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Documents:
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Summary Records of the 26th to 30th Meetings of the Fourth Committee

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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.

13/C.4/L.31); there was no difference of substance between the expressions "sovereign rights" and "exclusive rights", but he considered the former more appropriate, an opinion shared by several members of the International Law Commission. He had also abstained from voting on the Yugoslav proposal (A/CONF.13/C.4/L.13) because, though it was very similar to the Argentine proposal (A/CONF.13/C.4/L.6/Rev.2), he preferred the wording of the latter. Lastly, he would have supported the proposal submitted jointly by Australia, Ceylon, Federation of Malaya, India, Norway and the United Kingdom (A/CONF.13/C.4/L.36) if the word "crustacea" had been omitted; since, however, it had been retained, he had abstained from voting. He would reopen the question of the inclusion of crustacea among the resources of the continental shelf during the discussion of article 68 in plenary meeting.

NEW ARTICLE (PROPOSED BY CUBA)
(A/CONF.13/C.4/L.45)

2. Mr. BOCOBO (Philippines) supported the Cuban proposal. The coastal State's possession of its continental shelf as an integral part of its territory in the geological sense was an unquestionable fact which the Committee could not but recognize, whether it described the coastal State's rights as "sovereign" or as "exclusive". But, since the continental shelf was a new institution in international law, it was important to give the clearest possible definition of the coastal State's rights in the shelf. The general outline of those rights was already provided by article 68; the Cuban proposal constituted a logical and valuable addition.

3. Mr. JHIRAD (India) also supported the Cuban proposal, the provisions of which were all the more necessary, since the Committee had adopted the vague term "exclusive rights" in article 68. He disagreed with the view, expressed by the Netherlands representative at the 25th meeting (para. 22), that the proposal was out of order because it reintroduced the concept of sovereignty. The proposal did not seek to describe the rights of the coastal State, but dealt only with the mode of acquisition of those rights. The very doubts expressed concerning the propriety of the Cuban amendment emphasized the need to provide a safeguard against the argument that exclusive rights over the continental shelf would come into play only if there were effective occupation.

4. Mr. MÜNCH (Federal Republic of Germany) said he was not convinced of the usefulness of the Cuban proposal since the term "sovereign rights" had been replaced by "exclusive rights" in article 68. It was perfectly clear that the rights set forth in article 68 did not depend on occupation, effective or notional, or on any express proclamation. If the articles under discussion became part of an international convention, there would be no need for separate proclamations on the subject of the continental shelf, though individual States might well decide to introduce domestic legislation on the matter. He thought the proposal unnecessary and would vote against it.

5. Mr. MOUTON (Netherlands) said that he opposed

the Cuban proposal because its substance formed part of the Mexican proposal which had been rejected; discussion should not be re-opened on a decision already taken. Moreover, he regarded the proposal as completely superfluous. The question whether the rights of the coastal State depended on occupation might have arisen in case the coastal State had sovereignty over the continental shelf, occupation being one of the means to obtain sovereignty, or at the time when there still existed doubt whether these rights belonged to the coastal State *ipso jure*; it did not arise once those rights were clearly defined and embodied in an international convention. The proposal was redundant, and he would vote against it.

6. Mr. GARCIA ROBLES (Mexico) explained that, although the Cuban proposal was virtually identical with the last phrase of his own delegation's amendment to article 68, it was now being proposed in a different context because the text of article 68 as adopted spoke not of sovereignty, but of exclusive rights for the purpose of exploring and exploiting the natural resources. Since the terms of article 68 qualified the rights of the coastal State, it was necessary to make it clear that in law they constituted not an expectancy, but acquired rights. Occupation might be either actual, or might take some symbolic form, such as the planting of a flag. He considered that the Cuban proposal was essential, and his delegation would vote for it.

7. Mr. OBIOLS-GOMEZ (Guatemala) associated himself with the remarks of the representatives of the Philippines, India and Mexico in support of the Cuban proposal. The Mexican proposal had been rejected because a number of delegations had objected to the nature of the rights it sought to confer upon the coastal State, rather than to that part of it which corresponded to the Cuban proposal.

8. Mr. RANUKUSOMO (Indonesia) recalled that he had withdrawn the first part of his proposal on article 68 (A/CONF.13/C.4/L.40) in favour of the Mexican proposal; accordingly, he would now support the Cuban proposal. A convention requiring ratification by States must contain a proper guarantee; unless the Cuban proposal, which offered such a guarantee, were adopted, he would fear that the whole work of the Conference might prove unsuccessful.

9. Mr. KRISPIS (Greece) recalled that, at the 5th meeting (para. 8), he had said that the rights of States with regard to the continental shelf should not enter into effect prior to the issuance of a public proclamation. The text of article 68 as adopted was brief, concise and entirely adequate; the Cuban proposal was superfluous, and he would vote against it.

10. Mr. GARCIA AMADOR (Cuba), replying to the objection raised by the Netherlands representative (25th meeting, para. 22), explained that the Cuban amendment simply repeated the Mexican proposal and the text of paragraph 7 of the International Law Commission's commentary on article 68.

11. In adopting the term "exclusive rights", the Commission had decided that the coastal State did not have complete sovereignty over the seabed and subsoil of the continental shelf, but it had recognized the sovereign

nature of the rights of the coastal State for the purpose of the exploration and exploitation of the natural resources of the shelf. It might happen that another State might be unaware of such rights, because there was no occupation, either effective or notional, because the coastal State lacked the technical means for the exploitation of the resources beyond the depth of 200 metres provided in article 67. The Cuban amendment made provision for such a case.

12. That proposal might not be absolutely essential.

The Cuban proposal (A/CONF.13/C.4/L.45) was adopted by 41 votes to 7, with 12 abstentions.

13. Mr. QUARSHIE (Ghana) said he had voted in favour of the Cuban proposal because it introduced a safeguard not contained in article 68. He felt, however, that the text of article 68 together with the new article was far too long. He would urge the Committee, in the interests of clarity, to avoid amending the International Law Commission's text in a manner which would necessitate the addition of lengthy explanatory clauses.

14. Mr. WERNER (Switzerland) hoped, on purely editorial grounds, that the drafting committee would substitute the new article for paragraphs 3 and 4 of article 68 as adopted.

15. Mr. SAMAD (Pakistan) thought that, since the new article was closely connected with article 68, it should be numbered 68 (a).

16. The CHAIRMAN said that the suggestions made by the representatives of Switzerland and Pakistan, together with any others concerned with drafting, should be made to the drafting committee when it was set up.

ARTICLE 69 (A/CONF.13/C.4/L.6, L.14, L.41)
(continued)

17. Mr. RUIZ MORENO (Argentina) said that his proposal (A/CONF.13/C.4/L.6) sought to amend the International Law Commission's text in two respects: First, for reasons of technical accuracy, it introduced the term "epicontinental sea" as distinct from "superjacent waters". The epicontinental sea was that part of the high seas which covered the continental shelf in the geological sense of the term. Secondly, the proposal spoke of "the régime of freedom of navigation on the high seas" instead of "the legal status of the superjacent waters as high seas" because the freedom of the high seas envisaged in article 69 was substantially different from that proclaimed by article 67, a fact which should find reflection in the text.

18. Mr. JHIRAD (India) supported the Yugoslav and Bulgarian proposals (A/CONF.13/C.4/L.14, A/CONF.13/C.4/L.41). Far from agreeing with the representative of Ceylon who, at the previous meeting (para. 32), had argued that the danger implied in the Bulgarian proposal did not exist, since the coastal State did not exercise sovereign rights over the continental shelf, he thought the proposal even more pertinent since the rights of the coastal State were described as "exclusive".

19. The fact that the coastal State exercised exclusive rights in a restricted sense did not mean that other rights might not also be claimed. He would agree with

the representative of Ceylon, however, that the proposal was unnecessarily vague in that it did not specify who should decide whether an installation was directed against other States; he wondered, therefore, whether the representative of Bulgaria would agree to delete the words "any . . . which are directed against other States".

20. Mr. SANGKHADUL (Thailand) said that his delegation could not support the Bulgarian amendment. Article 68 as adopted clearly stated that the rights of the coastal State over the continental shelf were exercisable for the purpose of exploring and exploiting the natural resources. Hence, it was unnecessary to refer in article 69 to the unrelated question of military bases, since no right to build such bases was conferred by article 68. He thought that it was unlikely that any State would spend money on setting up installations of a military character when much the same purpose could be served by the use of ships.

21. Mr. KRISPIS (Greece) said that the Argentine amendment, if considered in relation to article 27 and to customary international law as interpreted in articles 70 and 71, gave the impression that the rights of the coastal State might affect the freedom of the high seas in the matter of fishing and conservation of the living resources of the sea, since the amendment referred only to navigation. The International Law Commission's draft was clear and logical; article 68 defined the legal status of the continental shelf, and article 69 safeguarded the freedom of the high seas, which would not be affected except as expressly provided in articles 70 and 71. His delegation would, therefore, vote against the amendment.

22. He considered that the Yugoslav amendment was unnecessary, since what it stated was self-evident, but, if it were pressed to a vote, he would suggest that a reference to article 70 should also be included.

23. His delegation would abstain from voting on the Bulgarian amendment.

24. Mr. BARROS FRANCO (Chile) said that he had maintained at the 21st meeting (para. 32) that, if article 68 specified that the rights of the coastal State were exercisable for the purpose of exploring and exploiting the natural resources of the continental shelf, article 69 would be superfluous. His delegation attached great importance to the principle of the freedom of the seas, especially freedom of navigation, and to the legal status of the air space over the superjacent waters. Decisions taken in other committees might affect the final meaning of article 69, but it was important to safeguard the principles it embodied.

25. He did not believe that the Yugoslav amendment was strictly necessary, and if it were included in article 69, it might lead to difficulties of interpretation. It was true that article 71 was an elaboration of article 69, but article 71 had not yet been adopted. For those reasons his delegation could not support the Yugoslav proposal.

26. If the Bulgarian amendment had been put forward after the adoption of a text of article 68 that gave the coastal State either sovereignty or sovereign rights over the continental shelf, he would have opposed the amendment on the grounds that it was an attempt to

limit the sovereignty of the coastal State. He did not agree with the view expressed at the 25th meeting (para. 31) by the representative of the Netherlands that the rights of the coastal State in the continental shelf were confined strictly to rights of exploration and exploitation of the shelf's natural resources. He did not consider, therefore, that the Bulgarian amendment in any way contradicted article 68; nevertheless, he had considerable doubts about the drafting of the amendment, since it specified only that the coastal State should not use the continental shelf for building military bases, and thus implied that another State might do so. Furthermore, the amendment referred to "the continental shelf" and not to "its continental shelf". He would agree with the objections voiced by the representative of Ceylon at the 25th meeting (para. 32) to the phrase "which are directed against other States". For all those reasons, he would vote against the Bulgarian amendment.

27. Mr. NIKOLIC (Yugoslavia) said, with reference to the comments on his amendment made by the representatives of Chile and the Federal Republic of Germany (25th meeting, para. 29), that the amendment was purely formal and in no way changed the substance of the article. The amendment introduced a necessary proviso, intended to correct what he felt must have been an oversight on the part of the International Law Commission. He had not included any reference to article 70, because he thought it possible that the drafting committee might combine articles 70 and 71; but, if his amendment were accepted, that committee could be asked to note the suggestion made by the representative of Greece.

28. The Bulgarian amendment was desirable in that it tended to forestall future misunderstandings; his delegation would vote for it.

29. Mr. MOUTON (Netherlands) said that he supported the International Law Commission's text of article 69 which referred merely to the legal status of the superjacent waters as high seas and that of the air space above those waters, further explanation being provided in article 71. There was no objection in principle to including a more detailed provision in article 69, but his delegation objected to the suggestion that article 69 should mention only the freedom of navigation, as was proposed in the Argentine amendment, and not the other freedoms of the sea.

30. He did not believe the Bulgarian amendment was necessary, and did not agree with the representative of Chile that there was no contradiction between that amendment and the text of article 68 as adopted by the Committee. The draft articles concerning the continental shelf referred only to exploration and exploitation of the shelf's natural resources and said nothing about other possible uses of the shelf. It would be possible to dig a tunnel in the shelf for communication or to build on the shelf installations for defence, for meteorological surveys or for flood warnings, or to build light-houses. Those were matters that were not regulated by the draft the Committee was considering. In his opinion, therefore, the Bulgarian amendment should not be dealt with in the context of article 69.

31. Mr. RANUKUSUMO (Indonesia) said that he

would vote for the amendments to article 69 proposed by Argentina and Bulgaria.

32. Mr. MÜNCH (Federal Republic of Germany) said that, although the Argentine amendment appeared to leave a gap in that it referred only to the freedom of navigation, and not to other freedoms, no gap would be left in the convention as a whole because the freedoms not referred to in the Argentine text were safeguarded in articles 27 and 49. The only result of adopting the Argentine amendment would be that article 69 would not be consistent with articles 27 and 49. Moreover, he did not consider the amendment was fully consistent with the text of article 68 as adopted. His delegation would therefore vote against it.

33. Mr. RUIZ MORENO (Argentina) agreed, in response to a suggestion by the representative of Ceylon, to change the word "or" in the last line of his amendment to "and".

34. Mr. QUARSHIE (Ghana) said that he believed the point raised by the Argentine amendment was adequately dealt with under article 27; if any amplification were required it should be discussed in relation to that article. He thought that the Bulgarian text should be an amendment to article 71 and not to article 69.

35. Mr. ALVAREZ-AYBAR (Dominican Republic) said that article 67 delimited the continental shelf in terms of its possible exploitation, article 68 indicated the nature of the economic rights of the coastal State in the shelf, and articles 70 and 71 provided the limitations on those rights. All those articles were concerned with economic activity, and therefore he did not consider that the Bulgarian amendment could properly be included in article 71.

36. The Argentine proposal was not more consistent with the text of articles 67 and 68 as adopted than was the International Law Commission's draft; in view of the terms of article 69, there was no danger of any encroachment on the freedom of the high seas.

37. He was not convinced that there was sufficient justification for the Yugoslav amendment.

38. Miss WHITEMAN (United States) said that her delegation strongly supported the International Law Commission's text of article 69. Her country had supported the principle of the freedom of the high seas throughout its history. For centuries the oceans had been the main highways of the world, and now the air space above them had become a second international highway. The importance of the principle had been stressed by the Commission in its commentary on article 69, which referred to the régime of the continental shelf as being subject to and within the orbit of the paramount principle of the freedom of the seas and of the air space above them. The freedoms in question were itemized in article 27. The United States delegation would be unable to vote for the Argentine proposal, which would restrict the freedom of the high seas to freedom of navigation.

39. She did not consider that the Yugoslav amendment was necessary, since any legal provision must be inter-

preted in the light of the rest of the document of which it was a part.

40. The United States delegation opposed the Bulgarian amendment for reasons that had already been stated by other representatives.

41. Mis GUTTERIDGE (United Kingdom) said her delegation also strongly supported the International Law Commission's draft of article 69. In its commentary on the article, the Commission had clearly stated that a claim to sovereign rights in the continental shelf could only extend to the seabed and subsoil and not to the superjacent waters, and that such a claim could not confer any jurisdiction or exclusive rights over the superjacent waters, which were and remained a part of the high seas. That represented her government's view, and the Argentine amendment only obscured the clarity of that concept. It referred only to freedom of navigation, no mention being made of fishing. Moreover, the reference to the epicontinental sea introduced an entirely different conception from that in the International Law Commission's draft. Her delegation would therefore vote against the Argentine amendment.

42. She was not convinced that the Yugoslav amendment was necessary, but it could be considered when article 71 was being discussed, and might well be left to the drafting committee.

43. For reasons that had been explained by other representatives, she considered the Bulgarian amendment unnecessary and inappropriate, and her delegation would therefore vote against it.

44. Mr. GARCIA AMADOR (Cuba) said that he would vote against the Argentine proposal for the reasons he had explained in his statement at the twentieth meeting (para. 22).

45. So far as the Yugoslav amendment was concerned, he would agree with the representative of the United Kingdom that the amendment involved a mere drafting change. As there was no disagreement on its substance, the proposal might be reintroduced subsequently and co-ordinated by the drafting committee with the text of the other articles when they had been adopted.

46. Mr. KWEI (China) said that the International Law Commission's draft of article 69 specified, not the rights of the coastal State, but a restriction on those rights. The Yugoslav amendment, by commencing with the words "subject to", introduced a double limitation. He would agree that it would be better to defer consideration of the amendment until article 71 was discussed.

47. Mr. KRISPIS (Greece) said that after listening to the debate he had decided to vote against the Yugoslav amendment, partly for the reasons given by the representative of the United States, and partly because article 69 referred to "legal status", which was a theoretical principle and not subject to restrictions. He would also vote against the Bulgarian amendment.

48. Mr. RUIZ MORENO (Argentina) said that some representatives appeared not to have fully understood his proposal. Freedom of fishing on the high seas was referred to in article 27 without reservation, but he did

not consider that that freedom should be reiterated in article 69 in view of the rights of the coastal State recognized in articles 67 and 68. The aim of his delegation's proposal was not to prohibit or restrict fishing in the superjacent waters, but to define the rights of the coastal State to regulate its coastal fisheries for the purpose of conservation. He also thought that the criticism of the expression "epicontinental" was based on a misunderstanding, but in deference to the critics he would be prepared to delete the words "and the epicontinental sea".

49. Mr. PATEY (France) said that, for the reasons explained by the representative of Cuba at the 20th meeting (para. 22), he would vote against the Argentine proposal.

50. He would hope that the representative of Yugoslav would consent to defer consideration of his amendment until article 71 was discussed, and perhaps leave it to the drafting committee to decide if it was necessary and in what form it should be included.

51. Mr. LACLETA (Spain) supported the International Law Commission's draft of article 69. He would agree with other representatives that the Bulgarian amendment introduced a question alien to the subject of the draft articles. He would agree with the representative of Cuba that the Yugoslav amendment might be dealt with by the drafting committee. With regard to the Argentine amendment, the rights granted to the coastal State were an exception to the general rule of the freedom of the high seas and should therefore be interpreted in a restrictive sense.

52. Mr. MOLODTSOV (Union of Soviet Socialist Republics) reiterated his delegation's support of the principle of the freedom of the high seas. At the same time, he would point out that the object of the articles referred to the Committee was to guarantee the well-being of the peoples of the coastal States; that was why the Soviet delegation had supported the recognition of the rights of the coastal State to explore and exploit the natural resources of the continental shelf. Since, however, the Committee was breaking new ground in international law, it should take particular care to ensure that the rules it drafted would never be cited in defence of activities prejudicial to international peace and security. A State bent on performing an unlawful act would often try to invoke rules of international law in self-justification. The Bulgarian proposal would make it impossible for the rights conferred upon the coastal State to be exercised to the detriment of other nations. The purely formal arguments advanced against the Bulgarian proposal were not convincing; the Committee should support the Bulgarian proposal as an important contribution to peace.

53. Mr. KANAKARATNE (Ceylon) suggested that the Bulgarian proposal be introduced as an amendment to article 71.

54. Mr. BELINSKY (Bulgaria) said that in the light of the debate, his delegation would withdraw its text as an amendment to article 69 and reintroduce it as an amendment to article 71 (A/CONF.13/C.4/L.41/Rev.1).

The Argentine proposal (A/CONF.13/C.4/L.6) was rejected by 40 votes to 10, with 10 abstentions.

The Yugoslav proposal (A/CONF.13/C.4/L.14) was rejected by 31 votes to 8, with 19 abstentions.

The International Law Commission's text of article 69 was adopted by 54 votes to none, with 8 abstentions.

The meeting rose at 6 p.m.

TWENTY-SEVENTH MEETING

Tuesday, 1 April 1958, at 10.30 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 69 (A/CONF.13/C.4/L.6, L.14, L.41)
(concluded)

In the absence of the Chairman, the Vice-Chairman, Mr. QUARSHIE (Ghana) took the Chair.

1. Mr. CALERO RODRIGUES (Brazil) said that in the votes taken at the previous meeting on article 69 and the amendments thereto, he had voted for the International Law Commission's text and against the proposals by Argentina (A/CONF.13/C.4/L.6) and Yugoslavia (A/CONF.13/C.4/L.14). The Yugoslav proposal was unnecessary, since legal documents must be interpreted as a whole; that was to say, article 69 must be read together with article 71.

2. He was concerned at the lack of conciseness in the Committee's work. If every detail were made explicit, the text would be very cumbersome. The International Law Commission's draft was concise, and he had therefore voted for it and would do so in the future.

3. He did not consider the Argentinian proposal an improvement on the International Law Commission's draft, which said exactly what was required. If the coastal State were to be given a special position regarding the superjacent waters of the continental shelf, that was not the consequence of its rights over the continental shelf.

4. Mr. OBIOLS-GOMEZ (Guatemala) said that he had voted in favour of the Argentine proposal, but had abstained on the International Law Commission's text, because the latter ran counter to Guatemala's views as expressed at the first ordinary meeting of the foreign ministers of the Central American States in 1955. He had not voted against the text because the best way of defending the principles of international law was to work in harmony with other States.

ARTICLE 70 (A/CONF.13/C.4/L.7, L.21, L.27, L.34)

5. Miss GUTTERIDGE (United Kingdom) withdrew paragraph 1 of her delegation's proposed amendment to article 70 (A/CONF.13/C.4/L.27), since the United Kingdom amendments to articles 68 and 69 contained

in the same document, on which it depended, had been rejected.

6. Paragraph 2 of the amendment stood. It was based on the International Law Commission's commentary to article 70 which stated that, in principle, pipelines should be included in the provisions of the article. Her delegation thought that any difficulties which might arise with regard to pipelines would be covered by the right of the coastal State to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources. Moreover, if pipelines were included in paragraph 2 of article 61, they should not be omitted from article 70.

7. Mr. PATEY (France) withdrew his delegation's proposal (A/CONF.13/C.4/L.7) in favour of the United Kingdom proposal, which expressed the same idea.

8. Although the commentary to article 70 said that the question of pipelines did not yet seem to be of practical importance, the Conference should, nevertheless, deal with the question in view of the statements made about recent technical progress.

9. He could not share the view of the Netherlands delegation (see A/CONF.13/C.4/L.21) that article 61 made article 70 superfluous, since the Committee was dealing with the question of the continental shelf, whereas article 61 came under the part "high seas".

10. Mr. MOUTON (Netherlands) said that the International Law Commission had made a mistake in introducing in article 70 a subject already dealt with in paragraph 2 of article 61, which, apart from the question of pipelines, was exactly the same as article 70. The Rapporteur, Mr. François, when asked if there was any reason for this repetition, had replied that it was probably due to haste in the preparation of the draft. It was for those reasons that he (Mr. Mouton) had proposed the deletion of article 70.

11. If, however, the other committees did not conclude their work at the current session, so that no general convention was drawn up covering all the articles, the Committee might have to consider reintroducing the article in order that a decision should be reached on the subject. Nevertheless, he thought article 61 was the proper place for it.

12. Mr. BARROS FRANCO (Chile) said that article 70 and paragraph 2 of article 61 were practically identical, and drew attention to document A/CONF.13/C.2/L.72 which contained a note by the International Telecommunication Union stating that, for that reason, one of them should be omitted. Article 61 was phrased better than article 70. His delegation therefore supported the Netherlands proposal (A/CONF.13/C.4/L.21).

13. Mr. MÜNCH (Federal Republic of Germany) agreed with the representatives of the Netherlands and Chile. If the Conference arrived at a general convention, the drafting committee would have to drop either article 70 or paragraph 2 of article 61. If, however, the Fourth Committee were the only one to reach a conclusion, article 70 should be included. For that reason, the Committee should vote on article 70.

14. He agreed with paragraph 2 of the United Kingdom proposal.

15. Mr. CARMONA (Venezuela) said that his delegation had preferred to deal with the question of a general convention by indicating in a footnote to its proposal (A/CONF.13/C.4/L.34) that that proposal was closely related to his delegation's proposal for article 61 (A/CONF.13/C.2/L.58).
16. Explaining his delegation's amendment to article 70, he said that if the coastal State had the right to take reasonable measures for the exploitation of the continental shelf, it obviously had the right to make regulations on the laying of submarine cables on the continental shelf. In that way, the coastal State could protect the interests of States if a conflict arose regarding exploitation and the laying of submarine cables.
17. He expressed agreement with the United Kingdom proposal.
18. The CHAIRMAN pointed out that article 70 spoke of laying submarine cables on the continental shelf, whereas article 61 referred to the laying of submarine cables in general.
19. Mr. BARROS FRANCO (Chile) said that article 61 was clearly meant to include the laying of cables on the continental shelf, since paragraph 1 of that article referred to the bed of the high seas, of which the continental shelf was part.
20. Mr. PATEY (France) said that article 61 came in part II of the International Law Commission's draft, which concerned the high seas. Article 69, as adopted, simply stated that the superjacent waters over the continental shelf were part of the high seas. A specific reference to the seabed of the continental shelf was therefore necessary, and article 70 should be retained.
21. Mr. SOLE (Union of South Africa) said that since article 70 had been put before the Committee, the Committee should taken a decision on it. If that decision overlapped with the decision of another committee on article 61, the final decision on the two articles could be left to the drafting committee or to a plenary meeting of the Conference.
22. Mr. KWEI (China) feared that, if the Committee deleted article 70 on the grounds that it was the concern of another committee, that other committee might delete paragraph 2 of article 61 for the same reason. The Committee had, moreover, to decide on the United Kingdom proposal.
23. Mr. MOUTON (Netherlands) suggested that the Committee should first vote on the United Kingdom proposal and should then take a provisional vote on article 70, leaving the decision whether to delete it in favour of paragraph 2 of article 61 to the drafting committee.
24. Mr. OBIOLS-GOMEZ (Guatemala) said that the Committee must at all events consider article 70, as article 61 might be considered superfluous by another committee. A cross-reference could be inserted in article 61.
25. Mr. RANUKUSUMO (Indonesia) proposed that the Committee should have a joint meeting with the Committee dealing with article 61.
26. The CHAIRMAN did not think that necessary.
27. Miss WHITEMAN (United States of America) said that article 70 placed limitations on the freedom to lay submarine cables formulated in article 27. The 1884 Convention prohibited interference with submarine cables. Some provision was therefore necessary to allow the coastal State to take measures for the exploration of the continental shelf which might affect submarine cables.
28. Since it was impossible to foresee all the situations that might arise with regard to article 70, no more definite criterion than that of reasonableness could be established for the measures which coastal States might take. Articles 69, 70 and 71 dealt with the four freedoms of the high seas formulated in article 27 in so far as they affected the continental shelf. If article 70 were omitted, the section would be incomplete. It could not be assumed that paragraph 2 of article 61 would be accepted. Her delegation therefore opposed the Netherlands proposal to delete article 70.
29. It had no objection to the United Kingdom proposal, but agreed with the view expressed in the commentary that such an amendment was not necessary.
30. She could not support the Venezuelan proposal (A/CONF.13/C.4/L.34), because it did not provide any standards for the regulations to be made.
31. For those reasons, the United States delegation supported the International Law Commission's text.
32. Mr. CALERO RODRIGUES (Brazil) was glad that the Netherlands representative had not insisted on his proposal, and had agreed to leave the question of article 70 to be decided by the drafting committee. He thought, however, that the main responsibility for deciding whether or not article 70 should be adopted rested with the Fourth Committee itself, and that it should inform the drafting committee of its view that, if paragraph 2 of article 61 were adopted, article 70 was unnecessary.
33. He had no objection to the United Kingdom proposal. With regard to the Venezuelan proposal, he would remind the Committee, as the United States representative had done, that the right of a coastal State to explore the continental shelf was a right to take "reasonable measures" only. The Venezuelan proposal, however, by giving it an unqualified right to make regulations, concerning routes to be followed by submarine cables and pipelines, was tantamount to bestowing an unlimited right on it, since such regulations might in practice lead to unjustified prohibition on laying or maintaining submarine cables on the continental shelf.
34. Mr. RUIZ MORENO (Argentina) said that it should be left to a plenary meeting of the Conference to decide whether or not article 70 should be adopted.
35. He supported the Venezuelan proposal, because he felt that, since the continental shelf was submerged territory of coastal States, those States had a right to say what route should be followed on the shelf by submarine cables and pipelines. Paragraph 2 of the International Law Commission's commentary to article 70 said that, in the case of pipelines, "it would often be necessary to install pumping stations at certain points",

and he did not believe that any coastal State could, or would, renounce its right to say where such pumping stations should be installed.

36. Mr. BARROS FRANCO (Chile) said that he had previously supported the Netherlands proposal. In view of the fact, however, that the Netherlands representative was considering withdrawing it, he wished to state that, if a vote were taken on article 70, he would support the Venezuelan proposal.

37. Paragraph 1 of the International Law Commission's commentary on article 70 said that the coastal State might "impose conditions concerning the route to be followed" by submarine cables on its continental shelf. He thought that that principle should be stated in the article itself.

38. Mr. MOUTON (Netherlands) said that, if his proposal were withdrawn, he thought that a recommendation should be made to the drafting committee to delete article 70 if both that article and the second paragraph of article 61 were adopted by the Conference for inclusion in the same final document. If he withdrew his own proposal, he would support the United Kingdom proposal, which, if adopted, would make it easier for the drafting committee to decide whether or not article 70 should be retained, since article 70 and the second paragraph of article 61 would then be identical. On the other hand, he would oppose the Venezuelan proposal, since, if it were adopted, its effect would be to change article 70 considerably, and that would make the drafting committee's task more difficult. The Venezuelan proposal was superfluous, and he was all the more inclined to oppose it after having heard the Argentine representative support it on the grounds of the sovereignty of the coastal State over the continental shelf.

39. Mr. DE ROSSI (Italy) supported the United Kingdom proposal and opposed the Venezuelan proposal.

40. Mr. KANAKARATNE (Ceylon) said that article 70 should be voted on as it stood. If the Committee rejected it, no question of procedure would arise. If it accepted it, then it would be a matter for the Third Committee, when it came to discuss the second paragraph of article 61, to decide whether to make any adjustment to that article.

41. Article 27 of the International Law Commission's draft referred to four specific freedoms of the high seas. Rights over the continental shelf might give rise to infringements of those freedoms, and hence articles 69 to 71 of the International Law Commission's draft had been designed to regulate the question of those freedoms in relation to the continental shelf. The removal of article 70 would mutilate the plan behind the draft and would leave an important gap. He would point out that, if article 70 were deleted, and the second paragraph of article 61 were also rejected, there might then be no article dealing with the question of submarine cables and pipelines.

42. The delegation of Ceylon was unable to support the United Kingdom proposal, since, as the International Law Commission had pointed out in paragraph 2 of its commentary on article 70, the question

of pipelines did not yet seem to be of practical importance.

43. His delegation would abstain from voting on the Venezuelan proposal, since the mention in article 70 of "reasonable measures" which the coastal State might take for the exploitation of its continental shelf and for that of the natural resources thereon included the right to impose conditions concerning the route to be followed by submarine cables and pipelines, and therefore included the substance of the Venezuelan proposal.

44. Mr. PATEY (France) said that the plenary session of the Conference could decide whether or not article 70 should be adopted. The Netherlands representative could raise the question in the plenary session if he wished to do so.

45. Mr. ROUHANI (Iran) thought that the International Law Commission had intended to make a distinction between the laying and maintenance of cables and pipelines on the bed of the high seas and their laying and maintenance on the continental shelf. Paragraph 4 of the commentary on article 61, which made a special reference to the continental shelf, bore that out. He therefore felt that the Third Committee should deal with the question of the laying and maintenance of cables and pipelines on the bed of the high seas, while the Fourth Committee should deal with it in so far as it concerned the continental shelf.

46. Mr. MOUTON (Netherlands) said that he withdrew his proposal, and would be glad if the Chairman would ask the drafting committee to bear in mind the whole question whether article 70 and the second paragraph of article 61 should both be adopted.

47. Mr. CARMONA (Venezuela) said that, at the Inter-American Specialized Conference on Conservation of Natural Resources at Ciudad Trujillo in 1956, twenty-one States had decided that minimum precautions should be taken with regard to the laying and maintenance of submarine cables, since such operations involved considerable dangers for coastal States. It had been decided that the coastal State should be informed of all the technical details and should have the right to take whatever steps were necessary to safeguard their own interests. It was impossible for a coastal State to renounce its right to control laying and maintenance operations when it feared that such operations might interfere with its exploitation of the continental shelf, or endanger its interests in other ways. He hoped that the drafting committee, if asked to work out a text for the second paragraph of article 61 and article 70, would keep the substance of the Venezuelan proposal in mind.

The Venezuelan proposal (A/CONF.13/C.4/L.34) was rejected by 22 votes to 18, with 15 abstentions.

The United Kingdom proposal (A/CONF.13/C.4/L.27) was adopted by 32 votes to 7, with 16 abstentions.

The International Law Commission's draft article 70, as amended by the United Kingdom proposal, was adopted by 48 votes to none, with 8 abstentions.

48. Mr. BARROS FRANCO (Chile) said that he had voted in favour of the Venezuelan proposal, but had abstained on the United Kingdom proposal and on the amended International Law Commission's draft.

49. Mr. CARMONA (Venezuela) said that he would have voted for the United Kingdom proposal if his delegation's proposal had been adopted. He had voted against the United Kingdom proposal after the rejection of his delegation's proposal, because if the right of the coastal State to make regulations concerning routes were denied, the question of pipelines would not be adequately regulated. For the same reason, he had abstained from voting on the amended International Law Commission's draft.

50. Mr. CARBAJAL (Uruguay) said that he had voted for the Venezuelan proposal because the exclusive rights of the coastal State established by article 68 implied the right of the coastal State to make regulations concerning the laying of pipelines on the continental shelf.

51. After the rejection of the Venezuelan proposal, he had voted for the United Kingdom proposal.

52. He had voted in favour of article 70 as amended, on the understanding that the right of the coastal State to take reasonable measures would be interpreted reasonably.

The meeting rose at 12.25 p.m.

TWENTY-EIGHTH MEETING

Tuesday, 1 April 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 71 (A/CONF.13/C.4/L.4, L.15, L.22, L.28, L.35, L.41/Rev.1, L.48, L.49, L.53)

1. Mr. MOUTON (Netherlands) said that, in view of the text which had been adopted for article 68, paragraph 1 of his delegation's amendment (A/CONF.13/C.4/L.22) should be deleted, as should the phrase "and within the limits mentioned in article 68" in paragraph 2.

2. He would confine his explanation of the amendment to its technical aspects. Paragraph 2 diverged from the International Law Commission's text in specifying more exactly what were the rights of the coastal State, and in laying down a radius of 50 metres for safety zones. As he had explained in document A/CONF.13/26, that figure had been decided upon after consultation with the oil industry. On land there was a circle round similar installations within which no naked flame was admitted, as a fire precaution against possible escaping gases, and the same precaution was necessary at sea. Vessels concerned with the exploitation could approach the installations because their personnel had been specially trained in the necessary precautions, but it was proposed that no other vessel should be admitted within a radius of 50 metres. That radius was considered safe by experts; at the same time, it encroached to an insignificant extent only on the freedom of the sea.

3. The last part of paragraph 2 of the amendment dealt with clusters of installations. Such clusters might be as much as six or seven miles long and two or three miles wide, the installations being separated by a minimum distance of about 400 metres. They constituted a serious obstacle to navigation. Ships proceeding to a harbour lying beyond the cluster of installations might be tempted to take a short cut by sailing through the cluster. That would not be dangerous for a small vessel, but might be for large ships. His delegation therefore proposed that any cluster of installations that was over ten miles long should have a fairway through it so that, in fact, the maximum length of any one cluster barred to large ships would be five miles.

4. A provision against anchoring inside such a cluster had been included because in a large, prolific oil-field there would be many pipelines on the seabed, and if they were damaged by an anchor, the sea would be polluted by oil.

5. Paragraph 4 of the amendment referred to the due notice to be given of such installations. At present, six or seven countries published charts which were supplemented by serial "Notices to Mariners". A coastal State which gave concessions on its continental shelf to oil companies should provide all countries publishing those notices with information about proposals to build or dismantle installations. The International Law Commission's text of article 71, paragraph 4, was not satisfactory, since it was restricted to speaking of due notice "of any such installations constructed"; for a sailor, it was necessary to have advance warning of the construction of such installations, and his delegation's text therefore read "of any such installations to be constructed".

6. The second part of paragraph 4 of the amendment referred to lights and fog signals. The International Law Commission's text referred merely to "permanent means for giving warning", but the Netherlands delegation considered that warning lights and fog signals, if they were of a special character, might not only prevent the installations from being an obstacle to navigation but actually transform them into navigation aids. Both lights and fog signals would be notified in the "Notices to Mariners". Since it would only lead to confusion if every installation in a large cluster had its own lights and fog signals, the placing of such means of warning in large clusters should be left to the discretion of the coastal State.

7. The amendment was proposed purely in order to deal with a practical problem from the nautical point of view, and he would be prepared to accept any suggested changes having the same object. He would speak later on the non-technical aspects of the proposal.

8. Mr. CARTY (Canada) remarked that, whereas the International Law Commission's text of article 71, paragraph 2, merely permitted the coastal State to establish safety zones, the Netherlands proposal made such zones mandatory. He thought the latter approach was the more desirable.

9. Miss GUTTERIDGE (United Kingdom) said that the United Kingdom amendment (A/CONF.13/C.4/L.28) replaced the earlier amendment (A/CONF.13/C.4/L.24). Paragraph 4 of the amendment to article 71

was withdrawn, since it was not in accord with the present text of article 67.

10. Paragraph 2 of the amendment was more precise than the International Law Commission's text in that it specified that the safety zone should have a maximum radius of 500 metres, which allowed an ample margin of safety.

11. She had listened with close attention to the explanations of the Netherlands representative, but had reached the conclusion that the United Kingdom's simpler amendment would be more likely to be generally acceptable than one specifying limitations, however small in extent, to the freedom of navigation. She would prefer to avoid any wording prohibiting ships of a certain size entering such zones.

12. Paragraph 2 of the United Kingdom amendment was materially identical with the corresponding provision of the Netherlands amendment; it was enough to provide that permanent means of giving warning of the presence of installations should be maintained, and it was unnecessary to provide that the character of those means of warning must be notified.

13. The object of the new paragraph proposed in paragraph 3 of her delegation's amendment was to incorporate in the text of the article the last sentence of paragraph 5 of the International Law Commission's commentary. It was obvious that abandoned installations might be a great danger to shipping, and the additional paragraph was therefore essential.

14. Mr. SORENSEN (Denmark) said that his delegation's proposal (A/CONF.13/C.4/L.49) was a condensed version of the proposal submitted in connexion with article 68 and subsequently withdrawn (A/CONF.13/C.4/L.10). The new text, which had been arrived at after consultations with other delegations, referred to fundamental oceanographic research only. Oceanography was a study of the phenomena of the ocean, which included the seabed as well as the ocean waters, but did not extend to the subsoil. Hence there was no danger of those engaged in oceanographic research also exploring the subsoil of the continental shelf for the purpose of finding useful mineral resources. The condition that research results must be published was retained in the new proposal. The only difference of substance between the Panamanian proposal (A/CONF.13/C.4/L.4) and the Danish proposal was that the provisions of the former were limited to scientific investigations carried out by a country or qualified scientific institution. He did not think that the possibility of private individuals engaging in fundamental research on the continental shelf should be ruled out. The Indonesian proposal (A/CONF.13/C.4/L.53) required the consent of the coastal State for scientific research in the continental shelf; he was anxious that no undue restriction should be placed on scientific research, which formed part of a great and honourable tradition of service to mankind.

15. Replying to Mr. KANAKARATNE (Ceylon), he explained that the word "unjustifiable" used to qualify the word "interference" in paragraph 1 of the International Law Commission's text of article 71 had been deliberately omitted by the Danish delegation, since interference with scientific research, unlike interference

with navigation, fishing or the conservation of living resources, could not, in his opinion, be justified in any circumstances. He would, however, welcome the views of other delegations on that point. He was also prepared to confer with the representatives of Panama and Indonesia with a view to agreeing on a possible joint text, but pointed out that the Indonesian proposal, by introducing the requirement of consent, differed substantially from the Danish and Panamanian proposals.

16. Mr. MUNCH (Federal Republic of Germany) expressed support for the Danish proposal, which sought to forbid all interference with scientific research on the continental shelf; the word "unjustifiable" was unnecessary in that context. The interests of the coastal States were fully safeguarded by the clause relating to the publication of the results of the research. The suggestion that the coastal State should be notified of any plans to carry out research on its continental shelf would cause unnecessary complications, because scientific research was often conducted from small ships in a sporadic manner.

17. Mr. GOMEZ ROBLEDO (Mexico) said that the provision requiring the consent of the coastal State would not unduly hamper scientific research; the applications for permission would, in effect, be a formality enabling the coastal State to satisfy itself that the proposed activity was indeed bona fide scientific research. He would ask the representative of Denmark to explain the precise meaning of the term "fundamental" in the context of his proposal.

18. Mr. MOUTON (Netherlands) believed that the terms "scientific research" or "scientific investigation" used in the proposal of Indonesia and Panama were preferable to "oceanographic research". In a number of instances marine research of great value had combined biological and meteorological, as well as oceanographic, elements. The broader term was undoubtedly the more appropriate.

19. Mr. SORENSEN (Denmark) said that the words "fundamental oceanographic research" had been taken literally from the last paragraph of the communication from the International Council of Scientific Unions transmitted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/28) in the hope of reducing the risk of controversy. It would, however, be wholly in the spirit of his proposal to extend its scope to other scientific research as well. Accordingly, he would insert the words "and other scientific" between the words "oceanographic" and "research".

20. Mr. SHIHABI (Saudi Arabia) remarked that scientific research other than oceanographic research might encroach upon the exclusive rights of the coastal State to explore and exploit the natural resources of the continental shelf. The limitation to a single field of scientific activity envisaged in the original Danish proposal was more in keeping with the objectives of the Conference.

21. Mr. GARCIA AMADOR (Cuba) said that it had been suggested that there might be some conflict

between the Danish amendment and the special rights of the coastal State recognized in article 68. He would not agree ; article 68 recognized the rights of the coastal State to explore and exploit the natural resources of the continental shelf, and article 71, paragraph 1, provided that in the exercise of those rights the coastal State must not interfere unjustifiably with the freedom of the high seas, with navigation, fishing and the conservation of the living resources of the sea. Whereas article 68 recognized the nature of the rights of the coastal State, article 71 laid down the conditions governing the exercise of those rights. He would therefore consider that the Danish proposal was appropriate, and that there was no reason why the freedoms safeguarded in article 71, paragraph 1, should not include the freedom of oceanographic or other scientific research.

22. Mr. SCHWARCK ANGLADE (Venezuela) said that in proposing the deletion of the words "in narrow channel or" in article 71, paragraph 5 (A/CONF.13/C.4/L.35), his delegation did not wish to limit the scope of that paragraph, but only to make it more concise by removing a phrase which appeared to be unnecessary.

23. Mr. RANUKUSUMO (Indonesia) recalled that his proposal (A/CONF.13/C.4/L.53) had originally been submitted in connexion with article 68 (A/CONF.13/C.4/L.40) and subsequently withdrawn. The International Law Commission's text made no provision for scientific research on the continental shelf ; the Indonesian proposal was intended to remedy the defect. The proposal was in no sense intended to cover nuclear tests or similar activities. He was ready to discuss the possibility of working out a joint proposal with the representatives of Denmark and Panama.

24. Mr. BELINSKY (Bulgaria) said that his proposal (A/CONF.13/C.4/L.41/Rev.1) reiterated the text of the Bulgarian proposal originally submitted in connexion with article 69 (A/CONF.13/C.4/L.41) ; it incorporated the amendment suggested by the representative of India at the 26th meeting (para. 18). Its purpose was to ensure that the peaceful utilization of the continental shelf should be guaranteed by an express rule of international law. No objections had been voiced to the substance of the original proposal ; the only criticism expressed had been that it stated the obvious. In view of the importance of the matter, however, it was surely better to make a positive statement than to remain silent.

25. Mr. MÜNCH (Federal Republic of Germany) asked whether the Bulgarian proposal was intended to prevent the building of military installations both of a defensive and of an aggressive nature on the continental shelf. Furthermore, it was not clear from the proposal whether a coastal State might not permit another State to build military bases or installations on its continental shelf.

26. Mr. LETTS (Peru) doubted whether the Bulgarian proposal was necessary, since, under article 68 as adopted by the Committee, the coastal State exercised exclusive rights only for the the purpose of exploring

and exploiting the natural resources of the continental shelf.

27. Mr. JHIRAD (India) said that the term "exclusive" in article 68 meant that the rights in question vested exclusively in the coastal State and were not exercisable by any other State. It did not mean that the coastal State exercised rights solely for the purpose of exploring and exploiting the continental shelf. The Bulgarian proposal, he believed, had great merit.

28. Mr. MÜNCH (Federal Republic of Germany) shared the Peruvian representative's scepticism with regard to the Bulgarian proposal. All rights over the continental shelf other than those set forth in article 68 were open to everyone ; except for the express purpose of the exploration and exploitation of its natural resources, the continental shelf, including its subsoil, was subject to the régime of the high seas. Any State could build installations on it, provided that they did not interfere with the exploration and exploitation of natural resources.

29. Mr. JHIRAD (India) said that, in view of the remarks made by the representative of the Federal Republic of Germany, he would propose the following amendment to the Bulgarian proposal :

"The coastal State shall have the right and the obligation to prevent the continental shelf from being used for the purpose of building military bases or installations."

30. The amendment constituted an addition to the Bulgarian proposal, and should be put to the vote separately. If it were adopted and included in an international convention, its effect would be to grant to the coastal State a right additional to those set forth in article 68.

The meeting rose at 5.25 p.m.

TWENTY-NINTH MEETING

Wednesday, 2 April 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 71 (A/CONF.13/C.4/L.4, L.6, L.15, L.22, L.28, L.35, L.41/Rev.1, L.48, L.49, L.50, L.53, L.54, L.55, L.56, L.57, L.58) (continued)

1. Mr. BELINSKY (Bulgaria), replying to points raised by the representatives of the Federal Republic of Germany and Peru at the 28th meeting (paras. 25 and 26), stated that his proposal (A/CONF.13/C.4/L.41/Rev.1) would not permit the coastal State to build military bases or installations on the continental shelf either for defensive or for aggressive purposes.

Except for the purposes of exploration and exploitation of natural resources, the continental shelf was subject to the régime of the high seas. Hence, the presence of any military installations on the continental shelf would be a violation of international law. Similarly, the proposal would not permit the coastal State to allow any other State to build military bases or installations on its continental shelf; and the prohibition it sought to impose was not limited to such military bases or installations as might interfere with the exploration or exploitation of natural resources. He would endorse the arguments advanced by the representative of India at the 26th meeting (para. 18) to the effect that the substitution of the term "exclusive rights" for "sovereign rights" in article 68 made his proposal all the more necessary. Since, however, the new Indian proposal (A/CONF.13/C.4/L.57), while fully retaining the spirit of his proposal, appeared to possess greater clarity, he would withdraw his proposal in favour of that proposal.

2. Mr. PATEY (France) said that his proposal on the freedom of scientific research on the continental shelf (A/CONF.13/C.4/L.56), like the Indonesian proposal (A/CONF.13/C.4/L.53), would require the consent of the coastal State to be obtained before such research was undertaken. That provision was intended to ensure that activities relating to the exploitation of the natural resources of the continental shelf, such as dragging the seabed or taking samples, should not be carried out on the pretext that they constituted scientific research. The French proposal, however, was somewhat more liberal than the Indonesian proposal in that it listed, in paragraph 2, the conditions under which the coastal State's consent should not normally be withheld. He had no fundamental objection to the proposal submitted by Iran (A/CONF.13/C.4/L.50), but thought that the wording of the French proposal was clearer and less likely to give rise to misinterpretations. He could not, however, accept the Danish or Panamanian proposals (A/CONF.13/C.4/L.49 and A/CONF.13/C.4/L.4), which contained no provision whatever regarding the coastal State's consent.

3. Mr. SANGKHADUL (Thailand) said that he would have supported the Danish proposal in its original form, but could not accept it since the representative of Denmark had amended it at the 28th meeting (para. 19) by inserting the words "and other scientific". The term "scientific research" was extremely broad and might be interpreted to include research into the effects of underwater explosions of atomic weapons. Unless the representative of Denmark would agree to insert a qualifying term such as "peaceful" before the words "scientific research", it would be necessary to provide for the consent of the coastal State being obtained.

4. Mr. SAMAD (Pakistan) said that his proposal (A/CONF.13/C.4/L.48) sought to remedy a lack of clarity in paragraph 4 of article 71. In stating that notice of installations constructed on the continental shelf must be given "to all governments and groups interested in navigation and fishing", the Pakistan proposal merely transferred part of the text of paragraph 4 of the International Law Commission's commentary on article 71 to the body of the article. The

last sentence of the proposal was also taken from the International Law Commission's commentary (paragraph 5). Finally, the proposal specified that "prior" notice should be given because installations in process of construction were the most likely to interfere with navigation and fishing.

5. Mr. NIKOLIC (Yugoslavia) said that his proposal (A/CONF.13/C.4/L.15) was intended, on the one hand, to ensure the greatest possible measure of observance of the principle of freedom of navigation in the area of the continental shelf, and, on the other, to provide for safety and order in that area. Paragraph 2 of article 71 was not sufficiently definite in either of those respects. The proposed distance of 500 metres for the safety zones around installations on the continental shelf was, he thought, reasonable; he could not agree to the radius of 50 metres specified in the Netherlands proposal (A/CONF.13/C.4/L.22). Moreover, since installations could be endangered by aircraft even more than by ships, the proposal also provided for an air safety zone to a height of 1,000 metres. The United Kingdom proposal for paragraph 2 of article 71 (A/CONF.13/C.4/L.28) was almost identical with the first sentence of paragraph 1 of the Yugoslav proposal; the two proposals perhaps might be combined. With regard to paragraph 2 of his proposal, he pointed out that article 48 proposed by the International Law Commission did not cover the special circumstances of the continental shelf; it was desirable to include a provision on the subject of pollution of the sea in the section dealing with the continental shelf in order to avoid the possibility of arbitrary interpretations. The wording proposed corresponded to that of the International Convention for the Prevention of Pollution of the Sea by Oil (London, 1954).

6. Commenting on other proposals before the Committee, he expressed support of the United Kingdom proposal in its entirety. The proposals submitted by Venezuela (A/CONF.13/C.4/L.35), Pakistan (A/CONF.13/C.4/L.48), Greece (A/CONF.13/C.4/L.54) and Italy (A/CONF.13/C.4/L.55) were also acceptable, as was the Netherlands proposal, with the exception of the provision for a 50-metre radius for safety zones. Of the proposals relating to freedom of scientific research, he preferred the French proposal (A/CONF.13/C.4/L.56), but would also be prepared to support the Iranian proposal (A/CONF.13/C.4/L.50), provided the word "shall" in its first sentence were replaced by "may". He had intended to support the Bulgarian proposal (A/CONF.13/C.4/L.41/Rev.1), and would support the Indian proposal (A/CONF.13/C.4/L.57), in favour of which it had been withdrawn.

7. Mr. MÜNCH (Federal Republic of Germany) remarked that, in many cases, the coastal State would not itself engage in exploiting the natural resources of the continental shelf, but would permit companies or individuals to do so subject to its supervision and control. The purpose of the first sentence of paragraph 2 of his proposal (A/CONF.13/C.4/L.58) was to ensure that the coastal State might issue certain regulations in such cases, a point not covered by article 71. The second sentence was self-explanatory. The

third sentence was very similar to the Danish proposal (A/CONF.13/C.4/L.49); if the latter were put to the vote first, he would support it, but he would not withdraw his own proposal, which might be preferable to some delegations as being somewhat less rigid. The suggestion that safety zones around installations on the continental shelf should be as wide as 500 metres seemed excessive; he preferred the figure of 50 metres suggested in the Netherlands proposal, especially as the representative of that country had explained that the sole purpose of safety zones was to prevent fires. Accordingly, he would vote in favour of the Netherlands proposal, but wondered whether security measures in general were not adequately covered by sub-paragraph (b) of his own proposal.

8. The idea underlying paragraph 1 of his proposal was that interference with navigation, fishing or the conservation of natural resources which was so slight as to be negligible need hardly be referred to in an international document; and any interference on a larger scale could not be justifiable. Paragraphs 3 and 4 of the proposal merely sought to clarify the International Law Commission's text. He would support other proposals having the same purpose, in particular those of the United Kingdom, Greece and Italy.

9. With regard to the Indian proposal, he felt that particularly clear thinking was required in matters connected with the cause of peace. A coastal State might need to build military installations on its continental shelf for reasons of self-defence. Why, he asked, should the continental shelf be singled out for demilitarization or neutralization? The matter was not ripe for consideration by the Committee, particularly as the exact limits of the continental shelf were not clearly defined.

10. Mr. LETTS (Peru) recalled that, throughout the discussion, his delegation had defended the principle of freedom of the high seas. In the case of article 71, however, he felt that the right of the coastal State to exploit its continental shelf should take precedence over the freedom of navigation, and suggested that a sentence to that effect should be inserted at the beginning of the article. A close reading of the article would show that the rights of the coastal State were, in effect, to be restricted, not in the interests of free navigation, but in those of the oil companies exploiting the mineral resources of the continental shelf. He objected, in particular, to the subjective nature of the terms "narrow channels" and "recognized sea lanes essential to international navigation" in paragraph 5. He would be unable to vote for article 71 unless it were amended on the lines he had suggested.

11. The wording of the Indian proposal fully satisfied the doubts he had expressed earlier with regard to the Bulgarian proposal, and he would support it, although he would have preferred it to appear as a separate article rather than as an addition to article 71.

12. Mr. JHIRAD (India), introducing his proposal (A/CONF.13/C.4/L.57), gave full credit to the representative of Bulgaria for having been the first to bring forward the idea underlying it. The proposal was not only supported by international law and the

provisions of the Charter, but was also particularly relevant to the subject under consideration. In recognizing that the coastal State enjoyed certain rights with regard to the continental shelf—whether those rights were described as exclusive or sovereign—the Committee was, inevitably, imposing some restrictions upon the régime of the high seas; those restrictions were specifically dealt with in article 71. It was extremely important, in that context, to emphasize that neither the coastal State nor any other State had a right to build military bases or installations on the continental shelf. It might be argued that an express provision to that effect was unnecessary because the matter was governed by other rules in international law. But it was generally agreed that the section on the continental shelf should be as complete and self-contained as possible, and that particular aspect of the freedom of the high seas was sufficiently important to merit special affirmation. The construction of military bases or installations on the continental shelf was illegal; as well as interfering with the recognized right of the coastal State to explore and exploit the natural resources of its continental shelf, it constituted a violation of the freedom of the high seas and of Article 2, paragraph 4, of the Charter.

13. Miss GUTTERIDGE (United Kingdom) said that her proposal (A/CONF.13/C.4/L.28) relating to paragraph 4 of article 71 differed only slightly from the Netherlands proposal; the latter went into unnecessarily greater detail. She would consider combining her proposal for paragraph 2 of the article with that contained in the first paragraph of the Yugoslav proposal, but she did not regard the question of air safety zones as falling within the competence of a conference on the law of the sea.

14. On the subject of scientific research, she would support the Danish proposal. Marine research was often very costly and could, moreover, only be carried out within certain limited periods; if the consent of the coastal State had to be obtained in every instance, as proposed by France, Indonesia and Iran, considerable difficulties might arise. Lastly, she thought that the issue raised by the Indian proposal was extraneous to the work of the Committee, and might considerably reduce the chances of agreement on its main task.

15. Mr. MOUTON (Netherlands) considered it regrettable that on previous occasions amendments embodying useful suggestions had not been adopted for the simple reason that they included points of minor importance which the Committee had found unacceptable. He hoped that the Chairman would be able to evolve a procedure which would obviate that happening again when the amendments to article 71 were voted on.

16. He agreed with the representative of Pakistan that mariners required prior notice of installations on the continental shelf. They should receive notification before the arrival of the first construction units. With regard to the persons or organizations to receive such notification, he pointed out that the International Law Commission, which was composed of legal rather than nautical experts had, in paragraph 4 of the commentary,

suggested notifying "not only governments, but also groups interested in navigation and fishing". In practice, the desired result would be achieved by notifying the six or seven governments who published sea charts and issued "Notices to Mariners".

17. The view represented by the amendment of the Federal Republic of Germany differed widely from that of his own government. His delegation regarded the International Law Commission's draft as too vague. It held that for the protection of installations and of navigation in general the coastal State should be required to accept obligations for safety on the high seas in relation to the exploitation of the continental shelf. The Federal Republic of Germany's amendment was too mild, since it made it optional, instead of obligatory, for the coastal State to make regulations. The convention should include a provision obliging the coastal State to adopt measures for settling possible conflicts between the oil industry, on the one hand, and those engaged in navigation and fishing, on the other. The same criticism applied to sub-paragraph (b) of the amendment, which apparently referred to safety zones, but did not specify their width. That would leave the coastal State free to establish unnecessarily large safety zones, whereas, in order to reduce encroachment upon the freedom of the seas to a minimum, the safety zones should be restricted to the width essential for protection.

18. The Yugoslav representative's objection to a safety zone with a radius of only 50 metres was perhaps due to the use of the word "radius", since a radius of 50 metres measured from the central point of an installation would be inadequate if the installation were very large. The Netherlands amendment was intended to refer to a belt 50 metres wide surrounding the installation. As he had explained at the 28th meeting (para. 2), his government considered a safety zone unnecessary for mariners, who knew how to steer clear of obstacles, but essential in order to protect the installations against fires such as those caused by the lighting of cigarettes by passengers from private yachts anchored near oil installations. He hoped that that explanation would make it possible for the Yugoslav representative to accept the Netherlands amendment.

19. He was glad that that representative had also referred to the question of pollution. It was true that article 62 on the régime of the high seas dealt with that subject, but that article might not finally appear in the same convention as the provision relating to the continental shelf, and in that case a provision on pollution would have to be added. The same procedure might be followed as for article 70, which had been adopted in case article 61 was not finally included in the same convention as the articles on the continental shelf.

20. He was unable to agree with the representatives of France, India and Iran that the prior consent of the coastal State was necessary before scientific research could be carried out on the continental shelf. The superjacent waters were part of the high seas and all States had the right to carry out research there. The rights of the coastal State under article 68 were limited to exploring and exploiting the natural resources of the

shelf and did not include the right to prevent the carrying out of scientific research there by other States. To insist on the need for the prior consent of the coastal State was at variance with articles 68 and 69 as adopted. The findings of purely scientific research might even be of benefit to the coastal State, and the provision for open publication proposed in the Danish amendment would ensure that the coastal State would be informed of the results of the research.

21. He fully appreciated the good intentions behind the Indian proposal, but did not feel that it fell within the scope of the Conference's work. The International Law Commission's proposals relating to the exploration and exploitation of the natural resources of the continental shelf were the result of seven years' work and had been fully studied by governments; he did not believe that the Conference could attempt to deal with other matters on which there had not been the same preparatory work. There were many other possible ways of using the continental shelf, some already under consideration, such as the tunnel under the English Channel or the proposed flood warning installation on the Dogger Bank, but no such extraneous questions should be introduced into the work of the Conference. There was no reason why the Indian proposal should not be studied and dealt with at the appropriate time, but it would be a mistake to deal with it hastily at the present Conference. His delegation would therefore vote against it.

22. Mr. CARTY (Canada) said that Canada had originally been satisfied with the International Law Commission's text for article 71. He believed that, apart from the Indian amendment, all the amendments submitted were prompted by two considerations, the first being that some of the expressions used by the International Law Commission were too vague—for example "unjustifiable interference" and "at a reasonable distance"—and that they should be replaced by some more precise terminology. Secondly, there was the desire to include in the body of the article the reference to scientific research in paragraph 10 of the Commission's commentary on article 68. The amendments proposed by Denmark, Panama, France, Indonesia and Iran were inspired by the desire, fully shared by Canadian delegation, to encourage legitimate scientific research. The first two proposals stressed the fact that there should be no interference with such research, whereas the remaining three stressed the need for the prior consent of the coastal State. The Netherlands representative had said that since the superjacent waters belonged to the régime of the high seas, research carried out there did not require the consent of the coastal State. Paragraph 10 of the International Law Commission's commentary on article 68, however, distinguished between research in the superjacent waters and research in the seabed and subsoil; that meant that there were some types of research for which the consent of the coastal State might legitimately be required. He did not consider that the two groups of proposals were necessarily exclusive, and when they were voted on it might be possible that the Committee would adopt one or more of the amendments in both groups, so that the drafting committee would have to reconcile them.

23. Another group of amendments dealt with safety zones and interference with navigation. The amendments proposed by Italy, the United Kingdom and Yugoslavia all proposed a width of 500 metres. The amendment of the Federal Republic of Germany stated the general principle without specifying a width for the safety zones, and the Netherlands amendment proposed a zone of 50 metres, for the very good reason that there should be a minimum curtailment of the freedom of the high seas. His delegation was inclined to vote for the Netherlands amendment because it included a provision relating to clusters of installations which was not in the other amendments, but it would not be possible to vote for the Italian, United Kingdom and Yugoslav amendments and also for the Netherlands amendment. He hoped it would be possible to vote on the Netherlands amendment as a whole, with the exception of the provision laying down a safety zone of 50 metres. He hoped that the Chairman would be able to recommend some voting procedure that would solve the problems facing the Committee in deciding upon the amendments dealing with safety zones and interference with navigation and those dealing with scientific research.

24. Mr. ROUHANI (Iran) said that the questions asked by the representatives of France and Yugoslavia showed that his delegation's proposal needed further clarification. The principle underlying the proposal was the belief that a compromise must be found between two important aims, first, that there must be no obstacle to bona fide scientific research and, secondly, that the coastal State must be protected against other activities that might be conducted under the guise of scientific research. If adequate safeguards were provided, no coastal State would refuse its consent. On that point, his delegation's amendment was very close to the one proposed by France. The Iranian amendment proposed four safeguards: first, that in its application to the coastal State the institution concerned should explain the project; secondly, that the coastal State should be free to ensure that the project conformed to an accepted criterion, specified in the amendment; thirdly, that the coastal State could participate in or be represented on a project; and fourthly, that the results should be published. If those safeguards were secured, the coastal State could not reject the application without unreasonably restricting the freedom of scientific research. He hoped that in the light of that explanation the representative of Yugoslavia would find it possible not to withdraw his support of the proposal.

25. In reply to the representative of the United Kingdom, he said that he did not believe fear of delay in obtaining the coastal State's consent was a valid reason for regarding it as unnecessary, because it would be possible for the coastal State to give general consent in advance for specific categories of investigation in the interests of bona fide research.

26. In reply to the representative of the Netherlands, he said that although the coastal State did not enjoy sovereignty and jurisdiction over the high seas, it might in special cases have vital interests there that should be recognized. Article 54, for example, recognized the right of the coastal State to take part on an equal footing

in any system of research and regulation in the area, even though its nationals did not carry on fishing there. Some mechanism would have to be established in order to enable the coastal State to ensure the bona fides of scientific research projects carried out on its continental shelf.

27. Mr. OBIOLS-GOMEZ (Guatemala) had some doubts about the word "perímetro" in the Spanish version of the Yugoslav amendment since it would imply a radius of 80 metres instead of 50 metres. He agreed that the word "radius" was unsuitable. He also agreed that a safety zone of 50 metres might suffice for isolated installations, but not, he thought, for clusters of installations. He suggested that the fourth paragraph of the Netherlands amendment might be simplified by stating that the coastal State should lay down and approve essential means for safeguarding navigation and for notifying through "Notices to Mariners" navigation channels in zones of exploration and exploitation of the continental shelf, and that in any clusters of installations more than 10 miles long there should be a fairway a mile wide.

28. Mr. MOUTON (Netherlands) suggested that, before voting on all the various individual texts, the Committee might vote on certain questions of principle, such as whether or not safety zones were necessary for navigation, and whether or not the prior consent of the coastal State should be required for scientific research on the continental shelf.

29. Mr. RUIZ MORENO (Argentina) was unable to agree that voting could take place on principles divorced from texts, since a simple comma in a text could change the whole meaning.

30. Mr. BARROS FRANCO (Chile) asked if the representatives of the Netherlands and the United Kingdom would consider replacing the words "those governments who publish Notices to Mariners" by "all governments". He fully supported all those amendments in favour of freedom of scientific research that required the prior consent of the coastal State.

31. Mr. LADOR (Israel) said that, in view of the distinction pointed out by the Canadian representative between research on the superjacent waters on the one hand, and the seabed and subsoil on the other, a compromise might be possible on the amendments dealing with scientific research, if the participation of the coastal State, rather than its consent, were required.

32. Mr. KRISPIS (Greece) said that he would withdraw his amendment (A/CONF.13/C.4/L.54) in favour of the relevant part of the amendment by the Federal Republic of Germany (A/CONF.13/C.4/L.58). His delegation had intended to convey that, where various methods were possible, that one should be chosen which would result in the least possible interference with navigation, fishing and the conservation of the living resources of the sea, but he felt that the Federal Republic of Germany's proposal covered that point.

The meeting rose at 6.10 p.m.

THIRTIETH MEETING*Thursday, 3 April 1958, at 9.45 a.m.**Chairman: Mr. A. B. PERERA (Ceylon)***Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)**

ARTICLE 71 (A/CONF.13/C.4/L.4, L.15, L.22, L.28, L.35, L.48 to L.50, L.53, L.55 to L.58) (continued)

1. Mr. CALERO RODRIGUES (Brazil) said that the business of the Committee was to draft provisions which would reconcile the special rights of the coastal State in the continental shelf with the principle of the freedom of the superjacent waters as part of the high seas. The question of military bases, referred to in the Indian proposal (A/CONF.13/C.4/L.57), was not related either to the right to explore and exploit the natural resources of the continental shelf or to the freedom of the high seas, but was a subject for the Disarmament Commission.
2. So far as scientific research in the continental shelf was concerned, his delegation considered that the French proposal (A/CONF.13/C.4/L.56) struck a happy balance between the views expressed in other amendments on that subject.
3. Mr. ROMANO DE CASTRO (Portugal) said that his delegation agreed with the arguments put forward at the 29th meeting (paras. 13 and 14) by the United Kingdom representative against the Yugoslav, Iranian, French and Indian proposals (A/CONF.13/C.4/L.15, 50, 56 and 57).
4. On the subject of the freedom to carry out scientific research in the continental shelf, his delegation agreed with the Netherlands representative's statement also at the 29th meeting (para. 20), regarding the consent of the coastal State. It would also support the Danish proposal (A/CONF.13/C.4/L.49), so long as it was understood that the proposal referred to scientific research in general and not merely to oceanographic research.
5. Mr. NAE (Romania) said that his delegation was in favour of the International Law Commission draft of article 71, which took into account the interests both of the coastal and of other States, and guaranteed the freedom of navigation and fishing and the conservation of living resources. But some changes were advisable. The term "reasonable distance" in paragraph 2 was too vague, and for that reason his delegation supported the Yugoslav proposal for a new paragraph 3. It would also support the Yugoslav proposal for the addition of a new paragraph 7.
6. His delegation would support the Danish proposal.
7. The continental shelf should be used for the welfare of mankind, and not for non-peaceful purposes; accordingly his delegation would support the Indian proposal. It could not support the Netherlands proposal (A/CONF.13/C.4/L.22) or that of the Federal Republic of Germany (A/CONF.13/C.4/L.58), since their detailed technical provisions were not appropriate in a general codification.

8. Mr. RANUKUSUMO (Indonesia) said that all delegations were agreed that scientific research on the continental shelf was very important. It should not be obstructed, and the consent of the coastal State should therefore be obtained. For those reasons his delegation had put forward its proposal (A/CONF.13/C.4/L.53). In order to produce a compromise amendment acceptable to the other delegations which had made similar proposals, he would add to his delegation's proposal sub-paragraph (b) of the Iranian proposal (A/CONF.13/C.4/L.50) and the words "coastal State may not unreasonably refuse or delay permission for research".

9. His delegation would support the Indian proposal (A/CONF.13/C.4/L.57) because, although the Conference was not military in nature, provision should be made to prevent ambitious nations from building military bases in the continental shelf.

10. His delegation would support the Venezuelan proposal (A/CONF.13/C.4/L.35) because the term "narrow channels" was too vague.

11. His delegation considered the Netherlands proposal excellent from the technical point of view, but thought that to lay down technical provisions at that time might hamper future technical progress.

12. Miss WHITEMAN (United States of America) said that her delegation was in favour of the International Law Commission's draft of article 71, which established a balance between the interests of navigation and exploitation. The words "unjustifiable" and "reasonable", the use of which had been questioned, were precisely the words which gave the article a proper balance. It was too early to decide on a specific maximum width for the safety zone since installations might vary greatly in nature, and hence her delegation did not agree with those delegations which proposed provisions having that effect. It would support paragraphs 2 and 3 of the United Kingdom proposal (A/CONF.13/C.4/L.28), and the Pakistan proposal (A/CONF.13/C.4/L.48). It considered the question of military bases as extending far beyond the subject matter considered by the International Law Commission and therefore opposed the Indian proposal.

13. Her delegation supported the principle of freedom of scientific research on the continental shelf, and would hope that several proposals on the subject might be consolidated; it would favour the French proposal (A/CONF.13/C.4/L.56).

14. Mr. VAN DER ESSEN (Belgium) said that his delegation was in favour of the Danish proposal because it supported the principle of the freedom of scientific research. The Indian proposal was outside the Committee's terms of reference, and his delegation would not support it.

15. Mr. CHRISTENSEN (Denmark) said that his delegation had used the term "fundamental oceanographic research" in its proposal because that was the term used in the communication from the International Council of Scientific Unions transmitted to the Conference by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/28). It was important that there should

be no misunderstanding about the term. Perhaps the Committee's experts would offer some guidance.

16. Mr. SCHAEFER, Expert, said that fundamental research meant scientific study intended to add to the sum of human knowledge about the world, regardless of its application. Oceanography was the scientific study of ocean basins, the ocean and its contents. It was subdivided into four parts: (i) physical oceanography which dealt with waves, tides, currents, magnetism, heat exchange, etc.; (ii) chemical oceanography, which was the chemistry of the complex mixture of substances in the waters of the sea; (iii) marine biology, which was the study of plant and animal organisms in the sea; (iv) submarine geology which included the geology of the sea bottom, the study of sedimentation processes, etc. Oceanography also included the study of phenomena outside the oceans, such as meteorology.

17. Scientists held that research should not be hampered by the rules of international law concerning the continental shelf. Although they had no objection in principle to the necessity of obtaining the coastal State's permission, they feared that such a requirement would involve delays, which would hinder them in planning their work.

18. Mr. RUIZ MORENO (Argentina) said that, within the zone in which it had been agreed that the coastal State had exclusive rights (article 68 as adopted), foreign institutions might wish to make investigations for the purpose of exploring the mineral resources, but that the coastal State concerned, although not in a position to carry out such exploration itself, might be opposed to foreign institutions doing so. It should be left to the coastal State to invite foreign exploration of the mineral resources on the continental shelf, if it wished to do so.

19. Mr. JHIRAD (India), answering some of the criticism expressed concerning the Indian proposal, said that it had not been introduced in order to create controversy. It had nothing to do with disarmament as such, and made no reference to warships. It merely sought to reaffirm a principle of international law. Article 68 laid down the uses which the coastal State might make of the continental shelf, and article 69 reaffirmed the freedom of the high seas. The Indian proposal was thus merely a further specification of the principle embodied in article 69.

20. At the 29th meeting (para. 21), the Netherlands representative had said that the Conference was concerned with drawing up articles governing the sea in time of peace, and that therefore the Indian proposal did not fall within the scope of the Conference's work. But the Indian proposal did not necessarily relate to wartime. If it were suggested that there could not be military installations in time of peace, then one might as well omit the references to warships which occurred earlier in the International Law Commission's draft.

21. The purpose of the Indian proposal was to ensure that the seas should be kept free for all nations.

22. Mr. KANAKARATNE (Ceylon) said that his delegation supported the Indian proposal.

23. He was struck by the change in attitude which had occurred among the habitual defenders of the freedom

of the high seas when they had come to consider the Indian proposal. They had argued that the question of military installations was irrelevant to the articles concerning the continental shelf. Yet, surely, the Indian proposal did no more than impose a certain restriction on the coastal State in the interests of the freedom of the high seas, just as articles 69 to 71 imposed other restrictions on the coastal State. If such restrictions could be imposed in the interests of scientific research, he failed to see why representatives could not accept the restriction embodied in the Indian proposal.

24. Mr. MOLODTSOV (Union of Soviet Socialist Republics) supported the views expressed by the representatives of India and Ceylon, and considered the arguments of those who opposed the Indian proposal unconvincing and contradictory. The Conference was concerned with drafting regulations in the interests of the welfare of humanity, and should therefore adopt an article forbidding the use of the continental shelf for military purposes.

25. His delegation would vote for the Indian proposal.

26. Mr. MOUTON (Netherlands) said that, in deference to the comments on the Netherlands proposal, his delegation would agree to certain drafting changes.

27. In the second sub-paragraph of the proposed new paragraph 2, the word "radius" was not perhaps altogether satisfactory; he would agree that the passage should make it clear that the proposed safety zone should be 50 metres from the outer edge of the installations. He was prepared to leave the precise wording of the sub-paragraph to the drafting committee. In the same sub-paragraph, the words "and maintenance" should be inserted between the words "exploitation" and "craft", and the words "to avoid danger of fire" should be added at the end of the sub-paragraph.

28. In the third sub-paragraph of the proposed new paragraph 2, the words "or channel through them" should be added between the words "units" and "no ship". The first sub-paragraph of the proposed new paragraph 4 should be amended to read "Due notice shall be given by the coastal State to other governments and in particular to governments who publish 'Notices to Mariners'..."

29. He felt that it was unnecessary to create other safety zones around installations on the continental shelf; the United Kingdom proposal concerning article 71, paragraph 2, was therefore superfluous. However, if representatives were to vote in favour of a safety zone of 500 metres, it should first be made clear exactly what was to be prohibited in that zone.

30. In general, if coastal States were to be given rights which constituted an infringement of the freedom of the high seas, such rights should be balanced by corresponding obligations, and the purpose of the Netherlands proposal was to state those obligations in more precise terms.

31. Mr. OBIOLS-GOMEZ (Guatemala) said that he agreed with the Netherlands proposal in substance, but not in form, and would therefore have to abstain in the vote on it. He would vote against the Indian proposal, since Guatemala had declared its sovereignty

over its continental shelf, and could therefore not accept the restriction embodied in the Indian proposal. He would vote for any amendments which required the consent of the coastal State to investigations carried out on the continental shelf.

32. Mr. MÜNCH (Federal Republic of Germany) said that his delegation's amendment (A/CONF.13/C.4/L.58) should be revised to read: "2. Add to paragraph 2 the following text:"

33. Mr. MOUTON (Netherlands) requested that his delegation's proposal should be voted on by sub-paragraphs.

34. Mr. KRISPIS (Greece) requested that the second part of paragraph 2 of the proposal of the Federal Republic of Germany, beginning with "the coastal State..." and ending: "...the living resources of the sea", should be put to a separate vote.

Paragraph 1 of the proposal of the Federal Republic of Germany was rejected by 38 votes to 8, with 9 abstentions.

The first part of the revised paragraph 2 of the proposal of the Federal Republic of Germany, beginning with the words "subject to..." and ending: "...or floating", was rejected by 36 votes to 4, with 17 abstentions.

The second part of the revised paragraph 2 of that proposal was rejected by 20 votes to 3, with 30 abstentions.

35. Mr. NIKOLIC (Yugoslavia) requested a separate vote on each of the sentences of paragraph 1 of his delegation's proposal (A/CONF.13/C.4/L.15).

The first sentence was adopted by 18 votes to 14, with 23 abstentions.

The second sentence was rejected by 18 votes to 17, with 21 abstentions.

36. The CHAIRMAN said that, as a result of the preceding vote, the words "and aircraft" should logically be deleted from the third sentence of paragraph 1 of the Yugoslav proposal.

The third sentence, as amended, was adopted by 31 votes to 5, with 19 abstentions.

Paragraph 1 of the revised Yugoslav proposal, as amended by the preceding votes, was adopted by 28 votes to 12, with 15 abstentions.

37. Miss GUTTERIDGE (United Kingdom) said that her delegation had voted for the first sentence of paragraph 1 of the Yugoslav amendment, which was substantially the same as paragraph 1 of her amendment (A/CONF.13/C.4/L.28), on the understanding that 500 metres was the maximum extent of the safety zone and not a fixed distance.

38. Mr. GABRIELLI (Italy) withdrew his delegation's proposal (A/CONF.13/C.4/L.55), which was substantially the same as paragraph 1 of the Yugoslav proposal.

The first sub-paragraph of the Netherlands proposal regarding article 71, paragraph 2 (A/CONF.13/C.4/L.22), was adopted by 25 votes to 12, with 17 abstentions.

39. After a procedural discussion, Mr. RANUKUSUMO (Indonesia) moved that no further sub-amendments to amendments should be admitted.

The motion was adopted by 20 votes to 11, with 20 abstentions.

The second sub-paragraph of the Netherlands proposal to article 71, paragraph 2, as revised, was rejected by 35 votes to 6, with 13 abstentions.

The third sub-paragraph of the Netherlands proposal, as revised, was rejected by 29 votes to 7, with 18 abstentions.

40. The CHAIRMAN put to the vote the amended International Law Commission draft of article 71, paragraph 2.

The International Law Commission draft of the paragraph was adopted by 49 votes to 1, with 5 abstentions.

41. Mr. MÜNCH (Federal Republic of Germany) withdrew his delegation's amendments to article 71, paragraphs 3 and 5.

Paragraph 2 of the United Kingdom amendment to article 71 was adopted by 20 votes to 14, with 18 abstentions.

The first sub-paragraph, as revised, of the Netherlands amendment to article 71, paragraph 4 was rejected by 23 votes to 7, with 23 abstentions.

The second sub-paragraph of the Netherlands amendment to article 71, paragraph 4 was rejected by 20 votes to 9, with 26 abstentions.

The Pakistan amendment to article 71, paragraph 4 (A/CONF.13/C.4/L.48) was adopted by 23 votes to 13, with 19 abstentions.

42. Miss GUTTERIDGE (United Kingdom) withdrew paragraph 3 of the United Kingdom amendment to article 71.

The new paragraph 4 of article 71, consisting of paragraph 2 of the United Kingdom amendment and the Pakistan amendment, was adopted by 41 votes to none, with 13 abstentions.

The Venezuelan amendment to article 71, paragraph 5 (A/CONF.13/C.4/L.35), was adopted by 23 votes to 19, with 11 abstentions.

Article 71, paragraph 5, as amended, was adopted by 48 votes to none, with 2 abstentions.

The Panamanian amendment to article 71, paragraph 1 (A/CONF.13/C.4/L.4), was rejected by 28 votes to 3, with 24 abstentions.

The Danish amendment to article 71, paragraph 1 (A/CONF.13/C.4/L.49) was adopted by 25 votes to 20, with 10 abstentions.

43. Mr. MÜNCH (Federal Republic of Germany) withdrew the last sentence of paragraph 2 of his delegation's amendment to article 71, paragraph 2.

The Iranian proposal for adding a new paragraph 6 to article 71 (A/CONF.13/C.4/L.50) was rejected by 26 votes to 4, with 24 abstentions.

The Indonesian proposal for adding a new paragraph to article 71 (A/CONF.13/C.4/L.53) was rejected by 23 votes to 10, with 22 abstentions.

The French proposal for adding a new paragraph to

article 71 (A/CONF.13/C.4/L.56) was adopted by 30 votes to 17, with 6 abstentions.

44. The CHAIRMAN put to the vote the Indian proposal for adding a new paragraph to article 71 (A/CONF.13/C.4/L.57).

45. At the request of Mr. KANAKARATNE (Ceylon), a vote was taken by roll-call.

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

In favour: Hungary, India, Indonesia, Iran, Iraq, Peru, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Bulgaria, Burma, the Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia.

Against: Iceland, Ireland, Italy, Japan, the Republic of Korea, Liberia, Netherlands, New Zealand, Norway, the Philippines, Portugal, Spain, Thailand, Turkey, United Kingdom, United States of America, Uruguay, Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Colombia, Cuba, Denmark, Ecuador, France, Federal Republic of Germany, Greece.

Abstaining: Israel, Pakistan, Poland, Sweden, Switzerland, Venezuela.

The amendment was rejected by 31 votes to 18, with 6 abstentions.

Paragraph 2 of the Yugoslav proposal (A/CONF.13/C.4/L.15), was adopted by 38 votes to 2, with 12 abstentions.

Article 71, paragraph 1, as amended by the revised proposal of Denmark (A/CONF.13/C.4/L.49), was adopted by 41 votes to none, with 8 abstentions.

Article 71 of the International Law Commission's draft, as amended, was adopted by 35 votes to none, with 13 abstentions.

The meeting rose at 1.40 p.m.

THIRTY-FIRST MEETING

Tuesday, 8 April 1958, at 10.40 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 71 (A/CONF.13/C.4/L.4, L.15, L.22, L.28, L.35, L.48, L.49, L.50, L.53, L.55, L.56, L.57, L.58) (concluded)

1. Mr. ZAORSKI (Poland) hoped that it would be possible to correct his vote on the Indian amendment (A/CONF.13/C.4/L.57), since through a misunderstanding he had abstained from voting, although he had fully intended to vote for the amendment.

2. Mr. LESCURE (Argentina) referred to his delegation's statement in the general debate at the 4th meeting (para. 1), in which regret had been expressed at the International Law Commission's failure

to recognize the sovereignty of the coastal State over its continental shelf. In defence of the coastal State's rights of sovereignty, he had asked the representative of India to change his amendment so that the prohibition against building military installations would apply, not to the coastal State, but to any other State. Since that had not been done, and there had been no separate vote on that part of the amendment, he had been obliged to vote against it.

3. Miss GUTTERIDGE (United Kingdom) said that her delegation had withdrawn its own amendment to paragraph 2 of article 71 (A/CONF.13/C.4/L.28) in favour of the Yugoslav amendment (A/CONF.13/C.4/L.15), on the understanding that the words "shall extend to a distance of 500 metres" in the Yugoslav amendment had the same meaning as the amendment originally proposed by the United Kingdom—namely, that 500 metres was the maximum radius of the safety zone.

ARTICLE 72 (A/CONF.13/C.4/L.16 and Add.1, L.23, L.24/Rev.1, L.25, L.28, L.42, L.60)

4. Mr. NIKOLIC (Yugoslavia), introducing his delegation's amendment (A/CONF.13/C.4/L.16 and Add.1), said that it was an established rule in law that in any provision regulating a question between two States criteria must be enumerated and clearly defined, if possible with examples. In the International Law Commission's draft of article 72, three criteria were to be applied in delimiting the boundary of the continental shelf when it was adjacent to the territories of States whose coasts were opposite or adjacent to one another. The first was that of agreement between the States concerned, which was appropriate and logical on the ground that in the absence of prejudice to third parties agreement between the parties concerned was the paramount consideration in law. The second criterion was the median line, to which his delegation had no objection since it provided a clearly understood method of solving the problem of delimitation if the parties concerned could find no better solution. The last criterion, however, namely, that a different solution might be justified by special circumstances, was unacceptable on legal grounds. It was both vague and arbitrary, and likely to give rise to misunderstanding and disagreement. The question was where and how such special circumstances were enumerated in international law and who could be charged with interpreting their application. His delegation had accordingly proposed the deletion of the reference to special circumstances in paragraph 2 of article 72.

5. After his amendment had been submitted, the Netherlands had proposed another amendment (A/CONF.13/C.4/L.23), which also referred to the unacceptable criterion of special circumstances, and the Yugoslav delegation had accordingly proposed a sub-amendment (A/CONF.13/C.4/L.16/Add.1) to the Netherlands amendment. If the Netherlands amendment were withdrawn, the Yugoslav sub-amendment would also be withdrawn, but the amendment to the International Law Commission's draft of article 72 would stand.

6. He hoped that the Italian amendment (A/CONF.13/C.4/L.25) would be withdrawn in view of the fact that