United Nations Conference on the Law of the Sea

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Summary Records of the 6th to 10th 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))*

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

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

The meeting rose at 5.15 p.m.

SIXTH MEETING

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

Chairman: Mr. Carlos SUCRE (Panama)

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

General debate (continued)

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

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

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

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

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

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

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

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

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

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

The natural resources of the high seas, however, could be freely exploited by all States. Unfortunately, the experience of the past ten years had revealed the need for regulating fishing because, owing to modern large-scale fishing techniques and irrational fishing methods, fish stocks in certain areas such as the North Sea had been considerably depleted. Accordingly, a number of international fishing agreements between the States directly concerned had been concluded in respect of several areas of the high seas. In certain cases, however, the existing system of agreements failed to protect certain species from extinction and in others the coastal State was helpless to prevent foreign nationals from exploiting stocks of fish.

10. The articles before the Committee were based on contemporary doctrine — article 49 was a particularly good example — and on the current practice of States. Certain articles had been drafted in the light of modern fishing techniques and trends and the draft as a whole would provide a sound basis for the Committee's work since it was designed to protect the living resources of the high seas and at the same time ensure freedom of fishing on the high seas. The USSR had been one of the first countries to lay a scientific basis for the conservation of the living resources of the sea. It maintained dozens of institutes engaged in marine biology research, fishing techniques, fish-processing and oceanography.

11. He drew attention to the articles which were intended to proclaim the equal right of all States to exploit the living resources of the high seas and recalled that the first of three articles on fishing drafted by the Commission at its third session in 1951 had stated that in no circumstances might any area of the high seas be closed to the nationals of other States wishing to engage in fishing activities ;[1] that, in the USSR's opinion, had been a sound statement of principle. The report before the Committee, however, contained references to the principle of " abstention " according to which a group of States could announce that a certain species was being exhausted and in that way deprive other States of the right to fish that species and to participate in exploiting the resources of the high seas on a footing of equality with other States. Clearly then, the principle of abstention was at variance with the principle of equality of rights and the concept of freedom of fishing on the high seas. In the USSR's opinion no discrimination should be allowed against relative " newcomers " in fishing grounds already being exploited by other States. The world was in a dynamic stage of development, increasing numbers of new independent States were being formed and the principle of abstention should not be used to prevent them from co-operating in the exploitation of the living resources of the high seas.

12. He noted that the problem raised in article 54, paragraph 1, had been given special attention at the Rome Conference of 1955[2] at which no definite conclusions had been reached. One group of States had felt that the coastal State should be regarded as having a special interest in the conservation of the living resources of the sea adjacent to its shores and should take steps to control and maintain stocks in that area. Another group, however, had considered that the coastal State should provide for the conservation of the living resources of the seas adjacent to its shores only with the agreement of other countries. The very existence of that difference of opinion indicated the difficulties involved. The USSR delegation felt that a solution of the problem would have to take account of geographical factors as well as of the behaviour of various species of fish.

13. In conclusion, he said that the articles relating to the settlement of disputes between States were out of place in the draft, and for that reason he would support the Mexican proposal (A/CONF.13/C.3/L.1). The deletion of such articles would improve the chances of reaching agreement on the articles embodying the substance of contemporary international law of the sea. In any event, ample provision for arbitral procedure had been made in other international agreements, and the elimination of arbitration provisions from the draft would be consistent with the recommendations of the Rome Conference of 1955.

14. Mr. HERRINGTON (United States of America) described the expansion of the fishing industry and the improvement of fishing techniques in the United States, but said that early in the twentieth century declining yields had nevertheless become apparent. Recognition of the need for conservation measures had led to the conclusion of a number of successful international conservation conventions, providing for co-operation between the States concerned. Those conventions had resulted in the discovery of the causes of the decline in yields and in the formulation of measures to restore the productivity and yield of fisheries. Additional agreements of a similar kind covering other fisheries in the North Pacific and North Atlantic had been concluded as the need arose.

15. In recent years, however, the intensity of fishing and efficiency of modern methods had led to a growing demand for suitable conservation measures of world-wide scope, and it was in response to that demand that the Rome Conference of 1955 had been convened.

16. It was an accepted fact that the optimum or maximum sustainable yield from a stock of fish could not be obtained if the stock were fished too intensively. On the other hand it had been proved in recent years that over-regulation could also reduce the yield and waste the productivity of a particular stock. The desire to achieve a proper balance between those two extremes had led to the modern concept of conservation which was reflected in the definition contained in draft article 50.

17. It was his delegation's understanding that the draft articles as a whole were intended to constitute a system of rules designed to regulate the exercise of the freedom of fishing on the high seas so as to ensure the maximum sustainable supply of food or other useful products from the sea (A/3159, article 50 and commentary). As such, they should strike a balance between under- and over-regulation and should therefore encourage the restoration of resources at present over-fished, prevent over-fishing in the future and encourage full utilization of currently under-utilized resources.

[1] *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858), p. 19.

[2] 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. 44 to 48.

Articles 51 to 59 were designed to facilitate the formulation and administration of conservation measures and postulated technical co-operation between all the States concerned. Such co-operation was necessary if the full potential yield of the living resources of the sea was to be realized for the benefit of mankind.

18. He reviewed the responsibilities, rights and interests set forth in the articles in question. His Government was of the opinion that, with one exception, each of those provisions was an important element in the system of rules that the Committee was seeking to formulate. The one exception was article 55, which seemed unnecessary in view of the provisions of other articles.

19. At the previous meeting the representative of Peru had argued in support of control by the coastal State over fishery resources in a broad belt of water adjacent to its coast on the grounds that the nutrients supporting marine life in that belt had originated in the land territory of that State. Actually, however, the movements of vast masses of water carried the nutrients contained in the oceans over long distances and hence it could not be contended that most of the marine life along any coast was dependent on the substances drained from the territory of the adjacent coastal State.

20. The same speaker, discussing the effect of fishing on certain stocks of fish, had referred to the effect of fishing on local halibut stocks in the North Pacific before 1910 as an illustration of the danger of exhaustion of resources by fishing. However, that depletion had occurred long before the conservation principles now under consideration had been developed. Since that time, Canada and the United States had carried out a joint conservation programme which had more than restored the yield of the halibut stocks to earlier levels. It had also been suggested that the yield of the tuna stocks in the eastern Pacific Ocean had been reduced by overfishing. Those tuna stocks were under continuing study by the Inter-American Tropical Tuna Commission, which would ensure that necessary conservation measures would be applied if and when needed. The available evidence indicated that there was no danger of over-fishing ; indeed, certain species were being underfished.

21. The International Law Commission's proposals concerning conservation provided a sound basis for the Committee's work though some of the proposals would have to be elaborated and certain new rules would have to be added to meet specific needs. For example, the proposals regarding the settlement of disputes should be stated in more precise language to ensure the effectiveness and proper use of article 53. A compulsory, speedy and final review of the facts to determine the existence of conditions which would justify action under the article appeared to be the only way of preventing long delays in applying the necessary conservation measures if agreement was not reached. Articles 57, 58 and 59, which were intended to provide that review, were inadequate because they failed to stipulate in sufficiently clear terms the nature and scope of disputes to be dealt with and because they failed to lay down sufficiently clear standards to guide the arbitral commissions in making their awards.

22. One new element which his Government considered essential was a rule regulating the exercise of the freedom to fish which would encourage States to undertake conservation programmes. The new element, which had been called " abstention ", was a procedure which would provide an incentive to States to build up, or restore and maintain the productivity of stocks of fish under certain special conditions. The development of a procedure of that kind had become increasingly important and urgent in view of the increasing range of fishing fleets and developments in fishery science.

23. He referred to the comments of the United States Government on the report on the régime of the high seas prepared by the International Law Commission at its seventh session.[3] In those comments his Government had proposed what had since come to be known as the " principle of abstention ", which was referred to in the Commission's commentary on article 53. In his Government's opinion, express rules should be formulated to govern the practical operation of the principle. Disagreements concerning the application of the principle could, of course, be dealt with in the manner contemplated in articles 57, 58 and 59.

24. The draft articles should also be supplemented in another very important respect. A rule should be formulated which would clarify the manner in which measures promulgated by a State or States would be enforced when they became applicable to the fishermen of other States, as under article 53, for example.

25. His Government believed that, with the amendments he had described, the Commission's proposals would constitute a new and effective system for the conservation of the living resources of the high seas.

26. In conclusion, he said that there might be other problems involving special economic circumstances which deserved recognition in international law. The Commission had referred to one of those possibilities in the commentary which followed article 59 in connexion with claims to exclusive fishing rights in cases where a nation was primarily dependent on the coastal fisheries for its livelihood. The United States was aware that special economic situations had received little attention at international meetings and would be interested to obtain any facts concerning such situations and to learn the views of other delegations.

27. Mr. KASUMA (Indonesia) said that the principles which the Committee would formulate would have an important bearing on fisheries and on the food supply of the world. As a country whose territory consisted of one vast archipelago — the largest in the world — Indonesia was naturally fully aware of the responsibility which the possession of that immense coastline and sea involved from the point of view of satisfying the population's nutritional and economic needs.

28. Fish were a very important factor in the diet of the Indonesian people, and would become even more important as the Government's plans for raising the standard of living matured. Accordingly, his delegation supported the view that the coastal State had a special, vital interest in the living resources of its maritime domain. At the same time, those resources were needed

[3] See *Yearbook of the International Law Commission*, 1956, vol. II (A/CN.4/SER.A./1956/Add.1), pp. 91 *et seq.*, especially comment on p. 93.

as a contribution to the food supply of the world at large.

29. Now, it was a familiar truth that stages of development of fisheries, research techniques and enterprises varied widely from region to region. The object of the Conference should not be to lay down a rigid set of principles embodied in a list of articles, but to make it possible for areas with highly developed techniques to set the pace for areas with less-developed techniques.

30. Inasmuch as over-fishing or over-exploitation were potential sources of disputes, the Committee should, for the purpose of avoiding such disputes, recommend the conclusion of agreements between neighbouring coastal States concerning their respective interests in the living resources of particular maritime areas. Indonesia would be able to conclude such agreements in the near future, since it was at roughly the same stage as its neighbours in the development of methods of technical research and exploitation. He hoped that the principles to be adopted by the Conference would be such as to encourage the conclusion of regional agreements.

31. With regard to the conservation of the living resources of the sea, he said that each coastal State should make regulations governing its own waters, the possibility being left open to neighbouring coastal States to enter into conservation agreements relating to areas of common interest. Such measures should be based on technical and practical, as well as on purely scientific data.

32. His delegation supported the views expressed by the representative of India at the 5th meeting of the Third Committee on the subject of conservation, and those of the representative of Burma, who had stressed, at the 4th meeting of the Fourth Committee, the importance of bottom fishes and sedentary fisheries.

The meeting rose at 4.45 p.m.

SEVENTH MEETING

Thursday, 13 March 1958, at 3 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

General debate (continued)

STATEMENTS BY MR. WALL (UNITED KINGDOM), MR. DE LA PRADELLE (MONACO), MR. THURMER (NETHERLANDS), MR. HULT (SWEDEN) AND MR. MICHIELSEN (BELGIUM)

1. Mr. WALL (United Kingdom) said that both coastal fishing and deep-sea fishing were important industries in the United Kingdom. In addition, the United Kingdom was responsible for the government of many overseas territories whose fishing economies were as yet undeveloped, or at least not fully developed, and whose interests had to be protected. His Government realized the importance of conservation measures and for that reason all the fishing areas of vital concern to its population were regulated by international conservation commissions established under conventions to which the United Kingdom was a party. His Government had also taken the lead in promoting a new and more comprehensive international conservation convention, along the lines suggested in the report of the Rome Conference of 1955,[1] covering the Atlantic areas and designed to authorize the use of a wide range of conservation measures applicable to every species of fish.

2. The Committee's debate would be heavily influenced by two factors. First, more food, including fish, had to be found for the world's population which was steadily increasing. Secondly, the resources of the sea were being exploited more efficiently and intensively owing to the improvement of fishing techniques and introduction of scientific devices. There was, however, a limit to the extent to which the living resources of the sea could be exploited; the Committee should look ahead and make timely provision for conservation measures. The freedom of fishing on the high seas should therefore be accompanied by a corresponding duty, accepted by States, to take necessary conservation measures. Although that duty was implicit in the draft articles it should be explicitly recognized and accepted, and article 49 so amended that the right to fish and the duty to conserve were given equal weight.

3. The definition of conservation contained in article 50 was sound and reflected the opinion of the Rome Conference of 1955.

4. The subsequent articles on conservation should specifically require States to conclude agreements on conservation programmes within the framework of properly constituted international conservation conventions covering defined areas of the seas or specific marine resources on condition that the conventions were open to accession by all States concerned with the area or with the resource in question. Several such conventions were already in existence and their effectiveness had been recognized in the report of the Rome Conference. Such conventions provided means of centralizing scientific resources and speeding up conservation work and gave better results than *ad hoc* negotiations between individual States.

5. Two very important questions arose in connexion with the draft articles. The first was whether some States had a special interest in the elaboration and application of conservation measures, whereas others had no such interest. The second was whether any kind of superior appellate body should be set up if agreement could not be reached and, if so, what should be its nature and powers. So far as the first question was concerned, he said that all countries, except land-locked countries, were in fact coastal States and had a special interest in the fish close to their shores; that was merely a recognition of a fact. Yet it did not really follow that every coastal State should have exclusive fishing rights in the areas adjacent to its territorial sea.

6. The reasons for his view were based partly on geography and partly on the habits of fish. He noted that, of the seventy-four coastal States participating in the Conference, about fifty shared common seas. The life

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

cycle of the herring of the North Sea — a good example of a common sea — took the fish through the coastal waters of eight States which all fished the herring at different stages of its life cycle. Which of those States would have the special interest? If all were regarded as having a special interest and were to apply conservation measures on a unilateral basis, the situation would indeed be chaotic. These observations applied not only to pelagic fish such as the herring, but also to cod, tuna, whales and other species. Exclusive fishery zones marked out on maps would not bring a stock of fish under the effective control of a particular State; the wider zone within which conservation could prove effective required the agreement of all the States concerned.

7. Agreements should therefore be concluded through conservation commissions or, in the absence of such commissions, by direct negotiations between States. Article 55 as drafted, with its emphasis on unilateral action in a specific high seas area, would not meet such situations or serve as a general formula but would rather tend to produce confusion and even anarchy in the fisheries. The article should be replaced by a provision to the effect that any coastal State which was unable to obtain agreement to a satisfactory conservation régime should be entitled to make its proposals, accompanied by supporting evidence, to some outside and impartial expert body which would be empowered to approve those proposals, if necessary modify them, and give them effect as an interim régime if the evidence seemed sufficient on a *prima facie* review to justify their adoption. That interim régime should safeguard and protect the interests of the coastal State and of other States pending an examination of all relevant facts concerning the fishery and the stock with a view to a final decision at some later time by the expert body in question.

8. All disputes relating to conservation measures should be referred to an independent expert body whose decisions would be binding upon all the States concerned, including newcomers. The cause of conservation would certainly be advanced if the parties to any dispute were prepared to accept the impartial verdict of the body of experts. However, if that procedure was not acceptable, the United Kingdom would be equally prepared to accept an arrangement (except where a State was seeking to exercise an initiative against others or where a newcomer to a fishery was required to conform to existing conservation measures) whereby the parties could, as an alternative, undertake to seek the opinion of an outside commission of referees and then decide in the international conservation body whether to accept and implement that opinion. That arrangement would be less desirable than the first because it could result in the non-application of necessary conservation measures.

9. His delegation would, in principle, support draft articles 57, 58 and 59 and felt that the proposed system was essential to the effective application of the fishery articles as a whole. He expressed certain doubts about the title " arbitral commission " and pointed out that the purpose of that body would be to weigh biological and technical factors and make recommendations rather than arbitrate in the customary sense of the term. It might also be well to establish a standing panel of experts from all parts of the world from among whom commissions of referees might be selected to settle specific disputes.

10. He observed that when the intensity of fishing reached a certain point in a given area, fishing might have to be controlled. He considered that when that point was reached in the case of any particular stock of fish, the scheme of regulation should recognize the special position of the small-boat communities of the coastal State or States which fished very small quantities of the stock. That provision was sometimes made under existing conservation conventions and could help to solve the economic problems of less developed fishing communities. Alternatively, deep-sea fleets might abstain from operating in specific off-shore areas which would thereby be reserved for the small-boat communities of the neighbouring State.

11. In conclusion he said that the coastal State's interest was twofold. First, it must ensure that fishing on the high seas off its shores was wisely conducted in accordance with proper conservation measures so that the maximum benefit could be derived from the resources of the sea. Secondly, it must secure a fair share of the catch if fishing had to be controlled quantitatively.

12. The Indian representative in the First Committee had recently stated that the concept of the seas as the common property of all nations to be appropriated to the use of mankind for the benefit of all should be reconciled with the particular needs of coastal States. That was a sound statement of the issues involved, and the United Kingdom delegation felt that the resources of the high seas could be most rationally used in the interests of all through the establishment of a proper conservation régime and not by dividing the sea into exclusive fishing domains.

13. Mr. DE LA PRADELLE (Monaco) emphasized his country's keen interest in matters relating to the sea. Prince Rainier III, for example, was President of the International Commission for the Scientific Exploration of the Mediterranean, and Prince Albert had founded the Oceanographic Institute of Paris in 1906.

14. It was no longer true to say that the living resources of the seas were inexhaustible, for some species had already become extinct, and he recalled that in view of the steady growth of the world's population, experts of the Food and Agriculture Organization of the United Nations had called for measures to increase the productivity of the living resources of the high seas. Conservation was not enough, however; what was needed was an increase in the productivity of the resources of the sea and for that purpose an international system regulating fishing should be established.

15. He announced that his country intended to set aside the Monegasque continental shelf as a fish reserve where no fishing would be allowed and where certain Mediterranean species of fish threatened with extinction would be reared. In that way, by practising the principle of abstention, Monaco would contribute to the establishment of international fishing regulations.

16. Mr. THURMER (Netherlands) was in general agreement with the substance of articles 49 to 60 of the International Law Commission's draft, which were aimed

at giving effect to the principle of conservation and rational exploitation of stocks of fish. Not only the draft, but also the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955, had underlined the immense importance of that principle.

17. He believed that article 49 implied the right, not only for the nationals of contracting States, but also for the contracting States themselves, to fish on the high seas. He agreed with the International Law Commission's opinion that the term " nationals " in articles 49, 51, 52, 53, 54 and 56 referred to fishing boats having the nationality of the State concerned, irrespective of the nationality of the crews. That interpretation of the word " nationals " should, however, be incorporated in the text of the convention itself.

18. With regard to article 55, he thought that coastal States contemplating the adoption of the measures referred to in the article should be obliged to satisfy a competent international body that the requirements stipulated in paragraph 2, sub-paragraphs (*a*) and (*b*), were fulfilled. But that article should not be construed as authorizing coastal States to abrogate unilaterally existing regulations adopted in accordance with articles 51 and 52 (regarding measures of conservation of the living resources of the high seas). Such regulations should be capable of being suspended only by an arbitral commission.

19. His delegation doubted whether article 60 (fisheries conducted by means of equipment embedded in the floor of the sea), were fully justified, and reserved the right to comment on it at a later stage. If the article were adopted, it would be necessary to provide for the settlement of disputes by arbitration, in conformity with the procedure laid down in articles 57 to 59. Moreover, the arbitration clause itself (article 57) should be redrafted in terms which would ensure its regular application.

20. With the principle of the freedom of the high seas in mind, his Government was convinced that it was in the interest of States engaged in fishing that the marginal belt of territorial waters should remain as narrow as possible. His delegation was therefore in favour of the maintenance of the three-mile zone of territorial sea. That breadth would, in his delegation's opinion, be fully reconcilable with the special interest of the coastal State in the fisheries in the zone contiguous to the territorial sea, and would, at the same time, safeguard the interests of all States engaged in fishing.

21. He pointed out that the general principles laid down by the International Law Commission did not exclude the possibility of adequate regulations being arrived at by means of regional conventions.

22. States whose nationals were engaged in fishing, or would be so in the future, had a common interest in seeing the stocks of fish in the sea exploited in the most effective way possible. Their object should therefore be co-operation for the purpose of conserving and developing those stocks. Nevertheless, the necessary regulations to that end should not be of a discriminatory nature.

23. Mr. HULT (Sweden) said that article 27 of the International Law Commission's draft, concerning the freedom of the high seas, was the basis of all the discussions in the Third Committee. The only exceptions to that principle, in so far as it affected fishing, referred to sedentary fisheries (article 68) and fisheries conducted by means of equipment embedded in the floor of the sea (article 60). The Swedish delegation wholeheartedly supported the principle of the freedom of fishing on the high seas. It followed from that principle that the provisions in the articles on the conservation of the living resources of the sea were of the utmost importance, and the Swedish delegation regarded such measures of conservation as essential. Accordingly, it supported the general principles laid down in articles 49 to 53, subject to certain drafting changes.

24. The common basis for discussions of the problems connected with fishing was the fact that the stock of fish in the sea was a natural resource common to all. Consequently, the maintenance of the productivity of a given stock of fish was of equal interest to all States fishing it, and coastal States did not necessarily have a greater interest in maintaining the stock than did other nations. Conceivably, a coastal State might not utilize the living resources of the sea adjacent to its coast, while a non-coastal State fishing the stock of a particular area had a vital interest in maintaining or increasing the yield from that area.

25. To recognize a special right vested in the coastal State over that part of the high seas which was adjacent to its coast would be to give that State preferential treatment at the expense of other States. There were no grounds for granting coastal States a special position, and for that reason his delegation strongly opposed articles 54 and 55, which, by providing that coastal States might adopt unilateral measures for the regulation of fishing in any area of the high seas adjacent to their territorial sea, granted such States rights which they had not previously possessed under international law.

26. He pointed out that the provisions of articles 51 to 53, regarding conservation measures, applied to areas of the high seas up to the limits of the territorial sea, which meant that such areas would be subject to two sets of rules : those set forth in articles 51 to 53, and those contained in article 55. That would inevitably create difficulties, particularly since there was no provision limiting the area in which coastal States were competent to take measures in pursuance of article 55. He felt that articles 51 to 53 were fully adequate in themselves.

27. He drew attention to the problems that might arise if different coastal States ordered unilateral measures of conservation which were incompatible with each other but which would all be valid at least pending the establishment of an arbitral commission and the giving of its award.

28. Article 56 would, if slightly modified, provide coastal States with a sufficient guarantee that the living resources of an adjacent area would be conserved, and so render article 54 superfluous.

29. In view of these considerations, he was in favour of deleting articles 54 and 55 from the draft.

30. He observed that the term " coastal State " was not without ambiguities. Moreover, paragraph 3 of the commentary on article 54 admitted the possibility of coastal States claiming special interests in areas far removed from their shores. In view of that and other

considerations, his delegation was unwilling to agree to provisions granting coastal States any special rights over the regulating of fishing on the high seas, although it was prepared to consider special claims that might be put forward on behalf of States whose economic conditions were such that fishing was their principal, or even their only, source of income.

31. He stressed, lastly, that his delegation would be unable to accept any system of conservation of the living resources of the high seas unless it were accompanied by rules providing for compulsory arbitration.

32. Mr. MICHIELSEN (Belgium) said that his delegation could not agree with the view put forward by some representatives that the trends which had become noticeable in some States with regard to the law of the sea represented progress. On the contrary, such trends were an obstacle to the final goal, which was that the riches at the disposal of humanity should be exploited by all in complete liberty and on a basis of equality. Belgium, which entirely supported the principle of the freedom of the high seas, rejected any provisions conflicting with that principle.

33. Wherever there was a possibility that the living resources of the sea might be endangered by overexploitation, the nations concerned should take measures of conservation, which should be inspired by a sincere desire to preserve the common patrimony. The interests of the inhabitants of coastal States with seas abundant in living resources should have equal weight with those of States which were without rich areas of adjacent sea but which had always taken part in fishing the high seas.

34. Some representatives had said that the recognition of special rights vested in the coastal State would especially benefit these States whose fishing was underdeveloped. It would, they argued, enable the coastal State to defend itself against competition from technically better-equipped fleets from other countries, which came to fish in the areas adjacent to its territorial sea. In his view, that argument was based exclusively on economic and technical considerations, and could not be admitted either as a basis for international law or as a justification for any attempt to limit the fundamental principle of the freedom of the seas. He tended all the more to that view because he felt it could be hoped that the fishing fleets of those countries would quite soon have been able to catch up and come into line with the most highly organized industries.

35. He regretted to note that the nations represented in the Committee had tended to become divided into two blocks : coastal States bordering on rich fishing-grounds, and the rest. He gave an example of the dangers which might result from such a division. Belgium's coastline was very short. Consequently, Belgian fishermen had gone fishing, in complete liberty and in company with the fishermen of other nations, along the coasts of England, the Netherlands, Scotland, Germany, Denmark and Iceland. If the views of certain countries were to prevail and find acceptance in international law, there was no doubt that Belgian fishermen would soon disappear from the seas and Belgium itself would become almost entirely dependent for its supplies of marine products on countries in a more advantageous geographical position.

36. That contingency was unlikely to materialize, in view of the historic rights acquired by Belgian fishing in the North-East Atlantic. However, the example quoted gave an indication of the possible dangers to which the new trends might lead.

37. Only through sincere collaboration between States would it be possible to protect the living resources of the sea, and Belgium regarded such collaboration as the wise and moderating factor on which the principle of freedom should be based.

38. Belgium could not support provisions which might lead to encroachment on the high seas, whether by an extension of the breadth of the territorial sea, by the drawing of excessive baselines or by the granting of sovereignty over the living wealth of the continental shelf. In addition, it had important reservations to make with regard to the principle of abstention and to articles 51 and 55. Article 58 should be broadened, and should include the interests of the community among the criteria to be applied by the arbitral commission.

The meeting rose at 4.40 p.m.

EIGHTH MEETING

Friday, 14 March 1958, at 3.10 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

General debate (continued)

STATEMENTS BY MR. GRAU (SWITZERLAND), MR. CUSMAI (ITALY), MR. RUIVO (PORTUGAL), MR. KRISPIS (GREECE), MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY), MARQUIS DE MIRAFLORES (SPAIN) AND MR. ALLOY (FRANCE)

1. Mr. GRAU (Switzerland) said that although Switzerland had no immediate practical connexion with the subject of the Committee's discussions, it would follow them with great interest in view of the international character of the proceedings. He felt certain that the Committee would be successful in its work.

2. Mr. CUSMAI (Italy) said that as a result of scientific research it had become clear that measures were required for the conservation of the living resources of the sea. Several States had already drawn up precise regulations on fishing, and there were many international agreements whose object was to protect fishing in certain areas and for certain species of fish. Italy had set up a commission of administrative officers, biologists and technicians, which had recently begun the study of new regulations for fishing.

3. Whether or not the committee accepted the articles drawn up by the International Law Commission, all members were agreed on the need for international regulations on fishing in order to avoid a repetition of the disagreements which had arisen as a result of the different criteria adopted by countries with regard to such matters as the delimitation of the territorial sea, contiguous zones, the continental shelf and breeding-

grounds where fishing was prohibited to fishermen from foreign States.

4. While it was true that many of the International Law Commission's draft articles which referred to fishing fell within the purview of other committees, he did not agree with the proposal for joint meetings, for which the time was too short. It would be better that the committee should study all the draft articles relative to fishing and communicate its views on them to the other committees concerned. Article 15, for example, laid down the right of innocent passage through the territorial sea for all ships, and paragraph 1 of the commentary explained that the term "ships" included fishing boats. But article 18 stated that foreign ships exercising the right of passage should comply with the laws and regulations enacted by the coastal State. Under the customs laws of some countries, fish was regarded as contraband if unaccompanied by the necessary documents. But was there any fishing-boat to which such documents could be supplied unless it was known whether it was in fact going to fish, what species of fish it was likely to catch and in what quantity? It would therefore be necessary, in order to avoid misunderstandings and incidents, to lay down clearly that fishing boats had the right of innocent passage, subject, naturally, to guarantees against abuse.

5. If fishing-boats were to be included in the category of commercial government ships, for which immunity was provided in article 33, he felt that the provisions of that article clashed with those of articles 51 to 56, which gave coastal and non-coastal States special powers in the high seas, and with those of several international agreements in force. He felt, in general, that the Committee should, in its study of the articles relating to fishing, attempt to decide on criteria which would bring those articles into line with the provisions of international conventions on fishing already in existence.

6. Articles 51 and 54 were liable to give rise to divergent interpretations. Some clarification was therefore needed, and a paragraph should be added to article 51, or a new article should be inserted, stating that a State which adopted measures to regulate and control fishing in an area of the high seas should inform other countries of such measures before they came into force.

7. The limitation contained in paragraph 1 of the commentary to article 52 on a State's right to enter into negotiations for the conservation of the living resources in a given area of the high seas should be inserted in the text of the article itself and the word "regularly" should be better defined. The expression "a reasonable period of time" used in article 52 and subsequent articles should also be made more explicit. The phrase "the high seas adjacent to its territorial sea" in article 54 was also ambiguous, and might be interpreted variously, according to whether a State had a vast expanse of ocean or a small internal sea lying off its coasts. If attention were not paid to such geographical differences, a situation might be reached in which the seas were divided by a median line, with the countries on one side of it being unable to fish in the other half and vice versa. That would be incompatible with the freedom of fishing in the high seas laid down in article 27.

8. Article 55 needed the greatest consideration, on account of the extensive rights which it gave to coastal States. The first two of the three conditions which coastal States must satisfy if its measures were to be valid as regards other States did not in fact justify such measures, since the idea of a scientifically proved "urgent need" for measures of conservation did not accord with the slow development of natural phenomena which was the scientific reality. Hence, coastal States would normally have time to enter into negotiations with the other countries concerned and to have recourse to arbitration before any "urgent need" arose. His delegation felt that in any case article 55 was not indispensable, since the provisions of articles 51, 52, 53 and 54 were more than sufficient to guarantee the protection of the living resources in the high seas adjacent to the territorial sea of any State.

9. With regard to article 57, he pointed out that the arbitral commission would become a judicial body whose decisions would have universal validity. That went beyond the traditional limits of arbitration. In addition, as had been stressed at the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955, it was often necessary to conduct protracted research before being able to decide whether conservation measures were necessary or not. It would thus be extremely difficult for the arbitral commission to render its decision within the five months laid down in paragraph 5 of article 57. That article would therefore require amendment. His delegation reserved the right to return to articles 58, 59 and 60, as well as to those articles on which he had commented in a general way.

10. Mr. RUIVO (Portugal) said that the law of the sea, like every other branch of law, should develop in the light of the great scientific and technical progress that had occurred, especially with regard to the exploration and exploitation of the living resources of the sea.

11. The growth of populations, the need to raise standards of living and the process of industrial expansion had led governments to intensify the exploration of those resources. An excessive increase in fishing might lead to the exhaustion of fish stocks, while arbitrary or inadequate measures of conservation might mean that fisheries were under-developed. Both possibilities could lead to conflicts between nations.

12. The only effective way of solving such problems was to draw up a body of legal provisions based on scientific and technical data. For that reason the Portuguese Government placed a high value on the draft articles prepared by the International Law Commission. The articles included several innovations — for example, the references to the special interests of coastal States and the rights relating to the resources of the continental shelf — but they nevertheless upheld the fundamental principle of the freedom of the seas. Intransigent and extremist positions, which called for an almost complete revision of the law of the sea and which sought to set up virtual monopolies in fishing areas, would have to be abandoned if progress were to be made.

13. He stressed the importance of fishing for Portugal's national economy and the feeding of its population.

That was why his Government believed that the interests of coastal States should be taken into consideration, although not in such a way as to limit the exploitation of the living resources of the seas by all nations. There was the danger that the granting of priority rights might lead to the under-development of those resources.

14. His delegation had followed with great interest the attempts to define the legal relationship between the continental shelf, with its natural resources, and the coastal State. Scientific arguments, however, led to different conclusions with regard to the living resources of the sea. A fishery could not be artificially separated from the ecological system which surrounded it. A localized fishery in an area of the high seas or on a continental shelf was the last stage in a long chain of events which sometimes originated hundreds of kilometres away. For such reasons, measures of conservation should be based on scientific and technical factors, of which the definition and geographical delimitation of fish stocks was the most important. A purely administrative view might lead to positive results, but it could not often do anything to guarantee "the optimum sustainable yield" (article 50). He would therefore like to see more clearly defined the areas of the high seas which might be held to have a special interest for coastal States.

15. He felt that article 56, which enabled States, even if their nationals were not engaged in fishing in an area of the high seas not adjacent to their coasts, to request other States to take the necessary measures of conservation in that area, might conflict with the principle of the freedom of the seas. It could only be accepted if it referred to fisheries belonging to the same ecological system or to stocks which had the same bio-ecological characteristics, or if such fisheries were engaged in catching the same stock even though they were geographically separated. Although the definition and delimitation of stocks was clearly a difficult task, it would have great advantages for the framing of really valid measures of conservation.

16. In that connexion, the Portuguese Government attached great importance to the regional fisheries conventions and the work of their corresponding permanent commissions. The latter could co-ordinate research programmes, lay down the necessary conservation measures for a fishery and ensure that such measures were being carried out. Any disputes between States bound by a fishing convention should first be brought before the permanent commission concerned. Recourse to the kind of arbitral commission provided for in the International Law Commission's draft should be the last stage, when all other means of settlement had been exhausted.

17. He felt that the composition, rules of procedure and periods for rendering decisions of the arbitral commissions should be more closely defined, if the articles on the conservation of living resources which were of a compulsory nature were to be accepted with any confidence.

18. Mr. KRISPIS (Greece) said that it was of vital concern to the international community to find ways and means of making the optimum use of the living resources of the high seas, particularly as some species were in grave danger of extinction owing to modern intensive fishing techniques. His country's interest in the establishment of suitable fishing regulations was obvious in view of its geographical situation and the importance of fish in the national diet.

19. Turning to the Commission's draft, he said that the use of the word "right" in article 49 was commendable, for — unlike the word "freedom" in subparagraph (2) of article 27 — it implied a power recognized by law. The word "nationals" in article 49 was, however, open to a variety of interpretations and should be clearly explained.

20. Articles 50 to 59, which represented revolutionary progress in international law, had a common heading but dealt with two separate topics — namely, the conservation and the maintenance of the productivity of the living resources of the high seas. Conservation was defined in article 50 and dealt with in articles 51, 52, 53 and 56. Maintenance of productivity, which was dealt with in articles 54 and 55, had not been defined, however, and that could well lead to misunderstandings. Redrafting was therefore indicated so that the concepts of conservation and the maintenance of productivity could be placed on the same footing and regulated by the same provisions.

21. He pointed out that, for purposes of conservation and the maintenance of productivity, four broad categories of cases had been envisaged in the Commission's draft. The first was covered by paragraph 1 of article 56 which was somewhat unrealistic, and he felt that the interest to which it referred could not really be described as special. It was difficult to see, for example, how Greece could have a special interest in the enactment of regulations for the protection of pink salmon in the seas near Alaska simply because the Greek people happened to like pink salmon. Paragraph 2 of article 56, moreover, was badly drafted, since it referred to an agreement but failed to specify the parties to that agreement. His delegation therefore proposed the deletion of article 56.

22. The second category was dealt with in article 51, the provisions of which were in conformity with international law. When the nationals of other States arrived to fish in the same area of the high seas, article 52 became applicable.

23. The third category was covered by article 52, which was acceptable. His delegation also concurred in the idea that conservation measures should be imposed on the States concerned should they fail to reach agreement.

24. With respect to the fourth category, his delegation felt that a State whose nationals were not engaged in fishing in a specific area of the high seas adjacent to its territorial sea could be treated as if it had fishing interests in that area. The fourth category could, therefore, be assimilated to the third.

25. His delegation accordingly accepted, in principle, articles 50, 51, 52 and 53 and paragraph 2 of article 54.

26. The provisions of paragraphs 1 and 3 of article 54, however, were unwarranted and should be deleted. It was enough that the coastal State's geographical situation for purposes of fishing in the waters adjacent to its territorial sea should be more favourable

than that of other States. To recognize that it had a special interest might tend to create a kind of coastal high seas, an unacceptable notion since it might in some circumstances jeopardize the freedom of the high seas. A suggestion along those lines had moreover been rejected by the Rome Conference of 1955.

27. Article 55 should also be deleted. It was difficult to understand why a coastal State should be allowed to adopt unilateral measures in such conditions. Any State anxious to adopt such measures would find it an easy matter to bring about the breakdown of negotiations. It was also unclear why the coastal State should be in such a hurry to adopt unilateral measures instead of resorting as quickly as possible to arbitration. To provide for cases of that kind, the arbitral commission could, in urgent cases, be authorized to render provisional decisions prescribing interim conservation measures. For that reason, the most suitable machinery to discharge the arbitration tasks described in article 57 would be a permanent international body with certain limited legislative powers, enabling it to prescribe fishing seasons, amounts of catches, etc., broader administrative powers, and perhaps some judicial powers.

28. His delegation had originally intended to propose the establishment of a body of that kind but found support for the idea lacking. It still hoped that proposals along those lines would be made and accepted; but if not, it would support the idea of compulsory arbitration as a minimum condition for accepting regulations on the conservation of the living resources of the high seas. He noted with regret that it had been suggested in certain quarters that article 57 should be deleted, and pointed out that to promulgate conservation regulations without providing for arbitration machinery would inevitably restrict the freedom of the high seas in one of its most important aspects — namely, fishing. That situation would undoubtedly lead to disputes and conflicts.

29. He noted that whereas the articles on the continental shelf sought to fill a gap in international law, the fisheries articles were designed merely to adapt existing international law to new needs and situations. The changes proposed did not in principle infringe upon the freedom of the high seas. Indeed, they were designed to protect that freedom from fishing claims which tended to destroy certain aspects of that freedom under the guise of progress.

30. In conclusion, the regulation of fisheries in the high seas should be based on two implicit conditions: first, that no regulation should be so construed as to exclude newcomers from fishing in any area of the high seas, and, secondly, that any regulations agreed must be interpreted and applied on a bona fide basis.

31. Mr. PFEIFFER (Federal Republic of Germany) congratulated the International Law Commission on selecting, as the basis for its draft, the freedom of the high seas which, as was explicitly recognized in article 27, implied freedom of fishing.

32. The task of conserving the living resources of the high seas was of vital consequence to the world's population but his delegation hoped that the conservation measures proposed would not hamper the freedom of fishing more than was absolutely necessary.

33. The State referred to in article 51 was certainly responsible to some extent for the conservation of the living resources of the high seas and should therefore be required to issue appropriate regulations for its nationals in so far as such regulations were warranted. Yet it would be unjustified to impose such regulations, which, being unilateral, might well have been prompted by other than biological considerations, on the nationals of other States who arrived to fish in that area at a later date.

34. The same objection could be raised to the provisions of article 52. If the States concerned had similar economic, social or political interests they might well draw up fishing regulations which were not entirely based on biological considerations. Furthermore, it was not inconceivable that fishing conventions might be based on a synthesis of such interests, including those of the fisherman and the consumer, and therefore it would be unwarranted if not unjust to impose their provisions, even temporarily, on the nationals of other States who subsequently engaged in fishing in the area concerned.

35. His delegation felt that article 54 went too far and to all intents and purposes established a contiguous fishing zone. The right referred to in paragraph 2 of article 54 should be granted to the coastal State only if its nationals were actually engaged in fishing the same stocks in the territorial sea, the adjacent area of the high seas or in both areas.

36. Paragraph 1 of article 55, which authorized the coastal State to adopt unilateral measures of conservation, would restrict the freedom of the high seas.

37. Furthermore, the term "special interest" in the context of article 56 was vague. A special interest of that kind could be recognized only in cases where the nationals of a State fished, in their territorial waters or in the high seas, the same stocks as were fished by the nationals of other States in other areas of the high seas. His delegation would therefore prefer a more specific term in order to avoid possible misunderstandings.

38. His delegation would submit a text to replace articles 51 to 56 in order to bring into harmony the concepts of the need for conserving, in the interests of the international community, the living resources of the high seas, the various interests of States engaged in fishing and the principle of the freedom of the high seas.

39. With regard to the settlement of any disputes that arose, his delegation accepted in principle the idea of an arbitral commission.

40. Marquis DE MIRAFLORES (Spain) stressed that, as an important fishing nation, with a large part of its national income derived from the fishing industry and a large fishing population, Spain had a particular interest in the success of the Third Committee's work.

41. Articles 49 to 60 constituted an attempt to draw up regulations governing the enjoyment of the classical and fundamental principle of the freedom of fishing in the high seas. That principle should not endanger the conservation and exploitation of the living resources of the sea at the expense of millions of human beings. On that point, the States represented in the Committee

seemed to be in agreement and to favour the introduction of a series of regulations which would guarantee the conservation of resources.

42. The International Law Commission's draft was founded on two basic principles — first, the idea of permanent collaboration between the States concerned, and, secondly, that of compulsory arbitration. The idea of permanent co-operation constituted the only ground for the partial renunciation by States of the existing principle of freedom of fishing on the high seas. In order that such collaboration might not be endangered by disputes, it seemed advisable, not only to lay down regulations governing such disputes, but also to provide for an international body to promote co-operation. It was not a question of attempting to revive the idea of an international legislative body, which had already been discarded by the International Law Commission, but to draw attention to the need for filling a gap which might appear in practice if no provision were made for an international body to further co-operation. Such co-operation could not be left to ordinary direct negotiations between States. It was necessary to place it on an institutional basis. If that were not done, any regulations agreed might lose their force, or there would be an excessive recourse to arbitration, which would undoubtedly diminish the spirit of co-operation between States. Thus, without discarding the idea of compulsory arbitration for settling the more important disputes, it was worth considering setting up an international body or commission which would be more easily accessible and in a better position to take decisions than an international tribunal. Some part of the varied international organizations already in existence might be used for that purpose.

43. Regional agreements might help to reduce fishing disputes and to ensure the fulfilment of regulations. Such regional agreements should not be interpreted in a purely geographical sense when it came to the question of fishing, since that might lead to artificial divisions of species.

44. The concept of the adjacent high seas (article 54) should be more clearly defined on the basis of a fixed depth beyond which fishing was not economically viable.

45. The Spanish delegation accepted the principle that coastal States should be empowered to take unilateral measures of conservation, but felt that the exercise of that right should be governed by clearly defined rules, since it was a new right and was not granted by the international community for the coastal State's exclusive benefit, but in the interests of all. It therefore should not be invoked to justify positions of dominion or in such a way as to damage other States' interests.

46. Coastal States interested in adopting conservation measures on the high seas adjacent to their territorial sea should continue to seek bilateral or multilateral agreements. If such agreements proved impossible, that in itself showed that there were vital interests at stake, and those should not form the subject of unilateral measures. In default of agreement, recourse should be had to an international body. That would be more equitable and practical than having recourse to the idea of priority rights.

47. The Spanish delegation agreed with the International Law Commission's opinion that the granting to States of rights on the high seas, which went beyond the limits of international law currently in force, should be balanced by a body of guarantees that would safeguard the legitimate interests of the other States interested in the exploitation of the riches of the sea.

48. His delegation reserved the right to introduce various concrete amendments to the articles submitted to the Committee.

49. Mr. ALLOY (France) emphasized the importance of the fishing industry to his country, which was keenly interested in the rational conservation of the living resources of the high seas and co-operated in a number of international fishery conventions. He congratulated the International Law Commission on its draft, which was based on a desire to ensure freedom of fishing and equality for all States. Some of its articles, however, required amendment. His delegation would be unable to accept article 55, since it authorized the coastal State to take unilateral measures of conservation. If conservation measures seemed necessary in any area, all the States concerned should, on a basis of equality, discuss their advisability and be given a reasonable time to reach agreement. If no agreement was reached, the matter should then be referred to arbitration and the coastal State should not issue any regulations pending the outcome.

50. The Committee's discussions on the freedom of fishing on the high seas would be influenced to a large extent by the decisions reached in other committees on the breadth of the territorial sea and on the exploitation of natural resources of the continental shelf.

The meeting rose at 4.50 p.m.

NINTH MEETING

Monday, 17 March 1958, at 1.10 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

General debate (continued)

STATEMENTS BY MR. CORREA (ECUADOR), MR. ALVAREZ (URUGUAY), MR. HAN (REPUBLIC OF KOREA), MR. CIEGLEWICZ (POLAND), MR. POPOVIC (YUGOSLAVIA), MR. OZERE (CANADA) AND MR. DE FONSEKA (CEYLON)

1. Mr. CORREA (Ecuador) said that whereas the International Law Commission was concerned with the codification and progressive development of international law, the Conference, being composed of plenipotentiaries, had much wider powers; indeed, it had virtual legislative functions which it should not hesitate to use. The law was not something static; it should evolve *pari passu* with the evolution of international life in general.

2. Ecuador's economy depended in no small measure on the living resources of the sea adjacent to its coast;

hence his country had a special interest in the matters referred to the Committee. As the delegations of the Latin American countries bordering on the Pacific had said repeatedly, for a number of reasons the fishing problems of those countries constituted a special case. First, owing to the influence of the Humboldt Current along the coasts of Chile, Peru and Ecuador, the adjacent seas abounded in a wide variety of fish; the inter-action of the current and the climate had, moreover, created a geographic-biological unity between the mainland and the sea. Secondly, the erosion of the Andes had contributed to the wealth of the living resources of the adjacent seas. Thirdly, certain stretches of the South Pacific coast had no continental shelf in the strict sense of the word, since the seabed dropped away sharply; the coastal States of the area would therefore benefit to a limited extent only from the recognition of their sovereignty over the resources and waters of the continental shelf. Fourthly, the economic future of the countries in question depended to a great extent on the Pacific fisheries. Fifthly, stocks of fish in the area had been exploited intensively by large, foreign-owned fishing fleets using modern equipment not available to the under-developed coastal States. Lastly, the destruction or depletion of such stocks would have far-reaching economic consequences for the countries of the region.

3. It was with the object of safeguarding the resources of the maritime areas off their coasts that Chile, Ecuador and Peru had, by the Declaration of 1952, laid down a common policy for the conservation, development and rational exploitation of those resources and set up joint machinery for the regulation of fishing in the areas in question. That declaration was not an isolated case; other countries had enacted regulations concerning the use or conservation of the living resources of the high seas.

4. His delegation would therefore seek international recognition of a special, preferential and unconditional right, vested in the coastal State, by reason of its geographical position, to utilize the living resources in an area of sea adjacent to its territorial sea and to issue, unilaterally, regulations governing the conservation, control and exploitation of those resources and applicable to the nationals of any other States who came to fish in that area. The recognition of that right was a legitimate limitation of the freedom of the high seas which had, in any event, ceased to be an absolute freedom. Unlimited freedom under present conditions of economic inequality would render the right of all nations to the wealth of the sea illusory and convert the high seas into the exclusive province of large fishing interests. Besides, the exercise of sovereign rights by the coastal State over the resources of the continental shelf had produced a trend that would make the recognition of the coastal State's rights over the fisheries of the contiguous zone inevitable, because the same considerations appeared to be applicable to both cases.

5. The International Law Commission had been forced to recognize, in the provisions relating to conservation, the special status of the coastal State, but had done so somewhat cautiously. That caution was not, however, evident in its statement of the coastal State's sovereign rights over the continental shelf; and yet, the "geographical phenomenon" referred to in paragraph 8 of the commentary on article 68 and the other circumstances of the Latin American States on the Pacific coast should provide sufficient grounds for the recognition of their special right over the living resources of the zone adjacent to their territorial sea.

6. Referring to articles 54 and 55, he pointed out that the rights and duties of all States, coastal or otherwise, in respect of the conservation measures referred to in articles 51 and 52, were not qualified by conditions as were the rights of the coastal State. It was illogical, in his opinion, that a right emanating from a special interest should be more limited in scope than a right based on a general interest. Conservation measures should be based on scientific evidence and findings but, as was pointed out in paragraph 56 of the Report of the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955,[1] the problem was to reach agreement on the basis of such findings.

7. Article 55 in its present form would create more difficulties than it solved and would render the coastal State's rights nugatory. The Indian representative had indicated the correct approach (5th meeting). The French delegation's amendment to article 55 (A/CONF.13/C.3/L.3), on the other hand, would, if adopted, make the conservation system completely unacceptable to a large number of States.

8. The system for the settlement of disputes described in article 57 had been widely criticized, and it seemed that States were not prepared to accept compulsory arbitration. Other methods must therefore be sought; and he suggested, for example, the establishment of a widely representative United Nations body under the Economic and Social Council. Alternatively, a special fisheries body might be set up under Article 57 of the United Nations Charter, or else a division concerned with the conservation of the living resources of the high seas might be established in the Food and Agriculture Organization of the United Nations. Yet another mode of settlement of disputes was that referred to in the Mexican proposal (A/CONF.13/C.3/L.1).

9. Mr. ALVAREZ (Uruguay) said that, under its terms of reference, the Conference was empowered to create international law of universal application. For according to article 38 of the Statute of the International Court of Justice treaties constituted the principal source of international law, and General Assembly resolution 1105 (XI) expressly mentioned "one or more international conventions" (operative paragraph 2). That provision should be read in conjunction with paragraph 1 of Article 13 of the Charter, which spoke, in sub-paragraph *a*, of the "progressive development of international law". Some representatives had said that many of the new provisions drafted by the International Law Commission were anything but progressive; his delegation did not share that view, though admittedly the emphasis on certain principles was misplaced.

10. He noted with satisfaction that the rational exploitation of the living resources of the high seas had been recognized; in Uruguay such exploitation was

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

carried on under the supervision of a special scientific body. The principle of the conservation of the living resources of the high seas proclaimed in article 50 also met a long-standing need.

11. His delegation still felt, however, that the necessary balance between the vital interests of the coastal State and the rights of other States had not been achieved in the International Law Commission's draft, which required considerable amendment, as Uruguay had already pointed out in the Sixth Committee of the General Assembly at its Eleventh Session.

12. Any attempt to determine which State was competent to adopt conservation measures should take into account three basic interests that should be reconciled — the international interest, the coastal State's interests and the interests of third States. His delegation considered that the coastal State was competent to adopt conservation measures relating to those areas of the high seas which were adjacent to its territorial sea. Its competence to do so was a special power conferred upon it by international law, regardless of whether it exploited the resources affected or not. It was both a right and also a duty imposed by the international community in the general interest. That competence of the coastal State was complemented by the right of any other State, should it feel that the conservation measures adopted by the coastal State were unsuitable, biased or inadequate, to set in motion as a last resort the compulsory arbitration machinery provided for in article 57.

13. The competence of the coastal State could be limited to the continental shelf, and in the absence of such a shelf its scope should be determined by reference to existing circumstances. His delegation, in short, considered that the competence to adopt conservation measures had been attributed to the coastal State by the international community for the following reasons: first, it was in the best geographical position; secondly, it had the greatest interest in conservation; thirdly, in cases where the coastal State had a continental shelf, there was an undeniable connexion between the living resources of the continental shelf and those of the superjacent water and, hence, the exploitation of the one was directly related to that of the other. The fourth reason was the existence of special economic circumstances.

14. His delegation had stated its views concerning the first two reasons at the meeting of the Inter-American Council of Jurists held at Mexico City in January 1956, when it had said that foreign fishing fleets had not the same interest as the coastal State in the conservation of living resources.[1] The validity of the third reason was clearly domonstrated in document A/CONF./13/13 prepared by the Food and Agriculture Organization of the United Nations. In that connexion he emphasized the importance of certain forms of exploration and exploitation of the continental shelf, such as oil prospecting, and pointed out that such work could directly affect, by contamination, the living resources in the waters of the continental shelf. The importance of such factors was reflected in paragraph 1 of article 48 and in article 71. The coastal State was thus best qualified to determine what steps should be taken to remedy the situation in respect of all forms of exploitation, bringing them into harmony as required. The validity of the fourth reason had been recognized by the Commission in its commentary on article 59, under the heading of "Claims of exclusive fishing rights, on the basis of special economic circumstances".

15. He proceeded to describe the conditions under which the coastal State should exercise its obligatory competence. First, the conservation measures it adopted should take into account the interests of all the States affected by them, and it should endeavour to have them adopted by means of international agreements. Secondly, they should be supported by adequate scientific proof of their necessity and based on appropriate scientific findings, should not discriminate against foreign fishermen, and should conform to principles of equity in the distribution of the produce of the resources concerned. Thirdly, where they did not already exist, regional fishing commissions should be set up, and their recommendations should be taken into account by the coastal State, which would have to show good cause for any failure to conform to them.

16. That system would not in any way impair the rights of the nationals of other States to fish in the high seas; the exercise of any right was limited to a certain extent by the common interest and by the exercise of similar rights by other parties.

17. With respect to conservation measures in areas of the high seas not adjacent to the coast of the coastal State, his delegation agreed in principle with the provisions of the draft but considered that any such measures should fulfil the requirements laid down with respect to the coastal State in preceding paragraphs.

18. With regard to article 57, his delegation reaffirmed the traditional standpoint of Uruguay, which was in favour of unilateral summons and automatic arbitration. In connexion with the wording of article 57, he said that the personal qualifications required of the members of the arbitral commission under paragraph 3 should be of a general character, and apply in the circumstances envisaged in paragraph 2.

19. Article 58 should be amended so as to require the arbitral commission, in awards concerning adjacent areas of the high seas, to take into account the coastal State's special interest in the conservation of the living resources of those areas. Article 60 should be similarly amended to make more ample provision for the interest of the coastal State.

20. The interest of certain coastal States in the exclusive exploitation of specific stocks or specific areas which was based on special economic circumstances should be placed, for purposes of international law, on the same footing as the "principle of abstention". His delegation would support the establishment of a working group to study the matter.

21. Mr. HAN (Republic of Korea) said that fishing was a vital part of his country's economic life. Korea subscribed to the principle of the freedom of the high seas but considered that no State had a right to the unlimited exercise of that freedom to the detriment of the interests of other States, particularly in the matter of fishing.

[1] See *Yearbook of the International Law Commission*, 1956, Vol. II (A/CN.4/SER.A/1956/Add.1), pp. 237 *et seq.*

22. New regulations governing fishing on the high seas were needed to meet the situation created by modern intensive exploitation methods and to prevent over-fishing and the exhaustion of fish stocks, including bottom fish. The efforts being made by the coastal States in that direction were based on their legitimate claims to the exploitation and conservation of the living resources in coastal waters. Recognition of their claims would obviously be in the interest of the international community, since any State that engaged in unrestricted fishing in total disregard of the coastal fisheries of another State was in fact abusing the freedom of fishing.

23. His delegation considered that articles 54 and 55 did not go far enough in protecting the interests of a coastal State which depended on the conservation of the living resources of the sea for the survival of its people. The coastal State should, on the basis of scientific findings, enjoy an exclusive right to control and regulate fishing activities over a reasonable distance in the high seas adjacent to its territorial waters. For not only was the coastal State best placed to evaluate the need for conservation measures, but also such fisheries should be protected in the interests of its nationals; the sacrifices of the coastal State in applying conservation measures should not be ignored. In any event, it would be quite unreasonable to put coastal and non-coastal States on the same footing from the point of view of the distribution of the world's food supply.

24. Unless the exclusive right of the coastal State was recognized, the living resources in its coastal waters would be threatened with irrational exploitation by large fishing fleets. States wishing to fish in any area of the high seas adjacent to the territorial waters of a coastal State which had already adopted conservation measures should approach that State with a view to reaching a suitable agreement. Moreover, if the conservation measures adopted by a coastal State were made equally applicable to its own nationals and to the nationals of other states fishing in that area, the special interests of the coastal State and the general interests of the international community would be well protected. The right of the coastal State to adopt such unilateral measures was recognized in principle in a number of international fishing conventions in which an obligation to abstain from fishing was imposed on non-coastal States. His delegation supported the principle that the coastal State had a pre-emptive right to control and regulate fishing in the case of specific stocks in designated areas and felt that that principle should be extended to cover all the living resources in those areas.

25. His delegation was in general agreement with the requirements stipulated in paragraph 2 of article 55, but felt that in determining the need for conservation measures the sacrifices and efforts made by the coastal State to apply and enforce such conservation measures should be taken into consideration. The economic conditions which necessitated conservation measures should similarly be taken into account. The draft should therefore include provisions stipulating expressly that in cases of disagreement the special interests of the coastal State would take precedence over the interests of other States wishing to fish in the areas concerned. Such provisions would improve the chances of a satisfactory settlement of such disputes and it was for that reason that his delegation favoured the principle of optional rather than compulsory arbitration.

26. Mr. CIEGLEWICZ (Poland) said that his country was co-operating actively with others in scientific research into the living resources of the sea, with a view to their conservation, and was a party to a number of international instruments concerning the regulation of fisheries. Poland was not interested only in an immediate increase in its total catch, but hoped rather, by international collaboration, to increase, or at least to maintain, the optimum sustainable yield from the living resources of the high seas.

27. In view of the complexity of the problem of conservation of the living resources of the sea and in the light of experience, his delegation considered that, so far as certain aspects of conservation and regulation were concerned, the Conference should confine itself to adopting general provisions relating to international co-operation; for special biological or economic conditions, which prevailed in certain regions and were not found generally in other seas or geographical regions, would be better covered by regional agreements. His delegation supported the principle indicated in article 52 that two or more States engaged in fishing in any area of the high seas should, when necessary, enter into bilateral or multilateral agreements to prescribe the necessary measures for the conservation of the resources in question. Such an approach to the problem of the regulation of fisheries would, it seemed, facilitate agreement among a greater number of States.

28. His delegation regarded the draft articles concerning fishing in the high seas as a valuable basis for detailed discussion. The draft very properly confirmed the generally accepted freedom of fishing (article 49). Since fishing techniques had been improving rapidly, and fishing had been intensified and was still developing, it was obvious that over-fishing was a real danger, and that more intensive exploitation might lead to the depletion of the living resources of the sea. His delegation therefore approved the provision in article 49 regarding the obligations of States in the matter of the conservation of those resources.

29. The definition of "conservation of the living resources of the high seas" contained in article 50 followed in general the definition adopted by the Rome Conference of 1955 and represented a progressive development of the law of the sea. His delegation was also prepared to endorse, in general, the new principle expressed in article 53, by which newcomers who engaged in fishing in a given area of the high seas had a duty to observe any conservation measures already in force in that area, but believed that the principle could only be applied on the understanding that such measures did not discriminate against foreign fishermen.

30. He entertained some doubts regarding the "principle of abstention" mentioned in the commentary to article 53. The principle had been discussed at the Rome Conference but had not been accepted as generally applicable for it implied unequal treatment of newcomers to a fishing area and was incompatible with the principle of equality of rights of all States as re-

gards fishing in the high seas, a principle which was implicit in draft articles 27 and 49.

31. Article 55 would require most careful discussion by the Committee, since its provision concerning unilateral action on the high seas might in practice give rise to many technical or economic difficulties. Technical difficulties might arise from the biological peculiarities of certain fish-stocks (the distant migrations of species, for instance), and economic difficulties from the unequal repercussions on the fishermen of various countries of the limitation of catches and changes in fishing methods. He thought it unlikely that article 55 would be acceptable, since discussions at the Rome Conference of 1955 and at the Inter-American Specialized Conference on Conservation of Natural Resources held in Ciudad Trujillo in 1956 had indicated that there was no agreement among States on the nature and scope of the special interest of the coastal State.

32. As had already been stressed by representatives of other countries, most careful attention should be given to defining the relation between the new provisions of the law of the sea and the provisions of existing conventions on conservation of the living resources of the sea, and the Conference should try to profit by the successful experience of the many countries which were parties to international agreements regulating fisheries on the high seas.

33. Mr. POPOVIC (Yugoslavia) said that, very properly, the draft articles contained some provisions which represented a progressive development of international law or were on the point of becoming rules of international law. There was, however, one fact which the International Law Commission had not fully taken into account. While the development of modern techniques had enabled certain countries to build large fishing fleets, the same was not, unfortunately, true of the under-developed countries, whose fishermen could not venture too far from their national waters because they did not possess modern fishing equipment. The Commission's draft articles had proclaimed the freedom of fishing on the high seas for ships of all flags, but for the fishermen of technically under-developed countries that freedom was illusory in those areas of the high seas which were not adjacent to their territorial sea, because they had no practical possibility of making use of the freedom. It was true that in article 55 the Commission had recognized the right of the coastal State to adopt unilateral measures of conservation, but that right was so hedged about with conditions that its practical value was very doubtful. Even if the conditions were to be waived or mitigated, the right of the small and under-developed countries to adopt unilateral measures of conservation would remain illusory, if they were not allowed to exclude — at least from an area of reasonable breadth adjacent to their territorial sea — foreign fishing fleets which could exhaust the area in a matter of a few days.

34. He recalled that the regulation of fisheries on an international level had been discussed at the Conference for the Codification of International Law held at The Hague in 1930, and suggested that the failure of that Conference had been due to the rigid attitude adopted by some countries towards a problem of vital interest for the majority of coastal States — namely, the question of the breadth of the territorial sea and the exclusive right of coastal States to fish in any area of the high seas adjacent to their territorial sea. Experience since The Hague Conference had shown that the trend of international law had been away from the standpoint then adopted by those States, which had been contrary to the actual necessities of contemporary life.

35. Turning to article 54, he suggested that the "special interest" of the coastal State would be best protected by the recognition of that State's exclusive right to engage in fishing and to exploit other marine resources in a belt of the high seas adjacent to its territorial sea and by permitting such a State to adopt unilateral measures for regulating and controlling fishing activities in a further belt of the same area necessary for conserving the living resources of the high seas. Unilateral measures should not discriminate against foreign fishermen. Only in that way would it be possible for small States to fish on the high seas.

36. The zone in which the coastal State should have the exclusive right to fish should not exceed, together with the territorial sea, a breadth of twelve miles. In that way all States would be placed on the same footing so far as fishing rights were concerned, even if it proved impossible to adopt a uniform breadth for the territorial sea. By a law of 1 December 1948, Yugoslavia had established a four-mile zone adjacent to its territorial sea, within which it had reserved the exclusive right of fishing for its nationals. A large number of States had also ensured the exclusive fishing rights of their nationals in an area of the high seas adjacent to their territorial seas by establishing conservation zones for all or some marine resources or by extending their sovereignty or jurisdiction, for the purposes of conservation and utilization of the living resources of the high seas, over a given maritime zone. It was therefore clear that the right of exclusive fishing on the part of a coastal State in any area of the high seas adjacent to its territorial sea, up to a reasonable limit, was an absolute necessity for the coastal State; and that, he submitted, was the only solution likely to lead to a reconciliation of conflicting views regarding the breadth of the territorial sea.

37. His delegation did not subscribe to the view expressed by the United Kingdom representatives in the First and Third Committees that the problem of conservation could not be solved unilaterally because fish such as tuna and herring did not recognize any barriers. On the contrary, the data concerning quantities of fish caught in coastal waters, submitted by the United States representative in the First Committee and the United Kingdom representative in the Third Committee, proved that it was possible to adopt efficient unilateral conservation measures in coastal waters. Those measures were particularly necessary in cases where the intensity of fishing in a given area was greater than the actual reproduction capacity of existing stocks, a circumstance that led to over-fishing. In order to safeguard the livelihood of its small fishing undertakings, a coastal State with technically under-developed equipment would, in that case, be compelled to establish a moderate fishing reserve adjacent to its territorial sea to preserve that area both biologically and economically for its coastal population.

38. Some delegations had suggested that the recog-

nition of such a right on the part of the coastal State would make it impossible for questions of conservation to be regulated by bilateral or multilateral instruments. His delegation, on the other hand, believed that the recognition of the right of the coastal State to adopt unilateral measures would have a salutary influence on the undisciplined fishermen of other States, inducing them to seek a solution of the question by agreement with the respective coastal States.

39. He fully appreciated the motives which had prompted the representatives of El Salvador and the United States to raise the question of the "principle of abstention", but felt that it was unlikely that the problem could be solved by the present conference, owing to insufficient study from the biological, technical and political points of view.

40. His delegation shared the hope expressed by the Indian representative (5th meeting) that the Committee would have an opportunity to examine the dangers threatening the living resources of the high seas as a result of pollution by the discharge of oil, by test explosions of nuclear weapons, by the dumping of radioactive waste and by other harmful agents.

41. His Government was in favour of the peaceful settlement of disputes among States by arbitration, but did not believe that the type of arbitration proposed in article 57 (particularly in view of the functions attributed to the arbitral commission under article 58) was the most appropriate. For example, the arbitration proposed in article 57, paragraph 3, was not arbitration between States, but statutory arbitration by a tribunal, and could not therefore lead to a friendly solution of disputes. Further, the draft articles had failed to establish the criteria on the basis of which the arbitral commission should reach its decisions, and there was a danger that the arbitral commission might itself become a legislator. His country could not accept any arbitration in regard to its actions resulting from its exclusive right of fishing in any area of the high seas adjacent to its territorial sea.

42. Mr. OZERE (Canada) observed that, whatever understanding might be reached on the extent of the territorial sea or the contiguous zones, there would remain many problems affecting the conservation and management of sea fisheries which would not be solved by the simple formula of drawing lines in the seas. That was not to say that the adoption of an exclusive fishing zone would not be of definite benefit to those countries which, like his own, had developed their fisheries mainly along their own coasts.

43. When the time came for detailed consideration of articles 49 to 60, his delegation would put forward suggestions for the clarification of some of the articles. For the moment he would refer only to one very important aspect of fisheries conservation which was not covered in the draft articles, and which he felt should be included — namely, the situation where one or more States had been actively engaged for a number of years in a special fishery involving only their own nationals, and where scientific investigation had demonstrated that the fishery was being fully exploited. Such a case involved heavy expenditure on scientific investigation and sacrifice by the participants in carrying out the necessary conservation measures. His delegation believed that the State or States involved should have some assurance, as an encouragement to continue effective conservation measures, that the catching of such fish would be limited to those who had contributed to their maintenance. For purposes of illustration, he referred to the salmon fishery off the Pacific coast of North America. Canada alone, or in some instances jointly with the United States, had spent many millions of dollars in research, in supervision of the migrating salmon and of fishing operations, in providing hatcheries and in building expensive fishways. Moreover, in its desire to protect the salmon, Canada had deliberately refrained from tapping the potential source of hydro-electric energy of some of the rivers in which the fish bred.

44. That particular problem had been discussed at the Rome Conference of 1955, where reference had been made to the "principle of abstention", the essence of which was that, where a stock of fish was under such scientific investigation, management and regulation as was required to obtain the maximum sustainable yield, and where an increase in fishing would not be expected to result in any substantial increase in the sustainable yield, then States whose nationals had not in recent years participated in the fishery should abstain from fishing the stock. His delegation urged that the adoption of such a principle was essential, if certain fisheries, such as the salmon and halibut fisheries in the North Pacific, were to be preserved. It should be remembered that principles of conservation in relation to high seas fisheries were of recent origin, and the Committee should not be deterred by the fact that a given principle might at the moment apply in a few instances only.

45. In reply to the statement of the representative of the Soviet Union (6th meeting) that the principle of "abstention" represented a restraint of the freedom of the seas, he would say that the Conference was assembled for the purpose of reaching agreement on certain rules relating to the sea, and such rules necessarily involved restraints voluntarily assumed in the common interest of conservation of the living resources of the high seas.

46. Mr. DE FONSEKA (Ceylon) observed that, as an island, his country was keenly interested in fishing and in any proposals for framing international laws regulating fisheries in the sea, whether it be the contiguous zone, the high seas or the continental shelf. For many centuries the coastal population of Ceylon had depended for its livelihood on what it obtained from the sea, and fisheries were still an important item in his country's economy.

47. His delegation was in general agreement with the provisions of draft articles 49 to 60, but there were some matters on which it must reserve the right to express disagreement at a later stage and, if necessary, submit amendments.

48. In particular, he believed that the right to fish on the high seas given to all States by article 49 carried with it an obligation to adopt the necessary conservation measures and that any neglect to adopt such measures would be an abuse of the right. His delegation would therefore welcome the modification of article 49 suggested by the United Kingdom repre-

sentative (7th meeting) to the effect that the duty to conserve would be closely bound to the right to fish.

49. He wished to make a reservation concerning articles 54 and 55 and the suggestions made by certain delegations that the rights of a coastal State should be extended further.

50. Turning to the question of exclusive fishing rights by reason of special economic circumstances, he agreed that it was necessary to grant some protection to coastal States, particularly under-developed ones, until they were able to reach the levels of efficiency and modernization already attained by the advanced fisheries of the more highly developed countries, but that protection should only be afforded to the small boat fisheries of those States and not to the more highly organized and capitalized concerns.

51. His delegation was also in agreement with the principle of abstention and with the explanation given in sub-paragraph (*d*) of paragraph 4 of the commentary on article 53.

The meeting rose at 5.40 p.m.

TENTH MEETING

Tuesday, 18 March 1958, at 3.10 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

General debate (continued)

STATEMENTS BY MR. BOCOBO (PHILIPPINES), MR. GOLEMANOV (BULGARIA), MR. SHAVIT (ISRAEL), MR. MALLIN (IRELAND) AND MR. MELO LECAROS (CHILE)

1. Mr. BOCOBO (Philippines), referring to the first paragraph of article 54, took exception to the argument that recognition of the special position of the coastal State departed from the rule that high seas fishing regulations were valid only *vis-à-vis* nations consenting thereto and that to grant coastal States a right to regulate fishing unilaterally was contrary to the principle of the freedom of the high seas. He agreed that the freedom of the high seas included freedom of fishing, but pointed out that indiscriminate fishing which was carried out in the name of that freedom and which deprived the populations of coastal States of their preferential rights to the living resources with which nature had endowed them was an abuse of that freedom. His delegation therefore supported the widely accepted principle, rightly incorporated in the draft, that the coastal State had a special interest in the conservation of the living resources in any area of the high seas adjacent to its territorial sea. The final convention should, however, be more specific and state categorically that the population of a coastal State had a preferential right in that respect. In the event of a dispute the inalienable rights of that population should have precedence over the claims of fishing fleets from distant States. In short, the right of other States to fish in areas adjacent to the territorial sea of a coastal State should be exercised only on condition that the livelihood of the population of the coastal State was fully safeguarded.

2. Article 49 should be amended so as to prevent any abuse of the freedom of fishing on the high seas. Thus, a coastal State whose interests had been reasonably guaranteed should never adopt conservation measures which unjustly restricted the rights of other States. Nor should the nationals of distant States abuse the freedom of fishing in such areas by catching excessive quantities of fish. Articles 50 to 59 by themselves were not enough to safeguard against abuse of the freedom of fishing, for even though a specific stock might be conserved, the problem of what constituted a fair catch remained. The nationals of a distant State should not be allowed to catch unlimited amounts of fish to the detriment of the population of a coastal State simply because they used modern intensive fishing methods.

3. Mr. GOLEMANOV (Bulgaria) said that, true to its traditional policy, his Government would co-operate wholeheartedly in attempts to solve outstanding problems relating to fishing and the conservation of the living resources of the high seas.

4. The use of modern fishing techniques threatened certain species of fish with extinction, and previous speakers had already drawn attention to the unscrupulous exploitation methods of private fishing fleets. The need for conservation measures to prevent the exhaustion of the living resources of the high seas was therefore fully justified and the fact that freedom of fishing was proclaimed in article 49 in no way precluded the adoption of such measures, which were in the interest of the whole international community.

5. His delegation felt that the Committee could and should study the important question of atomic weapon tests on the high seas and that the Conference should proclaim as a general principle that no State had the right to test nuclear weapons on the high seas in view of the danger involved for the living resources of the seas and human life. The Indian representative in the First Committee had adopted a similar position in referring to the danger of atomic weapon tests to navigation.

6. When the Committee came to examine the individual articles assigned to it, it should keep in mind the legitimate interests and rights of all countries and use as its point of departure the principle of the freedom of the high seas. That principle placed an obligation on States to refrain from any acts likely to restrict the use of the high seas by other States or their nationals.

7. One of the aspects of the freedom of the high seas was the right of nationals of all countries to engage in fishing therein. For certain countries, fishing was vital to the equilibrium of their national economy or to the livelihood of their population. Consequently, when the Committee embarked upon the codification of the fisheries articles, it would have to harmonize the principle of the freedom of the high seas — namely, the interests of the international community — with the economic and other interests of individual countries.

8. Although his delegation had no objection to articles 49, 50 and 51, it was unable to support the principle of compulsory arbitration set forth in paragraph 2 of

article 52 and in paragraph 2 of article 53. Nor could it agree that the " principle of abstention " mentioned in the commentary on article 53 should be firmly established in international practice, for it regarded it rather as a formula representing an attempt to create privileges for certain Powers. The Commission had rightly refused to incorporate it in its draft since that would only have led to confusion and difficulty. Article 53 as a whole was not sufficiently clear, and seemed to create a form of discrimination against newcomers, for which, in his view, there was no justification.

9. The provisions of paragraph 1 of article 54 were perfectly logical since they arose out of the interests of the coastal State. But the interests of the international community also had to be taken into account. In that connexion, his delegation fully shared the opinion expressed by the USSR that geographical factors as well as the behaviour of various stocks of fish should be taken into consideration.

10. His delegation could, under certain conditions, approve the principle of unilateral action embodied in article 55, but felt that the phrase " reasonable period of time " should be explained. The requirements listed in paragraph 2 of article 55 were somewhat vague and could lead to difficulties and disputes, since they lent themselves to various interpretations. The article therefore needed some clarification.

11. The procedure proposed for the settlement of disputes in articles 53 to 57 rested on the principle of compulsory arbitration and in certain cases the decision of the arbitrators would assume a legislative character. For that reason, his delegation, among many others, was unable to accept it, and would therefore support the Mexican proposal (A/CONF.13/C.3/L.1).

12. Mr. SHAVIT (Israel) said that the acid test of the Committee's work would be whether it strengthened or weakened the principle of the freedom of fishing as one of the fundamental freedoms of the sea. Freedom to fish on the high seas must include freedom to seek new fishing grounds and to carry out scientific surveys for that purpose.

13. Conservation had both legal and biological aspects, and these must be co-ordinated. Conservation measures were commendable when based on scientific research, but there was a tendency to adopt them simply as a precaution and then the urge to prevent over-fishing might easily lead to under-fishing. Large fish, if not caught in sufficient numbers, would deprive younger fish of their food and in those circumstances over-regulation would reduce the fish population and consequently the available supply of proteins for human consumption. Proper conservation measures that represented a mean between under- and over-fishing could be adopted only after a throrough scientific investigation.

14. Physically and biologically the basic problem before the Committee was essentially a regional problem, and certain measures that might be appropriately applied to wide stretches of ocean could prove disastrous if applied in a relatively small sea like the Mediterranean. The Conference should therefore determine which problems were unsuitable for general settlement and refer them to the appropriate regional expert bodies.

15. He noted that a number of draft articles with a definite bearing on fisheries problems had been referred to other committees, and expressed the hope that joint meetings of committees would be arranged whenever necessary. For example, no régime could be drawn up for the continental shelf without combining the biologist's knowledge of sea fauna with the geologist's knowledge of the seabed. Other examples were to be found in the provisions of articles 68 and 47.

16. The text of and reactions to article 53 had been a source of satisfaction to his Government, which shared the interpretation of the Soviet Union, Netherlands and Greek representatives — namely, that its purpose was to safeguard rights and a fair share of the world's wealth for newcomers.

17. He observed that article 55 was permissive in form and wondered what would happen if the unilateral measures mentioned there were unjunstified. It might be wise in that case to stipulate that the good offices of the Food and Agriculture Organization of the United Nations should be invoked. That might render unnecessary the Italian suggestions concerning the living resources of the high seas reproduced in the Comments by Governments (A/CONF.13/5, section 10).

18. Mr. MALLIN (Ireland) observed that, at an early stage in the discussions of the International Law Commission, and at the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955, it had been recognized that existing law on the conservation of the living resources of the high seas was deficient, firstly because it provided no adequate protection of marine fauna against extermination and secondly because the coastal States or other States directly interested were not sufficiently protected against wasteful and predatory exploitation of fisheries by foreign nationals. Accordingly, in draft articles 54, 55 and 56, the special interest of the coastal State was explicitly recognized and an attempt had been made to render that recognition effective by conferring on that State the right of unilateral action for conservation purposes, subject to certain qualifications.

19. It was generally agreed that where particular methods or unrestricted intensity of fishing, or the use of nets with meshes below certain sizes, or a continuance of fishing during certain periods were pursued without restraint in any sea area, there could be a serious reduction in the fishing population in that area. Where such activity was conducted by large foreign fleets in sea areas adjacent to a coastal State the reduction could render fishing there by vessels of the coastal State uneconomic. The ultimate result would be felt well within the State's exclusive fishery limits, and the narrower those limits the more pronounced the effect.

20. Serious repercussions of that kind might arise long before there was any great danger of extermination of fish stocks, or even before the stocks were diminished to such an extent that they would require a very long period for recovery, but the nationals of a coastal state might suffer seriously during the depression, however brief. The problem was in large measure economic as well as biological, since it arose in the first instance from the conflict between the large readily transferable fleets of long-range vessels and the craft with a more circumscribed radius belonging to the coastal State. Long-range fishing fleets could move into distant fish-

eries and pursue a fishing activity so intensive and so destructive that, failing effective and urgent measures of control, a coastal State might be driven into wholly uneconomic development in an effort to preserve its fishing industry. At that stage the intruders, having reduced the productivity of the area to a level below that necessary for their own profitable operation, could move to fresh areas, leaving the coastal State with a thoroughly depleted unremunerative fishery. Nor was it any answer to say that the economics were the same for all States, coastal or otherwise, for the logical conclusion of that line of reasoning would be that the nationals of every State should fish off any coast other than their own.

21. Serious consideration should therefore be given to the proposal that a coastal State should have the right unilaterally to adopt and enforce against fishing vessels of all States in a belt of the high seas of a specified breadth adjacent to its exclusive fishery zone whatever measures were necessary to put a stop to overexploitation. Such measures need not injure the real interests of other States, for safeguards could be formulated to protect non-coastal States. Article 55, indeed, specifically provided that no conservation measures might discriminate against foreign fishermen.

22. On the other hand, articles 54, 55 and 56 in their existing form failed to give adequate protection to a coastal State, or even to non-coastal State, since they were based purely on biological considerations and were not backed by any sanctions. It was true the basis on which many of the existing conventions on the regulation of fisheries were founded was biological. But adequate biological evidence generally took a long time to collect and, even when it had been accumulated, its interpretation was or might be difficult. Even when conventions had been accepted, some of the parties to them might have difficulty in enforcing their provisions. He suggested, therefore, that a coastal State should have authority, backed by the necessary sanctions, to enforce within a belt of sea of moderate width adjacent to its own waters regulations which had been accepted in conventions to which that State was a party. Such a decision would provide only partial amelioration of the present unsatisfactory position and might give rise to certain difficulties, but it had the advantage of being immediately applicable, of ensuring that conservation measures already agreed were fully enforced, and of being non-discriminatory.

23. Articles 51, 52 and 53 were likewise deficient in that they were based purely on biological factors and that there was no means of enforcing them.

24. With regard to articles 57 and 59, his delegation had no objection in principle to the adoption of arbitration measures, but felt that some modification of the procedure proposed in those articles might be desirable.

25. Mr. MELO LECAROS (Chile) reminded the Committee that the purpose of the Conference, as defined by the General Assembly, was not simply to codify already existing and accepted rules, but to participate in the progressive development of international law and to legislate on matters which lay outside the strictly juridical sphere, in such a way as to safeguard existing legitimate interests in the sea.

26. His delegation believed that on the discussions in the Third Committee and on the decisions reached by it might depend the success or failure of the greatest effort ever made to reach general agreement on the régime of the sea. The truth of that statement could be demonstrated by a brief review of the work of the other committees.

27. The First Committee was required to study the draft articles relating to the territorial sea. But, before agreement could be reached on them, it was essential to solve many specific problems connected with an extension of the territorial sea. The necessity of proceeding in that manner had been appreciated by the First Committee, which, like the Conference for the Codification of International Law held at The Hague in 1930, had asked for a postponement of a decision on that point.

28. The First Committee would also be examining the draft article on the contiguous zone, which might, as the United Kingdom and United States representatives had suggested in the First Committee, be the key to the solution of the entire problem. But it should be remembered that The Hague Conference had failed precisely because it had refused to adopt the idea of the contiguous zone. The position in which the present conference found itself was much the same, with one difference only, that it was required not only to codify existing principles, but to establish new principles to deal with new problems.

29. The Second Committee's task was to examine the articles relating to the high seas, in which the freedom of the high seas had been defined in much more absolute terms than could be applied to the freedom of fishing. The strict definition proposed would be unacceptable unless provision was at the same time made to restrict the freedom of fishing within its true limits. The origin of the freedom of fishing was quite different from that of the right of navigation ; and, if the latter was not absolute but was subject to exceptions, there was all the more reason why exceptions should be applied in the case of the former, particularly when it was remembered that the success of the Conference might depend on them.

30. In the Fourth Committee, which dealt with the articles relating to the continental shelf, the generally accepted view was that the waters superjacent to the shelf should be subject to the high seas régime. On the other hand, some countries with an adjacent continental shelf had claimed a special régime for the waters superjacent to it, so that they could regulate fishing and adopt measures for the conservation of the living resources of the sea. It was clear, therefore, that the agreements reached by the Third Committee would have a decisive influence on any resolutions which the Fourth Committee might adopt.

31. Turning to articles 49 to 60, he said that his country's general attitude to their provisions was well known. In 1947, Chile had claimed sovereignty over a 200-mile zone with the object of conserving the natural resources of the sea. That claim had been based on a similar declaration made by the President of the United States, Mr. Truman, in 1945. In 1952, Chile had signed a joint declaration with Ecuador and Peru, having the same end in view, and Costa Rica had subscribed to it later.

Those documents set forth the main aspirations of his country, which could be summed up as consisting of the special right of a State to exploit natural resources, regulate fishing and adopt methods for conserving the living resources of the sea in a zone adjacent to its territorial sea. In support of that claim he would ask whether other countries would be prepared to look on with indifference while foreign fleets, sometimes of no well-defined nationality, exploited a form of natural wealth which constituted an essential source of food for people valiantly struggling to secure even a modest existence.

32. The importance of fisheries to Chile was evident having regard to its geographical position. Some two-thirds of its total area was either mountainous or desert and only one-third was cultivable. Great efforts would be made to increase agricultural production, but it was unlikely that the increase would keep pace with the growth in the population. According to statistics published by the Food and Agriculture Organization of the United Nations, 3.2 metric tons of fish per thousand inhabitants were being landed in the country, which was the eighth in the world in regard to the quantity of fish caught per inhabitant.

33. The choice of the 200-mile limit in 1947 had not been at all fortuitous. It had been based on a serious study on the effects of the Humbolt current, the outer fringe of which lay about 200 miles from the Chilean coast. The scientific arguments in support of his country's case had been brilliantly expounded by the representative of Peru, who had demonstrated the need for protecting the biological complex, which experts described as the " bioma ". Some delegations had argued that protection should be confined to one or more individual species. On the other hand, there was no essential contradiction between the view that all species should be protected or that some should be protected, and the protection of the " bioma " did not exclude the simultaneous conservation of a migratory species. The essential point was that the resources of the sea should be protected. Arguments in favour of the freedom of fishing had been based on the inexhaustibility of those resources, but they were no longer valid.

34. His country had been particularly interested in one of the resolutions adopted by the third meeting of the Inter-American Council of Jurists, held in Mexico in 1956, which attributed to a coastal State the right to adopt measures of conservation to protect the living resources of the sea adjacent to its coast. Efforts had been made to under-estimate the value of that resolution, but he would ask how delegations which quoted Gidel and other legal authorities could overlook the considered opinion of distinguished representatives of the American legal world.

35. At the Inter-American Specialized Conference on Conservation of Natural Resources held in the same year it had been recognized that a coastal State had a special interest in conservation, but later it had been stated that there was no agreement on the nature or the scope of that special interest. It was obvious that, on a resolution designed for unanimous adoption, there could be no agreement if any State dissented, but there was no doubt that Latin-American legal experts had developed a principle which was now being applied throughout the world. If that had been understood in good time, there would in all probability have been no need to summon the present conference, and agreement would have been reached on the law of the sea in more favourable circumstances during the eleventh session of the General Assembly.

36. Finally, he pointed out that the International Law Commission had virtually put the coastal State on the same footing as a State protecting the interests of its fishing companies, since the former was only permitted to adopt measures of conservation if no agreement had been reached with any other interested State. That meant that the right to take conservation measures would rest in the first place with the latter State, while the State that would suffer most directly from predatory action was only allowed to play a passive and subsidiary role. In his delegation's view, that provision was unjust and resembled the open-door policy whereby the supervision of lunatics was entrusted to the lunatics themselves. Only a coastal State was in a position to adopt a prudent conservation policy untainted by the motive of profit.

The meeting rose at 4.30 p.m.

ELEVENTH MEETING

Wednesday, 19 March 1958, at 3.20 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

General debate (continued)

STATEMENTS BY MR. QURESHI (PAKISTAN), MR. OLAFSSON (ICELAND), MR. GOHAR (UNITED ARAB REPUBLIC), MR. TREJOS FLORES (COSTA RICA) AND MR. GONÇALVES (BRAZIL)

1. Mr. QURESHI (Pakistan) said that, notwithstanding his country's vital interest as a coastal State in marine fisheries, his Government firmly believed in the freedom of the high seas, and did not see how the best interests of mankind could be served by drawing imaginary lines in the ocean. Proclamations of artificial controls over the sea might satisfy man's desire for appropriation, but could not appease the appetite of the ever-increasing millions of mouths which had an equal right to participate in the wealth of the ocean. Fish was by nature both perishable and renewable, and humanity would be deprived of valuable protein if restrictions were imposed before there was a genuine need for them.

2. The normal aim of commercial fishing was to derive the maximum sustainable yield, but that was not synonymous with keeping stocks at their highest level. While it was true that fishing depleted stocks below their natural maximum, it was equally true that it simultaneously diminished competition for food and permitted a vast rate of growth for the remaining stock. A well-fished stock, as distinct from an over-fished one, had a lower proportion of old and slow-growing fish which were a