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Summary Records of the
11th to 15th Meetings of the Fourth Committee

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32. According to article 68, the coastal State exercised sovereign rights for the purpose of exploring and exploiting the natural resources of the continental shelf. The International Law Commission had thought it necessary in article 69 to safeguard the freedom of the superjacent waters and the air space above them. However, the sovereign rights of the coastal State over the continental shelf were not in conflict with the principle of the freedom of the superjacent waters or of the air space above them, since, according to the definition in article 67, the continental shelf included the seabed and subsoil of submarine areas alone. His delegation did not believe that any misunderstanding was possible on that point. It fully supported the freedom of the high seas in the interests of the international community, and more especially in the interests of scientific research and the conservation of the living resources of the sea. If article 68 were made more specific by the addition of some such phrase as " safeguarding the freedom of the superjacent waters ", he felt that article 69 would become superfluous.

33. He agreed with the provisions of article 70, but felt that it would be better to find some more precise form for the notion of " reasonable measures ", which would tend to give rise to disputes.

34. His delegation would prefer to see a specific maximum limit for safety zones stipulated in the text of article 71.

35. With regard to article 72, he considered that the delimitation of the continental shelf between States adjacent to or opposite each other should take account of the geographical configuration of the region, and that considerable flexibility would have to be used in applying that article.

36. Mr. GROS (France) said that the Fourth Committee was fortunate in two respects : first, that it had only seven articles to consider ; and secondly, that it had the opportunity of legislating in a field not previously regulated by international law. To legislate in international law meant reaching agreement between governments, since there was no international parliament other than that provided by diplomatic conferences. Nevertheless, it required the same virtues of self-restraint and fairness in resolving legitimate interests as did legislating in any democratic State. It was in that spirit that he proposed to examine the general problems presented by the seven articles on the continental shelf.

37. The first question was that of the recognition of the concept of the continental shelf. The best way of persuading those who were reluctant to accept that concept was to show them what the legal regulation of the continental shelf would mean in practical terms. If the Committee could agree on the rules of a convention, he thought that it might have no difficulty in developing from them a definition of the principle of law to set at the head of the convention. If that view were accepted, he suggested that the following problems would have to be solved. First, the question of whether all the resources of the continental shelf were to be exploited, or merely those of its seabed and subsoil to the exclusion of the superjacent waters. Secondly, who was to enjoy the rights of exploitation ; the coastal State, the international community or the first comer? Thirdly, what were the nature and extent of the rights necessary for exploitation? If that issue were first considered, the knotty problem of choosing between full sovereignty and restricted rights might solve itself. Fourthly, what adjustment might be required to existing rules of international law in relation to neighbouring legal situations which might be affected by an international régime for the continental shelf? Such adjustment lay at the heart of the matter in in legislating in any domain, and would involve weighing the different interests of international navigation on the high seas and fishing in traditional waters.

38. It would be more fruitful to try to reach agreement on what should be the basis of a convention on the continental shelf, rather than to engage in repeated clashes of principle over each separate article. The outcome of such an approach might well be that the Committee, instead of finding itself divided into groups by mere verbal differences, might suddenly find itself able to co-operate in a joint creative achievement.

The meeting rose at 12.30 p.m.

ELEVENTH MEETING

Monday, 17 March 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. ZAORSKI (POLAND), MR. BELINSKY (BULGARIA), MR. LEE (REPUBLIC OF KOREA), MR. BUU-KINH (REPUBLIC OF VIET-NAM), MR. LIMA (EL SALVADOR), MR. GARCÍA AMADOR (CUBA) AND MR. OSMAN (INDONESIA)

1. Mr. ZAORSKI (Poland) said that the articles on the continental shelf, drafted by the International Law Commission, provided a satisfactory basis for the Fourth Committee's work. The fact that they had been included in part II of the draft, under the general heading of " High Seas ", implied that the régime proposed for the continental shelf formed part of the general régime of the high seas, and hence could not run counter to the principle of the freedom of the high seas ; accordingly, the coastal State, in exercising its rights over the continental shelf, could not infringe that principle.

2. Viewed from that angle, the wording of article 68 was too broad, since it did not clearly specify that the sovereign rights of the coastal State over the continental shelf did not extend to bottom fish or to other marine organisms, such as *crustacea,* which had no permanent association with the seabed and moved about freely during certain periods of their lives. Whereas the position concerning bottom fish was defined in paragraph 3 of the International Law Commission's commentary on article 68, that concerning *crustacea* was left open. The problem of the physical and biological association with the seabed of living marine species was a highly complex one, as was clear from the document on that subject submitted by the secretariat of the Food and Agriculture Organization (FAO) (A/CONF.13/13). For

those reasons, the Polish delegation felt that any proposals intended to provide a clearer definition of the rights of coastal States in article 68 would merit careful consideration.

3. Several delegations had expressed doubts about article 73, which laid down the procedure to be followed in the event of disputes concerning the interpretation or application of the rules relating to the continental shelf. The problem of the settlement of disputes lay outside the scope of the International Law Commission's draft. The Polish delegation believed that the general principles of peaceful settlement of international disputes, and especially Article 33 of the Charter of the United Nations, should apply.

4. Given the importance of co-ordinating the decisions taken on the continental shelf with other decisions of the Conference, it would be advisable for the Committee to hold joint meetings with other committees, especially the Third Committee (fishing and the conservation of the living resources of the sea).

5. Mr. BELINSKY (Bulgaria) observed that in the changed circumstances which had obtained since the second world war it was extremely important that the rules which had governed the law of the sea in the past should give place to new ones answering to the requirements of the modern world. The articles drafted by the International Law Commission, despite certain shortcomings, were a welcome step in that direction.

6. The rapid technical progress of recent years had made it necessary to draw up rules for the exploitation of submarine areas beyond the territorial sea proper in such a way as to eliminate the possibility of conflict between coastal and other States. The system proposed by the International Law Commission met that most important condition. The Bulgarian delegation strongly supported the concept of the sovereign rights of the coastal State over its continental shelf; without that concept, the International Law Commission's text would lose its meaning and its legal foundation. However, in order to avoid all risk of subsequent disagreement, the Fourth Committee would be well advised to give careful attention to the precise definition of the continental shelf.

7. With regard to the exploitation of the continental shelf, the Bulgarian delegation accepted the International Law Commission's proposals, but wished to emphasize that the continental shelf should not be used for military purposes, such as the erection of military bases or installations aimed at the safety of other States.

8. Finally, the Bulgarian delegation could not agree to the principle of the compulsory jurisdiction of the International Court of Justice, provided for in article 73. Such jurisdiction would, in many cases, take on a legislative character, since the International Court would have the right to create compulsory rules and impose them on sovereign States, contrary to article 36 of its Statute, which established the principle of optional jurisdiction. The disputes envisaged in article 73 would relate to international rules of very recent origin and it would therefore be impossible to solve them on the basis of customary international law. In those circumstances, it would be more correct if any such disputes were settled by the procedure provided for in the Charter of the United Nations, and the Bulgarian delegation would support the proposal of the delegation of Argentina to that effect (A/CONF.13/C.4/L.51).

9. Mr. LEE (Republic of Korea), while recognizing the great value of the principle of the freedom of the high seas and the service it had rendered to mankind, felt that it required some adaptation to modern conditions, particularly in the interests of the smaller maritime nations. The use of the term "sovereign rights" in article 68, which defined the relationship between the coastal State and its continental shelf, represented a justifiable and realistic modification of the principle of the freedom of the high seas along those lines. The delegation of the Republic of Korea also preferred the term "natural resources" to "mineral resources", proposed by certain other delegations, which would exclude from the sovereign rights of the coastal State that of the exploitation of living resources attached to the seabed. The suggestion that the term "natural resources" should be extended to include so-called bottom fish and other fish which, although living in the sea, occasionally had their habitat at the bottom of the sea or bred there, put forward by the delegation of Burma (A/CONF.13/C.4/L.3) and some Latin-American delegations, also deserved sympathetic consideration.

10. With regard to the definition of the continental shelf given in article 67, the representative of China had rightly pointed out at the 4th meeting that the two criteria proposed were inconsistent with each other, so that one of them was redundant. A further important point, made by the representative of Ghana at the Committee's 7th meeting, was that the choice of a depth of 200 metres might operate to the disadvantage of certain coastal States which possessed a very narrow continental shelf because of the sharp declivity of the seabed near the shore. Furthermore, the memorandum submitted by the Secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO), on "Scientific Considerations Relating to the Continental Shelf" (A/CONF.13/2), explained that geological and oceanographic knowledge of the continental shelf was not yet sufficiently complete to provide a satisfactory basis for rules of international law. It was therefore impossible to fix a uniform limit of the continental shelf in terms of depth.

11. As to article 73, he doubted the advisability of laying down a compulsory procedure for the settlement of international disputes. Various measures for the peaceful settlement of international disputes were laid down in current international law and treaties, particularly in article 33 of the Charter of the United Nations. It was illogical to provide for compulsory jurisdiction in the event of disputes concerning the continental shelf when no such provision was made for disputes concerning the still more controversial subject of the territorial sea. Moreover, article 36 of the Statute of the International Court of Justice specified the optional nature of that body's jurisdiction.

12. The provision that a dispute could be submitted to the International Court at the request of any of the parties might offer an unfair advantage to States wishing to curtail the sovereign rights of others. On the other hand, if a State refused the request of another State to refer a dispute to the International Court, or was not

prepared to abide by the latter's decision, a serious situation might arise. For all those reasons, his delegation believed that article 73 should be amended and was prepared to consider the Argentine proposal on that subject.

13. Mr. BUU-KINH (Republic of Viet-Nam) said that the principal problem arising in connexion with the continental shelf was that of reconciling the traditional concept of the sea as a means of communication with the new one which saw the sea as a treasure-house of exploitable wealth. The International Law Commission had acquitted itself well of its task, and his delegation was prepared to accept the general principles set forth in the articles under consideration.

14. But in its desire to accommodate conflicting viewpoints the Commission had adopted certain vague views which might lend themselves to misinterpretation. For example, the criterion of possible exploitation introduced into the definition of the continental shelf in article 67 contained the seeds of uncertainty; modern technical progress was so rapid that it would be difficult to state at any time where the outward limit of the continental shelf lay. His delegation would prefer to see the criterion of depth alone retained, particularly as the waters off its own shores were relatively shallow and did not reach a depth of 200 metres for more than 200 miles.

15. With regard to the term " sovereign rights " used in article 68, he observed that the Commission's intention had doubtless been to indicate that the rights concerned were exclusive in the sense that no other State could explore or exploit the natural resources of the continental shelf of a coastal State without the latter's consent. In the interests of clarity, that point should be specified in the text.

16. Interesting as it was, the proposal submitted by the Federal Republic of Germany (A/CONF.13/C.4/L.1) created serious problems. A practical difficulty was that in most cases the exploitation of the continental shelf would necessitate the erection of installations on the territory of the coastal State, and might — particularly where the extraction of petroleum was concerned — interfere with deposits within that territory. Both legally and politically, the presence of installations belonging to a foreign State would constitute a constant threat to the security of the coastal State, for it should be remembered that the exploitation of the continental shelf by States other than the coastal State was not precluded, provided due consent was forthcoming. It would be unrealistic to imagine that States which possessed the means of exploiting the natural resources of the continental shelf could be prevented from doing so. The best course, therefore, was to regulate the matter as equitably and as clearly as possible, in order to avoid possible abuses.

17. His delegation supported the suggestion that appropriate technical or financial assistance should be offered to economically under-developed States, either by intergovernmental or by non-governmental organizations, with the object of enabling them to explore and exploit their continental shelf.

18. The concept of the continental shelf was not incompatible with that of the freedom of the high seas provided the rights of coastal States were clearly delimitated. Subject to that reservation, the delegation of the Republic of Viet-Nam would support the creation of the new legal principle of the continental shelf.

19. Mr. LIMA (El Salvador) said that, if the Conference succeeded in reaching agreement on the rules referred to the Fourth Committee, it might go down in history as having given legal sanction to the new concept of the continental shelf.

20. There appeared to be some disparity between the rights awarded over the continental shelf to the coastal State and the rights claimed by coastal States over other sea areas. The rights recognized by the International Law Commission's draft would lead to the curtailment of certain freedoms traditionally accepted in international law as immutable principles. Yet it was hardly logical to grant the coastal State exclusive rights over the continental shelf outside its territorial sea, which might interfere with navigation if exploitation were carried on from the surface, and at the same time to deny it exclusive rights over fishing and over the conservation of the natural resources in those same waters. El Salvador therefore accepted the rights of the coastal State, not only over the continental shelf, but also over an exclusive fishing zone, and its rights to regulate the conservation of natural resources in zones of the high seas adjacent to that exclusive fishing zone, in the conviction that that view constituted recognition of the legal unity of different aspects of the law of the sea. Article 7 of the Constitution of El Salvador of 1950 declared that the continental shelf was part of its territory, and that its sovereignty over the continental shelf was therefore identical with its sovereignty over its land domain and territorial sea. His delegation would accordingly support any amendment of article 68 in that sense, and was in agreement with the views expressed by the representatives of Mexico and Chile at the 9th meeting.

21. Some delegations had expressed the view that the International Law Commission had introduced two criteria into article 67 — namely the criterion of depth and that of possible exploitation — but a study of the records of the Commission's eighth session[1] showed that, although the definition had originally had a geological basis, it had given way to the criterion of possible exploitation, and that the 200-metre line itself was based on the criterion of possible exploitation, since that depth was considered the maximum present limit thereof, and might conceivably remain the limit for some time.

22. The Commission's same records also showed that the term " submarine areas " had been used in article 67 in order to make it plain that the concept of the continental shelf underlying articles 67 to 73 was not based solely on geological considerations. He believed that the submarine areas adjacent to the coast which were susceptible of exploitation formed part of the territory of the coastal State regardless of their geological configuration. In other words, the continental slope should be included, since the coastal State was master of the whole continental base. El Salvador accordingly supported the criterion of possible exploitation, and not that of the 200-metre line, which lent itself to confusion with the geological aspect.

[1] *Yearbook of the International Law Commission, 1956*, Vol. I (A/CN.4/SER.A/1956).

23. When the definition of natural resources had been under discussion by the International Law Commission, Mr. Padilla Nervo had argued that the criterion of immobility and permanent attachment to the seabed was not in itself sufficient to decide whether or not a particular marine species belonged to the continental shelf, and that the only basis for the legal determination of the status of such species would be its physiological and biological dependence on the seabed for elements vital to its existence. He had suggested that a suitable definition might be "The marine, animal and vegetable species which live in constant physical and biological relationship with the bed of the continental shelf."[1] That definition would exclude bottom fish. In fact, the International Law Commission had never reached a conclusion on the definition of natural resources. El Salvador believed that limitation of the definition to sedentary species permanently attached to the seabed of the continental shelf would make it too narrow, and he agreed with the wider interpretation proposed by the representative of Mexico at the 9th meeting, and would support an amendment in that sense. He also referred to FAO's paper on the nature of the association of living resources of the continental shelf with the seabed of the shelf (A/CONF.13/13), which provided a basis for a clear definition of which living resources belonged, for biological reasons, to the continental shelf and were therefore the exclusive property of the coastal State. That document, together with the findings of the First Committee of the Inter-American Specialized Conference, hold at Ciudad Trujillo in 1956, provided grounds for the rights of the coastal State over the benthonic species of the continental shelf.

24. Mr. GARCÍA AMADOR (Cuba) said that for his country the problem under consideration was an academic one, since its continental shelf lay entirely under internal waters and the territorial sea, so that his delegation was able to view the matter objectively. Believing that the International Law Commission's draft was based on the current development of international law, he would confine himself to commenting on some of the proposals put forward by other delegations.

25. Although that of the Federal Republic of Germany (A/CONF.13/C.4/L.1) had some theoretical merit, it was inconsistent with the modern political, economic and legal realities which lay at the basis of the International Law Commission's recognition of the exclusive right of the coastal State to explore and exploit its submarine areas. The national claims to the continental shelf made since 1942 had been acquiesced in by other States, and had thus become accepted international practice.

26. Both France (A/CONF.13/C.4/L.7) and the Lebanon (A/CONF.13/C.4/L.8) proposed that the final clause relating to possible exploitation be deleted from the text of article 67. The clause in question was the outcome of the consideration of a series of amendments and consultations, and reflected the widest measure of agreement possible. The criterion of possible exploitation had been accepted by the International Law Commission in 1951, dropped in 1953 and taken up again in 1956 in view of the unanimous resolution passed at the Inter-American specialized Conference held at Ciudad Trujillo. The International Law Commission's text had both a moral and a legal basis in that it covered the needs both of countries with a continental shelf and of those whose adjacent submarine areas did not meet the currently accepted definition of the continental shelf but were nevertheless rich, exploitable areas. He knew that the representative of Chile would appreciate that point, since Chile's was one of the special cases brought to the attention of the International Law Commission. Coral reefs off the coast of Chile were exploited to depths of up to 1,000 metres, and could not therefore be considered as part of the continental shelf in the accepted geological sense. Nevertheless, it was only right that such cases should be taken into account, and the criterion of possible exploitation had been accepted with the object of doing justice to all States. His delegation would prefer to see the clause retained.

27. He thought that the proposal by Panama (A/CONF.13/C.4/L.4) would be acceptable subject to certain drafting changes.

28. Articles 68 and 69 were the only two which had provoked general discussion. The International Law Commission had explained in paragraph 2 of its commentary to article 68 that the wording was intended to avert any infringement of the principle of the freedom of the superjacent sea and the air space above it. The Commission had therefore recognized the rights of the coastal State for the purpose of exploring and exploiting the natural resources of the continental shelf; in other words, the rights conferred were strictly limited, and not rights resulting from an extension of full territorial sovereignty. They were exclusive in the sense that if they were not exercised, no other State could exercise them without the coastal State's consent. Despite the clarity of the definition, some statements made in the debate showed that there was a tendency to recognize the full sovereignty of the coastal State over the continental shelf and so extend to those submarine areas the territorial sovereignty of the coastal State, with all its legal and political consequences. The proposals by Mexico (A/CONF.13/C.4/L.2) and Argentina (A/CONF.13/C.4/L.6) were based on that point of view, and indirectly raised the basic problem of the legal status of the superjacent waters, to which article 69 referred.

29. One theory relating to the superjacent waters was that of the epicontinental sea, which had been referred to, among others, by the representative of Uruguay at the 4th meeting. Claims concerning the epicontinental sea had not been favourably received, even in the regions from which the proposals had emanated. Earlier international conferences had shown that there were two ways of presenting the theory of the epicontinental sea. The first was to extend territorial sovereignty to submarine areas and then claim that the superjacent waters and the air space above them had the same status as the air space above the land domain. The wording of the Argentine amendments to articles 69 and 71 were very significant in that connexion, particularly because the new wording proposed for article 71 referred to interference with navigation, but not to interference with fishing or the conservation of

[1] *Ibid*, p. 142, para. 93.

the living resources of the sea, as in the International Law Commission's draft. The effect of accepting that amendment would be to modify the legal status of the superjacent waters with regard to fishing and conservation of the living resources.

30. The second approach was to subsume under natural resources, not only sedentary species, but also other living resources associated to varying degrees with the continental shelf; it had been followed by the delegation of Burma in its amendment (A/CONF.13/C.4/L.3) and by the representative of Mexico in his statement at the 9th meeting. The latter had referred to the working party set up by the Ciudad Trujillo Conference, but had not fully reported its findings, which included the statement that some species could belong to different categories at different stages of their life cycle. Any attempt to go beyond the well-defined category of the sedentary species led into an extremely complex world of greatly varied habits and types of movement. The representative of Mexico had mentioned the shrimp as a member of the natural resources of the continental shelf because it had been classified as a benthonic species; yet the shrimp was not only capable of movement, but could leave the continental shelf and live away from it.

31. Neither was the fact that a species might be in relation with the continental shelf at the time when fishing was being carried on a suitable criterion; the important question was the relative degree of association with the seabed.

32. Reference to UNESCO's report on the definition of the continental shelf (A/CONF.13/2) showed that the International Law Commission's draft had great merits, since it avoided the pitfall of recognizing sovereignty over areas of the seas about whose topography and exact extent there was no complete information. It was a more practical solution to stick to the 200-metre line and, in order to avoid the unfortunate consequences he had outlined earlier, to restrict the rights of the coastal State to those required for the purposes of exploring and exploiting the natural resources of the continental shelf. The Conference would have to devise a more exact criterion for defining the living resources of the continental shelf than that of mere ecological association, and a more objective criterion than one based on the requirements of fisheries.

33. He therefore fully supported the International Law Commission's approach, as more likely to lead to a lasting solution, though he would listen with interest to any proposals not likely to extend the definition of the natural resources of the continental shelf to almost all known marine species.

34. Mr. OSMAN (Indonesia) remarked that a conference of plenipotentiaries was not in a position to criticise the work of highly-qualified scientists, on the basis of which the International Law Commission had adopted the definition of the continental shelf given in article 67, which to a great extent would be acceptable to his delegation.

35. With regard to the legal status of the continental shelf in relation to the high seas, it should be remembered that the principle of the freedom of the high seas had won international recognition at a time when navigation and fishery had been the only means of exploiting the sea. The technical advances of the modern age made it necessary to impose certain limitations on that principle. That attitude was clearly reflected in the United States proclamation of 1945 and other developments of international law.

36. The concept of the continental shelf was based upon general principles of law which served the existing needs of the international community. Even if a coastal State was technically unable to exploit the natural resources of its continental shelf, or was unwilling to do so, it should nevertheless exercise control and jurisdiction over them down to the depth which could be exploited by the most advanced technical means. The Indonesian delegation could not agree to the suggestion that the exploitation of the natural resources of the continental shelf should be placed under the control of an international body rather than that of the coastal State, since under prevailing conditions such a solution would meet with insuperable difficulties. If a form of internationalization were introduced in future, the sovereign rights of the coastal State should be fully safeguarded, because the coastal State was in the best position to compile scientific data relating to the continental shelf off its shores.

37. Referring to the statement made by the representative of the Philippines at the 6th meeting that article 67 could not apply to the island shelves of an archipelago forming a continuous submarine platform around the perimeter of the archipelago and linking all its islands, islets, shoals and rocks, he urged the Committee to give consideration to that argument. He endorsed the use of the terms " sovereign rights " and " natural resources " in article 68, and shared the view of a number of other representatives that the latter term should be understood to include living resources as well as mineral resources.

The meeting rose at 1.15 p.m.

TWELFTH MEETING

Wednesday, 19 March 1958, at 10.50 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. GÓMEZ ROBLEDO (MEXICO), MR. GOHAR (UNITED ARAB REPUBLIC), MR. JONSSON (ICELAND), MR. BAILEY (AUSTRALIA), MR. O'SULLIVAN (IRELAND), MR. CARTY (CANADA) AND MR. MÜNCH (FEDERAL REPUBLIC OF GERMANY)

1. Mr. GÓMEZ ROBLEDO (Mexico), referring to a statement made by the representative of the United States of America at the 10th meeting with reference to his (Mr. Gómez Robledo's) statement at the 9th meeting, quoted extensively from the Submerged Lands Act of the United States of America, passed on 22 May 1953.

Title I, section 2, paragraph (*e*) of the Act contained a definition of natural resources, which included not only those marine organisms which were permanently associated with the seabed, but also those whose association with the seabed was less permanent. Title II, section 9, confirmed the jurisdiction and control of the United States of America over the natural resources of the continental shelf. Although he had no intention of attempting to interpret the domestic legislation of a foreign State, he felt that he had been justified in saying that United States experts included living marine organisms among the natural resources of the continental shelf. That remark, however, had been made purely as an illustration, and in no way affected the position of the Mexican delegation as stated at the ninth meeting.

2. Mr. GOHAR (United Arab Republic) said that he spoke, not as a jurist, but as a marine biologist, and would therefore not dwell on the legal aspects of the articles under discussion. The continental shelf was not an arbitrary delimitation, as was the territorial sea, but a natural feature, and before a sound legal system could be devised for such a domain a clear understanding of its origin and scientific characteristics was necessary.

3. It was generally accepted that the continental shelf was the result of denudation of the mainland by ocean waves and currents in remote geological periods, especially the Ice Age, when the sea level had been from 100 to 300 metres lower than it was today. In some places, the shelf might also have been formed by silt brought down by rivers, winds and so forth. In any event, the continental shelf must be regarded as an integral part of the land domain that had subsequently been covered by the sea.

4. The memorandum prepared by the secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/2) provided an excellent basis for an understanding of the scientific features of the continental shelf. In that memorandum, it was made clear that it was in some cases difficult or impossible to delimit the continental shelf by geological criteria. The shelf was formed by an increase in the depth of the sea bottom, often as a gentle slope the angle of which suddenly became steeper, the point of transition from the gentle to the steep portions constituting the end of the continental shelf and the steep part being known as the continental slope. However, the depth of the edge of the continental shelf might vary from less than 100 metres to more than 300 metres, and the figure of 200 metres stipulated in article 67 was an approximate round figure, not an average. It followed that depth alone was not a suitable criterion for defining the shelf.

5. The line of demarcation should be drawn where there was a marked change in the declivity. However, that point might be obscured in a number of ways ; in river deltas, for example, by the deposition of silt, in other cases by indentations penetrating for varying distances into the shelf. The shelf might extend for several hundred, or for only a few kilometres, from the coast, or it might be absent altogether. It could be fairly flat or studded with submarine hills or traversed by channels or trenches, sometimes of great depth, which might completely cut off part of the shelf rising from the sea bottom. It was doubtful whether such cases could reasonably be accommodated in a definition of the continental shelf, and their inclusion might give rise to controversy. There were also island shelves, comparable to the continental shelf, which should have the same status as the latter. There was a need for more marine surveys and detailed charts of the configuration of the sea bottom, especially in the less developed parts of the world.

6. The criterion of possible exploitation laid down in article 67 showed praiseworthy flexibility on the part of the International Law Commission in appreciating the effects of technological development, but it might necessitate frequent revision of the boundary line in order to keep pace with further technological advances. It was already possible to drill economically for oil from floating installations down to a depth of 100 metres, and recent advances would soon make it possible to do so at 200 or 300 metres. At one time it had not been thought possible to fish commercially below a depth of 200 metres, but much greater depths were now practicable.

7. The United Arab Republic supported the view that the sovereignty of the coastal State over its continental shelf implied an extension of its territory, and believed that consideration should be given to the desire of countries without a continental shelf to have sovereign rights over the adjacent part of the seabed, whatever its depth, for the purposes of exploitation.

8. Some speakers had denied the sovereign rights of the coastal State over its continental shelf. He wished to propose a solution — and he emphasized that it would in no way constitute an interference with the freedom of the high seas — that might appear simple, but which scrutiny might prove to solve many of the problems involved. The proposal was that the coastal State should be awarded sovereign rights only over the seabed and subsoil in a belt of sea of fixed breadth beyond its territorial sea, regardless of the depth or configuration of the sea bottom.

9. The first advantage of that solution was that the difficult, indeed, in some cases impossible, task of defining the continental shelf would become unnecessary. In the second place, the solution would limit the extent of the seabed brought under the sovereignty of the coastal State, and in cases where the continental shelf was very extensive some part of it would be left open to international exploitation. Thirdly, the solution would meet the needs of countries without a continental shelf and spur them on to develop the necessary processes which would enable them to exploit the deep waters off their shores. Fourthly, the definition he proposed did not depend on the depth of exploitation feasible at any given period, and would thus be unaffected by any technological improvements. It should be left to the Committee to decide the extent of the fixed belt of sea. The method of delimitation between neighbouring States could be that adopted for the territorial sea.

10. His delegation was satisfied with article 68 as it stood, and emphasized that natural resources should subsume both mineral resources and living resources. The coastal State should have the exclusive right to exploit and conserve benthonic organisms, both animal and vegetable, living on or closely associated with the sea bottom in the zone. Those organisms should include both fixed organisms — such as algae, coral, sponges

and oysters — and benthonic organisms — such as sea-urchins, soles, skates, rays, cuttlefish, etc.

11. With regard to article 71, the vagueness of the expressions " unjustifiable interference " in paragraph 1 and " reasonable distance " in paragraph 2 had been criticized. He felt that the International Law Commission could not have been expected to give an exact definition of the conditions required in those circumstances, but thought that provision might be made for a meeting of experts in the exploitation of natural resources and in navigation, who might be able to draft more specific requirements.

12. His delegation advocated the freedom of scientific research, provided that the results were published and that the coastal State was informed of the nature, plans and progress of the research to be carried out in its territorial sea or continental shelf zone ; indeed, it would be preferable to invite the coastal State to take part in the research.

13. Mr. JONSSON (Iceland) said that his delegation had no objection to the granting to the coastal State of rights over petroleum deposits, minerals and the so-called sedentary fisheries of the continental shelf, but saw no reason why those rights should be so limited. In paragraph 3 of its commentary to article 68, the International Law Commission stated that the rights excluded bottom-fish and other fish that occasionally had their habitat on the sea bottom, or bred there. His government had objected to that view on several occasions. Iceland had a continental shelf which contained none of the resources referred to in the draft articles, but was none the less intimately related to the living resources which formed the foundation of his country's economy, namely the coastal fisheries. Iceland was a barren country surrounded by rich fishing grounds. It had a well-defined continental shelf, following the coastline ; the nursery grounds were in shallow waters, and the spawning areas in the slightly deeper waters. Hence, it was the continental shelf that made bottom fishing possible.

14. The increasing concern about the depletion of fish stocks had caused an attempt to be made to reach international agreement on closing Faxa Bay, one of the most important nursery grounds in the north Atlantic, to trawling. That attempt had been unsuccessful, although the International Council for the Exploration of the Sea had unanimously recommended such a step as long ago as 1946.

15. After that failure to protect the over-fished stocks through international co-operation, a law had been passed in 1948 establishing zones within the limits of the continental shelf, and empowering the Minister of Fisheries to issue regulations for the protection of fish stocks ; and in 1950 and in 1952 such regulations had been issued closing all bays to trawling and seine fishing, and establishing a four-mile limit for the same purpose. Those regulations were intended to protect the nursery grounds of such species as the haddock, plaice and halibut, which had become classic examples in fisheries literature of over-fishing.

16. The results of those protective measures had been so encouraging that the recovery of the fish stocks was likely also to become a classical example in the technical literature. The over-fishing of plaice, for example, could be demonstrated by comparing the catch, expressed in hundredweights per hundred hours of trawling, of English trawlers for different periods. In those terms, the level had fallen between 1922 and 1937 from 56 to 18 cwt. After the respite of the second world war, the level rose again to 83.6 cwt in 1947, but by 1953 it had again fallen, to 26 cwt. In 1954, however, after the protective measures he had described had been put into effect, the level had begun to rise again, until in 1956 it had reached 61 cwt per hundred hours trawling.

17. There had also been an extraordinary rise in density within the protected areas. Inside Faxa Bay, the average catch in one hour of experimental trawling between 1922 and 1948 had been 22 kg, whereas in 1954-1957 it had been 185.4 kg. Tagging experiments showed that all such fish migrated from the bay once they had grown to a certain size. In other words, unilateral action by the coastal State had benefited thousands of foreign fishermen as well as the coastal State itself.

18. The continental shelf of Iceland formed the natural habitat for the coastal fish stocks which, with some exceptions, were stationary within the area. Hence, protective measures could well be applied to the whole area. The regulations promulgated in 1950 and 1952 must therefore be considered as a first step only, and would have to be applied outside the present fishery limit. As Iceland's economy was based on the living resources of the continental shelf, and fish and fish products accounted for 97% of the country's exports, the conservation of the fish stocks was of vital concern to the nation.

19. For the past ten years, Iceland had proceeded on the principle that the government was obliged to exercise jurisdiction and control over the fish resources of the superjacent waters of the continental shelf up to the distance from the coast necessary to safeguard those resources, so that they could be utilized as a source of food for the population. His government could not, therefore, accept the principle that the fish resources so intimately connected with the continental shelf could be separated from the natural resources of the shelf.

20. Mr. BAILEY (Australia) said that his delegation entirely supported the International Law Commission's draft articles, and considered that the régime proposed under section III for the continental shelf was sound, just and practical, and provided adequate safeguards for the freedom of the seas.

21. In paragraphs 25 and 26 of the report on its eighth session, the International Law Commission had stated that it was not possible to divide the articles into categories according to whether they represented the codification of existing international law or the progressive development of that law. He agreed that section III gave the law a precision and an elaboration which were new, but he referred to the conclusion reached in 1950 by Professor Lauterpacht, now a judge of the International Court of Justice, that at that time the right of appropriation of its adjacent submarine areas by the coastal State had become part of international law, by custom initiated by the leading maritime powers and acquiesced in by the generality of States. That conclusion had been at the basis of Australia's assertion of its rights over its continental shelf in the Governor-General's proclamation of 11 September 1953 (A/CONF.13/27,

part I, chapter I, section 2). There had been other similar declarations since then, the most recent of which had been made by Burma and Ceylon in 1957.

22. It would be seen that there was close conformity between the terms of the Australian proclamation and those of articles 68 and 69. Australia had asserted no sovereign rights over the waters above the continental shelf or over the airspace above them. There was Australian legislation regulating fishing for pelagic species in those waters, but it did not apply to foreigners, with the exception of the Pearl Fisheries Act of 1952-1953, which related only to sedentary species taken from the seabed of the continental shelf.

23. With regard to natural resources, his delegation supported the International Law Commission's view. The reasons for recognizing the sovereign rights of the coastal State over the resources of the continental shelf were practical, and were described in paragraph 8 of the International Law Commission's commentary to article 68.

24. For practical purposes it was impossible to distinguish between the mineral resources of the shelf and the sedentary living organisms referred to by the Commission, and there was no more reason to make those organisms available for exploitation by all States than there was to apply such a principle to mineral resources. Practical considerations thus reinforced ancient and familiar legal principles, on the analogy of the rules of private law which attributed to the owner of the soil things affixed to it or growing in it or, in the case of submerged land, things found sedentary and in constant contact with it.

25. There had been considerable discussion of what biological resources should come within the sovereign authority of the coastal State. Paragraphs 3 and 4 of the International Law Commission's commentary to article 68 explained why the Commission had refrained from providing a definition of the natural resources of the continental shelf, confining itself to stating the principle upon which such a definition should be worked out and leaving the details to be settled in the light of further scientific study. That principle was that the living organisms of the sedentary species should be considered as belonging to the continental shelf, whereas bottom fish or demersal species should not. His delegation would accept that principle, subject to suitable elaboration.

26. He hoped that it would be possible during the second stage of the Committee's work to formulate a text which would be in harmony with the intention of the present draft of article 68 and would also provide a practical working definition making it clear which species were included and which were excluded. His delegation would make further comments on the individual articles at that later stage.

27. Mr. O'SULLIVAN (Ireland) expressed appreciation of the valuable work done by the International Law Commission in drafting the articles concerning the law of the sea. The Irish delegation was in substantial agreement with those relating to the continental shelf. The continental shelf surrounding Ireland being clearly defined and fairly broad at all points, the definition given in article 67 was, on the whole, acceptable to his delegation.

28. With regard to article 68, the statements of previous speakers showed that there were two schools of thought on the subject of the rights exercised by the coastal State over the continental shelf. According to the first, the coastal State should exercise complete territorial sovereignty over the shelf and any limitation of that sovereignty should be removed from the article; according to the second, the rights of the coastal State should be limited to jurisdiction and control over the continental shelf for the purpose of the exploration and exploitation of its natural resources, and the wording of the article should be amended to that effect.

29. While recognizing that many valid arguments could be advanced in favour of either of those views, the Irish delegation felt that the International Law Commission's text, based as it was on the traditional interpretation of the freedom of the high seas, represented the most suitable régime for the exploration and exploitation of the natural resources of the continental shelf. Full sovereignty over the continental shelf would inevitably result in infringements of the freedoms exercised in the superjacent waters and air-space. The Irish delegation did not share the doubts expressed by certain delegations about the use of the term " sovereign rights ", since the purposes to which those rights applied were clearly stated in article 68. It might be advisable, however, to incorporate in the text of the article the provision in paragraph 7 of the International Law Commission's commentary to article 67.

30. The Irish delegation endorsed the Commission's decision, taken at its fifth session, to use the term " natural resources " instead of " mineral resources ". An important Irish precedent of long standing existed in the matter of sedentary fisheries, and had been quoted by the Special Rapporteur to the International Law Commission in his Second Report on the High Seas (A/CN.4/42) in 1951. With regard to marine organisms which were not permanently attached to the seabed but might be held to be part of its natural resources by reason of their constant physical and biological relationship with it, the Irish delegation would follow with interest any further study of the scientific aspects of the problem. It fully supported article 69, but would give careful consideration to any suggestions intended to make articles 70 and 71 more precise, since it attached the utmost importance to the prevention of future disputes.

31. Mr. CARTY (Canada) observed that, although his country had not advanced any formal claim concerning its continental shelf, it had a particular interest in the matter because of its exceptionally long coastline. After referring to the decision taken by the General Assembly at its eighth session (General Assembly resolution 798 (VIII)) on an earlier draft relating to the continental shelf submitted by the International Law Commission in the report on its fifth session,[1] he said that the Canadian delegation accepted the principle that the rights of the coastal State over the continental shelf related only to the exploration and exploitation of its natural resources and must not prejudice the freedom of the high seas. Accordingly, the Canadian delegation was

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[1] See *Official Records of the General Assembly, Eighth Session, Supplement No. 9* (A/2456), chapter III, section II.

able to accept the provisions of articles 68 and 69 and, by a logical extension of the same line of reasoning, those of articles 70 and 71 as well. It also accepted articles 72 and 73, which provided machinery for the settlement of possible disputes, although, as some previous speakers had pointed out, difficulties might arise in the case of disputes of a technical nature.

32. Article 67, which defined the extent of the continental shelf, constituted the crux of the problem before the Committee. There were five possible methods of defining the continental shelf. The first would be to lay down an agreed distance from the coast in terms of miles or kilometres — a simple solution with the obvious advantage of according exactly the same treatment to every country, but bearing no real relationship to geographical or geological facts or to the realities of the situation with regard to exploitation. The second method would be to define the continental shelf by the geological characteristics of the seabed or by the type of aquatic inhabitants found there. That method had been considered and rejected by the authors of the memorandum submitted by the Secretariat of UNESCO (A/CONF. 13/2) on the grounds that the continental margins did not appear to have the same origin and consequently differed widely in structure and in the type of living organisms they supported. The third method would be to fix the limits of the continental shelf in terms of depth, the commonly suggested figure being 200 metres (100 fathoms). Convenient though that approach was, it failed to take into account certain natural geographical features which might occur beyond that depth. The fourth criterion, that of possible exploitation, was not sufficiently objective; moreover, technical and scientific knowledge was increasing so rapidly that a limit thus defined would tend to expand continuously, creating much uncertainty. The fifth and last possible method was to fix the boundary of the continental shelf at its actual edge in a geographical sense. The objection to that method might be that in some cases the physical edge of the shelf was not well defined; that difficulty, however, could be met by establishing an agreed depth in such cases.

33. Taken separately, none of the five criteria listed would provide a completely satisfactory definition of the continental shelf applicable to all cases; such a solution could only be provided by a compromise text incorporating elements of more than one of those possible approaches. Recognition of that fact was reflected in the work of the International Law Commission at its third, fifth and eighth sessions.

34. By adopting the alternative criterion of possible exploitation in article 67, the International Law Commission had re-introduced the element of uncertainty which had previously led it to abandon that criterion in favour of that of depth. The adoption of a depth of 200 metres, however, was also open to question; eminent authorities agreed that the edge of the continental shelf generally lay at the much shallower depth of 130 metres. It was true that a depth of 200 metres applied in some cases, but in others the edge of the continental shelf lay at a still greater depth.

35. Since it could not unreservedly accept either of the clauses of article 67, the Canadian delegation wished to put forward an alternative suggestion in two parts.[1] First, where the continental shelf was geographically well-defined, the boundary should be set at its actual edge. Second, where the shelf was ill-defined, or where there was no shelf in a geographical sense, the boundary might be set at some precise depth which would be sufficient to meet foreseeable practical requirements of exploitation. Without suggesting any figure, the Canadian delegation thought that it might well be more than 200 metres. In that connexion, he would refer to a statement in the preparatory document by Mr. Mouton on Recent Developments in the Technology of Exploiting the Mineral Resources of the Continental Shelf (A/CONF. 13/25); in view of recent successful drilling in 500 metres of water, the view expressed in section IV of that paper about the possibility of exploiting petroleum deposits under 200 metres of water might be described as conservative.

36. Referring to paragraph 5 of the International Law Commission's commentary to article 67, he did not agree that the varied use of the term " continental shelf " represented a major obstacle to the adoption of the geological concept as a basis for legal regulation of the problem. More than 90% of the continental shelves in the world, excluding those in polar regions, had a clearly defined physical edge; about 5% had poorly-defined edges, and the remaining 5% had edges about which there was some uncertainty.

37. Another useful feature of the Canadian suggestion was that it would go a considerable way towards solving the problem of " shelf islands " alluded to in paragraph 8 of the International Law Commission's commentary to article 67. He would quote a number of data relating to shelf islands from a Canadian study on the subject. If the boundary of the continental shelf were fixed at its actual physical edge, by far the greatest number of those islands would be included in the continental shelf and would cease to create a special problem.

38. In conclusion, he would emphasize that his delegation's position on the proposal he had just made was neither dogmatic nor unyielding. While he felt that the proposal merited the Committee's careful consideration as an effective compromise solution, he would be guided, in considering other proposals for the definition of the continental shelf, by a desire to achieve a wide measure of agreement.

39. Mr. MÜNCH (Federal Republic of Germany) wished to correct certain misapprehensions which might have arisen in connexion with the memorandum submitted by his delegation (A/CONF.13/C.4/L.1). One of the criticisms made was that the freedom of exploitation of the subsoil of the sea advocated in the memorandum might interfere with the exploitation of natural resources in the territory of the coastal State. In that connexion, reference should be made to paragraph 2, sub-paragraph (*c*), of the memorandum, which expressly stated that the exploitation of natural resources in the territory of the coastal State must not suffer prejudice as a consequence of the exploitation of the subsoil of the sea. The term " territory " in that context included the territorial sea.

[1] Subsequently circulated as document A/CONF.13/C.4/L.30.

40. Another criticism was that the effect of the proposal would be to internationalize the exploitation of submarine resources. It was stated in paragraph 3 of the memorandum that internationalization was not " practicable in present circumstances ". While the conclusion of regional conventions was recommended, the text made it clear that such conventions presupposed the express consent of all the States concerned.

41. It had also been stated that under the terms of the proposal the legitimate interests of the coastal State would not be protected. Paragraph 3 of the memorandum would invest the coastal State with three highly important practical functions : that of control of the operator with regard to the technical and other conditions qualifying him to carry out the proposed work ; that of supervision of the work ; and that of allocating areas for prospecting and exploitation. The possession of those functions would certainly enable the coastal State to protect its legitimate interests.

42. Other speakers had charged the proposal with failing to take into account the situation existing in law and in fact. The existing situation, as many representatives had emphasized, was far from clear ; the continental shelf was a new concept in international law, and many authorities rejected it *de lege lata* and *de lege ferenda.* Unilateral decisions and measures in the matter could hardly be said to take into account the common interests of all nations. In so confused a state of affairs, which was, moreover, likely to degenerate still further to the detriment of the freedom of the high seas, the delegation of the Federal Republic of Germany was proposing a set of simple, clear and effective rules based on the conviction that the exploration and exploitation of the resources of submarine areas were desirable in the interests both of the coastal States and of the international community. The proposed system conformed to the principle of the freedom of the high seas, satisfied the general interest and in no way encroached upon the legitimate interests of the coastal States.

43. In conclusion, he would associate himself with the remarks made by the representative of France at the 10th meeting to the effect that the Committee should, in the second stage of its work, first attempt to agree on the legal regulation of the continental shelf in practical terms, and only then proceed to develop a definition of the principle of law to set at the head of the convention.

The meeting rose at 12.35 p.m.

THIRTEENTH MEETING

Thursday, 20 March 1958, at 10.50 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 67 (A/CONF.13/C.4/L.4, L.6, L.7, L.8, L.11, L.12, L.18)

1. Mr. OBIOLS-GÓMEZ (Guatemala) found the International Law Commission's legal definition of the continental shelf, which was based neither on geographical nor on geological considerations, confusing in respect of its reference to areas where the depth of the superjacent waters admitted of the exploitation of the natural resources. That criterion was dangerously vague, and was particularly unfair to under-developed countries, since the possibility that the advanced countries would be able in the near future to explore far greater depths for the purposes of exploitation could not be overlooked.

2. His delegation was therefore in favour of those proposals, particularly the amendment submitted by the delegation of Panama (A/CONF.13/C.4/L.4), which provided a definition which would reconcile scientific and legal concepts, would be applicable to islands and would give greater precision to the extent of the continental shelf. His delegation also thought it advisable to provide for a new concept, which might perhaps be termed the " continental terrace ", comprising an area bounded by a line drawn at a given distance from the baseline of the territorial sea of the coastal State. While there might be some difficulty in putting an exact figure to that distance, he was sure that the Committee would be able to reach agreement on the matter once it had accepted the principle.

3. Mr. BARROS (Chile) recalled the background to the International Law Commission's decision on the criteria to be applied in defining the continental shelf. The yardstick of possible exploitation adopted by the Commission in 1951 had been abandoned in 1953 in favour of that of a depth of 200 metres. However, the Commission had subsequently combined the two approaches in the light of the conclusions reached by the Inter-American Specialized Conference on " Conservations of Natural Resources : Continental Shelf and Oceanic Waters ", held at Ciudad Trujillo in March 1956. It could not therefore be said that the existing text of the article was an improvisation. Moreover, the Chilean delegation could not agree that the two criteria were contradictory ; it considered that they were complementary. Indeed, under the article, up to a depth of 200 metres the continental shelf would undoubtedly come within the sovereingty of the coastal State, but beyond that limit the first question that arose was the possibility of exploiting the submarine area. Some thought that the burden of proof would fall upon the coastal State ; others, that the question would solve itself. Chile, for its part, was mining submarine coal deposits at depths far exceeding 200 metres without difficulty and it would be unjust to deprive it of the use of those resources on purely technical grounds.

4. Mr. PATEY (France) said that his delegation had put forward its amendment to article 67, namely, the deletion of the phrase based on the criterion of possible exploitation (A/CONF.13/C.4/L.7), because, if accepted, that criterion would be both imprecise and variable. It would be imprecise, because it would not be clear whether all the seabed, and the subsoil below it, off the coast of a given State which could be exploited by mankind as a whole should be taken into account, or only that part which the coastal State itself was able to exploit. It would be variable, because the areas concerned would doubtless increase in extent with further technical progress, and it was plain that

such progress would materialise. It was a dangerous practice to lay down rules which would soon stand in need of modification. The general debate had strengthened his delegation's objections to the provision regarding possible exploitation ; at least ten representatives had expressed doubts or open opposition to it, and at least four had declared that it was incompatible with the provision regarding the 200-metre limit. He could not agree with the representative of Chile that the two provisions were complementary. If article 67 were adopted as it stood, only the provision regarding possible exploitation would have any real effect.

5. Mr. BENSIS (Greece) supported the French amendment.

6. Mr. LEE (Republic of Korea) said that his delegation had proposed the deletion of the words " to a depth of 200 metres or, beyond that limit," (A/CONF.13/C.4/L.11) because, as he had stated at the 11th meeting, the proposed limit might operate to the disadvantage of certain coastal States which possessed a very narrow continental shelf, and also because, as the memorandum entitled " Scientific Considerations relating to the Continental Shelf " submitted by the secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/2) made clear, geological and oceanographical knowledge of the continental shelf was not yet sufficiently complete to provide a satisfactory basis for the formulation of rules of international law. At the 12th meeting, the representative of Canada had stated that submarine drilling for oil had been successfully carried out at depths of up to 500 metres ; it was therefore obvious that the proposed 200-metre limit, which was based solely on the geographical consideration that the sea was generally, but not always, less than two hundred metres deep at the seaward edge of the continental shelf, would not meet the requirements of the technological methods which were likely to be used in the future.

7. Mr. NIKOLIC (Yugoslavia), not being a geographer, failed to see why so many people seemed so sure that the 200-metre limit would be appropriate from the geographical standpoint ; it was stated in the memorandum submitted by UNESCO that the outer edge of some continental shelves was more than two hundred metres below the surface of the sea in some places. He was prepared, however, to accept the 200-metre limit, but could not agree to the criterion of possible exploitation being used in conjunction with it. It was impossible to foresee the result of using the first criterion ; some countries which had vast resources and were technically very advanced would probably be able to exploit the subsoil below the sea at points as far as four hundred miles from their shores. His delegation therefore proposed (A/CONF.13/C.4/L.12) that the continental shelf be defined as " the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres, but only up to a distance not exceeding 100 miles from the outer limit of the territorial sea "; and further, since some countries had practically no continental shelf which would be so termed by a geographer, that where the depth of the sea exceeded 200 metres at a point less than 50 miles from the outer limit of the territorial sea, the seabed and subsoil up to a distance of 50 miles from that limit should be regarded as the continental shelf. The coastal State should in that event be the only State entitled to engage in bottom fishing in that area. The new text proposed by his delegation for article 67, which, he thought, successfully combined geographical and legal concepts, would leave nothing open to doubt.

The meeting rose as 11.55 a.m.

FOURTEENTH MEETING

Thursday, 20 March 1958, at 3.15 p.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 67 (A/CONF.13/C.4/L.4, L.6, L.7, L.8, L.11, L.12, L.18, L.24) (continued)

1. Mr. RUBIO (Panama), introducing his delegation's amendment to article 67 (A/CONF.13/C.4/L.4), said that its background lay in the work of the third meeting of the Inter-American Council of Jurists held at Mexico City in January 1956, and that of the Inter-American Specialized Conference on " Conservation of Natural Resources : The Continental Shelf and Marine Waters ", held at Ciudad Trujillo in March 1956. Two valid approaches to a definition of the continental shelf were possible in international law: the juridical and the scientific. The delegation of Panama believed that, as a new juridical concept, the continental shelf should be defined in scientific terms. That view was supported by eminent international authorities, including Professor Gidel and Dr. Mouton. Such a definition need not lack flexibility, but it must be firmly rooted in natural science.

2. It might be argued that, at its present stage of development, scientific knowledge about the continental shelf was still subject to many uncertainties and imperfections, and also that scientists themselves recognized more than one type of shelf. While both those objections were to some extent tenable, it was equally true to say that current geological knowledge, however imperfect, was sound enough to provide a basis for a definition.

3. The sixth International Hydrographic Conference held in Monaco in 1952 had arrived at a number of clearly defined conclusions about the continental shelf, all of which were embodied in his delegation's amendment.

4. Distinctions should be drawn between the continental shelf, the continental slope and the continental terrace. In terms of depth, the seaward limit of the continental shelf was extremely uncertain, ranging from 65 to 200 metres. Structurally, the continental slope did not greatly differ from the continental shelf proper, except in its angle and the fact that it was scarred by submarine chasms of various kinds. The continental shelf and the continental slope together constituted the

continental terrace, the submerged lands forming a natural prolongation of *terra firma*. Since the main claim of coastal States to their continental shelf lay in the fact that it constituted a prolongation of their land domain, it would be illogical to claim the continental shelf alone and abandon the continental slope as defined by science ; a similar point had been made by the rapporteur of the committee which had dealt with the subject of the continental shelf at the Specialized Conference at Ciudad Trujillo.

5. In its amendment, the delegation of Panama had endeavoured to follow the International Law Commission's text as closely as possible. It had thought fit to mention specifically the submarine gorges, valleys, depressions and ravines of the continental slope in order to meet the interests of those coastal States which were surrounded by areas with an unusual submarine topography which gave them an extremely narrow continental shelf in the strict sense of the term. The inclusion of the concept of the continental slope in the definition would overcome that difficulty.

6. Unlike the International Law Commission, which had applied both the criterion of depth and that of possible exploitation in its definition, the delegation of Panama believed that the criterion of possible exploitation to the extent of modern technical possibilities should alone be employed. At the Specialized Conference at Ciudad Trujillo, it had been reported that Chile was exploiting its submarine areas at a depth well below 500 metres. It was impossible to predict what the technical possibilities would be in twenty or thirty years' time. That being so, the wisest course would be to delete all numerical limits from the definition of the continental shelf, fixing a geological limit alone. The declivity of the continental terrace ended at the edge of the oceanic depths, the superjacent waters of which constituted the high seas and were unquestionably *res communis*. That was the meaning of the final phrase of the Panamanian amendment.

7. The advantages of the text put forward by his delegation were that, in addition to being based on well-known scientific facts, it offered surer protection for the interests of the coastal State than did the text proposed by the International Law Commission, because it fixed the limit of possible exploitation with greater precision.

8. In reply to a question asked by the Chilean representative, he explained that the " great or oceanic depths" mentioned in the amendment referred to the horizontal part of the ocean bottom, whereas the continental terrace had a definite downward slope in its outer parts.

9. Mr. RUIZ MORENO (Argentina) observed that consideration of article 67 was necessarily linked with that of article 68. In part I of the articles concerning the law of the sea, the International Law Commission dealt with the juridical status of the territorial sea before defining its limits; it might therefore be advisable, for the sake of consistency, to reverse the order of articles 67 and 68.

10. Introducing his delegation's amendment to article 67 (A/CONF. 13/C.4/L.6), he said that the text proposed by the International Law Commission lacked clarity because it combined two unrelated ideas, that of depth and that of possible exploitation. A juridical text should never incorporate two entirely different concepts on an equal footing. Faced with a choice between two criteria, the Argentine delegation favoured the geographical, since in the ultimate analysis possible exploitation was governed by geographical and geological considerations.

11. Referring to the paper by Dr. Mouton on recent developments in the technology of exploiting the mineral resources of the continental shelf (A/CONF.13/25), he drew attention to the statement in section IV that the real average of the different depths of the edge of the continental shelf was nearer to 133 metres than to 200 metres. It was also stated in section IV in the paper that oil exploitation in 200 metres of water might become feasible in the near future; in many cases that would mean drilling on the continental slope rather than on the continental shelf. The Argentine proposal, which was based on recognized facts of geology and geography, would cover such possibilities.

12. Mr. LIMA (El Salvador) said that the purpose of article 67 should be to set limits not to a particular submarine area, but to an area over which the coastal State should have sovereign rights ; in other words, what was needed was, not to devise a geological definition, but to define a legal principle. It was for that reason that the expression " submarine areas " had been introduced into the article. If that approach could be agreed upon, much would have been achieved. As he had said in the general debate at the 11th meeting, the International Law Commission's draft of article 67 in fact applied one criterion — not two — that of possible exploitation, since 200 metres had been the maximum practicable depth of exploitation at the time when the article had been drafted. In any case, the 200-metre line was not the outer geological limit of the continental shelf, and his delegation therefore considered that it was unnecessary to mention that figure. The amendment proposed by the delegation of the Republic of Korea (A/CONF.13/C.4/L.11) was closer to the principle advocated by his delegation than was the International Law Commission's draft.

13. The delegation of El Salvador had more than once raised the question of what lay at the basis of the sovereign rights of the coastal State over submarine areas. The legal basis for those rights could not be provided by a simple unilateral declaration by a given State. The legal justification would have to take account of three factors : the geological nature of the domain, geographical contiguity, and the possibility of exploiting the natural resources of the area. The possibility of exploitation was related to the contiguity of the areas to the mainland, and that relationship was the basis for the sovereign right of the coastal State to exploit the continental shelf. The possibilities of exploitation must accordingly be mentioned in any text which sought to delimit the continental shelf.

14. At the previous meeting, it had been said that the more highly developed States might have better technical means of exploiting the continental shelf and were therefore in a better position to do so. That idea arose from a confusion between the idea of exploitation and that of the possibility of exploitation. He did not consider that the criterion should be interpreted as meaning effective exploitation at a particular moment.

If the criterion was the possibility of exploitation, advances in science and technology would come to permit exploitation of submarine areas at greater depths, and the sovereignty of the coastal State would be extended if not *ipso jure* then *ipso facto* over those areas, whatever their depth. It had been said that the criterion of possible exploitation was too vague, but there was no possibility of denying to any coastal State its right to exploit its submarine areas from its mainland. The theory of the continental shelf had its origin in the possibility of exploiting those areas from the water surface, where interference with the freedom of the high seas might result.

15. He had read with great interest the amendment proposed by the delegation of Panama and, although he was not prepared to give his views forthwith, he had some doubts about the emphasis it placed on geological features.

16. Mr. AHMAD (Lebanon) said that article 67 was the corner-stone of the agreement that the Committee was trying to reach. In the general debate, many speakers had approached the definition of the continental shelf very cautiously. His delegation considered that one criterion — that of the 200-metre depth-line — was sufficient, and the amendment which it had submitted (A/CONF.13/C.4/L.8) reflected that view, which had been supported by many delegations, in particular by those of France and Greece, at the previous meeting. It had been said that to limit the definition by referring only to the 200-metre depth-line would make it too rigid, but the Lebanese delegation believed that a strict definition of the sea-space over which sovereign rights were exercised by the coastal State would diminish the likelihood of international disputes.

17. Mr. SCHWARCK ANGLADE (Venezuela) did not believe that there were any real grounds for disagreement about the continental shelf. During recent years various terms had been used in referring to the area in question. In fact, there was no such thing as a unique continental shelf, but merely various forms of it. In many parts of the world the edge of the shelf lay at a depth of 200 metres ; but in other regions it might be as deep as 2,000 metres. What was needed was a legal formula adapted to the realities of the situation, and it was therefore not possible in defining the shelf to rely on its strictly geographical or geological character.

18. At the Ciudad Trujillo Conference, it had been agreed by the Latin-American countries that it would be unwise to accept either the geological criterion or the criterion of possible exploitation alone. Recent technological advances had made it plain that reference to a depth line of 200 metres would rapidly become out of date. He quoted the example of Chilean coalmines being operated beneath the sea at a depth of 1,000 metres, and said that is would be wrong to limit the rights of other States with very deep waters off their shores by taking the 200-metre line as the boundary of the continental shelf. The Ciudad Trujillo Conference had mentioned the 200-metre line as a minimum depth, but had considered that the coastal State should have the right to exploit beyond that line to whatever depths allowed of exploitation.

19. In principle, therefore, his delegation agreed with the International Law Commission's text for article 67, and would vote against any amendment seeking to delete the clause relating to possible exploitation. Neither would it agree to the deletion of the reference to the 200-metre line, which many countries considered indispensable. His delegation's votes on the amendments proposed by Panama, Argentina and the Lebanon would be governed by those considerations.

20. Mr. JHIRAD (India) asked those representatives who had proposed that the definition of the continental shelf be restricted by using only the criterion of the 200-metre depth line whether they could clarify three points. First, was the coastal State to be precluded from exploiting the natural resources of the continental shelf beyond the 200-metre limit if exploitation were possible? Secondly, would exploitation of the continental shelf beyond that limit be open to all States, whether or not they were coastal States? Thirdly, if the answer to the second question was in the affirmative, was it the intention to suggest any legal régime for the seabed and subsoil beyond that limit concerning their exploration and exploitation?

21. He felt that any proposal for a fixed limit at a depth of 200 metres would not only curtail the International Law Commission's definition, but would also render nugatory the entire conception on which it was based, by restricting the régime which would otherwise apply beyond that fixed limit, a régime which included specific safeguards for the freedom of the superjacent sea (articles 69, 70 and 71).

22. Mr. CARBAJAL (Uruguay) considered that the International Law Commission had been correct in including in the definition of article 67 both the criterion of the 200-metre depth-line and that of possible exploitation. Two hundred metres was the general depth of the seaward edge of a large number of continental shelves, including that of Uruguay, which extended for some 200 kilometres from the coast. It was true that a definition which referred to the 200-metre line alone would provide a fixed exact criterion, but it would be likely to give rise to disputes, and it was the Conference's main task to avoid decisions likely to have that effect.

23. The 200-metre depth-line might sometimes be as much as 40 miles from the coast, and would therefore come under the régime of the high seas. Yet it was not possible to imagine that any great Power would permit the vessels of another State to approach its shores so closely for the purpose of exploiting the resources of the continental shelf. That was one of the reasons why the International Law Commission had considered it necessary to supplement the 200-metre criterion by that of possible exploitation. The first criterion would apply to those States whose continental shelf was in fact bounded by that depth line, and other States would be able to invoke the criterion of possible exploitation. He thought that the case of Chile, where the sea bottom fell away to considerable depths only a few miles from the coast, was instructive in that connexion.

The meeting rose at 5.15 p.m.

FIFTEENTH MEETING

Friday, 21 March 1958, at 10.45 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

TITLE OF SECTION III (ARTICLES 67 to 73) (A/CONF.13/C.4/L.17)

1. Mr. RUIZ MORENO (Argentina) suggested that, before continuing to examine seriatim the articles referred to it, the Committee should discuss their title. It should know exactly to what subject those articles would refer before it discussed their content. The Netherlands delegation had submitted an amendment (A/CONF.13/C.4/L.17) to the title proposed by the International Law Commission, namely to substitute the words " The continental shelf and other submarine areas adjacent to the territorial sea " for " The continental shelf ". His delegation intended to support the view that the articles should relate to submarine areas other than what geographers called a continental shelf as well as to such shelves, since some coastal States did not have a shelf of that kind.

2. After a brief discussion, Mr. MOUTON (Netherlands) said that the amendment his delegation had proposed to the title was merely a corrolary to its amendments to the articles. He would prefer the articles to be dealt with before the title was discussed.

3. Mr. CALERO RODRIGUES (Brazil) suggested that the Committee might agree to complete its discussion on article 67 at any rate before considering the title, since the purpose of that article was to define the areas to which the whole set of articles would relate.

It was so agreed.

ARTICLE 67 (A/CONF.13/C.2/L.4, L.6, L.7, L.8, L.11, L.12, L.18, L.24) (continued)

4. Mr. MOUTON (Netherlands) said that a number of countries without a continental shelf exploited the natural resources of submarine areas adjacent to their coasts. Coal, for example, was mined in submarine areas off the coasts of Scotland, Nova Scotia, France and Chile by means of tunnels dug from *terra firma.* In paragraph 11 of its commentary on article 67, the International Law Commission had stated, quite correctly : " Such exploitation of the subsoil of the high seas by a coastal State is not subject to any legal limitation by reference to the depth of the superjacent waters." In his opinion, it was important that that statement should be incorporated in the code which the Conference had been convened to draw up. A distinction should be drawn between exploitation of the subsoil of the high seas in a manner which could not hinder navigation or the use of the sea for other purposes in any way and other kinds of exploitation which could cause obstruction, such as exploitation requiring installations in the sea.

5. One of the advantages of making that insertion in article 67 would be that the question of dividing the subsoil of the high seas between States with coasts opposite to each other and off two adjacent States for purposes of its exploitation would then be settled by the provisions of article 72.

6. Bearing in mind the fact that the articles referred to the Committee had a legal, and not a geographical purpose, his delegation had proposed (A/CONF.13/C.4/L.18) that article 67 should begin with a paragraph reading : " 1. For the purposes of these articles the term " continental shelf " comprises also the continental slope, island-shelves and island-slopes " (A/CONF.13/C.4/L.18). It was explained in the memorandum by the secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/2, para. 6) that the outside edges of continental shelves were from 65 fathoms or less to 200 fathoms or more below the surface of the sea ; hence, if the Conference adopted the Commission's proposal that all the submarine areas adjacent to the coast of a State, but outside the area of the territorial sea to a depth of 200 metres, should be treated as part of the continental shelf, part of the continental slope would be covered by the articles. His delegation's proposal was in line with statements made by several representatives, including the representative of Panama, who had contended at the previous meeting that the whole of the " continental terrace ", which included both the continental shelf proper and the continental slope, should be covered by the articles.

7. If it was agreed that the articles should cover submarine areas in addition to the continental shelf, as his delegation had proposed, the title of the articles should be expanded to cover more than the continental shelf. One cogent reason for agreeing to that was the fact, explained in the memorandum of the UNESCO secretariat, that some continental shelves did not have a clearly defined outer edge but sloped in a convex manner to the ocean bed.

8. His delegation was also proposing (A/CONF.13/C.4/L.18) that paragraph 2 of article 67 should read : " The term ' natural resources' as used in these articles comprises :

(*a*) mineral resources

(*b*) sedentary species as enumerated in annex No. . . ."

He believed there was general agreement that the mineral resources should be covered. It had not been possible for his delegation to indicate exactly what should be regarded as sedentary species. Qualified scientists might be asked to draw up an exhaustive list of them, or the question might be referred to the Food and Agriculture Organization. His delegation was firmly opposed to the text it had submitted being extended to cover bottom-fish.

9. Miss GUTTERIDGE (United Kingdom) said that the proposal submitted by her delegation (A/CONF.13/C.4/L.24) was intended to be of benefit to countries which had little or no continental shelf, but exploited, or were capable of exploiting, submarine areas off their coasts.

10. Her delegation was proposing that the term " continental shelf " should not be used at all. During the general debate several delegations had mentioned the difficulty of reconciling any definition of that term

suitable for the purposes of the articles referred to the Committee with the geological definition adopted by the International Committee on the Nomenclature of Ocean-Bottom Features, which read : " The zone around the continent, extending from the low-water line to the depth at which there is a marked increase of slope to greater depth " (A/CONF.13/2, para. 6). As the International Law Commission itself had stated — in paragraph 5 of its commentary on article 67 — the sense in which it had used the term departed to some extent from the geological concept of the term. She agreed entirely with the statement in the second sentence of paragraph 6 of the commentary. The definition of the term finally adopted by the Commission was a mixture of the geological concept and the concept of possible exploitation. Several representatives had objected to that definition because of the uncertainties to which the dual criterion of depth of water and possible exploitation laid down in it gave rise. Some had argued that the only criterion should be the depth of water over the areas concerned ; others had contended that that would operate to the disadvantage of countries with little or no continental shelf. Her delegation believed that the best way of obviating those uncertainties was, without using the term " continental shelf " at all, to link the criterion of depth of water to the exercise by coastal States of the right of exploration and exploitation of the natural resources of the seabed and subsoil of submarine areas adjacent to their coasts.

11. Her delegation's amendment used the words " up to a depth of water of 550 metres ", because, as was explained in the annex to the memorandum of the UNESCO secretariat, the continental slope ended in most places approximately at that depth, and it was likely that that would be the limit of exploitation of the seabed and subsoil in the foreseeable future. She was however ready to discuss other figures.

12. The second paragraph of the new text proposed by her delegation was a provision to the effect that paragraph 1 should not prejudice the right of a coastal State to exploit the subsoil by means of tunnelling from *terra firma* irrespective of the depth of water above the subsoil.

13. Her delegation was not proposing a definition for the term " the natural resources ", but would support any amendment which defined it satisfactorily and limited the resources in question to mineral resources and sedentary species. That definition should be contained in article 68.

14. She was, needless to say, still firmly of opinion that the waters over the areas to which her delegation's new text related should be regarded as part of the high seas.

15. Mr. CALERO RODRIGUES (Brazil) preferred the simple text for article 67 submitted by the International Law Commission both to the Panamanian text (A/CONF.13/C.4/L.4) and to that proposed by the Netherlands. The Commission, in drawing up its text, had translated the geological definition of the term " continental shelf " into a definition couched in legal terms which was entirely adequate so far as the rights and obligations mentioned in the articles referred to the Committee were concerned. The Commission had not mentioned the " continental terrace ", the " continental slope " or " island-shelves " and " island-slopes " as was proposed by the representatives of those two countries. In his opinion, the use of those terms would introduce a new element of doubt and make the text unnecessarily complicated.

16. He was in favour of keeping the double criterion of depth of water and possible exploitation. Even if it were true that the seabed and subsoil could at present be exploited in places where the sea was more than 200 metres deep, he was in favour of retaining the provision of the 200-metres limit, because it would make it clear that no State had the right to exploit the natural resources of the seabed and subsoil less than 200 metres below the surface of the high seas off the coast of another State. There would be a great ado if one State started exploiting the submarine resources within a very short distance of the coast of another State without first obtaining its agreement. The provision, even though it might not be the determining factor, would not do any harm. If the provision regarding possible exploitation were deleted, limits should be laid down on the lines of those indicated in the text of the Yugoslav delegation (A/CONF.13/C.4/L.12).

17. He was much exercised by the problem of how the Committee could best deal with matters such as the definition of the term " the natural resources ", which were not covered by the Commission's text for article 67 and which some delegations thought should be mentioned in that article, whereas others considered a subsequent article more suitable.

18. Mr. PATEY (France) suggested that, instead of discussing questions on the basis of a particular article, the Committee should proceed to consider the problem of finding definitions for, first, the submarine areas to which the articles referred to the Committee should relate, secondly, the resources to which those articles should relate, and, thirdly, the rights of the coastal State in respect of those areas and resources. After that had been done, it could decide how to proceed further.

19. Mr. MOUTON (Netherlands) felt that the Committee would find it easier to deal with all the proposals if articles 67 and 68 were taken together.

20. The CHAIRMAN pointed out that certain amendments related specifically to article 68 and that the discussion of article 67 in itself gave rise to many problems. It would therefore be better not to combine consideration of the two articles.

21. Mr. JHIRAD (India) thought the difficulty could be avoided by simply redrafting proposals which impinged on both articles in such a way that they would refer to article 67 only.

22. The CHAIRMAN agreed with the Indian representative and stressed that the Committee could not deviate from its instructions under General Assembly resolution 1105 (XI) and from the rules of procedure. It should confine itself to article 67, on which all the other articles before it depended.

23. Mr. KANAKARATNE (Ceylon) observed that the Netherlands delegation's proposal would be clearer if the words " the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea and " were inserted after " comprises ".

24. Mr. MOUTON (Netherlands) agreed.

25. Mr. RUIZ MORENO (Argentina) said that, although the ideas on which the Netherlands and United Kingdom proposals as to the use of the subsoil were based were of no direct concern to countries with broad coastlines, the Committee was concerned with establishing international rules and it was therefore useful to enable certain countries to exploit mineral resources through subterranean galleries. The whole matter affected the broader principle of the territorial elements of a State. A coastal State could not be allowed to exploit natural resources unless the extent of its rights were specified. From the geographical point of view, two or three States might have rights over a continental shelf; the modern concept of territorial delimitation was therefore involved.

26. Mr. SCHWARCK ANGLADE (Venezuela) thought that the debate hinged on the conflict between the scientific and legal concepts of the definition. He agreed with the International Law Commission that the scientific notion was not yet sufficiently developed and thought it had been right to use a conventional approach. It would be interesting to hear the reasons why certain delegations objected to the International Law Commission's definition.

27. Mr. QUARSHIE (Ghana) said that most of the amendments proposed had served to confirm his appreciation of the existing text. He agreed with the Korean proposal (A/CONF.13/C.4/L.11) since, with the deletion proposed therein, the International Law Commission's article seemed perfectly satisfactory. It appeared unnecessary to state a limit of depth and also to impose a criterion of possible exploitation, unless it were deemed that the resources in question could be exploited by all States. If the exclusive rights of the coastal State were meant, the criterion of possible exploitation was the only one that need be considered.

28. Mr. MOUTON (Netherlands) drew the attention of the representatives of Venezuela and Ghana to the fact that article 67 in its existing form did not take into account the mining rights of States having no continental shelf. Moreover, the criterion of possible exploitation was legally unsound and difficult to apply. For example, if a technician invented an installation whereby resources could allegedly be exploited at a depth of 300 metres, but the apparatus failed to function after it had been installed, the State concerned would have committed an illegal act. The Netherlands proposal had the further advantage of providing for the territorial delimitation of the tunnelling or drilling rights of adjacent coastal States or States situated opposite each other.

29. In 1951, the International Law Commission had decided upon the depth of 200 metres because it had regarded that as the average depth of the continental shelf and because it had believed that it would be years before techniques could be evolved for mining or drilling at greater depths. The only reason for delimiting the rights of coastal States, however, was the possibility that installations in the high seas might interfere with the navigation and fishing rights of other States. The situation with regard to drilling from ships was quite different and was comparable to fishing in the high seas; it in no way affected the exclusive rights of coastal States.

30. The notion of possible exploitation was in itself liable to give rise to disputes and should therefore be avoided in the text. In fact, it could not be regarded as a criterion at all, since it set no limit upon exploitation other than those of the possibilities of technical advancement and the availability of minerals.

31. The depth of 550 metres, which was the lowest edge known in geological exploration and beyond which the establishment of installations was unlikely, seemed to be a satisfactory limit.

32. Mr. RANUKUSUMO (Indonesia) doubted the technical accuracy of the statement that some States had no continental shelf. If it were admitted that all States had a continental shelf, whether large or small, there was no reason to alter the International Law Commission's article to accommodate a hypothetical group of countries.

33. Emphasis had been laid mainly on mining by tunnelling and drilling, and not enough attention had been paid to direct drilling from the surface of the sea or from artificial islands. In the case of surface drilling, it was not true to say that navigation and fishing would not be affected. The Indonesian delegation was therefore inclined to support the International Law Commission's text of article 67.

34. Mr. CARTY (Canada) agreed with the Netherlands representative that the criterion of possible exploitation was unacceptable, since the Conference's task was to enable all States, and not only those with advanced technical means, to exploit the resources of the continental shelf. Moreover, if that criterion were adopted, States with limited economic means would be placed at a serious disadvantage.

35. His delegation had hesitated to submit yet another amendment and intended to make a formal proposal only if the consensus of the Committee did not seem to be in line with the amendments proposed by other delegations. It considered that the limit of the continental shelf should be the actual physical edge if well defined, and that, for the benefit of States having no continental shelf, a specific maximum depth should be specified. That depth might well be the 550 metres proposed by the United Kingdom and Netherlands delegations.

36. Accordingly, his delegation might propose to clarify the Netherlands proposal by using the first part of the International Law Commission's definition and then add a phrase along the following lines: "to the point where a substantial break in grade occurs, leading to the lowest ocean depths, and, where there is no such substantial break in grade, to the point where the subjacent waters are of a certain depth".[1]

37. Mr. MÜNCH (Federal Republic of Germany) observed, in connexion with the Netherlands representative's statement that the marine subsoil could not be exploited beyond a depth of 550 metres, that an apparatus had been evolved in the United States for exploiting oil resources at a depth beyond 200 metres;

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[1] Subsequently circulated as document A/CONF.13/C.4/L.30.

from all accounts, there was no reason to believe that that depth would not ultimately be increased to 600, 800 or even 1000 metres, for the apparatus was simple and was attached to the subsoil by a few cables and pipelines. In view of such rapid developments of possible exploitation the Committee must take stock of the position and determine its method of approach.

38. The Argentine representative had rightly stated that a legal definition must be given to a geographical term. The definition must therefore take into account a natural delimitation, perhaps on the lines suggested by the Canadian representative. On the other hand, if the problem were regarded merely as one on which coastal States had to make arrangements with regard to certain rights, the conventional juridical concept would suffice and President Truman's notion of the continental shelf as a motive for a particular measure, which the United States had proclaimed unilaterally, might be accepted on a collective basis in the convention resulting from the Conference's work.

39. The third approach, which was suggested by this increasing possible exploitation at extremely low depths, was that of establishing criteria similar to those used for fishing and navigation in the high seas with regard to jurisdiction over exploitation of submarine resources. In his delegation's opinion, all three methods should be taken into account in drawing up the final definition.

40. Mr. OBIOLS-GÓMEZ (Guatemala) observed that the Committee seemed to be agreed on the need to recognize the legal status of the continental shelf but that opinions varied on the delimitation of the area in question. He deplored the confusion caused by the dual criterion of depth and possible exploitation. The International Law Commission's text might be compared to a traffic regulation under which vehicles could travel at 100 kilometres an hour or at the maximum speed of the vehicle. He suggested that the problem could best be solved by setting up a working party.

The meeting rose at 12.55 p.m.

SIXTEENTH MEETING

Friday, 21 March 1958, at 3.15 p.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

Article 67 (A/CONF.13/C.4/L.4, L.6, L.7, L.8, L.11, L.12, L.18, L.24/Rev.1, L.26) (continued)

1. Mr. FATTAL (Lebanon), introducing his delegation's amendment to article 67 (A/CONF.13/C.4/L.8), said that it had been submitted for legal rather than technical reasons. It was important that the definition in that article should be clear and specific. As the text stood, the rights of the coastal State were not clearly limited, and were related to hypothetical future conditions. The present limiting depth for exploitation of the resources of the seabed and subsoil was between 60 and 70 metres; in his view, the margin between that depth and 200 metres was more than adequate. It had been mentioned that Chilean collieries were being operated at a depth of 1,000 metres below the surface of the sea, but, since they were worked from the mainland the fact was irrelevant to the international law of the sea. The Conference's task was to find solutions to present problems, not to legislate for future generations. If the criterion of possible exploitation were retained and it eventually became possible to exploit submarine areas at much greater depths, it was possible that four-fifths of an area which now formed part of the high seas would become the exclusive preserve of technically developed coastal States, instead of being open to the entire international community as *res communis.* If the clause relating to possible exploitation were retained, it would be unnecessary to mention the 200 metre limit, since the definition would then refer, not to a depth of 200 metres, but to some other, unspecified, depth.

2. Mr. RUIZ MORENO (Argentina) recalled that the International Law Commission's text provided the basis for the Committee's discussion. He therefore thought that Committee should first decide whether a limiting depth should be laid down in article 67, and, if so, whether it should be 200 metres, as in the Commission's draft, or 550 metres, as suggested by the United Kingdom delegation (A/CONF.13/C.4/L.24/Rev.1) and, in connexion with article 68, by the Netherlands delegation (A/CONF.13/C.4/L.19). Once that issue had been settled, the Committee could decide whether to include a clause relating to possible exploitation.

3. Mr. QUARSHIE (Ghana) agreed that the Committee's main task was to discuss the Commission's text, which his delegation supported, though it might be prepared to accept a limiting depth of 550 rather than 200 metres.

4. Mr. BOCOBO (Philippines) introduced his delegation's amendment (A/CONF.13/C.4/L.26). The Conference was legislating, and should therefore lay down beyond any doubt whether the articles relating to the continental shelf applied equally to corresponding areas round the coasts of islands. A similar proposal had been made in paragraph 1 of the Netherlands amendments (A/CONF.13/C.4/L.18), and if it were approved the Philippine amendment would become redundant. The International Law Commission had said in paragraph 10 of its commentary to article 67 that island shelves were also covered, but that should be stated explicitly in the article itself.

5. He could not agree that the Commission's text should be discussed before the Committee took up the amendments to it, since no one would know definitely how the term " continental shelf " was to be understood until either the Netherlands or the Philippine proposal had been voted upon. Moreover, rule 40 of the Conference's rules of procedure laid down that amendments should be voted on before the proposal to which they related — in the case in point, the Commission's text of article 67.

6. Mr. GOMEZ ROBLEDO (Mexico) agreed that rule 40 should be respected and the amendment furthest from the original proposal put to the vote first.