposal in document A/CONF.13/C.3/L.6 — was adopted unanimously.*

PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.45, L.50, L.60, L.66, L.69, L.70, L.79) (continued)

4. The CHAIRMAN invited the Committee to continue its discussion of the joint proposal submitted by Canada and the United States (A/CONF.13/C.3/L.69).

5. Mr. LEE (Republic of Korea) supported the joint proposal because it would protect the interests of coastal States where marine resources depended on conservation measures and more fishing would not result in an increase of the sustainable yield. The abstention principle had been discussed at the 1955 Rome Conference<sup>1</sup> as a special case for fishery conservation management. The International Law Commission had also mentioned in its report the desirability of creating, building up or restoring stocks which would otherwise be destroyed or reduced to levels below their potential productivity.

6. The Japanese representative had said at the 36th meeting that the Korean proposal was intended to monopolize coastal fishery and that the abstention principle was incompatible with the freedom of fishing on the high seas and the principle of equality. That argument seemed to attempt to justify an unrestricted exercise of the freedom of fishing to the detriment of the coastal State. The Japanese delegation had not supported the special interest of the coastal State in maintaining the productivity of living resources, and had not recognized the competence of the coastal State to take unilateral conservation measures in urgent cases; accordingly it disregarded the special situation of coastal States primarily dependent upon fishing for the livelihood of their populations.

7. Fishery conservation programmes on a world scale were designed to protect not only the interests of the coastal State, but also the general interests of the international community. Korea was among the countries to which coastal fishing was vital, since over 600,000 Koreans were engaged in fishing and between two and three million were dependent upon fishing resources for their livelihood. Korea had therefore made

<sup>1</sup> cf. *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), paras. 60 to 66.

efforts to apply and enforce conservation measures, to the extent of imposing restraints on its own fishermen. The position of coastal States was quite different from that of countries carrying on unrestricted fishing activities off the coasts of other States with purely commercial motives.

8. The abstention principle was incorporated in the International Convention for the High Seas Fisheries of the North Pacific Ocean concluded by the United States, Canada and Japan, under which Japan, which was not a coastal State of North America, was obliged to abstain from fishing certain stocks off the coasts of the United States and Canada, who as coastal States were entitled to utilize the resources of their coastal waters.

9. Freedom of fishing in the high seas was not a universally valid principle. The article on the freedom of the high seas was subject to other provisions, since the articles with which the Committee was dealing must be regarded as an integral whole. The Japanese representative had therefore been wrong in invoking the freedom of the high seas without regard to restrictive stipulations not related to fishing.

10. Mr. QURESHI (Pakistan) observed that the main arguments against the joint proposal submitted by Canada and the United States were, first, that the aim of "abstention" could be achieved by "conservation" as approved by the Committee under articles 51 to 55; and secondly that abstention measures might discriminate against newcomers. The arguments in favour of the proposal were based on the need to maintain current yields of fish resulting from the investments, sacrifices and research of the coastal State and other States participating in the fisheries.

11. The two points of view could be reconciled if a realistic view of the situation were taken. Several basic facts had to be taken into account in considering the joint proposal. First, the stipulation that the nationals of a coastal State must be fishing a specific stock, either exclusively or with nationals of other States, meant that if only non-nationals were fishing a particular stock in an area adjacent to a coastal State the abstention principle could not be invoked either by the fishing non-nationals or the non-fishing coastal State. Secondly, the principle could not be invoked unless evidence existed that the coastal State and the participating States had been applying a conservation programme over a number of years. Thirdly, there must be evidence that the maintenance of the current yield and the development of the fish stock were due solely to the conservation programmes carried out by the coastal State and other participating States. Fourthly, the coastal State was bound to extend full protection, without discrimination, to non-nationals who had been fishing the stock and participating in conservation measures. Fifthly, newcomers were to be debarred from entering the field until research and conservation had been effectively practised by the coastal State, and only on the ground that the resource was barely sufficient to meet the economic requirements of those already in the field; in other words, that new entrants in such circumstances would cause losses to others without benefiting themselves. Sixthly, the abstention principle could not be applied against newcomers when the

fishery was capable of greater yields, but only so long as abstention could maintain the current yield as a result of a conservation programme enforced by the coastal and other participating States. Finally, the abstention principle could not be applied as a matter of course, in the same way as conservation measures, since the coastal State had first to take adequate conservation measures, conduct research and collect data over long periods in order to establish that the current optimum yield had been maintained by its conservation programme.

12. All the action which the Committee proposed was directed towards the single goal of increasing food production. If stocks of fish were depleted by the entry of adventurers into well-managed fisheries, the result would be detrimental to mankind; over-fishing was a short-sighted policy, with wide repercussions.

13. It was inherent in human nature that a man should claim a harvest which he had prepared by great effort and at great cost. No State could be reasonably expected to invest money, labour and time in developing a resource if it were not assured of returns. That principle held good in various branches of economic activity. Traditional and established rights had to be respected, under certain limitations and conditions; the abstention principle was no departure from those established practices. Besides, the element of initiative and effort must be recognized. If initiative were discouraged, not only prospective participants in it but mankind as a whole would lose. Moreover, on a long view the abstention principle would apply neither to an adjacent coastal State nor to areas of the high seas where a specific conservation programme had not been applied.

14. The highly developed fishing nations knew most of the rich fishing grounds and were participating in those resources. They would therefore not be affected by the abstention principle in their regular fishing areas. The under-developed coastal States, on the other hand, would be obliged to husband the resources of the seas adjacent to their territories for a long time to come and would not be adversely affected by the principle.

15. In conclusion, he suggested that the sponsors of the joint proposal should meet informally with its main opponents and some neutral delegations and attempt to draw up an agreed text.

16. Mr. MELO LECAROS (Chile) and Mr. REGALA (Philippines) asked the sponsors to clarify the scope of the last sentence of paragraph 1 of the joint proposal. In particular they wished to know whether the tenor of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1), of which they were co-sponsors, was taken into account in that sentence.

17. Mr. HERRINGTON (United States of America) agreed with the Indian representative and other speakers that abstention was not essentially a scientific problem, and reiterated that the United States strongly advocated the inclusion in any official high seas conservation régime of a procedure to encourage States to restore or maintain fishing productivity. He could not, however, agree with the Soviet representative that the study of fisheries was insufficiently advanced for a definition of full utilization. The science of fish population dynamics

had made great strides in the past twenty years and reasonably accurate measurement could now be made of the utilization of an increasing number of stocks, such as salmon, halibut and fur seals, to which the sponsors of the proposal had referred. Sardines, mentioned by the Soviet representative, underwent wide environmental fluctuations and were therefore not subject to the abstention principle. He also could not agree with the Soviet representative that fishing rarely had to be limited. His own country's experience had amply proved that catches of certain species had to be strictly limited if productivity was to be maintained.

18. The Japanese representative seemed to have misunderstood the nature of the joint proposal (A/CONF.13/C.3/L.69), which related specifically to stocks of fish and did not exclude newcomers from any area of the high seas. The Japanese representative had also alleged that a coastal State could invoke abstention unilaterally without a test, thus causing economic and social suffering; but the proposed procedure could not be invoked against any State which was fishing a stock or had done so within a reasonable period.

19. It had also been stated that the proposal was not based on scientific data and that the principle had not been recognized by the International Law Commission. The Canadian representative had dealt adequately with the latter criticism, and the proposed criteria made the relationship between the procedure and scientific findings quite clear. A stock might be at a much lower level of productivity than its potential, owing to a natural disaster, to over-fishing in the past, or to the fact that positive conservation measures could greatly increase production. At such a low level of yield, foreign fishermen would not consider it worth while to come to the grounds. If, however, productivity were built up, they would be anxious to fish them.

20. The reason why the proposal was related to the coastal State was that projects to develop special fisheries always originated in the internal, territorial or adjacent waters. As a project became more successful, its effect spread further offshore; but in the first phase only the coastal State and perhaps a close neighbour were concerned. Additional States might become interested at a later stage. It was feasible to reach agreements with close neighbours who might be concerned with conservation while productivity was low, but it was obviously impossible to include all countries at that time. The only solution to the problem was to make abstention an international rule. He could understand the concern of representatives who feared misapplication of the principle. However, some of that anxiety might stem from the arguments advanced in the document entitled "The Economic and Scientific Basis of the Principle of Abstention" (A/CONF.13/3), to the effect that wherever there were conservation measures there should also be abstention; that theory was not embodied in the joint proposal.

21. Although the proposal raised many difficult problems, the issue should not be evaded. Anxious for the widest possible agreement, his delegation was prepared to review the proposal in the light of comments made in the Committee.

22. Mr. MALLIN (Ireland) thought that some of the difficulties raised by the joint proposal had not been

resolved by the debate, which had been considerably coloured by the statements in document A/CONF.13/3. The arguments were mainly economic and seemed to be cogent; nevertheless the proposal itself contained protection against abuses. A particularly good case could be made for applying the abstention principle to certain species about which a considerable amount was already known.

23. Ireland had made great efforts and spent much money on research on the Atlantic salmon, to the extent of modifying various projects, to its own economic disadvantage, in order to build special fisheries and to conserve the species. Despite extensive research, however, not much was known about what happened to the salmon of the high seas. If the salmon were to be caught in any quantity by improved methods of fishing, his country might have to reconsider its programmes, since it would have no incentive to spend money on improving a stock from which it would derive no benefit. The United States representative had said that the problems covered by the proposal would generally arise in coastal waters. He wondered whether equally accurate evidence was available with regard to many other species. The sponsors might consider narrowing their proposal to deal with particular species rather than stocks.

24. The second problem was how the proposal might be put into effect. It was notoriously difficult to get fishermen to obey general conservation regulations. In his own country's experience that problem had arisen with regard to privately owned fisheries which had become public as a result of a Supreme Court judgement. Several methods had been advocated for regulating such fishing in tidal waters, but none of them had yet been put into operation because of the questions of equity involved.

25. Mr. OLAFSSON (Iceland) considered that the Committee's decisions on conservation problems would be incomplete until the abstention principle was included in the conservation articles. He had been surprised by the opposition that the joint proposal had encountered, and remained unconvinced by the arguments against it.

26. Mr. LLOSA (Peru) said that, while he sympathized in principle with any proposal relating to the special situation of coastal States, he considered that the last sentence of paragraph 2 of the joint proposal was in conflict with article 58, paragraph 2, which the Committee had adopted.

27. Mr. OZERE (Canada) said that the discussion had revealed many misunderstandings which should be cleared up before the Committee voted on the principle of abstention. He was, however, in favour of the Chairman's suggestion that the authors of the proposal should consult representatives informally and re-draft their text in order to make it more acceptable.

28. In reply to the questions raised by the representatives of Chile and the Philippines, he explained that the purpose of condition (c) in paragraph 1 was to make clear that the coastal State should not be asked to abstain from fishing any stock in waters adjacent to its territorial sea.

29. With reference to the remarks of the representative of Peru, he explained that the arbitration clauses would



apply to disputes regarding the text under discussion in exactly the same way as to disputes regarding article 55.

30. In answer to those who had objected to the proposal because it related to matters other than conservation, he said that without a provision such as that under discussion it would not be possible to conserve certain special stocks of fish, such as the north Pacific salmon.

31. It had been argued that that provision would be unfair; but surely it would be unfair of States which had not taken part in measures to conserve a stock of fish to exploit it equally with a State that had. The text applied only to stocks which had been developed at considerable cost over a long period.

32. It had also been argued that the proposal should be rejected because it was discriminatory. The text would apply to all States which adhered to it; there was nothing discriminatory about that. The principle it contained did not work only to the advantage of his country; for example, Canada was a party to an agreement providing that its nationals should abstain from fishing Alaska salmon in the Behring Sea.

33. One representative had objected to the text because it might be abused. Every one of the articles adopted by the Committee might be abused. To deal with abuses, the authors had worded paragraph 2 to provide for the settlement of disputes by the impartial arbitral body named in article 57.

34. It was quite untrue to state that the text would entitle States to appropriate to themselves whole areas of the high seas. The text related only to special stocks of fish.

35. Mr. HERRINGTON (United States of America) agreed with the representative of Canada that it would be wrong to vote on the principle of abstention at the present juncture, and also agreed with that representative's explanation in reply to the remarks of the representative of Peru.

36. Mr. WALL (United Kingdom) was also opposed to a vote on the principle of abstention at the present stage; it was impossible to foresee what text regarding that principle would finally be adopted if the vote suggested by the Chairman were favourable to it. If the principle were voted on immediately, he would have to vote against it; but if the wording of the proposal were satisfactorily changed he would be ready to consider it further.

37. The representative of Canada had said that the text applied only to certain special stocks of fish. He himself suggested that the authors might, when they were redrafting it, change it so as to make that clear. They might also consider making it less mandatory.

38. The United States representative had said that the adoption of the text would not completely exclude from any area of the high seas a State which had not fished in the area before; but it might exclude States from areas in which it applied to all the stocks.

39. Mr. CASTAÑEDA (Mexico) said that he was in favour of the principle of abstention and was prepared to vote for the text proposed by Canada and the United States. He asked why in the text under discussion there was no provision similar to the one in article 55 requiring parties to a dispute to enter into negotiations

before submitting the dispute to the arbitral commission mentioned in article 57.

40. Mr. HERRINGTON (United States of America) said that the subject matter of the text was closer to that of article 53, which dealt with newcomers, than to that of article 55, which related to cases in which the nationals of more than one State were fishing in the same area. He did not, however, feel strongly on the Mexican representative's point.

41. Mr. KASUMA (Indonesia) supported the principle of the text, particularly in regard to condition (a) in paragraph 1, but thought that it should be expressed in the way proposed by the sponsors of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1).

42. Mr. CUSMAI (Italy) did not wish to embody the principle of abstention in the articles referred to the Committee, because he held that it was difficult to apply objectively, there was insufficient scientific knowledge to justify its application, and it was discriminatory. The matters under discussion should be settled by regional agreements, not by a world convention.

43. Mr. SOLE (Union of South Africa) favoured the principle of abstention but believed for practical reasons that the matters under discussion should be settled by regional agreements. If the majority thought that they should be settled by a world-wide agreement, the text under discussion should be embodied in an instrument separate from the draft articles which the Committee had already adopted.

44. Mr. HULT (Sweden) said that approximately sixty per cent of the stock of salmon in the Baltic came from his country, which in the near future would have to spend roughly 4,000,000 kronor a year on measures to conserve that stock. Nationals of other States took at least fifty per cent of the total salmon catch on the high seas of the Baltic. The Swedish Government nevertheless believed that the nationals of all States should be equally entitled to fish for salmon there. The matters under discussion should be settled by regional agreements rather than by a world convention. The Swedish authorities had discussed the problem with the authorities of neighbouring countries and, although they had not yet agreed on a text, they had reached agreement in principle.

45. Mr. HERRINGTON (United States of America) asked whether Sweden would welcome nationals of States without a Baltic coastline who fished for salmon there after agreement had been reached on such a text.

46. Mr. HULT (Sweden) replied that his country would have no objection. Vessels belonging to such countries had already been fishing for salmon there.

47. Mr. RUIVO (Portugal) said that the discussion had shown that the joint proposal was an economic and not a scientific one. He was opposed to the text because its authors had obviously not taken into account either the great changes which stocks of fish underwent, such as the recent large increase in the stock of cod off Greenland, or cases in which larger quantities could be caught without reducing the stock. It would

hinder both countries with large fishing fleets which wished to obtain more fish, and under-developed countries which wished to expand their fishing industries, and would also hinder international scientific co-operation.

48. The CHAIRMAN proposed that the Committee should not take any definite decision on the joint amendment submitted by the delegations of Canada and the United States (A/CONF.13/C.3/L.79) until its sponsors had had an opportunity to discuss it with representatives of other countries informally, and to revise it.

*The proposal was adopted by 47 votes to none, with 13 abstentions.*

49. Mr. OLAFSSON (Iceland) said he was grateful to the previous day's speakers for the understanding they had shown of the special circumstances on which his delegation's proposal (A/CONF.13/C.3/L.79) was based.

50. The United Kingdom representative had said at the 35th meeting that it would be unfair to leave the marine resources of the high seas off Iceland, the Faroe Islands and Greenland to their 200,000 inhabitants and make the 200 million inhabitants of the countries surrounding the North Sea go short. If it were agreed that the coastal State should have exclusive fishing rights as far as twelve nautical miles from the baseline and his delegation's proposal were adopted, there would still be large areas in the north Atlantic where the countries surrounding the North Sea would be free to fish, and they would be able to import fish from Iceland. The days of autarky were over. Every country should produce the commodities which it was best able to produce. Iceland imported most of the commodities it needed.

51. Mr. JONSSON (Iceland) referred to the United Kingdom representative's further statement at the 35th meeting in which he had said that it was incorrect to say that the European fishing countries destroyed coastal fish stocks, and, referring to the fact that the Icelandic representative had adduced that argument in the Fourth Committee in connexion with plaice, had added that that fish represented one per cent of the catch in Iceland's coastal waters. As regards the figure given for plaice in that statement, it was correct. However, the catch of plaice in Icelandic waters in 1955 had been roughly 8 per cent of the total European catch of plaice. He had chosen that species because the scientific work on it was clear-cut and of high quality.

52. He could have based his argument on figures relating to haddock. In 1955 the catch of haddock had accounted for 7.2 per cent of the total catch in Iceland's coastal waters and for 17 per cent of the total European catch of haddock. The stock of haddock in Iceland's coastal waters, which had previously been very much over-fished, had made a remarkable recovery since 1952. In 1957 the average experimental catch in Faxa Bay had been 778 kg per one-hour haul as compared with 85 kg before the closure of the Bay.

53. In 1955 the catch of cod had accounted for 60 per cent of the total catch in Iceland's coastal waters, and for 21 per cent of the total European catch of cod. From 1947 to 1952 the catch of English trawlers per 100 hours had varied from 38 to 44 tons; from 1953 to 1956 it had varied from 52 to 77 tons. The total catch had risen from 330,000 tons in 1951 to 540,000 tons in 1955. He had not mentioned cod in his general statement solely because it raised more complex problems than plaice, which was quite representative of the progress of Icelandic stocks under protective measures.

54. Mr. POPOVIC (Yugoslavia) said that for reasons which were not merely selfish his delegation thought that special consideration should be given to the interests of the coastal State, especially the small one. It would not support any unsubstantiated claim; it thought that the Committee should uphold Iceland's claim as moderate and based on solid reasoning.

55. Mr. PANIKKAR (India) also considered that special regard should be paid to the interests of the coastal State, and particularly to those of the people of sparsely populated land areas such as the Laccadive Islands who depended on fishing for their existence because their land was not suitable for cultivation. He therefore felt much sympathy with the delegation of Iceland; but he could not vote for the wording it had proposed. It would be wrong to give the coastal State greater rights than other States over any stock of fish which could be taken in greater quantities without harm. His delegation had made the precise proposal that the coastal State should "have exclusive fishing rights up to a distance of twelve nautical miles measured from the baseline" (A/CONF.13/C.3/L.50); that proposal was still awaiting discussion by the Committee.

56. He believed that the contents of the proposal of the Republic of Korea (A/CONF.13/C.3/L.45) and of the proposal submitted by the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60), the principle of which he supported, were covered by the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1). He wondered whether the subject of the proposal of Iceland was not also covered by that proposal. The authors of those four proposals might perhaps consider submitting a single proposal in their place.

57. Mr. OLAFSSON (Iceland) suggested that no definite decision be taken on his delegation's proposal at the current meeting, because his delegation was reconsidering it in the light of the discussion.

*That suggestion was adopted by 49 votes to none, with 7 abstentions.*

58. Mr. WALL (United Kingdom) considered that the Committee should not vote on the text proposed by the delegation of Iceland, which related to a purely economic problem, without first asking the General Committee for a direction, since the same text was also before the First Committee.

The meeting rose at 12.40 p.m.

### THIRTY-EIGHTH MEETING

Friday, 18 April 1958, at 10 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

##### SECOND READING OF ARTICLES APPROVED BY THE THIRD COMMITTEE ON FIRST READING

1. Mr. HERRINGTON (United States) recalled that the Committee had decided to postpone its decision on article 49 until it had taken a decision on some provisions of the other articles referred to it.

2. In reply to a question by Mr. WALL (United Kingdom), the CHAIRMAN stated that a discussion on substance was still possible at the present stage of the Committee's work.

3. The CHAIRMAN proposed that the Committee should vote first on articles 57 to 59.

*The proposal was adopted by 37 votes to none, with 14 abstentions.*

##### Article 57

4. Mr. ALVAREZ (Uruguay) pointed out that there was some ambiguity in the word "constitución" in the Spanish text of paragraph 5 of the article. In his view, the period allowed to the special commission under that provision should date from the time when it was set up.

5. After an exchange of views in which Mr. GARCIA AMADOR (Cuba), Mr. LACLETA (Spain), Mr. CORREA (Ecuador) and Mr. HERRINGTON (United States) took part, Mr. LACU (Argentina), seconded by Mr. ALVAREZ (Uruguay), proposed that the word "constitución" in the Spanish text be replaced by the word "designación" and that the corresponding changes be made in the English and French texts.

*The proposal of Argentina was adopted by 36 votes to 3, with 15 abstentions.*

*Article 57, as amended, was approved by 39 votes to 10, with 6 abstentions.*

##### Article 58

6. Mr. CORREA (Ecuador) asked that each paragraph of article 58 be put to the vote separately.

7. His delegation had previously stated the reasons why it regarded paragraph 2 as unacceptable. When the vote by roll-call had been taken at the 32nd meeting, the provision in question had been approved by a very small majority; the summary record set forth in detail the attitude which the various delegations had adopted in that connexion.

*Paragraph 1 of article 58 was approved by 38 votes to 7, with 9 abstentions.*

8. Mr. HERRINGTON (United States) understood from the provisions of paragraph 2 of article 58 that if the special commission decided that the measures in dispute should not be applied pending its award, it

would complete its work expeditiously and make its award as quickly as possible.

9. Although he was unable to state precisely within what period the special commission would make its award, he personally felt that, in a clear-cut case, it would be able to announce its decision before five months had elapsed.

10. Mr. NARAYANAN (India) pointed out that, in order to bring the two texts into line, the word "should" in the third line of the English text should be replaced by the word "shall".

*It was so decided.*

11. Mr. CORREA (Ecuador) stated that his delegation would vote against paragraph 2, because it considered that that provision rendered inoperative the provisions of article 55 that were favourable to the coastal States.

12. Mr. GANDJI (Iran) recalled that his delegation had voted against paragraph 2 of article 58 on first reading, because it considered that the provision in question was tantamount to the pronouncement of an award before a case had been heard.

13. The United States representative had just explained that if the measures were suspended under the terms of paragraph 2, the special commission's award would have to be made as soon as possible. His own delegation would not vote for paragraph 2 unless the special commission which decided to suspend the measures was not required to wait five months before making its award.

14. Mr. NARAYANAN (India) recalled that, at the first reading, his delegation—which accepted the principle of arbitration—had abstained when the vote had been taken on paragraph 2 because of the changes that had been made in it. However, since the majority of the Committee's members had approved the provision in question, his delegation would support it on second reading.

*Paragraph 2 of article 58 was approved by 34 votes to 21, with 6 abstentions.*

15. Mr. KRYLOV (Union of Soviet Socialist Republics) stated that his delegation—which was opposed to compulsory arbitration—would vote against article 58 as a whole.

16. It would, however, vote for article 59, as its provisions were unobjectionable, and were not related to those of the preceding article.

17. Mr. MELO LECAROS (Chile) said he would vote against paragraph 2 of article 58, as it rendered nugatory the advantages accorded to coastal States under article 55.

18. Mr. GARCIA AMADOR (Cuba) stated that he would vote for article 58, which seemed to him to safeguard the interests of non-coastal and coastal States alike. He had observed that at the first reading the coastal States had already voted for that article.

*Article 58 as a whole was approved by 40 votes to 17, with 5 abstentions.*

19. Mr. GOLEMANOV (Bulgaria) explained that he had voted against articles 57 and 58 for reasons of

principle. His delegation was unable to accept the principle of compulsory arbitration.

#### Article 59

*Article 59 was approved by 53 votes to none, with 7 abstentions.*

20. Mr. GLASER (Romania) explained that his delegation had voted against articles 57 and 58 for reasons of principle, because his government was unable to agree to compulsory arbitration in general. On the other hand, it had voted for article 59, because it had no objection to a State's agreeing voluntarily and in full knowledge of the facts to arbitration and because it seemed desirable to his delegation that the provisions of paragraph 2 of Article 94 of the Charter of the United Nations should be applicable to the decisions of the special arbitral commission.

21. Mr. OBIOLS-GOMEZ (Guatemala) had abstained from voting on articles 57 and 58 because his delegation was unable to accept compulsory arbitration in the form laid down for such arbitration in the articles in question.

22. Mr. CORREA (Ecuador) explained that his delegation had voted for articles 57, 58 and 59 with the proviso that they would not be applicable if they proved incompatible with the Constitution of Ecuador.

23. Mr. LLOSA (Peru) said that his delegation considered that the provisions on which the vote had just been taken did not provide adequate safeguards for coastal States and impaired the authority of the United Nations and the International Court of Justice.

#### Article 50

*Article 50 was approved by 59 votes to none, with 4 abstentions.*

24. Mr. LUND (Norway) said, in explanation of his vote, that he had abstained because he did not think that in defining the expression "conservation of the living resources of the high seas", preference should be given in article 50 to certain aspects of the exploitation of the resources of the sea.

#### Article 51

*Article 51 was approved unanimously.*

#### Article 52

25. Mr. LACU (Argentina) and Mr. CORREA (Ecuador) pointed out that the Spanish text of article 52 should be redrafted. In particular the word "vivos" should be inserted between the words "recursos" and "marinos". Both the English and the French text referred to "living" marine resources.

26. Mr. GARCIA AMADOR (Cuba) observed that the words "se dedica a pescar 'en' la misma o 'en' las mismas reservas" should read as follows: "se dedica a pescar 'de' la misma o 'de' las mismas reservas". The correction would, moreover, bring the text into line with the International Law Commission's draft.

27. Mr. MELO LECAROS (Chile) asked that each paragraph of article 52 be put to the vote separately.

*Paragraph 1 of article 52 was approved by 61 votes to none, with one abstention.*

*Paragraph 2 of article 52 was approved by 47 votes to 11, with 5 abstentions.*

*Article 52 as a whole was approved by 48 votes to 8, with 7 abstentions.*

28. Mr. GLASER (Romania) said that he had voted for paragraph 1 of article 52, and against article 52 as a whole, because, although the Romanian Government endorsed the principles set forth in paragraph 1 of article 52, it was opposed to the establishment of compulsory arbitration. From the legal point of view, the reference to the principle of compulsory arbitration in several articles was to be deplored, as it would compel delegations which did not accept it to express their opposition time and again.

29. Mr. KRYLOV (Union of Soviet Socialist Republics) agreed with the Romanian representative.

#### Article 53

30. Mr. KRYLOV (Union of Soviet Socialist Republics) proposed that, in paragraph 1, the words "on an equal footing" be inserted in the second line between the words "engage" and "in fishing", and that the words "in form or in fact" to be inserted in the fifth line after the words "shall not be discriminating".

31. Mr. WALL (United Kingdom) said that the words "shall not be discriminating" in the fifth line of paragraph 1 should preferably be replaced by the words "shall not discriminate against their nationals".

32. Mr. ASANTE (Ghana) requested that the Soviet Union representative should explain exactly what he meant by his proposal to insert the words "on an equal footing" in paragraph 1.

33. Mr. KRYLOV (Union of Soviet Socialist Republics) said that what he had in mind was solely equality before the law.

34. Mr. NARAYANAN (India) proposed, in an effort to combine the Soviet Union and United Kingdom proposals, that the words "shall not discriminate against their nationals, in fact or form" be substituted for the words "shall not be discriminating". The advantage of such a wording would be that it also covered the principle of equal rights which the Soviet Union representative wanted to see mentioned in the second line of article 53.

35. Mr. WALL (United Kingdom) and Mr. KRYLOV (Union of Soviet Socialist Republics) accepted the proposal.

*The Indian proposal was adopted by 52 votes to one, with 5 abstentions.*

36. Mr. MELO LECAROS (Chile) asked that each paragraph of article 53 as amended be put to the vote separately.

*Paragraph 1 of article 53, as amended, was approved by 58 votes to none, with one abstention.*

*Paragraph 2 of article 53, as amended, was approved by 40 votes to 12, with 6 abstentions.*

37. Mr. QURESHI (Pakistan), explaining his vote on the Indian representative's amendment, said that he had voted against it because it might cause confusion.

38. Mr. LUND (Norway) said he had voted against the Indian amendment for the same reason as the Pakistan representative. He considered article 53 to be incorrectly worded.

*Article 53, as amended, was approved by 45 votes to 9, with 7 abstentions.*

#### *Article 54*

39. Mr. THURMER (Netherlands) wished it placed on record that the Netherlands delegation would vote against articles 54 and 55 because the Committee's proposals, if adopted, would give coastal States special rights, contrary to the interests of mankind in general.

40. Mr. TSURUOKA (Japan), Mr. PIRKMAYR (Federal Republic of Germany), Mr. HULT (Sweden) and Mr. ALLOY (France) associated themselves with the statement of the Netherlands representative.

41. Mr. KRYLOV (Union of Soviet Socialist Republics) asked for a separate vote to be taken on the first three paragraphs of article 54 and on paragraphs 4 and 5.

42. Mr. MELO LECAROS (Chile) asked for a separate vote to be taken on paragraph 5 of article 54.

43. Mr. NARAYANAN (India) said that, after hearing several representatives express reservations concerning articles 54 and 55, he wished to point out that the articles formed part of a whole from which they could not be severed. Should they be deleted, the Government of India could not accept the other articles of the draft.

44. Mr. GANDJI (Iran), Mr. OLAFSSON (Iceland) and Mr. HERRINGTON (United States) endorsed the statement by the Indian representative.

45. Mr. AGUERREVERE (Venezuela) asked for a separate vote to be taken on paragraphs 3, 4 and 5 of article 54.

46. Mr. LACLETA (Spain) asked for articles 54 and 55 to be voted on paragraph by paragraph.

47. Mr. WALL (United Kingdom) said he was prepared to vote for the text proposed for article 54 except as regards paragraph 4. With regard to article 55, he would again vote against this provision. At the same time, his delegation would further study article 55 in the light of whatever decisions the First Committee might reach about the limits of the territorial sea and exclusive fishery jurisdiction. The United Kingdom delegation would also wish to appraise the fishery conservation articles as an integrated whole and would make known in plenary session their final position.

48. Mr. RUIVO (Portugal) said that he wished to enter reservations with respect to paragraphs 3, 4 and 5 of article 54 and asked that the article be voted on paragraph by paragraph. He would be obliged to vote against article 55.

At the request of Mr. CORREA (Ecuador) and Mr. CASTAÑEDA (Mexico), a vote was taken by roll-call on paragraph 1.

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

*In favour:* Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, El Salvador, Finland, Ghana, Guatemala, Honduras, Iceland, India, Indonesia, Iran, Ireland, Republic of Korea, Liberia, Mexico, New Zealand, Nicaragua, Pakistan, Panama, Peru, Philippines, Poland, Romania, Saudi Arabia, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Albania, Argentina, Australia, Brazil.

*Against:* France, Federal Republic of Germany, Japan, Monaco, Netherlands, Sweden.

*Abstaining:* Israel, Italy, Norway, Portugal, Spain, Switzerland, Belgium.

*Paragraph 1 of article 54 was approved by 50 votes to 6, with 7 abstentions.*

49. Mr. LUND (Norway), explaining his abstention, said that it was because paragraph 1 of article 54 did not establish a rule of law, but merely contained a postulate which his delegation could not accept as valid in its general form.

50. Mr. RUIVO (Portugal) and Mr. MICHELSEN (Belgium) said that they had abstained for the same reason as the representative of Norway.

51. Mr. LACLETA (Spain) said that he had abstained from voting because he did not approve of the implications of the paragraph.

*Paragraph 2 of article 54 was approved by 54 votes to 3, with 6 abstentions.*

*Paragraph 3 of article 54 was approved by 50 votes to 2, with 10 abstentions.*

*Paragraph 4 of article 54 was approved by 41 votes to 19, with 3 abstentions.*

*Paragraph 5 of article 54 was approved by 40 votes to 2, with 11 abstentions.*

*Article 54 as a whole was approved by 41 votes to 8, with 15 abstentions.*

52. Mr. KRYLOV (Union of Soviet Socialist Republics) explaining his abstention from the vote on article 54 as a whole, said that though his delegation set great store by the provision in paragraph 1, it considered paragraph 5 unacceptable.

#### *Article 55*

53. Mr. KRYLOV (Union of Soviet Socialist Republics) asked for his delegation's proposal (A/CONF.13/C.3/L.42/Rev.1) to add a new sub-paragraph (d) to paragraph 2 of article 55 to be put to the vote again. Should that proposal be rejected, the Soviet Union delegation would be obliged to vote against article 55.

*The Soviet proposal was rejected by 13 votes to 9, with 36 abstentions.*

54. Mr. WALL (United Kingdom) proposed adding the words "in fact or form" to sub-paragraph (c) of paragraph 2, to make the provision consistent with article 53 as amended.

55. Mr. AGUERREVERE (Venezuela) asked for a vote on article 55 in parts. Paragraphs 1, 2 and 3 could be taken together; paragraph 4 by itself; and then paragraphs 5 and 6 together.

56. Mr. GOHAR (United Arab Republic) asked the Committee to replace the expression "scientific findings" in sub-paragraph (b) of paragraph 2 by "scientific principles". As it stood, sub-paragraph (b) of paragraph 2 was practically impossible to apply, because scientific findings were usually not available. On the other hand, the similarity which often existed between the stocks of fish in several areas justified basing conservation measures on rules already in use elsewhere, without waiting for the results of scientific investigations. When conditions were identical, there was no danger in basing conservation measures on scientific principles used in other areas to prevent the stock of fish from diminishing.

57. Mr. HERRINGTON (United States) felt that the change proposed by the representative of the United Arab Republic was inadvisable.

58. Mr. NARAYANAN (India) recalled that the terms used in sub-paragraph (b) of paragraph 2 had been chosen after careful thought. It was important that all measures taken should be based on scientific findings. The word "scientific" should not cause any alarm, for even simple data about the measurement of distances and spawning seasons were scientific.

59. Mr. ASANTE (Ghana), Mr. ANDERSON (Australia) and Mr. CORREA (Ecuador) supported the proposal made by the representative of the United Arab Republic.

60. Mr. RUIVO (Portugal) considered that it would be dangerous to adopt scientific principles as a criterion for conservation measures. Such measures should be based essentially on actual data concerning the stocks of fish in question. The change proposed by the delegation of the United Arab Republic might undermine the scientific basis on which all conservation measures should be founded.

*The proposal of the United Arab Republic was rejected by 25 votes to 22, with 10 abstentions.*

*Paragraphs 1, 2 and 3 of article 55 were approved by 46 votes to 13, with 4 abstentions.*

61. Mr. CORREA (Ecuador) recalled that the provision contained in paragraph 4 of article 55 had been included as the result of a proposal by the Norwegian delegation and had only been approved (27th meeting) by 17 votes to 14. At the time, the Norwegian representative had explained, with reference to "uninhabited territories" that Antarctica was a case in point. The vagueness of that provision introduced a dangerous element into the convention which might reduce the right of the coastal State to nothing.

62. Mr. MELO LECAROS (Chile), supported by Mr. LACU (Argentina) considered that, even if the paragraph in question were supplemented by the words "in Antarctica", it would still remain unacceptable, because it would deal with a part of the world which was not in fact uninhabited; it would thus contain an inexact statement. It should be possible to apply conservation measures to all areas of the high seas where resources existed, which was exactly the position in Antarctica.

63. Mr. WALL (United Kingdom) thought that the provision in paragraph 4 of article 55 was a logical one, since the purpose of article 55 was to deal with urgent questions. In Antarctica, there were neither fishermen to protect nor people to feed. His delegation felt that paragraph 4 should be left as it stood.

64. Mr. ANDERSON (Australia) drew attention to the difficulties connected with the interpretation and application of paragraph 4.

*Paragraph 4 of article 55 was rejected by 29 votes to 12, with 20 abstentions.*

65. Mr. ALVAREZ (Uruguay) pointed out that paragraph 5 of article 55 duplicated provisions which appeared elsewhere, and it could thus be deleted.

66. Mr. GARCIA AMADOR (Cuba) thought that it was rather paragraph 3 which should be deleted.

*Paragraph 5, which now became paragraph 4, was approved by 32 votes to 22, with 8 abstentions.*

*Paragraph 6, which now became paragraph 5, was approved by 41 votes to 4, with 11 abstentions.*

*Article 55 as a whole, as amended, was approved by 34 votes to 20, with 5 abstentions.*

67. Mr. LLOSA (Peru) recalled that, when the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) had been under discussion, he had stated that it did not pay sufficient attention to the rights of the coastal State; that it gave them no protection against wasteful fishing by foreign enterprises; and that it was completely at variance with the traditional principles of Peru's foreign policy.

68. Those views of his delegation had been further strengthened as a result of the efforts made by some other delegations to remove from article 55 anything that was favourable to coastal States. For those reasons, his delegation had been obliged to vote against article 55 as a whole.

69. Mr. CIEGLEWICZ (Poland) said that the Polish delegation had voted against article 55 as a whole, for reasons which it had already explained. In particular, it could not agree that unilateral measures should have compulsory effects.

#### *Article 56*

*Article 56 was approved by 42 votes to 8, with 6 abstentions.*

#### *Article 59 A*

*Article 59 A was approved by 49 votes to none, with 6 abstentions.*

70. Mr. GLASER (Romania) said that he had voted for article 59 A because that article established a procedure which was not compulsory, but which the States concerned were free to adopt.

#### Article 60

*Article 60 was approved by 51 votes to one, with 5 abstentions.*

The meeting rose at 1.30 p.m.

### THIRTY-NINTH MEETING

*Monday, 21 April 1958, at 10.25 a.m.*

*Chairman: Mr. Carlos SUCRE (Panama)*

#### **Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81)**

1. Mr. MELO LECAROS (Chile) said that his delegation was in favour of a single instrument covering all the topics with which the Conference had dealt, for the reasons which had twice led the General Assembly to the conclusion that the law of the sea should be treated as a whole.

2. Referring to the paper on final clauses prepared by the secretariat (A/CONF.13/L.7), he said that the term "accession" should be more precisely defined; whereas in some countries it implied ratification, in the Latin American countries it implied signature subject to approval by the legislature. So far as reservation clauses were concerned, he said that some countries might not be able to ratify certain articles, particularly those concerning arbitration, and as a consequence a reservation clause was necessary.

3. Mr. CUSMAI (Italy) said that the articles which the Committee had adopted would be best embodied in a convention, a more appropriate instrument than a declaration, which could not include the arbitration clauses or bind States to adopt the measures necessary to put the articles into effect.

4. Mr. REGALA (Philippines) said that all the articles which obtained a two-thirds majority in the plenary Conference should be embodied in a single convention. A declaration would not be a fitting form of certification. It was possible that agreement might not be reached on certain articles, such as article 3, but there were groups of articles which were generally acceptable, in particular those dealing with fishing and the continental shelf. It might be advisable to embody such groups in separate conventions. Articles which, although adopted by the various committees, failed to obtain a two-thirds majority in the plenary Conference might be incorporated in a declaration, which would be of assistance to future conferences.

5. Mr. CORREA (Ecuador) said that, so far as the articles referred to the Committee (articles 49 to 60) were concerned, three courses were possible which the Committee might recommend to the plenary Conference

as alternatives. Firstly, the articles adopted by the Committee might constitute a separate convention. In that case, it would be necessary to reconsider article 49 with a view to including provisions regarding zones in which coastal States would have exclusive fishing rights. Secondly, the provisions adopted by the Committee might form part of a general convention, which was the intention of the International Law Commission. The final decision would have to be taken by the plenary Conference, in the light of the work of the First and Second Committees and could not be taken at the present stage. Thirdly, the articles might be embodied in a declaration; but a declaration would not be a binding instrument, for it would have only moral force, and hence could not contain the articles on arbitration. A separate protocol would be required for States which were prepared to accept compulsory arbitration.

6. If it was decided that the provisions adopted by the Committee should form the subject of a separate convention, then final clauses should be recommended which were based on those reproduced in the secretariat paper (A/CONF.13/L.7). By reason of the interdependence of the branches of the law of the sea, his delegation was strongly in favour of a general convention embodying all the articles adopted by the various committees.

7. Mr. PANIKKAR (India) said that his delegation was in favour of a separate convention for the articles relating to fishing, and opposed the idea of embodying the provisions in a declaration. The final clauses suggested by the secretariat (A/CONF.13/L.7) would form a convenient basis for discussion. The convention should be permanently open for acceptance, and the procedure of initial acceptance followed by later ratification should be allowed. Articles 49 to 60 were so closely interdependent that partial acceptance should not be permitted, and accordingly he considered that the clause disallowing reservations should be adopted by the Committee.

8. Mr. OZERE (Canada) and Mr. GANDJI (Iran) agreed with the remarks of the Indian representative.

9. Mr. POPOVIC (Yugoslavia) said that, because the various sections of the law of the sea were closely interdependent, his delegation was in favour of a single general convention. The new provisions which the Conference adopted could only come into force if embodied in a treaty.

10. With regard to the respective merits of a convention and a declaration, he said that history contained several examples of declarations which were no less binding than conventions. Nevertheless, on balance, his delegation considered that a convention would be a more appropriate instrument in the case of the articles relating to the law of the sea.

11. Mr. CASTANEDA (Mexico) said that the ideal instrument would be that which made the provisions adopted truly binding. But no conclusion could be reached until a decision had been taken on article 49. He therefore supported the suggestion by the representative of Ecuador that the Committee should recommend alternatives to the plenary Conference.

12. Miss SOUTER (New Zealand) said that her delegation supported the Indian representative's suggestion for a separate convention to embody the articles already adopted by the Committee relating to the conservation of the living resources of the sea. In view of the interdependence of those articles, no reservations should be allowed.
13. Mr. HERRINGTON (United States of America) said that he agreed with the remarks of the Indian and New Zealand representatives, although it would be necessary to await the decision taken regarding article 49. If reservations were allowed or if some articles were rejected by the plenary Conference, a separate convention might not be acceptable to many States.
14. Mr. LUND (Norway) said that his delegation agreed with the United States delegation.
15. Mr. LLOSA (Peru) said that his delegation broadly agreed with all those who had proposed that it should be left to the plenary Conference to decide the type of instrument which should be adopted. A general convention would be most appropriate.
16. Mr. SCHWARCK ANGLADE (Venezuela) said that his delegation maintained the view it had expressed in other committees that no recommendation should be made to the plenary Conference as to the type of instrument. It could support a convention, though not necessarily a separate one. Reservations should be allowed.
17. Mr. CORREA (Ecuador) said that, as no formal proposal had been submitted, he wished to suggest that the rapporteur should include in his report a summary of the views expressed at the present meeting and any final clauses which might be recommended.
18. Mr. WALL (United Kingdom) said that articles 49 to 60 were so closely linked that no reservations should be allowed. He therefore agreed with the statements made by the representatives of India, New Zealand and the United States of America.
19. Mr. LÜTEM (Turkey) said that, as the final votes requiring a two-thirds majority had not yet been taken, the Committee should leave the form of instrument to the plenary Conference, as the Second Committee had done. His delegation therefore agreed with the suggestion of the representative of Ecuador.
20. Mr. PANIKKAR (India) proposed formally that the Committee should recommend to the Conference that the results of the Committee's work be embodied in a convention relating to fishing and the conservation of the living resources of the sea. The question of reservations could be postponed until after a decision on article 49 had been taken.
21. Mr. HULT (Sweden) said that his delegation was in favour of recommending a separate convention to which no reservations would be allowed.
22. Mr. THURMER (Netherlands) said that his delegation was in favour of recommending a separate convention for articles 49 to 60, provided that no extra articles were added and no reservations were allowed.
23. Mr. CASTAÑEDA (Mexico) said that the Indian proposal could not be accepted, because the plenary Conference had not yet confirmed the articles which the Committee had adopted, and thus it was not known what articles the convention would contain. The Indian representative himself had said that his delegation could not support the other articles if articles 54 and 55 were rejected.
24. Mr. PANIKKAR (India) said that his proposal dealt only with the question of a separate convention; he had made no formal proposal concerning reservations.
25. Mr. RUIVO (Portugal) said that his delegation was in principle in favour of a separate convention, though it would be influenced by the final decisions of the plenary Conference and by the decision on the articles concerning claims to exclusive or preferential rights by virtue of special conditions. The latter could not be admitted in a convention of a general nature.
26. Mr. KRYLOV (Union of Soviet Socialist Republics) said that the Conference, even if not able to produce a general convention, might agree on a separate convention relating to fishing. His delegation therefore agreed with the representative of Ecuador that it was too early to decide on the type of instrument required, and that the matter should be left to the plenary Conference.
27. Mr. CHRISTENSEN (Denmark) said that his delegation agreed with the statements made by the representatives of India, New Zealand, the United Kingdom and the United States.
28. Mr. ANDERSON (Australia) said that his delegation was in favour of a separate convention, but it could not decide whether to support the Indian proposal until it appeared in writing and until a decision was taken on article 49.
29. Mr. MELO LECAROS (Chile) said that it was clear that the countries which supported a separate convention were those hostile to provisions giving special rights to the coastal State. If a single convention were not adopted, those countries would only support what was in their interests. His delegation supported the suggestion of the representative of Ecuador that a decision on the type of instrument should be left to the plenary Conference.
30. Mr. LÜTEM (Turkey) said that the Committee could not reach a decision on the question under consideration before it had dealt with all the proposals before it. The question should therefore be left to the plenary Conference.
31. Mr. KASUMA (Indonesia) said that, on the basis of his interpretation of the terms of reference of the Conference, he would support the Indian representative's proposal. He agreed, however, that it would be difficult to reach a final decision on the question of the type of instrument since the Committee had not yet completed its work. His delegation attached particular importance to articles 49, 54 and 55, and on their adoption would depend its position on the fisheries articles as a whole.
32. Mr. LACLETA (Spain) said that his delegation supported the Indian representative's proposal because



the fisheries articles constituted a separate unit and unless they were taken as such his delegation would be unable to participate in the vote. The Committee had not, in any case, completed consideration of article 49.

33. Mr. PANIKKAR (India) pointed out that under his delegation's proposal the Committee would merely recommend to the Conference that the fisheries articles should be the subject of a separate convention. The Committee would, of course, have to dispose of all outstanding proposals first. The proposal would be circulated in writing.

34. Mr. GANDJI (Iran) said that he would support the Indian representative's proposal, on the grounds that the fisheries articles were very closely interrelated and that his delegation would be unable to accede to any convention unless it included articles 49, 54 and 55.

35. The CHAIRMAN suggested that the Committee should defer further consideration of the matter until it had completed its examination of article 49 and the question of exclusive and preferential rights.

*The Chairman's suggestion was adopted by 41 votes to none, with 13 abstentions.*

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

**CONSIDERATION OF PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.12, L.45, L.60, L.69, L.70, L.79/Rev.1, L.86 to L.88) (continued)<sup>1</sup>**

36. Mr. ANDERSEN (Iceland) said that his delegation had always maintained that a general twelve-mile zone, representing either the territorial sea or the extent of exclusive jurisdiction over fisheries, while effective in certain cases, would not adequately meet the needs of countries which were overwhelmingly dependent on coastal fisheries for the livelihood of their population. The case of Iceland, 97% of whose exports consisted of fisheries products, was special indeed, and his delegation had accordingly submitted a suitable proposal in the First Committee (A/CONF.13/C.1/L.131). That proposal had been withdrawn, however, and a similar one submitted in the Third Committee (A/CONF.13/C.3/L.79), which itself had later been amended as a result of the valuable advice of certain delegations.

37. The revised proposal (A/CONF.13/C.3/L.79/Rev.1) was based on the idea that in exceptional cases, such as that of Iceland, fisheries problems would arise in their most acute form when the maximum sustainable yield had been obtained and when fishing had been limited accordingly. At that point, the extent of the fishing activities of fishermen of different nationalities would have to be determined equitably, and countries such as Iceland must be accorded preferential fishing rights corresponding to their almost complete dependence on fishing. Unless such rights were

recognized, Iceland might well become uninhabitable in consequence of intensive fishing around its coasts.

38. That view was not selfish but merely realistic. Iceland, owing to its geographical position, found it extremely difficult to diversify its economy, and, although experiments with banana and grape production were being carried out, the present international division of labour, whereby it imported the necessities of life in exchange for fisheries products, was obviously to the general advantage. If the survival of a nation was at stake, a departure from the general rule should be authorized.

39. He requested a roll-call vote on his revised proposal.

40. Mr. SCHWARCK ANGLADE (Venezuela) felt that the second paragraph of the revised Icelandic proposal, which he supported in general, was unnecessary.

41. Mr. ANDERSEN (Iceland) explained that the second paragraph had been added at the suggestion of certain delegations, which thought that the proposal might otherwise be regarded as dangerous. The new paragraph would ensure that the provisions of the preceding paragraph were not abused. His delegation had no strong views on the matter, and he therefore suggested that a separate vote should be taken on the second paragraph.

42. Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam) said that, for reasons he had explained earlier, his delegation considered that preferential fishing rights should be granted to certain States. The exercise of such rights should, of course, be reasonably limited so as to prevent their abuse; such a safeguard was provided for in the revised Icelandic proposal, which was in accordance with his country's interests. If that proposal were adopted, his delegation, with the agreement of the other two co-sponsors, would withdraw the three-power proposal (A/CONF.13/C.3/L.86).

43. Mr. CASTAÑEDA (Mexico) said that he supported the revised Icelandic proposal. There was very little likelihood of its abuse since, like all other international rules drafted in general terms, it would merely serve as a guide and would be interpreted by competent bodies in the event of disagreement. Its wording was, if anything, rather too restricted and would seem to apply only to the case of Iceland, particularly in view of the use of the words "overwhelmingly dependent". Although a more broadly applicable rule would have been better, his delegation would vote for the proposal despite the reservations it had about the reference to article 57.

44. Mr. CHRISTENSEN (Denmark) said that his delegation would vote for the revised Icelandic proposal, on the understanding that the reference to arbitration procedure would be retained.

45. Mr. WALL (United Kingdom) considered that the Committee should hear explanations of other proposals on exclusive or preferential fishing rights before reaching a decision on the revised Icelandic proposal. That proposal was in some respects rather vague; the reference to the limitation of the total catch, for example, failed to mention conservation, and he

<sup>1</sup> Resumed from 37th meeting.

wondered whether the limitation decision would be based on conservation principles. Moreover, would that decision be taken as a matter of course by the fishing States under article 52 through an international conservation body or unilaterally by the coastal State under article 55?

46. He also observed that a decision to limit the catch would be based essentially on scientific evidence, whereas the preferential rights of the coastal State implied a consideration of economic criteria. Under the revised Icelandic proposal, disputes would be referred to an arbitral commission under article 57; but those commissions were composed of experts other than economists. In those circumstances, he doubted seriously whether such bodies would be qualified to assess the relative economic interests of different States. Furthermore, the proposal failed to indicate which economic criteria would be used in reaching decisions.

47. The Cuban representative had stated at the 29th meeting that a coastal State should not be granted exclusive rights by virtue of its special interests if other States also had interests in the area affected. That was quite true, and he considered that the special interests of Iceland—which, in any event, possessed a modern fishing fleet—were to some extent overlapped by the interests of the small-boat communities of Greenland and the Faroes. It would be very difficult indeed to decide such questions in respect of the north Atlantic area where an intricate balance of economic interests was maintained.

48. Mr. ANDERSEN (Iceland) explained, with reference to the United Kingdom representative's remarks, that conservation had not been mentioned in the proposal because the crux of the problem was how to divide the yield after the catch had been limited. It was then that the need for preferential rights arose. The procedure under his proposal would be quite simple—the matter would first be taken up in the competent regional fisheries body, and, if no agreement was reached in that body, the coastal State would adopt unilateral measures which under the second paragraph could be referred to arbitration. The decision on the coastal State's claims to preferential rights would be based on both scientific and economic considerations and the arbitral commissions would, in his view, be eminently qualified to examine such questions.

49. Mr. STABELL (Norway) said that despite his country's close friendship with Iceland he would be unable to support the revised Icelandic proposal. Account should be taken of the interests of Norwegian fishermen who were economically just as dependent as those of Iceland on certain traditional fisheries. The standard of living of certain Norwegian coastal communities was no higher than that of Icelandic communities and therefore his delegation was unable to accept the principle that a State should be granted preferential rights by reason of the existence of a special situation.

50. Mr. LEE (Republic of Korea) said that his delegation, on behalf of the co-sponsors, withdrew the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) as well as its own proposal (A/CONF.13/C.3/L.45)

since they were duplicated by the revised Icelandic proposal.

51. Mr. ALVAREZ (Uruguay) said he would vote in favour of the revised proposal of Iceland because his delegation viewed the special position of that country with sympathy and well understood the aspirations of its inhabitants.

52. The existence of countries which were underdeveloped owing to the lack of economic and technical means was an actual fact, and not—as some remarks made at the 35th meeting might appear to imply—a notion invented by the small countries to help them in their negotiations with the larger States. As the representative of the United Kingdom had pointed out, the problem would not be solved by millions of human beings leaving the resources of the sea in the hands of some thousands. What was required was that countries which possessed great economic wealth should consent to the sacrifice of a small share of their interests for the sake of those who were less fortunate, in order to allow the latter to breathe more easily and lead a better existence.

53. The CHAIRMAN proposed the closure of the debate on the revised Icelandic proposal.

*The proposal was adopted by 27 votes to 10, with 18 abstentions.*

54. The CHAIRMAN put paragraph 1 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) to the vote.

*At the request of the representative of Iceland, a vote was taken by roll call.*

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

*In favour:* Ghana, Hungary, Iceland, India, Indonesia, Iran, Ireland, Republic of Korea, Mexico, Panama, Peru, Philippines, Tunisia, United Arab Republic, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Bolivia, Burma, Canada, Chile, Costa Rica, Czechoslovakia, Denmark, Ecuador.

*Against:* France, Federal Republic of Germany, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic.

*Abstaining:* Finland, Israel, Liberia, Switzerland, Thailand, Union of South Africa, United States of America, Australia, Brazil, Ceylon, China.

*Paragraph 1 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) was adopted by 27 votes to 18, with 11 abstentions.*

55. The CHAIRMAN put paragraph 2 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) to the vote.

*At the request of the representative of Iceland, a vote was taken by roll call.*

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

*In favour:* Sweden, Switzerland, Uruguay, Republic of Viet-Nam, Argentina, Belgium, Bolivia, Canada, Ceylon, China, Costa Rica, Denmark, Finland, France,

Federal Republic of Germany, Ghana, Iceland, India, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Panama.

*Against*: Portugal, Romania, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Republic of Korea, Peru.

*Abstaining*: Thailand, Tunisia, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Brazil, Burma, Czechoslovakia, Ecuador, Hungary, Indonesia, Iran, Liberia, Mexico, Philippines, Poland.

*Paragraph 2 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) was adopted by 26 votes to 12, with 18 abstentions.*

56. The CHAIRMAN put the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) as a whole to the vote.

*At the request of the representative of Iceland, a vote was taken by roll call.*

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

*In favour*: Costa Rica, Czechoslovakia, Denmark, Ecuador, Ghana, Hungary, Iceland, India, Indonesia, Iran, Ireland, Mexico, Panama, Peru, Philippines, Tunisia, United Arab Republic, Uruguay, Republic of Viet-Nam, Yugoslavia, Argentina, Bolivia, Burma, Canada, Chile.

*Against*: France, Federal Republic of Germany, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic.

*Abstaining*: China, Finland, Israel, Republic of Korea, Switzerland, Thailand, Union of South Africa, United States of America, Venezuela, Australia, Brazil, Ceylon.

*The Icelandic proposal as a whole was adopted by 25 votes to 18, with 12 abstentions.*

The meeting rose at 1.15 p.m.

#### FORTIETH MEETING

*Monday, 21 April 1958, at 2.45 p.m.*

*Chairman*: Mr. Carlos SUCRE (Panama)

*In the absence of the Chairman, Mr. Krispis (Greece), Vice-President, took the Chair.*

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

PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.12, L.45, L.60, L.66/Rev.1, L.69, L.70, L.79/Rev.1, L.86 to L. 89) (continued)

*Explanations of votes on the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1)*

1. Mr. O'HALLORAN (New Zealand) said that in

voting against the first paragraph of the Icelandic proposal and against the proposal as a whole his delegation had implied no judgement about the merits of a local situation not directly within its experience. It had formed the impression from statements made by the Icelandic delegation and delegations from other countries directly concerned with the problem, that the possibilities of ultimately arriving at a provision acceptable to those countries had not yet been fully explored. In these circumstances, his delegation considered that the adoption of the proposal could only prejudice the value of the articles on fishing as a whole.

2. Mr. ALLOY (France) said that his country's understanding of what was meant by fishing rights on the high seas had prevented the French delegation from voting for the Icelandic proposal. The French delegation could not go beyond the concessions it had already made to coastal States without jeopardizing the livelihood of the 55,000 French fishermen. The Icelandic proposal aimed at nothing less than granting an additional right to the coastal States. It was not, however, by granting an additional right that the question could be settled, but by negotiations between all the States concerned. The Icelandic proposal ran counter to the principle of equal fishing rights on the high seas, for restrictions on that right must be applied to all fishermen without discrimination.

3. The French delegation well understood Iceland's special position and would therefore be prepared, in the First Committee, to vote in favour of an amendment which took into account the point of view he had just outlined.

4. Mr. LEE (Republic of Korea) recalled that his delegation had already expressed the view that the provisions of article 54 and 55 did not adequately protect the interests of coastal States which exploited and conserved living resources of the seas as a means of subsistence for their peoples. It had accordingly submitted an alternative proposal (A/CONF.13/C.3/L.45), and was one of the co-sponsors of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1).

5. For the same reasons as had already led it to vote against the provisions of article 57 concerning the settlement of disputes by compulsory recourse to arbitration, the Korean delegation had voted against the second paragraph of the Icelandic proposal.

6. The Korean delegation was in favour of a form of words which would leave the States concerned a measure of latitude to choose whatever procedure was best suited to the case in point and had therefore proposed that in the event of disagreement regarding the provisions of articles 52 to 56, the parties should seek a solution in accordance with the provisions of Article 33 of the United Nations Charter.

7. Mr. THURMER (Netherlands) pointed out that at the previous meeting he had asked to speak in the discussion on the Icelandic proposal and that, contrary to the provisions of the rules of procedure, he had not been given the floor. He therefore proposed formally that the Committee should reconsider the decision it had taken on the Icelandic proposal.

8. The CHAIRMAN said that the Netherlands

representative's proposal was in order. A simple majority would suffice for its adoption.

9. Mr. OZERE (Canada) thought that the Netherlands representative's proposal could only delay the Committee in its work.

10. Mr. ANDERSEN (Iceland) pointed out that it was open to any delegation to submit to a plenary meeting of the Conference amendments to a proposal adopted by the Committee.

11. Mr. WALL (United Kingdom) said that though he had been in the same position as the Netherlands representative at the previous meeting, he saw no point in re-considering the decision that had been taken. The best course would be for those delegations who were unhappy about the solution proposed by the Icelandic delegation to prepare an amendment which could obtain a majority vote in plenary meeting. He associated himself with the remarks of the New Zealand representative.

12. After a procedural discussion in which Mr. GANDJI (Iran), Mr. ANDERSEN (Iceland) and Mr. REGALA (Philippines) took part, the CHAIRMAN put to the vote the Netherlands representative's proposal that the Committee reconsider the Icelandic proposal.

*The proposal was rejected by 33 votes to 3, with 18 abstentions.*

13. Mr. HULT (Sweden) said he had voted against the Icelandic proposal. The Swedish delegation fully appreciated the difficulties facing Iceland, which depended on fishing for a major part of its resources, but in its view the First Committee's adoption of paragraph 2 of the revised Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) would remove most of those difficulties.

14. Mr. MICHIELSEN (Belgium) said he had been unable to vote in favour of the Icelandic proposal, which infringed the principle of the freedom of the high seas and might seriously prejudice the interests of fishermen from other countries. Moreover, the First Committee's adoption of paragraph 2 of the revised Canadian proposal should largely meet Iceland's requirements. In his delegation's view, the form of the Icelandic proposal could also have been considerably improved if a lengthier discussion had been devoted to it.

15. In conclusion he expressed the hope that a form of words which could satisfy all delegations could be prepared for submission to the plenary meeting.

16. Mr. ASANTE (Ghana) said he had voted in favour of the proposal by Iceland, whose situation he well understood, since his country also drew a large part of its resources from the sea. Large numbers of people might see their means of subsistence curtailed, however, if the provisions of the Icelandic proposal were put into effect. He was therefore glad to learn that an amendment to it might be submitted at the plenary meeting.

17. Mr. KRYLOV (Union of Soviet Socialist Republics) said he had voted against the Icelandic proposal. For him to have voted in favour of it, it would have had

to stipulate that it related solely to Iceland, but it did not in fact do so.

18. Mr. RUIVO (Portugal) said he had voted against the Icelandic proposal, which, in his delegation's view, did not solve the problem of conservation but provided for discriminatory measures which infringed the freedom to fish on the high seas. Moreover, in very many cases, the fishermen to suffer from such discriminatory measures would have a lower standard of living than those on whose behalf they were taken.

19. In his view, the proposal which Canada had submitted to the First Committee should not be taken into account in the present debate, since it was still under discussion.

20. Mr. LIMA (El Salvador) requested that it be placed on record that his delegation had intended to vote in favour of the Icelandic proposal but had been unable to attend the meeting at which it had been put to the vote.

21. Mr. LLOSA (Peru) said he had voted in favour of the Icelandic proposal, as it related to special conditions such as those in which Peru found itself with regard to the living resources off its coasts, on which the economic life of the entire country depended.

22. Mr. ANDERSEN (Iceland) expressed his surprise that the Soviet Union representative, who, in the International Law Commission, had voted in favour of inserting the comment on article 49, should have said that the Icelandic proposal was not sufficiently precise. The Icelandic delegation was very disappointed at the attitude which the Soviet Union delegation had adopted with regard to its proposal.

23. The CHAIRMAN pointed out that the members of the International Law Commission were appointed in their personal capacity, whereas delegates to the Conference represented their governments.

24. Mr. CASTAÑEDA (Mexico) observed that, in the Spanish text of the Icelandic proposal, the word "overwhelmingly" had been mistranslated "absolutamente".

25. The CHAIRMAN replied that that observation would be taken into account in the final text.

PROPOSAL SUBMITTED BY CANADA AND THE UNITED STATES (A/CONF.13/C.3/L.88)

26. Mr. HERRINGTON (United States of America) said that after the debate on the proposal submitted by Canada and the United States (A/CONF.13/C.3/L.69), the two delegations had thought it should be replaced by another proposal (A/CONF.13/C.3/L.88), which he hoped would commend itself to the members of the Committee.

27. Mr. TSURUOKA (Japan) appreciated the co-operative attitude of the delegations of Canada and the United States. However, he had some comments to make on the draft proposal which Mr. Herrington had just presented. First, the procedure known as abstention, referred to in the third paragraph of the preamble, had nothing to do with the conservation measures inasmuch as it lacked scientific basis, thus being contradictory

to the articles concerning conservation which had already been adopted in the Committee.

28. Secondly, the Canadian and United States joint proposal was based on the assumption that any State would not be disposed to spend money for the restoration of the productivity of certain stocks of fish unless other States would abstain from fishing them. Any State would have to take conservation measures whenever necessary for the general interests of the international community. Every year Japan was spending more than one million dollars for the maintenance of the productivity of salmon, but had never asked other States to abstain. It was unreasonable that a State giving protection only to part of certain stocks of fish should claim the monopoly of those stocks of fish as a whole. Furthermore, it was not fair that a State which was to be responsible for the depletion of the living resources of the sea, caused by intensive fishing by that State, should ask other States to abstain.

29. Finally, the joint proposal referred to the Report of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955,<sup>1</sup> but that reference was not appropriate.

30. For all those reasons, his delegation was unable to accept the Canadian and United States joint proposal.

31. Mr. WALL (United Kingdom) recognized that the new proposal (A/CONF.13/C.3/L.88) presented by Canada and the United States represented an advance over the proposal it replaced (A/CONF.13/C.3/L.69), for it took account of the special situations involved in the development of stocks of fish. He could not vote for the new proposal, but would abstain. In the first paragraph of the preamble to the proposal it would be preferable to replace the word "conclusion" by the word "declaration", for the text cited was not, strictly speaking, a conclusion of the International Technical Conference on the Conservation of the Living Resources of the Sea.

32. Mr. THURMER (Netherlands) said that the resources of the sea should be regarded as the property of all and that no one was entitled to reserve their use for himself. For that reason, his delegation would vote against the Canadian and United States joint proposal, which it considered to favour discriminatory measures.

33. Mr. LLOSA (Peru) said that, having supported the proposal of Iceland at the preceding meeting, his delegation was prepared to support the Canadian and United States joint proposal (A/CONF.13/C.3/L.88). Those two proposals referred to special situations, and Peru certainly found itself in one. It had spent large sums on the conservation of stocks of fish off its coasts and had for forty years been carrying out a programme designed to increase stocks of fish and encourage the production of guano, which was essential to its agriculture. He was glad that the United States delegation had presented the proposal contained in

document A/CONF.13/C.3/L.88, and his delegation would vote for it.

34. Mr. HULT (Sweden) asked if the sponsors really meant that such a misuse of a fish stock as to cause depletion ought to give the fishing State a monopoly for the future through the principle of abstention.

PROPOSALS OF YUGOSLAVIA (A/CONF.13/C.3/L.12),  
INDIA (A/CONF.13/C.3/L.50) AND PORTUGAL  
(A/CONF.13/C.3/L.70)

35. Mr. POPOVIC (Yugoslavia) said that his delegation would withdraw its proposal (A/CONF.13/C.3/L.12) and reserve the right to revert to the question in the plenary Conference.

36. Mr. PANIKKAR (India) announced that his delegation was also withdrawing its proposal (A/CONF.13/C.3/L.50) and reserving the right to revert to the question in the plenary Conference.

37. Mr. RUIVO (Portugal) announced that his delegation was withdrawing its proposal (A/CONF.13/C.3/L.70), which would very shortly be replaced by a more general recommendation stressing the need for the establishment of co-operation between coastal States and the competent international institutions in the adoption of measures for the conservation of stocks.

PROPOSAL OF THE UNITED KINGDOM  
(A/CONF.13/C.3/L.87)

38. Mr. WALL (United Kingdom) drew attention to the draft resolution on international fishery conservation conventions (A/CONF.13/C.3/L.87) presented by his delegation, which he was placing before the Committee for its approval.

39. Mr. LUND (Norway) said that he was prepared to vote in favour of that draft resolution.

40. Mr. PANIKKAR (India) said that he would vote for the United Kingdom proposal.

*The United Kingdom draft resolution (A/CONF.13/C.3/L.87) was adopted by 49 votes to none, with 11 abstentions.*

*A vote was taken by roll-call on the joint proposal by Canada and the United States (A/CONF.13/C.3/L.88).*

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

*In favour:* Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Republic of Korea, Liberia, Federation of Malaya, Mexico, New Zealand, Panama, Paraguay, Peru, Philippines, Saudi Arabia, Thailand, Tunisia, Union of South Africa, United Arab Republic, Republic of Viet-Nam, United States of America, Argentina, Australia, Bolivia, Brazil.

*Against:* Finland, France, Federal Republic of Germany, Italy, Japan, Netherlands, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania,

<sup>1</sup> United Nations publication, Sales No.: 1955.II.B.2, para. 61.

Belgium, Bulgaria, Byelorussian Soviet Socialist Republic.

*Abstaining*: Denmark, Haiti, Israel, Norway, Switzerland, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia.

*The joint proposal of Canada and the United States (A/CONF.13/C.3/L.88) was adopted by 38 votes to 17, with 8 abstentions.*

NETHERLANDS PROPOSAL (A/CONF.13/C.3/L.59)

41. Mr. URBINA (Ecuador) requested that discussion of the Netherlands proposal (A/CONF.13/C.3/L.59) be postponed until the next meeting.

*It was so agreed.*

SECOND READING OF ARTICLES APPROVED BY THE THIRD COMMITTEE ON FIRST READING (continued)<sup>1</sup>

Article 49

42. Mr. THURMER (Netherlands) said that his delegation could not accept paragraph 1 (b). There was a danger of placing too much emphasis on national interest, which might lead to disputes in a world in which they were only too frequent already. He reminded the Committee of his delegation's views on the resources of the high seas, which belonged to all countries. The Netherlands delegation, being unable to accept the text of paragraph 1 (b), moved that a separate vote be taken on it.

43. Mr. LLOSA (Peru) pointed out that paragraph 1 (b) had only been adopted on first reading after a long discussion, which was the reason why it had been retained in the text by the drafting committee. He therefore thought it useless to reconsider the question and was opposed to a separate vote on paragraph 1 (b).

44. Mr. PANIKKAR (India) considered that article 49, on which the Committee had to take a decision, formed a whole which should not be divided. He, too, was therefore opposed to a separate vote on paragraph 1 (b).

*The Netherlands motion that article 49 be put to the vote in parts was defeated by 41 votes to 13, with 6 abstentions.*

*Article 49 was approved on second reading by 50 votes to 8, with 5 abstentions.*

45. Mr. WALL (United Kingdom) explained that he had abstained from voting on article 49 because he did not see any difference whatever between paragraph 1 (b) and paragraph 1 (c).

46. Mr. RUIVO (Portugal) said that he had voted against article 49 because he did not approve of paragraph 1 (b).

47. Mr. CASTAÑEDA (Mexico) pointed out that after the adoption of article 49 the question of the contiguous zone still had to be settled by the First Committee and by the plenary Conference.

48. Mr. GARCIA AMADOR (Cuba), referring to the comment of the representative of Mexico, said it would be advisable to wait for the First Committee to decide on the kind of instrument to be recommended to the plenary Conference.

49. Mr. GANDJI (Iran) agreed with the representatives of Mexico and Cuba.

Article 49 A (A/CONF.13/C.3/L.79/Rev.1)

*A vote was taken by roll call.*

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

*In favour*: Indonesia, Iran, Ireland, Mexico, Panama, Paraguay, Peru, Philippines, Tunisia, United Arab Republic, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala, Iceland, India.

*Against*: Italy, Japan, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Albania, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, France, Federal Republic of Germany, Haiti.

*Abstentions*: Israel, Republic of Korea, Liberia, Switzerland, Thailand, Union of South Africa, United States of America, Australia, Brazil, China, Finland.

*Article 49 A was approved on second reading by 29 votes to 21, with 11 abstentions.*

Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81) (continued)

50. Mr. GARCIA AMADOR (Cuba) thought that the Committee should first settle a prior question. He referred to his remarks at the present meeting when paragraph 1 of article 49 was being considered. The matters examined by the Committee fell into two groups: those relating to the conservation of living resources, and those relating to the claiming of exclusive or preferential fishing rights in specific zones of the sea. The Cuban delegation considered that for each of those two groups the Committee should submit a separate instrument to the Conference. For the second group it might perhaps submit more than one instrument.

51. Mr. LLOSA (Peru) recalled that suggestions very similar to that just made by the Cuban delegation had already been put forward by other delegations at the preceding meeting.

52. The CHAIRMAN suggested that the Committee adjourn the discussion on the kind of instrument required to embody the results of its work.

*It was so decided.*

The meeting rose at 5.45 p.m.

<sup>1</sup> Resumed from the 38th meeting.

**FORTY-FIRST MEETING**

*Monday, 21 April 1958, at 8.15 p.m.*

*Chairman:* Mr. Carlos SUCRE (Panama)

**Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81) (continued)**

1. The CHAIRMAN summed up the viewpoints emerging from the discussion, as follows:
2. Some delegations thought that the decision on the nature of the instrument should be left to the plenary Conference and that the Committee should do no more than transmit to the plenary Conference, through its rapporteur, a summary of its discussions on the point.
3. Other delegations considered that the Committee should recommend that the results of its work be embodied in a particular kind of instrument, some favouring a convention, others preferring a declaration. The delegations advocating the adoption of several separate instruments by the Conference, and those in favour of a general convention, could be ranged in the same category.
4. Finally, there were some delegations which thought that the Committee should state its views on whether reservations to the instruments should be permitted.
5. He thought that the Committee should first decide whether it should be left to the plenary Conference to take a decision on the basis of a summary of the Committee's discussions, or whether the Committee should recommend that the results of its work be embodied in a particular instrument.
6. Mr. SOLE (Union of South Africa) pointed out that, in similar circumstances, the Second Committee had decided to leave the matter to the plenary Conference and to transmit to the latter the record of its proceedings. The Fourth Committee, on the other hand, had recommended that the Conference embody the results of its work in a convention relating to the continental shelf.
7. The fact must not be overlooked that the plenary Conference largely consisted of the same representatives as the committees. It was therefore desirable for the committees to clear the ground as much as they could in order to lighten the plenary Conference's task. The delegation of the Union of South Africa thought that the Third Committee should likewise recommend to the Conference that the results of its work be embodied in a convention. It agreed, however, that the Committee might first choose between the alternative courses indicated by the Chairman; in which case, should it decide in favour of a positive recommendation, it would have to state its views on the form of instrument in which the results of its work should be embodied.
8. Mr. ASANTE (Ghana) agreed with the representative of the Union of South Africa, and supported the proposal made orally by the Indian delegation at an earlier meeting that the results of the Committee's work be embodied in a convention. In any case, the Ghana delegation felt that the Committee must make a definite recommendation to the plenary Conference.

9. Mr. CORREA (Ecuador) considered that a decision on the kind of instrument in which the results of the Committee's work was to be embodied should be left to the plenary Conference, and that a summary of the Committee's discussions on the matter, together with the proposals emerging therefrom, should be transmitted to it.

10. As the South African representative had pointed out, the Fourth Committee had made a definite recommendation to the Conference. However, as was clear from the Fourth Committee's report (A/CONF.13/L.12, section VI), after the Canadian delegation had proposed that the results of the Fourth Committee's work be embodied in a "separate" convention relating "only" to the continental shelf, the Fourth Committee, on the proposal of the Soviet Union representative, had decided to delete the words "separate" and "only", with the result that its final recommendation was that the Conference embody the results of its work "in a convention..."

11. At that stage in the Conference's work, it was hard for the Committees to decide whether the various questions dealt with should be the subject of separate conventions or whether the Conference should adopt a general convention. He therefore thought it preferable for the Third Committee to put three alternatives to the plenary Conference: first, the adoption of a separate convention on fishing and conservation of the living resources of the high seas; secondly, the inclusion of articles on fishing and conservation of the living resources of the high seas in a general convention; and thirdly, the adoption of a declaration on fishing and conservation of the living resources of the high seas and of an additional protocol on arbitration.

12. Mr. GARCIA AMADOR (Cuba) pointed out that reference must be made to the summary record of the 39th meeting of the Fourth Committee in order to grasp the meaning of the decision finally taken by that committee in similar circumstances to those of the Third Committee. At all events, it was clear from the Fourth Committee's report (A/CONF.13/L.12, section VI) that it had recommended to the Conference that the results of its work be embodied in "a convention relating to the continental shelf". The convention in question was not therefore a general convention, but one covering the articles considered by that committee.

13. However, whatever decisions were taken by the other committees, each committee should decide on the kind of instrument which it considered most appropriate for the subjects it had handled.

14. Mr. CAICEDO CASTILLA (Colombia) expressed the view that the Committee should recommend the plenary Conference to adopt a convention, such an instrument providing the surest guarantee that the provisions adopted by the Conference would be observed. Should the Conference reach agreement on the breadth of the territorial sea, there would be nothing to prevent its adopting a general convention covering all the subjects examined. If no agreement were reached on that point, however, it would be better for fishing and conservation of the living resources of the high seas to be dealt with in a separate convention.

15. Mr. SCHWARCK ANGLADE (Venezuela) also

thought that in recommending to the Conference that the results of its work be embodied in a convention "relating to the continental shelf", the Fourth Committee had in fact favoured a separate convention. The Venezuelan delegation considered, however, that the expedient of separate conventions should be adopted only if the Conference could not succeed in adopting a general convention.

16. Mr. MELO LECAROS (Chile) also felt that it was difficult for the Committee to take a decision before knowing whether the Conference would result in the adoption of a general convention. It was clear that, if the basis articles emerging from the discussion of the various Committees did not obtain a two-thirds majority in plenary session, the Conference could not adopt a general convention.

17. With regard to the meaning of the decision reached by the Fourth Committee, he would point out that, while the Fourth Committee's draft report (A/CONF.13/C.4/L.67) was not entirely clear, its final report (A/CONF.13/L.12) contained all the information required for the plenary Conference.

18. Mr. LUND (Norway), referring to the procedure adopted in the Second Committee, pointed out that the matters dealt with in that committee belonged to the realm of codification. The Third Committee, on the other hand, was called upon to formulate principles; it was therefore natural that it should make a recommendation on the form of instrument in which the results of its work should be embodied. In view of the nature of the questions dealt with, the proper form was that of a convention; but it was for the plenary Conference to decide whether those questions should be dealt with in a separate convention, or whether the articles relating to those questions should be incorporated in a general convention.

19. Mr. HERRINGTON (United States of America) was of the opinion that the only instrument in which the matters dealt with by the Third Committee could be effectively embodied was a convention. If an attempt were made to incorporate in a single convention all the articles and all the conclusions adopted by the Conference, the task would probably turn out to be so complicated that there would be slender hope of success. It therefore seemed preferable that the various subjects dealt with by the Conference should be embodied in separate conventions.

20. Mr. LIMA (El Salvador) considered that the choice before the Committee could be indicated as follows: first, if the Committee decided not to make a definite recommendation, the question would have to be settled by the plenary Conference; secondly, if the Committee did make a recommendation, it would have to decide between a declaration and a convention. Thirdly, if it decided in favour of a convention, would the convention be a separate one, or would the articles on fishing and conservation of the living resources of the high seas be included in a general convention? Fourthly, if the Committee preferred a general convention, should such a convention deal with all the subjects handled by all the committees? Fifthly, if the Committee decided in favour of a separate convention, would there be, on

the one hand, a separate convention on fishing and conservation of the living resources of the high seas, and, on the other hand, a convention dealing with all the remaining questions discussed by the Conference? And, finally, a subsidiary question arising out of the latter, did the Committee feel that a distinction should be drawn between fishing and the conservation of the living resources of the high seas?

21. In the case in point, matters of form were bound up with matters of substance; and it was clear from the discussions that complete agreement had not yet been achieved on substance. But it was still possible that at that late stage in the Conference's work, a basis of agreement could be reached by negotiation. If the attempt to do so were successful, a convention would clearly offer the best solution.

22. In the circumstances, the Committee might confine itself to expressing its views as to form, and leave it to the plenary Conference to take a final decision once the results of those last-minute negotiations were known.

23. The CHAIRMAN moved the closure of the debate on the first question he had put to the Committee.

*It was so agreed.*

24. The CHAIRMAN put to the vote the question whether the Third Committee should make a definite recommendation to the plenary Conference.

*The Committee decided in favour of a definite recommendation by 28 votes to 16, with 7 abstentions.*

25. The CHAIRMAN invited discussion on the question whether, in the Third Committee's opinion, the plenary Conference should adopt a convention or, alternatively, a declaration.

26. At the request of the CHAIRMAN, Mr. RATON (Secretary of the Committee) read out the following text of a proposal made orally at the 39th meeting by the representative of India: "The Third Committee recommends to the Conference that the articles adopted by the Committee be embodied in a convention on fishing and the conservation of the living resources of the high seas."

27. Mr. GARCIA AMADOR (Cuba) proposed that the Indian proposal be amended to stipulate that articles 49 to 59, dealing with the conservation of the living resources of the high seas, should be embodied in a separate instrument, the nature of which could be decided later.

28. Mr. PANIKKAR (India), Rapporteur, pointed out that the Indian and Cuban proposals were not incompatible, for, if the Committee recommended that the articles it had adopted on fishing and the conservation of the living resources of the high seas should be embodied in a convention, it would be for the plenary Conference to decide whether a distinction should be drawn between fishing and the conservation of the living resources of the high seas. In any case, the Committee was fully competent to express an opinion to the plenary Conference, on the understanding, as the Norwegian representative had said, that the actual decision would rest with the plenary Conference.



29. After an exchange of views, in which Mr. CORREA (Ecuador), Mr. MELO LECAROS (Chile) and Mr. LIMA (El Salvador) took part, on the advisability of continuing the debate on the basis of oral proposals, Mr. HERRINGTON (United States of America), seconded by Mr. ANDERSEN (Iceland), moved that the debate be adjourned until the Indian and Cuban proposals were available in writing.

*The motion for the adjournment was not adopted, 15 votes being cast in favour and 15 against, with 19 abstentions.*

30. The CHAIRMAN invited the Committee to continue the debate on the Indian and Cuban proposals.

31. Mr. LÜTEM (Turkey) said that, inundated as they were with a flood of amendments, the smaller delegations were in a particularly difficult position. It was even doubtful how they could properly express an opinion on the form of instrument in which the results of the Committee's work should be embodied. Furthermore, those delegations which were prepared to decide in favour of a convention were not always equally ready to accept all the obligations which it would involve. A recommendation by the Committee that a convention should be adopted would consequently be of no practical value. Accordingly, the Turkish delegation would vote against the Indian proposal.

32. Mr. RATON (Secretary of the Committee), in reply to requests for fuller information, stated that the text of the Indian proposal, as amended by Cuba, was as follows: "The Third Committee recommends to the Conference that the articles on conservation of the living resources of the sea (articles 49 to 59 inclusive) adopted by the Committee be embodied in a single instrument."

33. Mr. CORREA (Ecuador), on a point of order, stressed the importance of the decision which the Committee was called upon to take. Time should be allowed for careful examination of the proposals submitted, and he would therefore move the adjournment of the meeting.

*The motion for the adjournment of the meeting was adopted by 18 votes to 14, with 17 abstentions.*

The meeting rose at 10.20 p.m.

#### FORTY-SECOND MEETING

*Tuesday, 22 April 1958, at 10.35 a.m.*

*Chairman: Mr. Carlos SUCRE (Panama)*

#### **Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81, L.90, L.91) (concluded)**

1. Mr. PANIKKAR (India) said that, as a result of informal consultations with other delegations, the Indian proposal (A/CONF.13/C.3/L.90) had been amended by the addition of the following words: "The Convention shall consist of two sections, one dealing

with articles 49-59 inclusive and the other dealing with article 49 in part, the proposal of Iceland, article 60 and such other new articles as may be accepted by the Conference." That wording would separate the conservation articles from those dealing with fishing rights.

2. Mr. GARCIA AMADOR (Cuba) withdrew his delegation's amendment (A/CONF.13/C.3/L.91) to the original Indian proposal, and also its proposal for a preamble to the fisheries articles (A/CONF.13/C.3/L.81), but reserved the right to resubmit that proposal to the plenary Conference.

3. Mr. HERRINGTON (United States of America), Mr. GANDJI (Iran), Mr. ANDERSON (Australia), Mr. PAROLETTI (Italy) and Mr. WALL (United Kingdom) expressed their support of the revised Indian proposal.

4. Mr. ALVAREZ (Uruguay) said that he would vote for the revised Indian proposal. Reservations to the proposed convention should not be admissible as the fisheries articles were closely related and represented a compromise solution.

5. Mr. THURMER (Netherlands) said that his delegation would vote for the revised Indian proposal on the understanding that the fisheries articles were regarded and adopted as a self-contained unit.

6. Mr. KRYLOV (Union of Soviet Socialist Republics) said that his delegation, which was prepared to support the revised Indian proposal, did not share the views expressed by the Uruguayan and Netherlands representatives. The admissibility of reservations was a reality that had been accepted in international law; in any event, the question of final clauses would be examined in the Drafting Committee and the plenary Conference.

7. Mr. MALLIN (Ireland) said that he would vote for the revised Indian proposal. A convention embodying the Committee's work would be a milestone in international law.

8. Mr. CASTAÑEDA (Mexico) had some doubts about the way the problem was to be solved under the revised Indian proposal. He had already stated his view that the Committee must ensure that the fisheries articles received the widest possible measure of application and had binding force. A convention would admittedly fulfil the second condition, but he wondered, in the light of past experience with international instruments, whether it would ensure the greatest measure of applicability. From a purely practical point of view those two requirements would be better met by a declaration; that view had been confirmed by some representatives who had already stated that their governments would find it extremely difficult to accept certain of the fisheries articles, whose applicability would thereby be reduced. He feared that inadmissibility of reservations would make it impossible for some States to ratify the convention; on the other hand, reservations would deprive certain articles of their value. However, in view of the general feeling in the Committee, he was prepared to support the revised Indian proposal.

9. Mr. KASUMA (Indonesia) said that he was prepared to vote for the revised Indian proposal. His delegation was in general satisfied with the fisheries articles as adopted by the Committee, particularly as its objection to the arbitration procedure proposed by the International Law Commission had been overcome by the amendment of paragraph 1 of article 57.

10. Mr. GARCIA AMADOR (Cuba) agreed wholeheartedly with the Mexican representative that it would be infinitely better for the Committee to promulgate the fisheries articles in the form of a declaration. A convention would be suitable as a means of codifying existing international law but the work of the Third and Fourth Committees had ranged over a practically new field, and entirely new elements had been introduced. A declaration, being the more flexible instrument, would better reflect international law in the process of evolution and leave it room for further development. In view of the great scientific and technical advances that had been made in the field of fisheries during the past decade, it was impossible to believe that the Committee's articles, which were quite satisfactory at the present time, would still be adequate in ten years' time. His delegation would, however, be prepared to vote for the revised Indian proposal, which seemed to enjoy majority support.

11. Mr. LLOSA (Peru) agreed with the proposal made by the Ecuadorian representative at a previous meeting that the Committee should simply refer the results of its work to the plenary Conference, which alone should decide on the most appropriate instrument in which it should be embodied. All parts of the work of the Conference were interrelated, and it would be difficult for the Committee to take a decision *in vacuo*. His delegation would therefore be forced to vote against the revised Indian proposal.

*The revised Indian proposal was adopted by 44 votes to 4, with 6 abstentions.*

12. Mr. AGUERREVERE (Venezuela) thought the Committee was not in a position to deal with the question of reservations, that was a matter which should be decided by the plenary Conference.

13. Mr. CORREA (Ecuador) said that, although he had felt the Committee should not make any recommendations concerning the form of the instrument to be adopted, consistency now required that a recommendation be made concerning the final clauses of that instrument. That could be done at the next meeting.

14. Mr. KRYLOV (Union of Soviet Socialist Republics) could not agree that, having gone so far in the matter of recommendations, the Committee should go still further. The question of reservations was highly complex, and the Committee would be unable to deal with it and choose between the four alternative clauses contained in the secretariat note (A/CONF.13/L.7) in the very short time at its disposal. The matter was one for the plenary Conference and then the Drafting Committee. He therefore proposed that the Committee should make no recommendations to the plenary Conference on final clauses.

15. Mr. STABELL (Norway) supported the Soviet representative's proposal.

16. Mr. MELO LECAROS (Chile) supported the Ecuadorian representative's suggestion and said that the Committee would be in a better position to decide on the admissibility of reservations at the next meeting in the light of the plenary Conference's discussion of the subject that morning.

17. Mr. HERRINGTON (United States of America) said that the Committee was the best judge of the interrelation between articles and what action should be taken concerning reservations to articles, and therefore should make a recommendation on that subject for consideration by the plenary Conference. He agreed that the matter could be taken up at the next meeting.

18. Mr. CASTAÑEDA (Mexico) agreed that the problem was complicated and had wide ramifications. If the Committee decided that reservations were admissible, it would have to specify, for example, to which articles they would be admissible. He therefore supported the Soviet representative's proposal.

*The Soviet proposal was adopted by 31 votes to 3, with 20 abstentions.*

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

##### PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.89) (concluded)<sup>1</sup>

19. Mr. CORREA (Ecuador), introducing his delegation's proposal (A/CONF.13/C.3/L.89), said that its purpose was to give moral recognition to the special situations of countries whose subsistence depended on their coastal fisheries, or whose coastal populations depended on them for their food. It recommended that "States should collaborate to secure just treatment of such situations by regional agreements, by the recognition of duly justified unilateral measures, or by other means of international co-operation." The delegations of States in such special situations had already explained their cases. It would be difficult to include provisions on special situations in a convention of a general nature, so that some measure supplementary to the convention would have to be taken. If it were not, the Conference might be accused of leaving part of its work undone. It might be claimed that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1), which the Committee had adopted, already covered such situations, but in fact it dealt only with the specific case of Iceland. That was a further reason why his delegation had put forward its proposal.

20. Mr. GARCIA AMADOR (Cuba) said that only some of the proposals put forward by States in the special situations referred to in the Ecuadorian proposal had been adopted by the Committee for inclusion in the articles to be inserted in the convention. His delegation therefore supported the Ecuadorian proposal, but had reservations as to the wording. The

<sup>1</sup> Resumed from the 40th meeting.

imprecise phrase "duly justified" in the operative paragraph of the proposal was presumably intended to have the same meaning as similar phrases used elsewhere in the articles considered by the Conference. On that understanding, he made a formal proposal that the last paragraph of the Ecuadorian proposal should be amended by substituting for the phrase "duly justified unilateral measures" the phrase "unilateral measures in keeping with the provisions contained in the convention concerning fishing and the conservation of the living resources of the sea". By "convention" he meant the instrument to be recommended to the plenary Conference.

21. Mr. WALL (United Kingdom) disagreed with the view of the representative of Ecuador that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) covered only the case of Iceland. Other delegations had withdrawn similar proposals on the understanding that the Icelandic proposal contained a general provision. If the Ecuadorian proposal had been tabled in time for the discussion on claims to exclusive or preferential rights by virtue of special conditions, it might have been of assistance; but a new proposal on the same subject as the already adopted Icelandic proposal could not be considered unless the whole debate was reopened.

22. Mr. KRYLOV (Union of Soviet Socialist Republics) agreed with the view put forward by the United Kingdom representative that the Ecuadorian proposal contained the same concept as the Icelandic proposal, which he had voted against. He would vote in favour of the Ecuadorian proposal because the drafting was more satisfactory. However, there was a contradiction in referring at one and the same time to "duly justified unilateral measures" and "means of international co-operation"; he therefore supported the amendment proposed by the Cuban representative.

23. Mr. LLOSA (Peru) agreed with the representative of the United Kingdom that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) covered the special situations of other States besides Iceland; the Mexican representative, with the approval of the co-sponsors, had withdrawn the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) on that understanding. The proposed Cuban amendment was not acceptable because the separate convention referred to had not yet been adopted by the plenary Conference.

24. Mr. INDRAMBARYA (Thailand) said that his delegation could not accept the Ecuadorian proposal because it would lead to confusion.

25. Mr. HERRINGTON (United States) said that the discussion on the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) had shown that it was not limited to the specific case of Iceland. The Ecuadorian proposal therefore to some extent duplicated the Icelandic proposal, and should be either modified or dropped.

26. Mr. MELO LECAROS (Chile) said that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) was a general provision concerning relatively normal special situations, such as that of Iceland. The Ecuadorian proposal, on the other hand, was merely a recommendation, relating to exceptional situations which

might arise sporadically, and was complementary to the universal system of international law, that was, to the separate convention on fishing and conservation. For those reasons, he supported the Ecuadorian proposal, but opposed the Cuban amendment, which would deprive the proposal of its complementary nature by attaching it to the Convention.

27. Mr. CASTAÑEDA (Mexico) said that the Ecuadorian proposal was not necessary in view of the adoption of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1), which was not limited to the specific case of Iceland, but was a general provision. He suggested that the representative of Ecuador should withdraw his delegation's proposal.

28. Mr. CORREA (Ecuador) said that he had been unable to introduce his delegation's proposal (A/CONF.13/C.3/L.89) at the 40th meeting owing to his duties as Chairman of the Drafting Committee. Since it appeared from the discussion that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) covered a large variety of special situations and, in part, constituted a more precise legal formulation than his own delegation's proposal, and further that the adoption of his delegation's proposal might make difficult the adoption of the Icelandic proposal in the plenary Conference, he accordingly withdrew his delegation's proposal, whilst reserving the right to reintroduce it in the plenary Conference.

#### CONSIDERATION OF THE PORTUGUESE DRAFT RESOLUTION ON CONSERVATION MEASURES IN THE ADJACENT HIGH SEAS (A/CONF.13/C.3/L.92)

29. Mr. RUIVO (Portugal), introducing his delegation's proposal (A/CONF.13/C.3/L.92), said it was desirable that international co-operation in the conservation of living resources should develop on the basis of regional conventions and organizations. If there were no collaboration between regional organizations and States having jurisdiction over fishing areas adjacent to the high seas, the problem would be unnecessarily complicated. His delegation had therefore put forward the proposal that coastal States should collaborate with regional organizations in the application of conservation measures, basing itself on the arguments to that effect put forward at the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955. The proposal related only to conservation, and had no political or economic implications.

30. Mr. GARCIA AMADOR (Cuba) said that his delegation supported the Portuguese proposal, which was in keeping with the provisions adopted by the Committee, and of which his delegation was to have been a co-sponsor.

31. Mr. ALLOY (France) and Mr. THURMER (Netherlands) also expressed support for the Portuguese proposal.

32. Mr. ASANTE (Ghana) said that the strength of the proposal lay in the spirit of goodwill which it reflected, which could not be expressed in purely legal provisions. His delegation supported it.

33. Mr. LUND (Norway) said that his delegation supported the Portuguese proposal, but wondered whether it could not be incorporated in the United Kingdom proposal already adopted (A/CONF.13/C.3/L.87). The question should be left to the drafting committee.

34. Mr. MELO LECAROS (Chile) said that his delegation supported the substance of the Portuguese proposal, but that, as it stood, it would impose an obligation on the coastal State to co-operate with international conservation agencies. In order to remove that obligation, he suggested that the words "to the coastal States" should be inserted after the word "*Recommends*".

35. Mr. CASTAÑEDA (Mexico) expressed support for the substance of the Portuguese proposal, but said that in imposing an obligation on the coastal State to act in conformity with measures adopted by international conservation agencies, it modified the system already adopted in article 55. To eliminate the element of obligation, the second paragraph of the proposal should be amended by deleting the words "as far as practicable, adopt and enforce necessary conservation measures in fishing areas under their jurisdiction in co-operation with" and replacing them by the words "consult, and when practicable endeavour to co-ordinate their activities with". If that amendment were not accepted, his delegation would have to vote against the proposal.

36. Mr. PAROLETTI (Italy) said that his delegation supported the Portuguese proposal as originally drafted. It could not agree to the Mexican amendment because the proposal was only for a recommendation, and not for a rule with binding force.

37. Mr. RUIVO (Portugal) rejected the suggestion that his delegation's proposal imposed an obligation on the coastal State. The amendments which had been put forward did not affect its substance, and he was ready to consider drafting changes.

38. The CHAIRMAN proposed the suspension of the meeting in order to allow agreement to be reached on the amendments proposed to the Portuguese proposal.

39. After a brief suspension of the meeting, Mr. RUIVO (Portugal) announced that a compromise text had now been drafted, which read as follows: "*Recommends* that coastal States, in cases where a stock or stocks of fish or other living marine resources inhabit both the fishing areas under their jurisdiction and areas of the adjacent high seas, should co-operate with such international conservation agencies as may be responsible for the development and application of conservation measures on the adjacent high seas, in the adoption and enforcement, as far as practicable, of the necessary conservation measures in fishing areas under their jurisdiction."

40. Mr. HERRINGTON (United States of America) noted that biologists and fisheries experts were in agreement that any conservation programme must cover the entire stock under consideration. Where the jurisdiction of a coastal State was confined to a narrow band of water, the question of co-ordination was not too important, but if that jurisdiction were extended, the

problem became acute. Difficulties would certainly arise unless conservation programmes in waters under the jurisdiction of coastal States and adjacent waters were co-ordinated. Those considerations were rightly taken into account in the revised Portuguese proposal which he would support.

41. Mr. TSURUOKA (Japan) said that he would vote for the revised Portuguese proposal which was based on the idea that States were collectively responsible for sound conservation programmes.

42. Mr. PANIKKAR (India) supported the revised Portuguese proposal which provided for close co-operation between coastal and fishing States in the improvement of conservation programmes.

43. Mr. WALL (United Kingdom) said that his delegation would vote for the revised Portuguese proposal. It should, however, be retained as a separate proposal and not, as had been suggested the previous day, combined with other proposals.

44. Mr. LLOSA (Peru) and Mr. KASK (Canada) also expressed support for the revised Portuguese proposal.

*The revised Portuguese proposal (A/CONF.13/C.3/L.92) was adopted by 46 votes to none, with one abstention.*

The meeting rose at 1.10 p.m.

#### FORTY-THIRD MEETING

*Wednesday, 23 April 1958, at 5.25 p.m.*

*Chairman: Mr. Carlos SUCRE (Panama)*

#### Draft report of the Third Committee (A/CONF.13/C.3/L.93)

1. Mr. PANIKKAR (India), Rapporteur, said the report was brief and factual and reproduced on one side of the page the International Law Commission's draft of the articles concerned, and on the other the text adopted, followed by a note on the important changes.

2. Mr. WALL (United Kingdom) thought that the words "shall not be discriminatory in form or in fact" in paragraph 1 of article 53, which had also been adopted for article 55, should also be used in subparagraph 1 (a) (iii) of article 58.

3. Mr. PANIKKAR (India), Rapporteur, said that he had not felt competent to exceed the Committee's decisions in connexion with articles 53 and 55.

4. The CHAIRMAN did not think it advisable to introduce substantive changes. Even such a slight change as that suggested by the United Kingdom representative might open the door to a long debate.

5. Mr. RUIVO (Portugal) suggested that the United Kingdom representative bring up the point in the plenary Conference.

6. Mr. WALL (United Kingdom) asked that his suggestion be drawn to the attention of the Drafting Committee of the Conference. If that committee did not decide to incorporate the change, his delegation might raise the question in the plenary Conference.

7. Mr. ASANTE (Ghana) thought there should be a full stop after the word "others" in the third sentence of the first paragraph of the note to article 53. The last sentence thus formed could then be amalgamated with the second sentence of the note, in order to dispel the erroneous impression that two periods of seven months' grace for new entrants were entailed.

8. Mr. PANIKKAR (India), Rapporteur, pointed out that the two sentences referred to separate ideas; seven months were allowed for newcomers to put conservation measures into effect, and those seven months would date from the time of notification to the Food and Agriculture Organization of the United Nations.

9. Mr. HERRINGTON (United States of America) observed that, in the second paragraph of the resolution on conservation measures in the adjacent high seas, the words "the International Conservation Agencies" should read "such International Conservation Agencies".

10. The CHAIRMAN closed the debate and put the Committee's draft report to the vote.

*The Committee's draft report (A/CONF.13/C.3/L.93) was adopted unanimously.*

#### **Conclusion of the Committee's work**

11. The CHAIRMAN declared that the Committee had concluded its work.

The meeting rose at 6.30 p.m.

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