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of the coastal State, duly restricted by limitations to be agreed by the Conference.

33. Mr. ROSENNE (Israel) referred to his statement at the 9th meeting, in which he had stressed the need to maintain unimpaired the full freedom of the superjacent waters of the continental shelf and the air space above them. The word "sovereignty" was not suitable, although he would be prepared to accept the expression "sovereign rights" if it were understood that the word "sovereign" was merely a description of the content of those rights as applied to the continental shelf, in accordance with paragraph 2 of the International Law Commission's commentary on article 68.

34. He would vote for the United States amendment because the expression "exclusive rights" was a more exact description of the nature of the rights in question.

35. He would speak later on the second subject dealt with in article 68 — namely, the definition of natural resources.

36. Mr. MOUTON (Netherlands) said that the Fourth Committee might be hampered by a strict notion of the vertical identity of media; in other words, many delegations might fear that, if the rights of the coastal State over the continental shelf were referred to as sovereign rights, that might lead to claims of sovereignty over the superjacent waters. That apprehension was referred to in paragraph 2 of the International Law Commission's commentary on article 68. It might facilitate the discussion if he drew attention to some cases in which that vertical identity was not maintained. One example was the territorial sea, where, although the coastal State had full sovereignty over the marine subsoil, its sovereign rights in the waters of the territorial sea were limited by the right of innocent passage. There was accordingly a difference in legal status between the subsoil and the superjacent waters of the territorial sea. Another example was the frontier area between the Netherlands and the Federal Republic of Germany where, by agreement between the two countries, Dutch coal mines continued beyond the frontier, so that in that area the surface was German territory and in the mines below it was the Netherlands which had the exclusive right of exploitation.

37. Miss WHITEMAN (United States of America) said that the representative of Argentina had suggested that an unfounded fear lay behind the opposition to the word "sovereignty"; but that fear was justified by the views that had been expressed.

38. Mr. KANAKARATNE (Ceylon) thought that the Committee had been too much concerned with abstract legal principles. He would refer to the preamble to the United Nations Charter, and stress the inclusion of the idea of the economic advancement of all peoples as one of the purposes for which international machinery was to be employed. If the principle of the freedom of the high seas were upheld regardless of all other considerations, it might well conflict with that aim of the Charter. He would agree with the United States representative that whatever safeguards were provided by article 69, the expression "sovereignty" should not be used in article 68 if there were any possibility that it might be misunderstood. Ceylon was not yet prepared to take a decision on the expressions "sovereignty", "exclusive rights" and so forth, but he was interested to note that the amendments proposed by Mexico, Argentina, Yugoslavia and the Netherlands all referred, either implicitly or explicitly, both to sovereignty or sovereign rights and to exclusive rights. If the delegations concerned could agree that the expression "exclusive rights" was in fact what was meant by "sovereignty", it might be possible for the Committee to agree on the United States amendment.

39. Mr. DE LA PRADELLE (Monaco) would be prepared to accept the formula "sovereign rights" if it were followed by some expression limiting the effect of those rights, as had been suggested. He would prefer "sovereign rights" to "exclusive rights", since sovereignty could be surrendered, whereas exclusive rights could not be ceded. He would therefore support a text referring to sovereign rights for the purpose of exploring and exploiting natural resources. He would interpret the term "natural resources" to mean mineral resources only, but would enlarge on that at a later stage.

40. With regard to quotation of the United Nations Charter by the representative of Ceylon, he would point out that the only reference in the Charter to sovereignty was to the "sovereign equality" of all Member States. He would draw attention to the reference in Article 55 to human rights and fundamental freedoms for all; those were the principles that should form the background of the Committee's discussion.

The meeting rose at 1.10 p.m.

TWENTY-FIRST MEETING

Wednesday, 26 March 1958, at 3.25 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 68 (A/CONF.13/C.4/L.2, L.3, L.6 and Rev.1, L.9, L.10, L.13, L.31, L.36, L.39) (continued)

1. Miss SOUTER (New Zealand) observed that, according to some delegations, the concept of the freedom of the seas had become anachronistic, and should be set aside in order to take account of newer needs and interests. Her delegation shared the view that the United Nations Charter provided a yardstick for judging the International Law Commission's work. It would be seen that, far from being out of step with the principles of the United Nations, the principle of the freedom of the seas reconciled the interests of individual States with those of the world community. At its third session in 1951, the Commission had acknowledged that the exploration and exploitation of the continental shelf might affect the freedom of the seas — and had favoured such exploration and exploitation only because they met the needs of the international community. It had decided that for the time being those needs would best be met by entrusting exploration and exploitation to the

coastal State. In framing article 68 on that basis, the Committee should have regard to the considerations which had led to that conclusion.

2. Thus, in considering the meaning of the term "natural resources" it should be noted that paragraph 3 of the commentary on article 68 stated that natural resources comprised mineral resources and sedentary fisheries, but did not include bottom fish and other species which occasionally had their habitat at the bottom of the sea or were bred there. The amendments proposed by the delegations of Burma and Yugoslavia (A/CONF.13/C.4/L.3 and L.13), however, defined the term "natural resources" as including bottom-fish and others temporarily associated with the seabed.

3. The New Zealand delegation appreciated the need to conserve the demersal species which frequented the waters above the continental shelf, but thought it would be a fundamental departure from the International Law Commission's intentions to suggest that the rights of coastal States in respect of the resources of the continental shelf should extend to swimming fish in the superjacent waters. In deciding that the right to exploit the natural resources should be vested in the coastal State, the Commission had stressed considerations of legal and practical convenience. Methods of exploring and exploiting often involved building on the seabed permanent or semi-permanent installations and the use of facilities on the land territory of the coastal State. The Commission had intended to regulate under the régime of the continental shelf operations whose connexion with the land territory was so intimate that the effective exploitation necessary to meet the needs of mankind could be carried out only by the coastal State. The exploitation of mineral resources satisfied that test, as did the exploitation of sedentary fisheries. The tendency of lawyers to associate with the soil things attached to it or permanently situated on it was applicable equally to the seabed. Obviously, species which were not sedentary could be harvested by techniques which did not impinge on the land territory. There was no valid distinction between the harvesting of swimming fish in the waters above the continental shelf and in other parts of the high seas. Although coastal States should not necessarily be denied certain rights in respect of swimming fish in the waters off their coasts, such rights would be based on principles fundamentally different from those governing rights exercised in respect of the continental shelf. The New Zealand delegation would therefore support the proposal by Australia, Ceylon, the Federation of Malaya, India, Norway and the United Kingdom (A/CONF.13/C.4/L.36), under which the definition of natural resources would not include crustacea and swimming fish.

4. With regard to the nature of the rights exercisable by the coastal State in respect of the shelf, her delegation considered that the Commission's stated intention of safeguarding the full freedom of the superjacent waters and air space seemed adequately reflected by the statement in the article itself that the coastal State exercised "sovereign rights for the purpose of exploring and exploiting its natural resources". The Swedish and United States amendments (A/CONF.13/C.4/L.9 and L.31) were designed to make the fulfilment of that intention even more certain. On the other hand, her delegation shared the Commission's view that its object would not be accomplished by accepting the notion that the coastal State exercised sovereignty over the continental shelf. The fact that neither the Mexican nor the Argentine amendments (A/CONF.13/C.4/L.2 and L.6) made it clear that the freedom of the high seas, including in particular the freedom of fishing, would not be affected did nothing to dispel the doubts which had been expressed concerning their effect.

5. Mr. CALERO RODRIGUES (Brazil) thought that the discussion of the article would be confused by the introduction of the notion of the freedom of the high seas. The various phrases suggested to define the nature of the rights of the coastal State did not differ greatly from one another and had been exhaustively examined by the International Law Commission. The term "sovereign rights", which the Commission had finally adopted, was in the nature of a compromise.

6. The meaning of the word "sovereignty", to which the Argentine and Mexican delegations wanted to return, was becoming increasingly blurred. Both those delegations proved that point by qualifying the notion on sovereignty and stating specifically that it excluded the rights of other States. On the other hand, if sovereignty was not an exclusive right, the word did not carry with it the notion of absolutism which seemed to have aroused alarm among some delegations.

7. If sovereign rights, which were of themselves exclusive *erga omnes,* were deemed to be limited for certain purposes, they could not properly be regarded as sovereign, since sovereignty was the aggregate of the rights of a State. On the other hand, if the term "sovereign rights" was used to distinguish them from contractual rights, there would seem to be no objection to using it in the article.

8. Mr. CARMONA (Venezuela), outlining the considerations that had led to the International Law Commission's adoption of the term "sovereign rights" in article 68, said that to ignore the fact that the principle of sovereignty was generally understood would mean not only deviation from international traditions, but also an admission of indecision. The word "sovereignty" should therefore be retained and understood in its fullest sense. The Mexican amendment (A/CONF.13/C.4/L.2) seemed most likely to attain that objective; the qualification in the last paragraph of the Argentine amendment (A/CONF.13/C.4/L.6) was unnecessary, as the question whether or not a coastal State exploited the resources of its continental shelf in no way affected its sovereignty.

9. Mr. BELTRAMINO (Argentina) withdrew his delegation's amendment to article 68, and submitted in its stead the amendment contained in document A/CONF.13/C.4/L.6/Rev.1.

10. Mr. TSURUOKA (Japan), speaking on the proposed definitions of natural resources, said that the International Law Commission had gradually extended its definition. It had first limited the definition to mineral resources, had then included sedentary fisheries and had finally introduced the concept of constant physical and biological contact with the seabed. It was

therefore obvious that the Commission had had considerable doubts with regard to the definition. The Japanese delegation, however, was convinced that if the exclusive rights of the coastal State were recognized, the definition should be confined to mineral resources only.

11. In the case of mineral resources, the coastal State was entitled to exploit and explore from land, to a distance which did not necessarily fall within its territorial waters. Moreover, since the time of President Truman's proclamation in 1945, coastal States had claimed exclusive rights to exploit those resources irrespective of any attachment to the land territory. The rapid development of surface exploitation techniques could be held to justify that move; however, that technical revolution raised problems of international law. It was obvious that submarine resources could become a source of prosperity for mankind; unfortunately the solution of international exploitation to that end was not yet feasible. The International Law Commission had had no choice but to vest the right in the coastal State, and it was for that reason that it had suggested certain innovations in the régime of the continental shelf. Sedentary fisheries, however, had since time immemorial been subject to their own régime and the technical advances that had been made gave rise to no serious practical difficulties in that regard. It would therefore be unwise to submit both types of resources to the same régime.

12. Furthermore, the International Law Commission's growing tendency to make the definition of sedentary fisheries more flexible might eventually lead to the restriction of all freedom of fishing. The precise definition of sedentary fisheries was an extremely controversial matter. It was generally agreed that the notion of attachment to the seabed was relative. But whether it was absolute or relative, there seemed to be no reason to subject different types of fisheries to different principles, for it could not be denied that all fish lived in the water. However, it was always possible to draw the distinction between the living resources of the sea by conventions, in which case it would be binding only on the parties thereto. The danger of the tendency to extend the definition was shown by the proposals for including bottom-fish and other species among the resources of the continental shelf. It was extremely difficult to draw a distinction between pelagic and benthonic species, since some swimming fish rested on the seabed for certain periods and some even spent most of their adult life on the seabed. Any line that the Committee might draw would be arbitrary. It would be even more difficult to draw a clear distinction between the "mobile animal" and "sessile animal".

13. The Japanese Government was not systematically opposed to juridical innovations regarding the concept of continental shelf. On the contrary, it considered them to be justifiable in view of the development of the technique in exploration and exploitation of the resources deposited in the seabed, but they were acceptable only under certain conditions and to a limited extent. Since this point was of vital importance to Japan, without sufficient guarantee in this respect, the Japanese delegation could not accept the International Law Commission's views, and preferred the Swedish and Greek amendments (A/CONF./13/C.4/L.9 and L.39) which limited the definition to mineral resources.

14. Mr. TREJOS FLORES (Costa Rica) suggested that, in order to avoid misinterpretation, the words "explore or" should be inserted before "exploit" in the revised Argentine amendment (A/CONF.13/C.4/L.6/Rev.1).

15. Mr. BELTRAMINO (Argentina) accepted that amendment.

16. Mr. CARMONA (Venezuela) said that the revised Argentine proposal obviously represented a sincere attempt to help the Committee to agree on a compromise, for it combined the idea of exclusive rights (see United States amendment (A/CONF.13/C.4/L.31)) with the stipulation that the exploration and exploitation of the continental shelf required the coastal State's consent. Every coastal State should have exclusive rights over its continental shelf, including the right to decide whether or not to grant concessions. Some States would decide that only national undertakings might exploit their continental shelf while others would decide to grant concessions to foreign undertakings. The latter would obviously grant concessions to private undertakings only, over whose operations on its continental shelf it would exercise control. He did not think they would grant concessions to other States. Yet that possibility seemed to be contemplated by the Argentine text. Accordingly, he could not agree to the additional clause.

17. The article should not relate to mineral resources only, since a very large proportion of the resources of continental shelves were not mineral, but living resources. The question exactly what resources the article should apply to was a very complex one. Biologists had stated that it was very difficult to say whether some species were attached to the seabed or not. He was inclined to support the amendment submitted jointly by the Australian and other delegations (A/CONF.13/C.4/L.36), because their definition of the term "natural resources", although it was of an empirical and not a scientific nature, would probably suit the purposes of the article.

18. Mr. BAILEY (Australia) said that the amendment to article 68 submitted jointly by his own and other delegations was merely a detailed expression of the principle laid down in the International Law Commission's commentary on the article.

19. The reason why a definition of "natural resources" was necessary was clear from the Commission's commentary. The Commission had agreed that the drafting of a definition required a combination of legal and scientific experience which it lacked. The joint amendment was the result of close consultation between lawyers and biologists.

20. The resources covered by the definition proposed in the joint amendment were "mineral and other non-living resources" and also "living organisms belonging to sedentary species". Most of the non-living resources of the seabed and the subsoil were, of course, mineral resources, but the words "and other non-living resources" had been added so that the article would apply to resources such as the shells of dead organisms. So far as the living resources in question were con-

cerned, the sponsors of the amendment had acted on the basis of considerations of legal principle and practical utility. They considered that it was the permanent, intimate association of certain living organisms with the seabed which justified giving the coastal State exclusive rights in regard to such organisms. The words "living organisms belonging to sedentary species" were broadly equivalent to "the products of 'sedentary' fisheries", which was the term used by the Commission in paragraph 3 of its commentary. The permanent association of some living resources with mineral resources of the seabed and subsoil was such that it was best that both those types of resources should be exploited jointly. They were harvested in such a way that it was appropriate to give the coastal State sovereign rights in respect of both types. Some sedentary living organisms were such permanent features of the seabed that it was inadvisable that they should be thrown open to unregulated universal exploitation.

21. The living organisms of the seabed and subsoil belonging to sedentary species comprised organisms such as coral, sponges, oysters, including pearl-oysters, pearl shell, the sacred chank of India and Ceylon, the trochus and plants.

22. It would be senseless to give the coastal State sovereign rights over mineral resources such as the sands of the seabed, but not over the coral, sponges and the living organisms which never moved more than a few inches or a few feet on the floor of the sea.

23. The sponsors of the amendment had agreed that no crustacea or swimming species should be covered by the definition. Swimming species were obviously not sedentary. It was true that the term "crustacea" included all crabs, of which some species were unable to move except in contact with the seabed or subsoil; but those species could move considerable distances.

24. He considered that the amendment represented a balanced compromise between the requirements of the coastal State and the need to maintain the freedom of the high seas. Some of the sponsors of the amendment were States of which the people fished only off their own coasts; others were States with fishing fleets which operated in distant waters. The former would certainly not lose if the definition were extended. The latter might not wish to go even so far. The amendment had the advantage of being both clear and well-balanced, two points to which great importance had been attached in the course of the debate in the Committee.

25. Mr. DE LA PRADELLE (Monaco) said that either the Swedish amendment (A/CONF.13/C.4/L.9) or the Greek amendment (A/CONF.13/C.4/L.39) would be acceptable to his delegation, for the reasons explained by the representative of Japan.

26. It was immaterial whether the rights of the coastal State in the continental shelf were described as "sovereign rights" or as rights of "control and jurisdiction". He would not object to the adoption of the additional paragraph proposed by the representative of Argentina (A/CONF.13/C.4/L.6/Rev.1). But he could not agree to article 68 being drafted in terms which would cover "natural resources" as contrasted with "mineral resources"; in particular, he could not accept the interpretation of "natural resources" given in the joint amendment (A/CONF.13/C.4/L.36).

27. The term "natural resources" had been used in President Truman's proclamation of 28 September 1945; but the terms of that proclamation showed that, in the context, the expression denoted mineral resources only, primarily mineral deposits which were partly under the sea and which, as a result of technical progress, it had become possible to exploit from platforms built out at sea. As stated in the International Law Commission's commentary on article 68, the Commission had come to the conclusion at its fifth session that "the products of 'sedentary' fisheries, in particular, to the extent that they were natural resources permanently attached to the bed of the sea should not be left outside the scope of the régime adopted, and that this aim could be achieved by using the term 'natural resources'" in preference to the term "mineral resources" which it had used previously. At its eighth session, the Commission had gone still further in the wrong direction; and he would cite paragraph 4 of the commentary on the article. And it was further being proposed that even bottom fish should be covered by the use of the term "natural resources".

28. The use of the term "natural resources" would have dangerous implications for the freedom of fishing, which was part of the freedom of the high seas. If that term was used, the coastal State would be free to take unilateral action regarding areas outside its territorial waters; it was impossible to predict what would be the limit of such action. It followed from the passage relating to "sedentary" fisheries in the commentary on the article that the Commission agreed that, if its draft article 68 was adopted universally, the coastal State would be able to exercise exclusive rights over fisheries which had in the past been open to fishermen of all nationalities, such as the pearl fisheries off the coast of States to the south of the Persian Gulf, which he understood were of great importance to people living on the coast of Iran. Fishing rights in respect of the seabed under parts of the high seas were not suitable for partitioning amongst States.

29. In the joint amendment were adopted, fishermen would have the right in many areas to fish for some species, but not for others. It was not possible to invent fishing gear which would differentiate between species in accordance with the distinction made by the authors of the joint amendment. Fishermen would not recognize that distinction, and there would be incidents between fishermen of different nationalities and those incidents would doubtless lead to political disputes. Accordingly, if the Committee did not limit the article to mineral resources, its provisions might become a source of political disputes.

30. Mr. NAFICY (Iran) said that in the Persian Gulf no vessels from countries other than those actually bordering on the Persian Gulf engaged in fishing.

31. Mr. BARROS FRANCO (Chile) said that the rights of the coastal State in the continental shelf should not be limited to exploration and exploitation. To provide that the coastal State should have sovereignty over the continental shelf would not impair the freedom of the superjacent sea and the air space above it. The

Commission had been unduly apprehensive in stating, in paragraph 2 of its commentary on article 68, that: "it was unwilling to accept the sovereignty of the coastal State over the seabed and subsoil of the continental shelf", because it attached decisive importance to "the safeguarding of the principle of the full freedom of the superjacent sea and the air space above it".

32. There was surely no valid reason for including article 69 if the words "for the purpose of exploring and exploiting its natural resources" were used in article 68 to qualify the "sovereign rights" mentioned in that article.

33. The word "sovereignty" should be used instead of the words "sovereign rights", as the latter term was vague, whereas jurists understood exactly what was meant by "sovereignty", a term which had been used frequently in international instruments for a long time.

34. He would support the amendment proposed by the Mexican delegation (A/CONF.13/C.4/L.2), which was consistent with the essential part of the Commission's commentary on article 68, in particular with paragraph 7 of that commentary. The additional paragraph proposed by the delegation of Argentina (A/CONF.13/C.4/L.6/Rev.1) constituted a logical corollary to the text proposed by the Mexican delegation.

The meeting rose at 6.10 p.m.

TWENTY-SECOND MEETING

Thursday, 27 March 1958, at 3.20 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 68 (A/CONF.13/C.4/L.2, L.3, L.6/Rev.2, L.9, L.10, L.13, L.19/Rev.1, L.24, L.31, L.36, L.37, L.39, L.40, L.43, L.44) (continued)

1. Mr. TAANING (Denmark) said that his delegation could not agree to the use of the adjective "sovereign" in article 68 as drafted by the International Law Commission to qualify the word "rights", and preferred the text of the Swedish proposal (A/CONF.13/C.4/L.9). It could, however, accept the definition of natural resources in the proposal by Australia, Ceylon, the Federation of Malaya, India, Norway and the United Kingdom (A/CONF/13/C.4/L.36).

2. The purpose of the Danish proposal (A/CONF.13/C.4/L.10) that a new paragraph be added, dealing with the freedom of scientific research, was to confirm a freedom which all countries had enjoyed for generations and which benefited all mankind. Moreover, scientific research on the continental shelf outside territorial waters was valuable to coastal States, yet need cost them nothing. Biological research was essential to the proper exploitation of fisheries, and the fact that the best stocks of fish of economic interest existed on and around the continental shelf made it necessary to take proper legal precautions; otherwise, difficulties might arise. To give only one example, sampling of the seabed was essential to determine the character of the food upon which the fish fed, and it was not always possible to notify the coastal State concerned of specific investigations in time. A general provision safeguarding freedom of research was therefore necessary in the interests of all branches of oceanography.

3. Mr. GOMEZ ROBLEDO (Mexico) considered that sovereignty was an absolute attribute and that it was therefore erroneous to speak of "sovereign rights". As the Italian representative had pointed out, the concept of sovereignty was inherent in the relationship between a State and its territory. It was a geological fact that submerged territory was merely the prolongation of the land domain, and it therefore followed that the State had identical sovereignty over both. The Mexican delegation considered that the concept was certainly not obsolescent; it had been rightly said that, far from having given way to international law, sovereignty was the essential condition of its being. It could no longer be argued that international law had supremacy over political entities, since the Charter of the United Nations was based on the sovereign equality of all the Members. Even delegations which favoured the internationalization of the continental shelf recognized the sovereignty of the coastal State. Those who contended that sovereignty did not extend to the superjacent waters had invoked the analogy of the relationship between the superjacent waters and the air space above them; but that argument was difficult to defend on physical grounds and impossible to defend legally, since the sole use to which the air space could be put was that of passage.

4. The term "exclusive rights" in the United States amendment (A/CONF.13/C.4/L.31) and the words "control and jurisdiction" in the Swedish amendment were equally unsatisfactory. In legislating, it was essential to use expressions which corresponded to reality. His own delegation had used the qualifying phrase "to the exclusion of other States" merely to define a consequence of sovereignty. In that connexion, the definition of the exclusive rights of the coastal State in the Argentine amendment (A/CONF.13/C.4/L.6/Rev.2) was acceptable, if not strictly necessary.

5. Of the proposed definitions of natural resources, his delegation preferred those of the Burmese and Yugoslav delegations (A/CONF.13/C.4/L.3 and L.13), which subsumed species that occasionally had their habitat at the bottom of the sea or bred there. It could not support the six-power proposal, since no clear distinction could be made between the organisms referred to in the first part thereof and crustacea, which were closely associated with the seabed, particularly during fishing. He would therefore ask for a separate vote on the last eight words of the proposal.

6. Mr. KRISPIS (Greece), introducing his delegation's amendment (A/CONF.13/C.4/L.39), observed that the rights claimed in the Truman proclamation of 1945 related to mineral resources, which term had originally been used by the International Law Commission. Several States had at that time believed that the opportunity could be seized to claim exclusive rights over fisheries on the continental shelf, but the Greek delegation could not entertain such a claim. It had submitted its amend-

ment for both practical and legal reasons. From the practical point of view, the marine subsoil could no longer be left unexploited, in view of the present great technical possibilities and of the fact that the exploitation of those resources would serve the interests of the international community. The legal question then arose of who was to exploit the resources. The proposal that the international community itself should do so was both unrealistic and dangerous: unrealistic, because it would be impossible to devise satisfactory international rules for a long time to come; dangerous, because no State would be prepared to allow others to erect installations off its shores. Accordingly, there was no alternative but to recognize the rights of the coastal State.

7. It had rightly been said that, as the continental shelf was not yet regulated by international law, the Conference should make good that deficiency. But that was quite a different matter from amending international law, which would be unavoidable if natural resources other than the mineral resources were to be covered. It should be borne in mind that all the living resources were of the waters of the sea, and were accordingly subject to the régime of the high seas; only the mineral resources belonged to the continental shelf properly so called.

8. The attempt to confine the definition of living resources to sedentary fisheries was unsatisfactory. For example, the sponsors of the six-power proposal maintained that bottom fish would not be affected by their régime, but some scientific experts disagreed with that view. In practice, therefore, accidental catches of sedentary species during bottom fishing would entail legal risks. It was essential to view the matter practically.

9. If the coastal State had absolute authority over the mineral resources alone, there was no reason why the term " sovereign " should not be used. While there was no great difference between that and the alternative terms proposed, is seemed unrealistic to avoid the most direct expression. However, his delegation would make no formal proposal in that sense, as it was disposed to support the International Law Commission's text whenever possible.

10. Mr. JONSSON (Iceland) said that his country's views on article 68 were conditioned by two facts: first, that its fish stocks were so closely connected with its continental shelf that they formed part of its natural resources; and second, that they provided the country's main subsistence. Experience had shown how easily the stocks could be depleted. He would quote from the document on the physical and biological association of living resources with the seabed of the continental shelf prepared by the secretariat of the Food and Agriculture Organization (FAO) (A/CONF.13/13, page 4), passages which stressed that the shelf contributed to the creation of particular physical and chemical conditions that were of considerable significance to the living organisms, and that in discussing the association the part played by the superjacent waters must be recognized. He would further mention some examples of the importance of the continental shelf to some species of food fishes. The Atlantic herring, which had accounted for approximately 70% of the total North Sea catch in 1955, laid its eggs on the seabed, and was therefore dependent on it for reproduction.

11. It was stated in the FAO report that, although some species visited the seabed for only a brief period to spawn, the destruction of a breeding ground might lead to the extinction of the stock. Many fish were closely connected with the seabed and others — for instance, flat fish — were so closely connected with the bottom when older that they had to be dredged up from the seabed. Moreover, off-shore demersal fishing in the North Atlantic largely involved the use of gear which either lay on the seabed or was trawled along it; the seabed therefore represented a necessary basis for the gear.

12. The delegation of Iceland would vote for those of the proposals which were in conformity with its views. Although it would not vote against the others, which were reasonable so far as they went, it would abstain from voting on them because they did not go far enough.

13. Mr. RANUKUSUMO (Indonesia) said that his delegation could accept the principle of the " sovereign rights " of the coastal State over its continental shelf because, as was made clear in paragraph 8 of the International Law Commission's commentary to article 68, it was based on general principles corresponding to the present needs of the international community and was in no way incompatible with the principle of the freedom of the seas. His delegation also considered that the coastal State should be given the primary right of exploring and exploiting the continental shelf.

14. The point of departure of state practice in the matter was the Truman proclamation of 1945, the preamble to which drew attention to the world-wide need for new sources of petroleum and other minerals, and indicated that recognized jurisdiction over such resources lying under the continental shelf of the United States of America was required in the interest of their conservation and prudent utilization. It was obvious from that assertion that the proclamation broke new ground and that similar recognition by other States would be necessary when exploitation was attempted. The preamble further stated that it was only just for the contiguous nations to exercise jurisdiction over those resources, because, facility of exploitation apart, the continental shelf was an extension of the land territory of the coastal State and self-protection compelled it to keep a close watch over activities off its shores. In the light of those considerations, President Truman, while reserving the status of the waters concerned as high seas with unlimited rights of navigation, had proclaimed that the natural resources of the continental shelf appertained to the United States and were subject to its jurisdiction and control.

15. It would be noted that the word " sovereignty " did not appear in the proclamation; it was difficult, however, to see any difference between " jurisdiction and control " and " sovereignty ". A United States judge had stated that territorial sovereignty involved the exclusive right to display the activities of a State; Professor Brierly had said that the littoral State, having exclusive rights of control and jurisdiction over the subsoil, could be regarded as enjoying sovereignty; and another authority had gone so far as to say that if the rights claimed over the continental shelf were

termed "sovereignty", they would be no more extensive than what was claimed in the proclamation. It must be remembered that substance was more significant than form. The Indonesian delegation could therefore see no reason for some representatives' prejudice against the term "sovereignty", particularly since other unilateral declarations annexing the resources of the continental shelf had been made by the United Kingdom, Pakistan, Saudi Arabia and some of the sheikdoms on the Arabian peninsula.

16. It was regrettable that, in an age of great technical progress, the true needs of mankind were still disregarded. The Conference had been convened, not to perpetuate outworn legal principles, but to promote the progressive development of international law and its codification.

17. The Indonesian delegation considered that scientific research into the continental shelf was essential, provided that its purpose was to promote the well-being of mankind, and that it was carried out with the consent of the coastal State concerned.

18. With regard to the revised Netherlands amendment (A/CONF.13/C.4/L.19/Rev.1), he would draw attention to paragraph 11 of the commentary to article 67, which his delegation endorsed; it therefore considered that there was no reason to mention such operations as "tunnelling" and "directional drilling" in article 68.

19. In conclusion, his delegation was inclined to support the Burmese amendment, and approved in principle of the six-power proposal.

20. Mr. MÜNCH (Federal Republic of Germany) considered that, in defining the nature of the rights of the coastal State, the Committee should avoid general formulae. The text of article 67 adopted by the Committee had, moreover, deprived the continental shelf of practicable limits. With all due respect to the International Law Commission, it should be remembered that drilling gear had been developed for operation at far greater depths than had been contemplated when article 67 had been drafted. Accordingly, instead of discussing terms to convey the idea of sovereignty, it would be better merely to refer to article 71, in which the rights of the coastal State would be set forth.

21. With regard to the definition of natural resources, he considered that theoretical definitions of the living resources to be made subject to the provisions of article 68 were liable to undermine the Committee's real purpose. A more practical approach was needed, bearing in mind the relation between man and the resources in question. It was hardly likely that fishermen could or would respect rules which disregarded the real relationship between species attached to the seabed and swimming fish. His delegation had therefore confined its proposal to mineral resources (A/CONF.13/C.4/L.43).

22. Mr. GOHAR (United Arab Republic) considered that the arguments of those who wished to limit the definition of the natural resources of the continental shelf to mineral resources and living organisms attached to the seabed were artificial and biologically unsound. It was true that the attached species were physically more closely related to the seabed than were bottom-fish, but any distinction between benthonic and pelagic species was likely to be arbitrary. Indeed, attached species were likely to be less closely related to the seabed than certain bottom fish which sheltered and bred at the bottom of the sea. Moreover, the former species often depended on the water itself for food, whereas the latter found their sustenance on the seabed. He also agreed with the Greek representative that it was difficult to distinguish between attached and bottom species when actually fishing and that the conservation of one group might depend on that of the other. The only practical distinction was the kind of gear used, but gear used for bottom fishing might also catch pelagic species.

23. Mr. JHIRAD (India) wished to refer to the statement of the United States representative in support of the United States amendment (A/CONF.13/C.4/L.31). According to that statement, the amendment had been prompted because the delegation considered that uncertainty prevailed about the term "sovereign rights", that the term "exclusive rights" meant something less than sovereign rights, that in order to ensure the freedom of the high seas it was necessary to use that term, and it would not be right to anticipate for that purpose the provisions of article 69.

24. He could not agree. If there were any uncertainty about the term "sovereign rights", there was even more uncertainty about the term "exclusive rights".

25. The International Law Commission had separated the provisions on the nature of the rights of the coastal State into two articles, namely, articles 68 and 69. Those articles could by a drafting device have been combined into one, but that was not necessary, since it was a cardinal principle of interpretation that any legal instrument must be examined as a whole, and any article might modify other articles in the instrument. The suggestion that article 69 must not be anticipated was not, therefore, acceptable.

26. The sponsors of the amendment had not advanced any positive meaning for the term "exclusive rights". Were those rights held to include the right to legislate in respect of the exploration and exploitation of the seabed and subsoil and the right to legislate and to exercise jurisdiction and the right to punish offenders?

27. The supporters of the amendment were not themselves in agreement as to what the term "exclusive rights" meant. Some thought that they meant something less and others something more than sovereign rights; it was difficult to accept a draft on the meaning of which its own supporters were not agreed.

28. The term "exclusive rights" was not a term of art and had no significance in international law. While exclusivity was an attribute of sovereign rights, none of the other attributes of sovereignty were attached to the expression "exclusive rights".

29. In view of those considerations, the Indian delegation would vote against any proposal which substituted "exclusive rights" for "sovereign rights".

30. With regard to the definition of "natural resources", he could not agree with representatives who referred to the Truman proclamation as covering

mineral resources alone and who for that reason maintained that natural resources should be confined to mineral resources. The task of the Conference was not to put the seal of approval on that proclamation, but to draw up an equitable instrument defining the rights of the coastal States. For centuries, sedentary fisheries had been the object of regular and exclusive exploitation. There was, therefore, nothing wrong in principle in the grant of such rights generally.

31. While he sympathized with the coastal States which claimed the so-called bottom-fish — and indeed the inclusion of such bottom-fish would also be of benefit to India — he could not agree to their inclusion under natural resources, because swimming species belonged to the domain of the high seas and not to that of the continental shelf. Any claims for such fish should be put forward in one of the other committees of the Conference.

32. Mr. PATEY (France) said that the decision of the French delegation to support the six-power amendment naturally implied that it withdrew part 1 of its amendment to article 68 (A/CONF.13/C.4/L.7); part 2 still stood.

33. He would ask the Danish representative to explain whether his amendment to article 68 meant that coastal States undertook to give their permission each time that the research complied with the conditions which had been laid down, and appeared to be based on sound reasons, or whether it meant that general permission was to be given in advance. In the latter case, his delegation would be unable to agree to it.

34. Mr. BARROS FRANCO (Chile) asked whether the Danish delegation intended the amendment to relate only to research by state bodies and international organizations.

35. Mr. TAANING (Denmark) thought that obstacles to research on the seabed and the subsoil of continental shelves should be reduced to a minimum. It was right that the coastal State should be notified of plans to carry out such research. Often, however, it would be impracticable to give such notification every time a vessel set out to engage in such work; it would be sufficient in such cases to give a general notification once a year. He had particularly in mind research in the North Sea area, where there were many coastal States.

36. He intended to submit a revised version of his amendment, which he hoped would dissipate many of the misgivings expressed about it.

37. Mr. CARTY (Canada) suggested that the Danish delegation might well consider using the word "object", instead of the word "intention", in the revised version of its amendment, and adding the words "or to participate if desired" at the end.

38. Mr. RIDALL (United Kingdom) said that his delegation considered that there was much in favour of using the term "mineral resources" rather than "natural resources" in article 68, as the delegation of Sweden and that of Greece proposed. The articles referred to the Committee related to the seabed and subsoil of continental shelves, as opposed to the superjacent waters. It was true that it was laid down in article 69 that the rights mentioned in article 68 did not affect the legal status of the superjacent waters as high seas, but the sea was vital to all the organisms which lived in relationship with the seabed, whatever form that relationship took. It could therefore be argued that all those organisms should be covered by the régime of the high seas rather than by that of the continental shelf.

39. On the other hand, it should be remembered that the International Law Commission had agreed that living organisms permanently attached to the bed of the sea should be covered by the régime of the continental shelf. Moreover, in practice coastal State had *de facto* rights in respect of certain living organisms, such as pearl-oysters, sacred chanks (*turbinella pyrum*) and Wexford oysters, outside its territorial sea. His delegation thought it would be wrong to abolish such rights. It would be better to embody them in the international code which the Conference had been convened to draw up.

40. The United Kingdom delegation believed that it was essential to include in the article a clear definition, consistent with biological considerations, of the term "the natural resources of the continental shelf". To exclude all living organisms that were not physically attached to the seabed or subsoil would be inconsistent both with those considerations and with practice. The definition proposed by the sponsors of the six-power amendment (A/CONF.13/C.4/L.36) was based on the advice of marine biologists. It was consistent with the argument that there should be different régimes for the seabed and the subsoil of continental shelves on the one hand and for the superjacent sea on the other. The definition covered all the living resources which remained in the same place, excluding organisms which travelled over considerable distances. It was obviously tempting for those States which, like the United Kingdom, possessed large fleets equipped for fishing in distant waters to press that the definition be limited to mineral resources, especially in view of the fact that most fishing was done over continental shelves, and for other States to urge that it be widened to cover bottom fish and even other fish which occasionally had their habitat at the bottom of the sea or bred there. But it was scarcely likely that either of those extremes would command the Committee's approval; he therefore hoped that the six-power definition would be accepted as a compromise, for it had the advantages of clarity, of ensuring equality and stability and of realism.

41. Mr. KANAKARATNE (Ceylon) believed that if members forgot their biological or legal expert knowledge for a time and relied on their common sense they would come to understand one another better.

42. Following the statements made by the representative of Australia at the previous meeting (21st meeting, para. 18) and by the representatives of India and the United Kingdom at that meeting, he thought that all he need say about the amendment (A/CONF.13/C.4/L.36) which his delegation had submitted jointly with the delegations of those and other countries was that he considered it a reasonable provision, which was consistent both with the need to maintain the freedom

of the high seas and with the need of most coastal States, particularly new ones, to exploit the seabed and subsoil of their continental shelves.

43. The only part of the United Kingdom representative's statement with which he did not agree was that to the effect that living organisms attached to the seabed might be considered to be more closely related to the sea than to the continental shelf because they could not live without water; that statement was as fallacious as would be an assertion that man was an aerial being because he could not live without air.

44. The sponsors of the amendment had divided the natural resources in question firstly into (i) mineral resources; (ii) other non-living resources; secondly, into (i) immobile living organisms; (ii) living organisms which moved only a few feet or less; and (iii) living organisms which moved considerable distances — i.e., swimming species and crustacea. To agree on a reasonable definition, they had had to draw a line somewhere between those categories. They had done so between category (ii) and category (iii) of the living organisms. He hoped that all present would accept that definition. Surely members were not so lacking in ingenuity as to have to admit defeat by the crustacea.

45. He would pay a tribute to the representatives of the United Kingdom and Norway, which both possessed large fleets equipped to fish far from their home waters, and to the representative of India, which was building such a fleet, for having agreed to the limitation of their rights to fish on the high seas. He hoped that others would follow their example.

46. He could not support the Burmese amendment (A/CONF.13/C.4/L.3), because to include "bottom-fish and other fish which ... occasionally have their habitat at the bottom of the sea or are bred there" would be to go much too far. The term bottom-fish did not mean the same thing in every country; moreover, there would undoubtedly be disputes about what exactly were the "other" fish. Who would settle such disputes? Surely it would be better to adopt a definition which left no room for doubt?

47. Neither could he agree to the amendments submitted by the delegations of Sweden, Greece and the Federal Republic of Germany (A/CONF.13/C.4/L.9, L.39, L.43), because their proposal that only mineral resources be included went too far in the opposite direction. It would be absurd to give coastal States the right to explore and exploit resources far below the seabed but not resources within easy reach on top of it.

48. Mr. GARCIA AMADOR (Cuba) recalled that in 1956, at the third meeting of the Inter-American Council of Jurists, a representative of the Government of Mexico had made a statement to the effect that, because a coastal State exercised sovereignty over its continental shelf as over those parts of its territory which were not submerged, it had sovereignty over the superjacent seas as well.

49. Mr. GOMEZ ROBLEDO (Mexico) said that, the Cuban representative having raised a very delicate point, he must reserve his right to reply later.

50. He thought that the authors of the six-power amendment should not have excluded all crustacea, because some were permanently attached to the seabed at the time of harvesting. He had in mind particularly the kind of barnacle known as the *percebe* in his country.

51. Mr. GOHAR (United Arab Republic) added that that barnacle was an edible crustacean which, except in the larval stage, was permanently attached to the seabed.

52. Mr. RIDALL (United Kingdom) said that he would look into the matter.

53. Mr. HULT (Sweden) said that the observation of the representative of Ceylon had persuaded him to withdraw that part of his delegation's amendment (A/CONF.13/C.4/L.9) consisting of the substitution of the words "mineral resources" for the words "natural resources". He thought that the definition proposed by the sponsors of the six-power amendment was very close to what those who had drafted his government's comments on the draft agreed upon at the third session of the International Law Commission had had in mind; those comments included a statement to the effect that, in practice, coastal States exercised sovereign rights over some sedentary species on their continental shelves, and that when there was a historical basis for such rights such States should not be deprived of them.[1]

54. Mr. HERRINGTON (United States of America) agreed in part with those who argued that the term "mineral resources" should be used rather than "natural resources", particularly since the use of the former term would provide a positive line of separation between the resources of the shelf and those of the sea. On the other hand, it would be wrong to ignore the fact that in practice States actually enjoyed historical rights in respect of some species of organisms living on their continental shelves. He was firmly opposed to broadening the definition to cover bottom-fish and other fish which occasionally had their habitat at the bottom of the sea or were bred there. If those words were used the article would cover half the total yield of world fisheries, including fish which moved from the territorial sea of one State to that of another and fish which moved out into the open ocean. The inclusion of such fish would adversely affect conservation schemes. He thought it would be practicable to limit the living organisms covered by the definition to those "which in the inharvestable stage of life are attached to the seabed". He would, however, support the definition proposed in the six-power amendment, which covered a number of historical species that were not attached to the seabed in the harvestable stage, if, as appeared likely, the majority of the members of the Committee were prepared to accept it as a compromise, particularly since it had the advantage of being explicit. He would deprecate the tendency to provide for exceptions to the definition, which could not fail to make it less explicit and open it to the possibility of succesive changes, exceptions and complications.

[1] *Official Records of the General Assembly, Eighth Session, Supplement No. 9* (A/2456), p. 65.

55. Mr. CARL STABEL (Norway) said that his delegation had come to the conclusion that there were no potent arguments against the International Law Commission's contention that the so-called "sedentary fisheries" should, to some extent, be covered by the régime of the continental shelf in the same way as mineral resources. Since the jurisdiction of some coastal States over "sedentary fisheries" outside their territorial waters had been established for a long time in many parts of the world, he could well understand their reluctance to subscribe to a new régime for the exploitation of the mineral resources of the continental shelf which did not also cover the exploitation of other resources closely connected with that shelf. Although the Norwegian fishing industry was not engaged in "sedentary" fishing outside Norwegian territorial waters, he was prepared to agree to the extension of the rights to which article 68 related to such fisheries, but only on condition that the non-mineral resources in question were clearly defined. If that were not done, there would be much uncertainty among those fishing on the high seas, particularly in regard to the regulations under consideration by the Third Committee. Those considerations explained why his delegation was one of the sponsors of the six-power amendment.

56. He was opposed to the use of the term "sovereignty" in respect of the continental shelf, because it was proposed to grant to the coastal State only limited rights in regard to the shelf, solely for the purposes of exploring and exploiting certain of its natural resources. The régime of the continental shelf should not be assimilated to that of the territorial sea. Some representatives had argued that the use of the term "sovereignty", instead of "exclusive rights" or "jurisdiction and control", would add nothing to the rights awarded to the coastal State, but the discussion had shown that that was not the view of all the proponents of the term; so it was clear that its use would create undesirable uncertainty. He was therefore prepared to vote for either the Swedish or the United States proposal on the subject.

57. Mr. KWEI (China) asked whether he was right in assuming that the text proposed for article 68 by the International Law Commission covered known resources which had not been properly explored or exploited before the emergence of the concept of the continental shelf as a new subject of international law.

58. He would draw attention to that point in order to ensure that the Committee adopted a proper criterion for the interpretation of the term "natural resources" as used in the article.

59. Mr. CARTY (Canada) said his delegation had decided to join those which supported the six-power amendment.

60. Mr. CARBAJAL (Uruguay) said that in his opinion it was unnecessary to specify what was meant by the term "natural resources" in article 68. To do so would only create confusion.

The meeting rose at 6.5 p.m.

TWENTY-THIRD MEETING

Friday, 28 March 1958, at 10.25 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 68 (A/CONF.13/C.4/L.2, L.3, L.6/Rev.2, L.10, L.13, L.19/Rev.1, L.31, L.36, L.39, L.40, L.43, L.44) (continued)

1. Mr. GOMEZ ROBLEDO (Mexico) emphasized that his delegation and others were claiming sovereignty for the coastal State only over the seabed and subsoil of the continental shelf. If the only reason for the opposition to that view was a fear that the coastal State's claim might affect the régime of the high seas, he would have no objection to a vote being taken first on article 69, which safeguarded that régime. He would also be willing to add to his delegation's proposal (A/CONF.13/C.4/L.2) some wording to the effect that it would be without prejudice to the régime of the high seas as applied to the superjacent waters of the continental shelf, and that there was no intention of amending article 69.

2. At its sessions in 1951 and 1953, the International Law Commission had recommended the expression "control and jurisdiction", but that had been changed to "sovereign rights"; and the representative of Cuba at the Third Inter-American Conference of Jurists had agreed that "sovereignty" was in fact the only accurate form for expressing the ideas felt by the International Law Commission about the rights of the coastal State.

3. Mr. TAANING (Denmark) said that, as it appeared that there might not be unanimous agreement on his delegation's proposal (A/CONF.13/C.4/L.10), he would withdraw it and submit a revised version, as close as possible to the terms of document A/CONF. 13/28, in the form of an amendment to article 71.

4. Mr. VAN DER ESSEN (Belgium) supported the proposal by the Federal Republic of Germany (A/CONF.13/C.4/L.43). He would agree that the expressions "sovereignty", "sovereign rights", "jurisdiction and control" and "exclusive rights" all meant the same thing, and therefore would prefer the less ambiguous definition proposed by the Federal Republic of Germany. He would also agree that the natural resources reserved to the coastal State should be limited to mineral resources. He would doubt the wisdom of recognizing exclusive rights over certain organisms on the sea bottom, even if they could be clearly specified, as in the joint proposal of Australia, Ceylon, Federation of Malaya, India, Norway and the United Kingdom (A/CONF.13/C.4/L.36), fearing that that proposal might lead to difficulties in the future. While recognizing the coastal State's legitimate interest in the exploitation of the organisms living on the seabed, he would consider that it would be a more practical solution to reach regional agreements than to incorporate an arbitrary distinction in an international agreement.

5. Mr. MÜNCH (Federal Republic of Germany) said that his delegation's proposal did not suggest either the setting up of any monopolies for the coastal State — in oil, for example — while excluding less-developed coastal States from the coastal fisheries, or the recommendation of any form of internationalization of the resources of the continental shelf. Its only object was to establish a régime of freedom, to be regulated by the international agreement to be drawn up by the Conference. If his amendment to article 68 were accepted, additional safeguards could be introduced into article 71.

6. He wished to correct some statements that had been made about the origin of the principle of the freedom of the seas. It had been said that the freedom had worked to the interest of the great maritime Powers, but his country, though it had never been one of those Powers, was a firm supporter of that principle, and there was no country in western Europe that had not benefited therefrom.

7. He had intended, if the proposal of Denmark (A/CONF.13/C.4/L.10) were withdrawn, to re-introduce it in the name of his own delegation, but if it were to be discussed again in connexion with article 71 he would make an appropriate proposal at that stage.

8. Mr. ZAORSKI (Poland) said that, in order to avoid misunderstanding, it was necessary to give a clear definition of natural resources and thus define and limit the rights of the coastal State with regard to other States. He believed that the six-power proposal had the same intent as paragraph 3 of the International Law Commission's commentary on article 68, and excluded all free-swimming marine organisms. It was a reasonable compromise, and his delegation would therefore support it.

9. Mr. MONACO (Italy) said that article 68 was of paramount importance, and raised two fundamental problems — the definition of the rights of the coastal State over the continental shelf, and the extent of those rights. With regard to the first point, he did not believe it was possible to differentiate between "sovereign rights" and "sovereignty".

10. The expression "control and jurisdiction" was not satisfactory because it did not define the coastal State's rights, but merely guaranteed them once they had been defined. The United States proposal (A/CONF.13/C.4/L.31) deserved serious consideration, but the expression "exclusive rights" was open to the same objection. The right to own something and the right to use it might equally be exclusive, but they were different categories of right. Thus, to say that a right was exclusive was not to define it in substance.

11. The proposal by the Federal Republic of Germany therefore offered the best solution, since it renounced the attempt to define fully the rights of the coastal State over the continental shelf in favour of enumerating certain specific rights in article 71.

12. The standing in international law of the many unilateral declarations of rights over the continental shelf by coastal States was an open question, for the Conference to decide. The whole concept of the institution of the continental shelf had developed in relation to mineral resources, and it would be a mistake to include living organisms. It should be left to the Third Committee to make its own decisions with regard to fishing, including sedentary fisheries, since any overlapping between the articles would lead to confusion.

13. For those reasons he would support the proposal by the Federal Republic of Germany, though he might have certain drafting changes to suggest.

14. Mr. PATEY (France) said that he would speak later on the freedom of scientific research, possibly in relation to any reintroduction by Denmark of its proposal (A/CONF.13/C.4/L.10) when article 71 was discussed. The second part of his delegation's proposal on article 68 (A/CONF.13/C.4/L.7) was provisionally withdrawn, the first part having been withdrawn earlier in favour of the six-power proposal (A/CONF.13/C.4/L.36).

15. He wished to correct the impression given by the representative of India (22nd meeting, para. 23) that, in French at any rate, the expression "exclusive rights" (droits exclusifs) had a more restricted meaning than sovereign rights (droits souverains). That was not so. Paragraph 2 of the International Law Commission's commentary on article 68 explained that those rights were exclusive in the sense that, if the coastal State did not exploit its continental shelf, others could do so only with its consent. The expression "exclusive rights" accordingly had a specific meaning, but its inclusion in the text would have no such implication as the expression "sovereign rights" or "sovereignty". He did not consider that at that stage any proposal with regard to article 68 could be justified on the basis of safeguards provided under article 69, since the final text of the latter article was not yet known.

16. The views expressed by the Cuban representative at the 20th meeting (para. 20) on the possible effects of the recognition of the coastal State's sovereignty over the superjacent waters of the continental shelf were in accord with the opinion of his own delegation, which would accordingly support the United States proposal.

17. Mr. LACLETA (Spain) did not believe that there was any basic difference of view between the group which supported the mention of "sovereignty" and that which preferred the phrase "exclusive rights", but he felt that the insistence of some representatives on the idea of sovereignty did not help to dispel the apprehensions felt by the other group. For his part, he considered that the rights of the coastal State were an exception to the general rule of the freedom of the seas and that the expression "exclusive rights" was accordingly preferable to any reference to the concept of sovereignty. In that respect, the proposal of the Federal Republic of Germany was in harmony with that of the United States.

18. With regard to natural resources, he would prefer that the reference should be only to mineral resources, but he was not taking a rigid stand on that point. His delegation was disposed to support the six-power proposal.

19. Mr. LIMA (El Salvador) supported the Mexican proposal (A/CONF.13/C.4/L.2), since the term "sovereignty" was one that was recognized in international law.

20. On the question of natural resources, his delegation adhered to the view that the rights of the coastal State with regard to the seabed and subsoil of the continental shelf should extend to the natural resources, including mineral resources and all marine, animal and vegetable species living in a constant physical and biological relationship with the continental shelf, not excluding the benthonic species. He was therefore unable to accept the definition in the six-power proposal, as it was too restrictive. He would agree with the representative of Mexico that the last phrase, excluding crustacea and free-swimming species, should be deleted. If, however, there were no other amendments approximating more closely to his delegation's position, he would be prepared to vote for that amendment if it could be improved as he had suggested.

21. The records of the International Law Commission's proceedings in recent years showed that the Commission had not felt able to pursue its discussion of definition of natural resources.

22. It had been suggested that the question should be studied further by a group of experts, but that study had never been made and in the absence of such a study the Committee was now being asked to adopt the interpretation in paragraph 3. The study by the Food and Agriculture Organization (FAO) (A/CONF.13/13) might provide the basis of a solution of the problem. It demonstrated that, in addition to the sessile species, there were other species which for physiological and biological reasons might legally be considered an essential part of the continental shelf. He did not believe therefore that there was a scientific basis for the six-power proposal. The study by FAO contained no justification for the exclusion of crustacea. It divided the living resources of the continental shelf into four categories: those within the sea bottom; those fastened to the bottom; those living in the surface of the bottom and the water immediately above it; and those living in the superjacent waters at various depths; and it reached the conclusion that only the last category could reasonably be excluded from the living resources of the shelf. The crustacea were included in the third classification, and clearly belonged to the shelf. His delegation would be much gratified if the joint proposal could be amended to bring it into line with the expert views expressed in the FAO study.

23. Mr. MOUTON (Netherlands) said that in article 68 the Committee must decide, first, on what meaning was to be given to "natural resources" and, secondly, what rights were to be given to the coastal State. It was the possibility of exploiting the mineral resources of the coastal States that had led to the various declarations of rights over the continental shelf. In the early stages of its work, the International Law Commission had considered only the mineral resources of the shelf, but in 1953 it had widened the notion to subsume sedentary species. He did not regard that as justified, since the sedentary species depended on the superjacent waters for their vital requirements rather than on the subsoil of the shelf.

24. With regard to the recognition of historic rights, which applied, for example, to the pearl-oyster and chank *(turbinella pyrum)* fisheries off the coast of Ceylon long universally recognized as belonging to that country, he agreed that there was no logical basis for differentiating between those rights claimed at an earlier period and rights claimed later over the sedentary fisheries of the coast. He was inclined therefore to accept the inclusion of sedentary species in the term "natural resources", but only if they were precisely defined. That precise definition was necessary because any encroachment on the freedom of the high seas should be restricted to what was essential in the interests of the coastal State. It was, therefore, necessary either to make a list of items that were considered to belong to the sedentary species, or to give some such definition as was proposed in the six-power proposal. He believed that the second course was the most practicable, and he would accordingly vote for the joint proposal.

25. With regard to the coastal State's rights, it was necessary to decide, first, the character of those rights and, secondly, their extent. He did not consider that the coastal State's rights should extend beyond the right to exploit the sedentary species. The bottom-fish must be free for general exploitation, since it was open to any State to trawl on the continental shelf. The rights of the continental shelf could not be described as "sovereignty"; and the joint proposal was accordingly well founded in excluding the idea of sovereignty.

26. The question of the coastal State's rights should be considered solely in relation to the purposes of exploring and exploiting the natural resources of the continental shelf; that had been made clear by the International Law Commission in order to avoid any encroachment on the freedom of the high seas. The same idea lay behind reference to "exclusive rights" in the Netherlands proposal (A/CONF.13/C.4/L.19/Rev.1), although he did not believe that the adjective was of major importance and would be prepared to submit to a majority view on the question whether the rights in question should be described as "sovereign" or "exclusive".

27. A far more important question was the extent of those rights. That was not a difficulty in relation to exploitation of the submarine areas by means of tunnelling or directional drilling, but it became a question of importance when installations were set up where they might encroach upon the freedom of the high seas. There were already in existence clusters of installations three miles wide and six or seven miles long, with distances of 400 metres between the installations, and such groups might constitute a serious obstacle to navigation. There were also forms of exploration of the submarine areas in which explosions were used and harm might be done to fisheries. It was for those reasons that his delegation's proposal differentiated between the two methods of exploiting the natural resources of the continental shelf. It incorporated a very generous outer limit for the second type of exploitation — the limit of 550 metres — which according to the United Nations Educational, Scientific and Cultural Organization (UNESCO) report (A/CONF.13/2) corresponded to the lowest edge of the continental shelf.

28. Mr. ALVAREZ AYBAR (Dominican Republic) thought that the International Law Commission's use of the expression "sovereign rights" in article 68 was consistent with other articles, since articles 1 and 2,

for instance, also referred to "sovereignty". The principal question in discussing the nature of the coastal State's rights must be the effectiveness of those rights, and provided that the coastal State had effective rights to exploit the natural resources of the continental shelf it was of no consequence how those rights were described.

29. His delegation would therefore vote for any proposal in which the rights in question were described as exclusive or sovereign rights, though it considered that the International Law Commission's draft was more consistent with the remaining articles than any text referring to exclusive rights.

30. In view of the text which the Committee had adopted for article 67, he could not agree to the Netherlands (A/CONF.13/C.4/L.19/Rev.1) and United Kingdom (A/CONF.13/C.4/L.44) proposals limiting exploitation to a depth of 550 metres. Article 68 dealt with the nature of the coastal State's rights, but the extent of those rights had been decided in article 67.

31. With regard to the six-power proposal, he was not fully convinced of the justification for that method of classifying the natural resources, but he agreed that any system of classification would be better than none.

32. Mr. MOLODTSOV (Union of Soviet Socialist Republics) reiterated the view he had advanced during the general debate that the problem of the utilization of the continental shelf could be solved only by recognizing the rights of the coastal State to explore and exploit the continental shelf; the recognition of those rights, however, must not lead to the abolition of the freedom of the high seas, which was an important factor in the development of peaceful relations between nations. A correct solution would reconcile the individual and general interests of all countries. The International Law Commission's text guaranteed the exclusive right of the coastal State to utilize the wealth of the continental shelf while limiting that right to a definite purpose, thus making any claim of the coastal State to the superjacent waters or air space juridically untenable.

33. The United States proposal to replace the word "sovereign" by the word "exclusive" (A/CONF.13/C.4/L.31) was not an improvement; the discussion had shown that the term "exclusive" lent itself to widely differing interpretations; it would therefore be unwise to employ it in an important international convention. The term "control and jurisdiction" was also not acceptable for reasons stated in the general debate.

34. So far as the definition of natural resources was concerned, it was difficult to see any justification for extending the rights of the coastal State to fish and other swimming species; he would agree, however, with the arguments advanced in favour of including in the concept of natural resources organisms associated with the sea bottom in the harvestabele stage of their life. The definition contained in the six-power proposal represented a useful compromise between the view that natural resources should include mineral resources only and the opposing view that all the living organisms of the continental shelf should also be included. The Soviet Union delegation would support that proposal, on condition, however, that the phrase excluding crustacea from the definition was deleted.

35. Mr. SAMAD (Pakistan) remarked that the replacement of the word "sovereign" by "exclusive" as proposed by the United States delegation would make little difference to the nature of the rights set forth in article 68, since the possession of exclusive rights was a necessary attribute of sovereignty. The International Law Commission's interpretation of the term "sovereign rights" was clearly stated in paragraph 2 of the commentary on article 68. The Pakistan delegation favoured the Commission's text, and would vote in favour of its first part. As he had already stated during the general debate, however, a precise delimitation of the extent of the rights of the coastal State in terms of depth was desirable in order to remove the possibility of future disputes; he would, accordingly, support the United Kingdom and Netherlands proposal, which introduced a depth limit of 550 metres.

36. With regard to the definition of natural resources, he was unable to support the view that mineral resources only should be included; he would therefore support the six-power proposal, which offered a definition limited to the resources of the seabed and subsoil, thus preserving the status of the superjacent waters as high seas in accordance with article 69.

37. Mr. ZUPANOVIC (Yugoslavia) said that his delegation's proposal (A/CONF.13/C.4/L.13), whereby benthonic and other fish which occasionally had their habitat at the bottom of the sea or were bred there would be included among the natural resources of the continental shelf, was governed by practical rather than theoretical considerations. The theoretical approach to the problem of exploitation of the natural resources of the continental shelf was rendered extremely complicated by the fact that a haul obtained with one and the same exploitation device might, and almost inevitably did, include a wide range of different organisms. All those organisms, which were fished at the same time and by means of the same device, constituted a single biological whole. That mutual interdependence was the principal reason why the Yugoslav delegation considered it necessary to give a much wider interpretation to the biological resources of the continental shelf than that contained in the International Law Commission's text.

38. Mr. RANUKUSUMO (Indonesia) withdrew the first part of the Indonesian proposal (A/CONF.13/C.4/L.40), as the Committee had before it a number of other similar or identical proposals — in particular, the Mexican proposal (A/CONF.13/C.4/L.2). In view of the Danish representative's remarks, he would also withdraw the second part of the proposal, reserving the right to re-submit it in connexion with article 71.

39. Referring to proposals whereby the coastal State's rights to technical exploitation of the continental shelf would be subject to a depth limit, he remarked that a coastal State could not be required to forgo the natural resources of its continental shelf for the sake of the navigation and fishing rights of other States.

40. Mr. KANAKARATNE (Ceylon) expressed appreciation of the spirit in which the Swedish representative had withdrawn his proposal (A/CONF.13/C.4/L.9). The United Kingdom and Netherlands proposal aroused his serious misgivings. A definition of the continental shelf as contained in article 67 had been

adopted by a substantial majority of the Committee's members. Article 67 began with the words "For the purposes of these articles"; that meant that the rights of the coastal State dealt with in article 68 must be related to the continental shelf as defined. Yet the United Kingdom and Netherlands proposals sought to reintroduce the concept of a depth limit, which was not in conformity with the provisions of article 67. That proposal was therefore illogical and his delegation could not support it.

41. Commenting on the proposal submitted by the Federal Republic of Germany (A/CONF.13/C.4/L.43), he would point out that no decision had yet been adopted on article 71, and that the commentary to the Federal Republic's proposal envisaged a possible amplification of article 71. He could not support a proposal which would make article 68 hinge upon a subsequent article the substance of which was as yet undetermined.

42. The representative of Italy had said that the unilateral declarations issued by a number of States on the subject of the continental shelf had no binding force in international law. Technically, that was no doubt true; but the situation was not substantially different in the case of the territorial sea, which was, nevertheless, recognized as an institution in international law. The fact that the continental shelf was a relatively recent concept, or that some of the States which had issued declarations with regard to it were not among the world's powerful maritime nations, should not be allowed to influence the issue. He was therefore unable to concur in the Italian representative's view.

43. With regard to the Mexican proposal, he said that, in adopting the wording of article 68, the International Law Commission had been guided by the desire to safeguard the principle of the full freedom of the superjacent sea and the air space above it. That was why the Commission had imposed a limitation upon the sovereign rights of the coastal State, a limitation which, in the strictly juridical sense, was incompatible with the concept of sovereignty. If the coastal State's rights were confined to exploring and exploiting the natural resources of the continental shelf, a situation might arise in which another State would wish to erect installations on the continental shelf for some entirely different purpose — say, that of interstellar communications — and the coastal State would be unable to protest. The Mexican proposal, while in no way impinging upon the status of the superjacent waters as high seas, set forth the coastal State's rights with unimpeachable clarity and logic. His delegation therefore endorsed that proposal and, by the same token, that of Argentina as well (A/CONF.13/C.4/L.6/Rev.2).

44. Mr. MOUTON (Netherlands), referring to the statements of the representatives of Indonesia and Ceylon, said that article 67 merely gave a definition of the continental shelf as used in the subsequent articles; it did not relate to rights over the area thus defined. The Netherlands proposal set no limit upon the rights of the coastal State with regard to exploration by means of tunnelling or directional drilling from *terra firma*; it did, however, specify that, so far as the use of drilling devices working on or in the high seas beyond a depth of 550 metres were used, the régime of the high seas should prevail. That did not, of course, mean that the coastal State was precluded from employing such devices, but only that it must do so on an equal footing with other States. The coastal State's rights would in effect remain exclusive until the depth of 550 metres became technically attainable for the purpose of drilling, which would not be the case for a long time ahead. The sole intention of the proposal was to preserve the freedom of the high sea to the greatest possible extent.

45. Mr. GIHL (Sweden), replying to Mr. BARROS FRANCO (Chile), stated that since the intention underlying the United States proposal (A/CONF.13/C.4/L.31) appeared to be identical with that of the first part of the Swedish proposal (A/CONF.13/C.4/L.9), the difference between them being one of terminology rather than of substance, he would withdraw the Swedish proposal in its entirety.

46. Mr. BARROS FRANCO (Chile) said that he would vote for the Mexican proposal (A/CONF.13/C.4/L.2). There could be no doubt that the rights claimed in the unilateral proclamations issued on the subject of the continental shelf were those of sovereignty; and the principle of sovereignty was recognized with regard to the territorial sea. He would quote international authorities and pronouncements of the Paris Institute of International Law to that effect. The fears expressed by some delegations lest the adoption of the term "sovereignty" in article 68 might lead to an infringement of the status of the superjacent waters as high seas should have been allayed by repeated assurances that the provisions of article 69 would be accepted. There was thus no reason why the principle of sovereignty over the continental shelf should not be recognized.

47. Mr. SCHWARCK ANGLADE (Venezuela) associated himself with the remarks of the representatives of Mexico and Ceylon; he would vote in favour of the Mexican proposal. The representative of the Netherlands was right in saying that the presence of installations for the exploration of the resources of the seabed and subsoil would, of necessity, constitute some restriction upon the freedom of fishing; but that was true whether the installations concerned belonged to the coastal State or any other State. The coastal State, being the most directly interested in the living resources of the area, should enjoy full sovereignty, and therefore also bear the responsibility in that respect.

48. He would also support the six-power proposal, provided that the phrase excluding crustacea from the definition of natural resources was deleted. He proposed that the joint proposal should be voted on in two parts.

49. Mr. OBIOLS-GOMEZ (Guatemala) also expressed support of the Mexican proposal (A/CONF.13/C.4/L.2), which avoided the excessive complications arising from a purely technical approach, and of the Argentine proposal (A/CONF.13/C.4/L.6/Rev.2). If those proposals were defeated, he would vote for the United States proposal (A/CONF.13/C.4/L.31).

The meeting rose at 1 p.m.

TWENTY-FOURTH MEETING

Friday, 28 March 1958, at 3 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 68 (A/CONF.13/C.4/L.2, L.3, L.6/Rev.2, L.13, L.19/Rev.1, L.31, L.36, L.39, L.43, L.44) (continued)

1. Mr. GOMEZ ROBLEDO (Mexico) proposed the deletion of the words "crustacea and" from the amendment of Australia, Ceylon, Federation of Malaya, India, Norway and the United Kingdom (A/CONF.13/C.4/L.36).

2. Miss GUTTERIDGE (United Kingdom) said that, since the indefinite possible exploitation clause in the text for article 67 adopted by the Committee made it uncertain what were the areas to which the rights mentioned in article 68 related, it was necessary to lay down in article 68 a limit to those rights in terms of the depth of water above the seabed, as well as stating in that article, as the Commission had done, that those rights were solely "for the purpose of exploring and exploiting... natural resources". It was also necessary to indicate exactly what those resources were by adopting a text such as that proposed by the six delegations. That was the reason for her delegation's proposal in paragraph 1 of its amendment to article 68 (A/CONF.13/C.4/L.44), which included the words "up to a depth of water of 550 metres". Her delegation thought that those words were reasonably consistent with all the relevant factors, particularly as most continental slopes ended about 550 metres below the surface of the sea. Paragraph 2 of that text had been included with a view to specifying that the article would place no restriction on the right of the coastal State to exploit the subsoil by tunnelling from *terra firma.*

3. For the reasons set out in paragraph 2 of the International Law Commission's commentary on article 68, her delegation preferred the term "sovereign rights" to any of the alternatives that had been proposed.

4. Miss WHITEMAN (United States of America) said that the term "sovereignty" covered a large number of concepts. The discussion had shown that there were many different opinions on its meaning. That was why her delegation had proposed to substitute the word "exclusive" for "sovereign". For the numerous delegations who were opposed to using the words "sovereignty" or "sovereign" in the article "exclusive" was the only acceptable term.

5. Mr. BELINSKY (Bulgaria) said that the rights which the coastal State should enjoy in respect of its continental shelf did not amount to full sovereignty; they were sovereign rights for the purpose of exploring and exploiting the natural resources of the continental shelf. Physical or virtual occupation of the areas concerned was not a necessary condition for enjoyment of those rights. For those reasons, he was in favour of using the term "sovereign rights".

6. He would agree that a definition of the term "natural resources" should be added to the article. He could accept the definition proposed by the sponsors of the joint amendment if the words "crustacea and" were deleted.

7. Mr. GOHAR (United Arab Republic) said that the 550-metre limitation proposed by the Netherlands delegation (A/CONF.13/C.4/L.19/Rev.1) would be inconsistent with the possible exploitation clause in the text which the Committee had adopted for article 67. In putting forward that amendment, the Netherlands delegation had in effect proposed that the coastal State should have the sole right to exploit by means of tunnelling areas in which all States would have the right to drill for oil; if the amendment were adopted, those rights would conflict. The Netherlands representative's contention has been that his proposal should be adopted because of the need to preserve freedom of navigation on the high seas, but he would point out that an installation in the sea for exploiting the continental shelf would be no less an obstacle to shipping because it belonged, not to the coastal State, but to some other State.

8. Mr. MOUTON (Netherlands) said that the purpose of his amendment was to make it impossible for any State, whether the coastal State or another, to set up installations which would constitute obstacles in the sea where it was deeper than 550 metres for exploiting the continental shelf, should that become a technical feasibility, and it would, he thought, be at least 25 — perhaps 50 — years before that happened.

9. Mr. LETTS (Peru) thought the word "sovereignty" was preferable to any of the other terms suggested, because everyone knew what was meant by it. The term "sovereign rights" would not be clear; some thought it was wider, others narrower than "sovereignty". "Exclusive rights" was very vague. "Control and jurisdiction" would amount to sovereignty; that being so, why not be forthright and use the term "sovereignty"?

10. It appeared that, if the six-power amendment were adopted, it would still not be clear what was meant by "natural resources". He would vote for the amendment proposed by the Burmese delegation (A/CONF.13/C.4/L.3).

11. Mr. NIKOLIC (Yugoslavia) said that, although he still thought that for economic reasons "bottom-fish" should be covered by the régime of the continental shelf, he had decided to withdraw paragraph 1 of the text proposed by his delegation for article 68 (A/CONF.13/C.4/L.13) in order to help the Committee agree on a compromise. Paragraph 2 of his amendment still stood.

12. Mr. MARTINEZ ZANETTI (Cuba) said that the rights with which article 68 was concerned should be called "sovereign rights" rather than "sovereignty" or "exclusive control and jurisdiction". He was, however, prepared to vote in favour of any of those terms provided they were followed by the indispensable qualifications "for the purpose of exploring and

exploiting". He could accept the addition of the words "physical or virtual occupation not being a necessary condition", proposed by the representative of Mexico (A/CONF.13/C.4/L.2). He would vote for the Argentine amendment (A/CONF.13/C.4/L.6/Rev.2).

13. In reply to a question by Miss WHITEMAN (United States of America), Mr. HARDERS (Australia) explained that in the six-power amendment the word "harvestable" had been used to indicate that what was meant was the stage of their life at which organisms were harvested, and not the moment at which they were harvested.

14. Mr. WALL (United Kingdom) said that deletion of the words "crustacea and" from the text of the joint amendment would radically alter its substance. It would make the text — which was at present very explicit — vague, and it would almost certainly give rise to much unnecessary argument as to whether or not certain crustacea moved "in constant physical contact with the seabed". If all delegations present endeavoured to alter the definition to suit the special interests of their own countries, it was unlikely that agreement would ever by reached. He might add that the deletion of those words would suit his own country, because it was not engaged in any fishing for crustacea off the coasts of other countries, whereas foreign vessels fished for them off the coast of the United Kingdom.

15. It was true that the species of barnacle named by the representative of Mexico at the Committee's 22nd meeting (para. 50) was attached to the seabed during the stage of its life at which it was harvested, but since it was harvested only in territorial waters and was not a staple food and since very few people found it to their taste, it was scarcely likely that it would be the subject of an international dispute, whatever the wording of the article.

16. Mr. GOHAR (United Arab Republic) said it was true that that barnacle was found only in territorial waters. But there was another crustacean — namely, the goose-necked barnacle — which existed in large numbers in other parts of the sea attached to reefs and also boats, and even whales and turtles. He would therefore vote for the deletion of the words "crustacea and".

17. Mr. BHUTTO (Pakistan) said it was very difficult, if not impossible, to agree on a really satisfactory definition of the term "natural resources" for inclusion in the article. He would, however, vote in favour of the definition proposed by the sponsors of the joint amendment if the words "crustacea and" were deleted.

18. The CHAIRMAN said he intended to put to the vote, first, the amendments relating to the question of the nature of the resources concerned, then the amendments relating to the question of the nature of the rights concerned and, lastly, the other amendments to article 68.

19. Mr. BARROS FRANCO (Chile) proposed that the amendments relating to the question of the nature of the rights concerned be put to the vote first.

20. The CHAIRMAN put that proposal to the vote.

It was adopted by 25 votes to 24.

21. The CHAIRMAN put to the vote the whole of the amendment proposed by the delegation of the Federal Republic of Germany (A/CONF.13/C.4/L.43), with the exception of the word "mineral".

It was rejected by 52 votes to 7, with 6 abstentions.

The Mexican amendment (A/CONF.13/C.4/L.2) was rejected by 37 votes to 24, with 6 abstentions.

The first sentence of the text proposed by the Netherlands delegation (A/CONF.13/C.4/L.19/Rev.1) was rejected by 40 votes to 4, with 22 abstentions.

22. Miss WHITEMAN (United States of America) requested a vote by roll-call on her delegation's amendment for the substitution of the word "exclusive" for "sovereign" (A/CONF.13/C.3/L.31).

23. Mr. GOMEZ ROBLEDO (Mexico) said he thought the rejection of the Netherlands proposal implied that the Committee had rejected the United States proposal also.

24. The CHAIRMAN ruled that it did not.

A vote was taken by roll-call.

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

The delegations voted as follows:

In favour: Guatemala, Israel, Japan, Liberia, Malaya, Norway, Panama, Philippines, Portugal, Spain, Sweden, Switzerland, Turkey, United States of America, Belgium, China, Denmark, Dominican Republic, France, Federal Republic of Germany, Ghana.

Against: Hungary, India, Iran, Republic of Korea, Mexico, Morocco, Peru, Poland, Romania, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, Czechoslovakia.

Abstaining: Greece, Haiti, Iceland, Indonesia, Ireland, Italy, Jordan, Libya, Netherlands, New Zealand, Pakistan, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Yugoslavia, Argentina, Australia, Brazil, Burma, Ceylon, Colombia, Costa Rica, Cuba, Ecuador, El Salvador.

The United States proposal was adopted by 21 votes to 20, with 27 abstentions.

25. The CHAIRMAN invited the Committee to vote on the amendments relating to the definition of natural resources.

26. He put the Greek amendment (A/CONF.13/C.4/L.39) to the vote.

The amendment was rejected by 52 votes to 7, with 6 abstentions.

27. The CHAIRMAN observed that the rejection of the Greek amendment made a vote on the remainder of the amendment of the Federal Republic of Germany (A/CONF.13/C.4/L.43) unnecessary.

28. He called for a vote on the Burmese amendment (A/CONF.13/C.4/L.3).

The amendment was rejected by 42 votes to 11, with 11 abstentions.

29. The CHAIRMAN put to the vote the Mexican oral sub-amendment to the six-power amendment (A/CONF. 13/C.4/L.36) to delete the words "crustacea and" from the last phrase.

There being 27 votes in favour, 27 against and 13 abstentions, the sub-amendment was not adopted.

The amendment proposed by Australia, Ceylon, the Federation of Malaya, India, Norway and the United Kingdom was adopted by 41 votes to 11, with 17 abstentions.

30. The CHAIRMAN invited the Committee to consider proposals which did not relate either to the nature of the rights of the coastal State or to the definition of natural resources.

31. He put paragraph 2 of the Yugoslav amendment (A/CONF.13/C.4/L.13) to the vote.

The paragraph was adopted by 37 votes to 5, with 24 abstentions.

32. In reply to a question raised by Mr. WERSHOF (Canada) and Mr. GARCIA AMADOR (Cuba), the CHAIRMAN said that, although the purpose of the Yugoslav amendment and the Argentine amendment (A/CONF.13/C.4/L.6/Rev.2) was substantially the same, he would put the Argentine amendment to the vote because the wording was quite different. The drafting committee would eventually combine the two texts.

The Argentine amendment was adopted by 36 votes to 6, with 25 abstentions.

The last sentence of the Netherlands amendment (A/CONF.13/C.4/L.19/Rev.1) was rejected by 36 votes to 8, with 22 abstentions.

33. Miss GUTTERIDGE (United Kingdom) asked for a separate vote on the two paragraphs of her delegation's amendment (A/CONF.13/C.4/L.44).

Paragraph 1 of the United Kingdom amendment was rejected by 41 votes to 11, with 16 abstentions.

34. Mr. BARROS FRANCO (Chile), speaking on a point of order, observed that, since paragraph 1 of the United Kingdom amendment had been rejected, paragraph 2, which referred to paragraph 1, was now meaningless and should not be voted on.

35. The CHAIRMAN pointed out that both paragraphs of the amendment represented a substitution for the original text of article 68 and that the second paragraph could still pertain to the International Law Commission's text.

36. After a brief procedural discussion, Mr. JHIRAD (India), proposed that the paragraph should begin with the words "The provisions of these articles shall not prejudice . . . "

37. Miss GUTTERIDGE (United Kingdom) accepted that proposal.

38. After a brief procedural discussion, the CHAIRMAN put paragraph 2 of the United Kingdom amendment, as amended, to the vote.

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

39. Mr. OBIOLS-GOMEZ (Guatemala), speaking on a point of order, said that his doubts concerning the admissibility of the alteration to the United Kingdom amendment had been motivated by the decision on the Cuban representative's request to introduce a part of the Mexican amendment.

40. Mr. WERSHOF (Canada) observed that the Mexican amendment had been voted on and rejected. In his view, there was no basis for taking another vote on the last part of that text.

41. Mr. GOMEZ ROBLEDO (Mexico) thought the difficulty raised by the Canadian representative could be avoided by the reintroduction of the last part of his proposal by the Cuban representative on the basis of paragraph 7 of the commentary on article 68.

42. Mr. GARCIA AMADOR (Cuba) agreed.

43. The CHAIRMAN pointed out that, since that procedure would entail a new proposal, it could not be dealt with during the voting on amendments to article 68. It could, however, be dealt with later at any appropriate time.

44. He invited the Committee to vote on the International Law Commission's text of article 68, as amended.

45. After a brief procedural discussion during which it was suggested that the vote should be postponed till the next meeting, when a written text of the amended article would be available, the CHAIRMAN ruled that the Committee should conclude its agenda for the meeting and proceed to vote on article 68 as a whole, as amended.

At the request of the representative of India, the vote was taken by roll-call.

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

The delegations voted as follows:

In favour: Cuba, Denmark, Dominican Republic, Ecuador, France, Federal Republic of Germany, Guatemala, Haiti, Ireland, Israel, Republic of Korea, Liberia, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia, Argentina, Australia, Belgium, Brazil, Canada, Ceylon, China, Costa Rica.

Against: Czechoslovakia, India, Indonesia, Italy, Japan, Jordan, Romania, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Albania, Bulgaria, Byelorussian Soviet Socialist Republic.

Abstaining: El Salvador, Greece, Hungary, Iceland, Iran, Libya, Mexico, Morocco, Netherlands, Pakistan, Panama, Philippines, Poland, Venezuela, Burma, Chile, Colombia.

Article 68 as a whole, as amended, was adopted by 34 votes to 14, with 17 abstentions.

The meeting rose at 6.30 p.m.

TWENTY-FIFTH MEETING

Saturday, 29 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 68 (A/CONF.13/C.4/L.2, L.3, L.6/Rev.2, L.19/Rev.1, L.31, L.36, L.39, L.43, L.44) (continued)

1. Mr. JHIRAD (India) said that he had voted against the United States proposal (A/CONF.13/C.4/L.31). When that proposal had been adopted, he had voted for the other amendments eventually adopted, but against the text of of the article as a whole. The reason was that the expression "exclusive rights" had no exact meaning in the context of the article, since the rights of the coastal State could not be effectively asserted except by virtue of its sovereign authority. The expression "exclusive rights" might be interpreted in one sense by a military Power in relation to its own rights, and in a different sense in relation to the rights of some other State. With regard to the Truman proclamation itself, different views had been held and expressed in official statements about the nature of the rights asserted, and the expressions "control and jurisdiction", "property rights" and even "sovereignty over the continental shelf" had all been used. He had not expected, therefore, that in drafting an international instrument the United States would have proposed substituting a weak and ambigious phrase for the well-understood expression "sovereign rights" recommended by the International Law Commission. He had accordingly been unable to vote for the text of article 68 as amended. He would reserve his delegation's position on the question; it would have to be seriously considered whether India could be a party to an international instrument relating to the continental shelf, in which so much uncertainty attached to an essential operative clause.

2. Mr. BOCOBO (Philippines) said that he had voted for paragraph 2 of the United Kingdom amendment (A/CONF.13/C.4/L.44), since that proposal approximated to his delegation's views on the continental shelf (17th meeting, para. 2).

3. He had abstained from voting on the text of article 68 as amended because he considered that it contained three conflicting descriptions of the rights of the coastal State over the continental shelf: unlimited rights to exploit the shelf by tunnelling; rights restricted to a depth limit of 200 metres if exploitation were conducted from the surface; and rights to exploit from the surface to the limit of possible exploitation over an area that had no geological identity with the continental shelf.

4. Furthermore, article 68 as adopted recognized the continental shelf as based on two contradictory legal concepts — those of absolute dominion on the one hand, and limited power or control on the other. He had voted for the United Kingdom amendment because he considered that it was based on the correct view of the rights of the coastal State over the continental shelf, but he had abstained from voting on the text as a whole because it incorporated a different view with which his delegation could not agree.

5. Mr. MÜNCH (Federal Republic of Germany) said that his delegation had always opposed the doctrine of the continental shelf, and had considered that the aim of the Conference should be not to make any fundamental alteration in the law of the sea, but to add specific rules which had become necessary in the general interests of the international community and in the legitimate interests of the coastal State in exploiting the mineral resources of the marine subsoil. He considered that the interests of the coastal State in fishing were guaranteed by existing international law in accordance with the principle of the freedom of the high seas. He had never considered that the Conference should allow itself to be bound in advance by unilateral assertions of rights over the continental shelf by coastal States. The adopted text gave the coastal State rights over an area of unlimited extent that did not correspond to geological findings. Moreover, to recognize the rights of the coastal State over a continental shelf which it was incapable of exploiting was a contradiction, particularly in the light of the Truman proclamation. He had voted in accordance with those views on all the amendments, and had voted for the United States amendment, believing that future practice would demonstrate its importance.

6. Mr. VASQUEZ (Colombia) said that he had voted for the Mexican amendment (A/CONF.13/C.4/L.2).

7. Mr. LADOR (Israel) said that, although his delegation felt some sympathy for the point of view expressed by the representative of Burma in support of including bottom-fish among the natural resources of the continental shelf (A/CONF.13/C.4/L.3), scientific advice received by his delegation had led him to doubt if those species should be included in a general rule of international law, and he had therefore voted against the amendment proposed by Burma. That did not mean that his delegation declined to recognize exclusive rights of the coastal State over bottom-fish in all cases; in certain areas, it might well be proper to recognize such rights on the grounds of historic title, or on more equitable grounds, such as had been recognized by the International Court of Justice in the Anglo-Norwegian fisheries case as being a proper fact to be taken into consideration in determining a legal situation.[1]

8. Mr. LEE (Republic of Korea) said that he had voted against the United States amendment because he saw no reason for replacing the expression "sovereign rights" by "exclusive rights"; since, however, he believed that sovereign rights were in fact exclusive rights, he had voted in favour of the article as a whole.

9. Mr. BARROS FRANCO (Chile) said he had voted for the amendment proposed by Mexico for reasons that he had explained previously. He had voted against the United States amendment because, once the Mexican proposal had been defeated, his delegation preferred

[1] *I.C.J. Reports, 1951,* p. 116.

the expression "sovereign rights" recommended by the International Law Commission. He had voted for paragraph 2 of the United Kingdom amendment because, although the International Law Commission considered that the unlimited right of the coastal State to exploit the resources of the seabed by tunnelling was not in question, he had feared that a considerable number of votes against that amendment might give the impression that the Fourth Committee did question that right. He had voted against the six-power amendment (A/CONF. 13/C.4/L.36), because it established limitations applicable to some natural resources and not to others.

10. Since the text of article 68 as a whole contained some passages to which his delegation objected and others which they supported, he had abstained from voting on it.

11. Mr. KANAKARATNE (Ceylon) said that he had voted in favour of the Mexican amendment because, if the word "sovereign" were used in article 68, it was not consistent to limit the rights by adding that they were exercisable for the purpose of exploring and exploiting the natural resources. That amendment having been defeated, he had had no grounds for opposing the United States amendment, for in his view there was no real difference in meaning between "sovereign" and "exclusive" if the word in question were followed by a limiting phrase specifying a particular purpose; he had therefore abstained from voting on the United States amendment. When that amendment had been adopted he had, for the same reasons, not objected to the text of the article as a whole and had, therefore, voted for it.

12. Mr. CARTY (Canada) said he had voted against the United States amendment and the first sentence of the Netherlands amendment (A/CONF.13/C.4/L.19/ Rev.1) because he believed that the wording recommended by the International Law Commission should be maintained unless there were compelling reasons for changing it. He had voted for the article as a whole because he agreed with the representative of Ceylon that there was not a substantial difference between "exclusive rights" and "sovereign rights". He had voted for both the Yugoslav and Argentine amendments (A/CONF.13/C.4/L.13, A/CONF.13/C.4/L.6/Rev.2); those proposals were very similar in intent and the drafting committee would no doubt remove any duplication. He had voted against the second sentence in the Netherlands amendment and paragraph 1 in the United Kingdom amendment because, although his delegation had no objection to a depth limit of 550 metres, and he had proposed including that figure in article 67, it considered that the question had been settled by the adoption of article 67. He had voted against paragraph 2 of the United Kingdom amendment because it was redundant, the right of the coastal State to tunnel regardless of the depth of the superjacent waters being perfectly clear.

13. Mr. SANGKHADUL (Thailand) said that he had voted for the Mexican amendment and had abstained from voting on the United States amendment because his delegation preferred the expression "sovereign rights" recommended by the International Law Commission.

14. Mr. GOMEZ ROBLEDO (Mexico) thanked the delegations which had voted for his amendment and said that he believed future developments would prove its soundness.

15. Mr. OBIOLS-GOMEZ (Guatemala) said that, in order to facilitate the work of the drafting committee, he would propose a text that might combine the Yugoslav and Argentine amendments to read: "If the coastal State does not exercise the rights established under paragraph 1 of this article, no other State may lay claim to the continental shelf of that coastal State, nor may any State explore or exploit that continental shelf without the express consent of the coastal State."

16. Mr. NAFICY (Iran) said that he had voted for the Mexican amendment and against the United States amendment and had abstained from voting on the text of the article as a whole because his delegation was not satisfied with the expression "exclusive rights". If the Fourth Committee could specify exactly what was meant by that expression, he might be able to revise his attitude.

17. Miss LEFEVRE (Panama) said that her delegation had voted against the Yugoslav proposal. It had supported the Argentine proposal, which made it clear that a coastal State could not relinquish its rights over the continental shelf; the coastal State was free to concede certain exploitation rights to other States or to foreign companies, but never to transfer its entire continental shelf to another country.

Article 69 (A/CONF.13/C.4/L.6, L.14, L.20, L.27, L.41, L.45)

18. The CHAIRMAN drew attention to a new proposal submitted by the delegation of Cuba (A/CONF.13/ C.4/L.45).

19. Mr. GARCIA AMADOR (Cuba) remarked that the proper place for his proposal was between articles 68 and 69; hence, it should be discussed immediately.

20. Mr. KANAKARATNE (Ceylon), supported by the representatives of the Federal Republic of Germany, Panama and Chile, suggested that discussion of the Cuban proposal be deferred until the following meeting.

21. Mr. RUIZ MORENO (Argentina) pointed out that the Cuban proposal, being a positive enunciation of the rights of the coastal State, was more closely linked in substance with article 68 than with article 69, which provided for a limitation of those rights and was therefore negative in character.

22. Mr. MOUTON (Netherlands) said that the Cuban proposal hinged on the concept of occupation, which in turn was linked with that of sovereignty. Since the Committee had decided, at the previous meeting, (para. 24), to abandon the concept of sovereignty in connexion with the continental shelf, consideration of the Cuban proposal would, in effect, mean reopening discussion of a matter already decided by a vote. The Cuban proposal was therefore out of order.

23. Mr. CARBAJAL (Uruguay) disagreed with the representative of the Netherlands. The Cuban proposal

dealt with an extremely important question — that of *de facto* or *de jure* occupation — and deserved the Committee's careful attention.

24. After further procedural discussion, the CHAIRMAN ruled that both the consideration of and the vote on the Cuban proposal should be placed on the agenda of the following meeting.

25. Miss GUTTERIDGE (United Kingdom) withdrew her delegation's proposal (A/CONF.13/C.4/L.27), which no longer served a useful purpose in view of the Committee's decision on article 67.

26. Mr. MOUTON (Netherlands) also withdrew his delegation's proposal (A/CONF.13/C.4/L.20), originally submitted in conjunction with other proposals which the Committee had since rejected.

27. Mr. NIKOLIC (Yugoslavia), introducing his proposal (A/CONF.13/C.4/L.14), remarked that the principle set forth in article 69 evidently enjoyed the Committee's full support. Certain limitations, however, were imposed on that principle by the provisions of article 71. For the sake of strict accuracy, therefore, it was necessary to include a reference to article 71 in article 69.

28. Mr. BELINSKY (Bulgaria) said that the purpose of his proposal (A/CONF.13/C.4/L.41) was self-evident. The considerations underlying it were twofold. First, the continental shelf should be used solely for the utilization of its natural resources and for no other purpose. Although that principle had not found concrete expression, it was implicit in most of the statements heard by the Committee. The utilization of the continental shelf for any other purpose, and particularly that of aggression, had nothing in common with the aims pursued by the Conference and would, moreover, gravely impede the utilization of natural resources. Secondly, the rights of coastal States over the continental shelf were to be limited in the interests of the freedom of navigation and fishing; it was only logical, therefore, that the further limitation set forth in the Bulgarian proposal should also be adopted.

29. Mr. MÜNCH (Federal Republic of Germany) said he could not see the object of the Yugoslav proposal and his delegation would vote against it. The legal status of the high seas generally was being considered by the Second Committee; any limitations affecting the status of the sea above the continental shelf would be discussed in connexion with article 71.

30. With regard to the Bulgarian proposal, he would remark that, since the Committee had replaced the concept of sovereign rights in article 68 by that of exclusive rights, the proposal was not pertinent.

31. Mr. MOUTON (Netherlands) agreed with the representative of the Federal Republic of Germany so far as the Bulgarian proposal was concerned; the fact that the coastal State did not exercise sovereign rights over the continental shelf, but only exclusive rights for the purpose of exploring and exploiting its natural resources, removed all possibility of the threat which that proposal envisaged. The Yugoslav proposal, on the other hand, was theoretically sound; article 71 would introduce certain restrictions affecting the status of the superjacent waters as high seas, and it was correct, in principle, to make a reference to that fact in article 69. He would reserve judgement on the Yugoslav proposal.

32. Mr. KANAKARATNE (Ceylon), while welcoming the principles underlying the Bulgarian proposal, feared that it might be somewhat unrealistic. No State would admit that its installations were directed against other States. It was not clear whether the Bulgarian proposal intended the aggressive nature of the installations to which it referred to be determined by the coastal State itself, or by the State which considered itself to be threatened; if there were disagreement on that point, with whom would the ultimate decision rest? He was inclined to agree with the representative of the Netherlands that the danger implied in the Bulgarian proposal did not exist, since the coastal State did not exercise sovereign rights over the continental shelf. In view of the change in the circumstances since the Committee's decision on article 68, he wondered whether the representative of Bulgaria would withdraw his proposal.

Statement by the Secretary-General

33. The CHAIRMAN welcomed the Secretary-General.

34. The SECRETARY-GENERAL said that the Secretariat had long been conscious of the need to draw up a comprehensive legal régime for the sea, incorporating rules that could be accepted by the society of States as a whole. New technological developments had brought the resources of the continental shelf within the reach of mankind, which must not be denied the benefits that the use of those resources could bring for lack of a concerted general effort to secure agreement on a régime designed to bring about the peaceful exploitation of that new source of wealth. He would continue to follow the work of the Fourth Committee with great interest, and would express the hope that the Committee would succeed in finding just solutions to the problems it was dealing with, a hope that was shared by the whole world.

The meeting rose at 12.45 p.m.

TWENTY-SIXTH MEETING

Monday, 31 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 68 (A/CONF.13/C.4/L.2, L.3, L.6/Rev.2, L.13, L.19/Rev.1, L.31, L.36, L.39, L.43, L.44) (concluded)

1. Mr. LIMA (El Salvador) said that he had voted in favour of the Mexican proposal (A/CONF.13/C.4/L.2), as "sovereignty" was the correct description of the coastal State's authority over the continental shelf. That proposal having been rejected, he had abstained from voting on the United States proposal (A/CONF.