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31st to 35th Meetings of the Fourth Committee

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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

since its submission its substance had been incorporated in the text of article 67, as adopted, in consequence of the adoption of the Philippines amendment (A/CONF. 13/C.4/L.26). For that reason, the Italian amendment was unacceptable to his delegation.

7. He supported paragraphs 1 and 2 of the United Kingdom amendment (A/CONF.13/C.4/L.28), which were fully in accord with his delegation's views. He had no objection to paragraph 3, but did not consider it necessary.

8. The Venezuelan amendment (A/CONF.13/C.4/ L.42) was unacceptable for the same reason as the reference to special circumstances in the International Law Commission's text — namely, that it would introduce uncertainty into the interpretation of the final convention. The same criticism applied to the Iranian amendment (A/CONF.13/C.4/L.60). He was therefore unable to accept either of those amendments.

9. Mr. ROUHANI (Iran) said that the reference to special circumstances in the International Law Commission's draft of article 72 had been clarified in paragraph 1 of the commentary. If the article were to be comprehensive and provide for all the difficulties that might arise in delimiting the continental shelf, further clarification was necessary and that was the reason for his delegation's amendment (A/CONF.13/C.4/L.60). One special case arose when large bodies of water carrying sediment deposited it near the coast and formed extensive mud flats which were exposed at low water. In such cases it would be almost impossible to identify the low-water line by visual observation or photography. It would have to be established by calculation from the high-water mark and time measurements, but there were many areas where no tide measurements had been made and where it might be necessary to define a boundary line for the continental shelf in the near future. His delegation therefore proposed that in such circumstances the boundary should be measured from the high-water mark instead of the low-water mark.

10. It might also be a complicated matter, where there were islands on a continuous continental shelf, to identify the low-water line for each island and it was therefore proposed that in such cases the boundary should be measured from the low-water line along the coast. His delegation's proposal was substantially the same as the Italian amendment, except that the Iranian amendment recommended the reference in special circumstances to the high-water mark.

11. In reply to the representative of the Netherlands, he said that although the high-water mark might not always be clearly defined, experts who had studied the question in the Persian Gulf had found that visual or photographic identification was more practicable for the high-water mark than for the low-water mark.

12. Mr. KANAKARATNE (Ceylon) remarked that the only difference between the Netherlands proposal and the International Law Commission's draft was that the former introduced the words " or other submarine areas " in both paragraphs 1 and 2. He wondered whether, in view of the text of paragraph 67 as adopted, that proposal still served any useful purpose.

13. Mr. MOUTON (Netherlands) explained that the Netherlands proposal was intended to provide for the case of undersea tunnelling from the territories of two adjacent States, which was not adequately covered by the wording of article 67. He would maintain his proposal, as the Committee might feel that a definite delimitation of tunnelling boundaries in such circumstances would be desirable.

14. Commenting on the United Kingdom and Iranian proposals for the addition of a third paragraph 3 to article 72, he wondered whether the thought underlying both proposals was that the low-water mark was not necessarily stable, but might shift as a result of sedimentation.

15. Miss GUTTERIDGE (United Kingdom) said that although her delegation's proposal might not, at first sight, appear to differ greatly from the International Law Commission's text, the proposed changes went beyond the scope of mere drafting. According to the proposal, the median line would always provide the basis for delimitation. If both the States involved were satisfied with the boundary provided by the median line, no further negotiation would be necessary; if a divergence from the median line appeared to be indicated by special circumstances, another boundary could be established by negotiation, but the median line would still serve as the starting point.

16. Replying to the representative of Yugoslavia, who had expressed doubts concerning the usefulness of paragraph 3 of the United Kingdom proposal, she said that considerable practical difficulties might arise unless boundaries were defined in the specific manner set forth in the proposal. A more detailed explanation would be given by Commander Kennedy, of the Hydrographic Department of the United Kingdom Admiralty.

17. Mr. NIKOLIC (Yugoslavia) said that, while he was not convinced of the usefulness of paragraph 3 of the United Kingdom proposal, he had no objection to the proposal as a whole and would vote in favour of it.

18. Mr. STABEL (Norway) thought that the attention of the drafting committee should be drawn to the fact that the problems dealt with in article 72 were very similar to those covered by other articles, particularly articles 12 and 14, with regard to which the Norwegian delegation had submitted proposals; similar questions might also arise in connexion with article 66. It was generally agreed that similar terms should be used throughout the text of the articles wherever possible; indeed, all the articles concerned might be combined into a single article, provided, of course, that the Conference decided to adopt only one instrument. Any drafting changes in the texts of articles 12, 14 and 66 should therefore be taken into consideration by the drafting committee.

19. Mr. SCHWARCK ANGLADE (Venezuela), referring to the Yugoslav proposal to delete any reference to special circumstances, pointed out that failure to make due provision for special circumstances such as were frequently imposed by geography could not result in a solution which would be fair to all States.

20. He would postpone the introduction of his own

proposal (A/CONF.13/C.4/L.42) until Mr. Kennedy had made his explanatory statement.

21. Mr. KENNEDY (United Kingdom), speaking on paragraph 3 of the United Kingdom proposal, said that, once a boundary was fixed by agreement, it must be entirely independent of the low-water line. That line varied from year to year, particularly at the mouths of rivers. The turning points of boundary lines should be related to fixed points on land, such as a church, a beacon, or a lighthouse. Furthermore, latitude and longitude represented a movable grid dependent on the timekeeping methods employed. Many charts were extremely old; they were being brought up to date, but some years might elapse before that process was completed. That was why the United Kingdom proposal specially provided that boundaries should be defined with reference to charts as they existed at a particular date.

The meeting rose at 11.35 p.m.

THIRTY-SECOND MEETING

Wednesday, 9 April 1958, at 10.20 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 72 (A/CONF.13/C.4/L.16 and Add.1, L.23, L.24/Rev.1, L.25/Rev.1, L.28, L.42, L.60) (continued)

1. Mr. KENNEDY (United Kingdom) said that sea boundaries established by projection of a land boundary, by projection of a parallel of latitude or meridian, or by intersection of the radii of two fixed points on the coastlines of States which were adjacent or opposite to each other were not satisfactory in many cases; such boundaries often did not result in a fair apportionment of the sea area between the two States concerned, and might, indeed, cut across land territory. Similarly, the line of deepest water was not, he thought, a satisfactory criterion for establishing a boundary; in the presence of a number of pools of varying depth it would be difficult to establish the exact position of such a line.

2. The fairest method of establishing a sea boundary was that of the median line every point of which was equidistant from the nearest points of the baselines from which the breadth of the territorial sea was measured, as stated in the United Kingdom proposal (A/CONF.13/C.4/L.28). When properly drawn, the median line was a precise line consisting of a series of short straight lines. In agreeing upon a boundary, adjacent or opposite States might well decide to straighten that series of lines so as to avoid an excessive number of angles, giving an equal sea area to each State and also taking into account any special circumstances. It had been suggested at the 31st meeting (para. 9) that the high-water line might be a more satisfactory criterion; he pointed out, however, that while the high-water line did not move as rapidly as the low-water line, it was nevertheless liable to move, and in certain places it had moved seaward by several miles in the course of about 50 years.

3. Among the special circumstances which might exist there was, for example, the presence of a small or large island in the area to be apportioned; he suggested that, for the purposes of drawing a boundary, islands should be treated on their merits, very small islands or sand cays on a continuous continental shelf and outside the belts of territorial sea being neglected as base points for measurement and having only their own appropriate territorial sea. Other types of special circumstances were the possession by one of the two States concerned of special mineral exploitation rights or fishery rights, or the presence of a navigable channel; in all such cases, a deviation from the median line would be justified, but the median line would still provide the best starting point for negotiations.

4. The United Kingdom proposal also stated that boundaries should be defined with reference to charts as they existed at a particular date, since a boundary line, once drawn, should remain constant regardless of any subsequent changes in the coastline. It was also essential that both the States involved should reach agreement on what chart was used, as charts differed considerably, depending on the date on which they were drawn, and those " officially recognized " by the State might not conform in every detail.

5. Mr. GABRIELLI (Italy) said that, while the criterion of the median line proposed by the International Law Commission could not be contested in principle, it might, if rigidly applied, lead to inequitable results and considerable technical difficulties. The International Law Commission had shown itself to be aware of that fact by providing for the possibility of establishing other boundaries by agreement, and also by allowing for special circumstances which might necessitate divergencies from the median line. So far as agreements were concerned, it was unlikely that a State which found the median line advantageous to itself would agree to depart from it in the interests of another State. Adequate arrangements which would satisfy the interests of both parties could only be reached by giving due consideration to special circumstances. The most satisfactory solution, therefore, was that proposed by the International Law Commission and by the Netherlands delegation (A/CONF.13/C.4/L.23). The Italian delegation would be unable to vote in favour either of the United Kingdom proposal or of the Yugoslav proposal (A/CONF.13/C.4/L.16 and Add.1), which contained no reference to special circumstances.

6. The Italian proposal (A/CONF.13/C.4/L.25/Rev.1) dealt with the special case of islands belonging to a continuous continental shelf between two States which were opposite to each other. The importance of that case was borne out by paragraph 12 of the memorandum submitted by the secretariat of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/2), and he would quote a statement made by the representative of Chile in the Sixth Committee of the General Assembly at its Eleventh Session (A/CONF.13/19, p. 397) to the effect that, in 1916, the Russian Government had " declared

that several islands off the coast of Asia were Russian territory, basing its claim on the argument that they were part of the Siberian continental shelf." He believed that such islands should form the subject of a special provision to be codified subsequently to the general rule set forth in paragraph 1 of article 72. He would also support the Iranian proposal (A/CONF.13/C.4/L.60), which offered a similar solution.

7. Mr. GIHL (Sweden) remarked that, as the terms " islands " and " coast " appeared to be employed in opposition to each other in the Italian proposal, the proposal might be interpreted to mean that the median line serving as a boundary between the two States concerned should be drawn solely on the basis of coastlines, leaving islands entirely out of account. If that were indeed the purpose of the proposal, he would be unable to support it. According to the text of article 67 as adopted, islands were recognized as having a continental shelf of their own. Furthermore, the International Court of Justice in the Fisheries case [1] had decided that the Norwegian coast was constituted by the exterior line of the " skjaergaard " — i.e., of the coastal archipelago. That declaration, in the opinion of the Swedish delegation, represented a general principle applicable to coastal archipelagos, bays, etc., and wherever the method of straight baselines was applied.

8. Mr. GABRIELLI (Italy) replied that it was not the purpose of his proposal to detract in any way from the general rule according to which each island should have its own continental shelf. He believed, however, that certain situations formed an exception to the general rule, and that the special provisions governing that exception should be duly codified.

9. Mr. SCHWARCK ANGLADE (Venezuela), introducing his delegation's amendment (A/CONF.13/C.4/L.42), said that Venezuela fully agreed with the basic principle laid down by the International Law Commission in article 72 that the delimitation of the continental shelf between adjacent or opposite States should be arrived at by agreement between the States concerned. His delegation could not, however, accept the idea that if there were no agreement the boundary line should, as a general rule, be the median line. The situations that existed in different parts of the world were too varied to justify the adoption of any such general rule. Moreover, the cases in which the median line would offer the best solution were likely to arise less frequently than any others, so that exceptions would be more numerous than the cases covered by the general rule. The reference to the median line was only one of the systems that might have been selected by the International Law Committee, and he would refer to others described in the Commission's fifth report. No single one of these systems could, any more than the median line method, meet the requirements of all the situations that would be encountered. The question should, therefore, be left to the States concerned to settle, since they were at once the most interested and the best informed parties.

10. At the 31st meeting (para. 8), the representatives of Yugoslavia had criticized the Venezuelan amendment as too general, but Venezuela could not accept the Yugoslav amendment (A/CONF.13/C.4/L.16 and Add.1), because it was too rigid and limited. The final convention which the Conference was preparing would have to be ratified by national parliaments and its provisions must be as flexible and general as possible so at not to create any obstacles to ratification. It was essential to avoid incorporating rigid rules that would oblige States signing the convention to make reservations with regard to points that conflicted with their own constitutional principles or prior unilateral declarations.

11. Mr. CAICEDO CASTILLA (Colombia) said that his delegation supported the median line method of delimitation recommended by the meeting of experts at The Hague convened at the request of the International Law Commission. The establishment of such a rule of law was calculated to avoid arbitrary decisions rather than to conduce to them. Believing that article 72 would be improved if the median line method were given greater emphasis, his delegation supported the United Kingdom amendment, which laid down a clear and just legal rule without excluding the possibility of agreement between States, and he hoped that the Committee would adopt that amendment. It was to be preferred to the Venezuelan amendment, which recognized direct negotiation as the only solution, with the result that if there were no agreement, the problem would remain unsolved. That was more likely to lead to disputes between neighbouring States than was the existence of a general rule. No general rule could cover special cases, but special solutions were not excluded by the United Kingdom amendment.

12. The Yugoslav amendment, which would reduce the likelihood of disputes over the question of delimitation, was, in principle, acceptable. However, that point was also met by the United Kingdom amendment, which covered the different aspects of the delimitation of the continental shelf.

13. Mr. ROUHANI (Iran) said that, whereas the United Kingdom proposal was intended to prevent any subsequent fluctuation of the boundary once it had been defined, the purpose of the Iranian amendment was to permit some measure of relaxation of the general rule followed in delimiting the boundary to the extent of referring to the high-water mark rather than the low-water mark where an exceptional geographical configuration or other circumstances might justify such a departure.

14. Mr. MOUTON (Netherlands) said that his delegation was opposed to the Venezuelan amendment, which omitted any reference either to special circumstances or to the median line method. It was generally accepted that the best method of delimiting the continental shelf was by agreement among the States concerned, but in the absence of such agreement there should be some principle laid down according to which the boundary could be determined. It was not possible to rely on international jurisdiction, since any State could either refuse to adopt article 72 or refuse to accept the jurisdiction of the Court. Such a guiding principle would be of value, not only in cases of dis-

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

agreement, but also as a basis for agreement, the deviations from the general rule to be worked out by the States concerned.

15. The Yugoslav and Venezuelan amendments both omitted any reference to special circumstances, and one argument proposed in favour of that omission was the difficulty of deciding who was to judge whether or not such special circumstances existed. It was for that reason that his delegation had proposed (A/CONF.13/C.4/L.62) an additional clause to article 73. He hoped that that might meet the objection of some delegations to the reference in article 72 to special circumstances.

16. There was a close connexion between article 72 and 73, clearly demonstrated by the observations of the Venezuelan representative. He therefore proposed that, after the amendments to article 72 had been voted upon, the vote on the article as a whole should be deferred until voting took place on article 73.

17. The CHAIRMAN said that that question might perhaps be deferred until the time came to vote on article 72.

18. Mr. KANAKARATNE (Ceylon) said that article 73 did not seem to him to have any closer relation to article 72 than to any of the other articles on the continental shelf.

19. Mr. WERNER (Switzerland) said that, in view of the reference to special circumstances in the Netherlands amendment to article 73, it would not be possible to vote on article 73 until the Yugoslav amendment to article 72 had been voted on.

20. Mr. RUIZ MORENO (Argentina) asked how the provisions of the Italian amendment would apply, for example, to the case of the small island of St. Helena in the Atlantic off the west coast of Africa. Presumably, the intention was not, by drawing the median line between that island and the African coast, to grant rights over enormous stretches of ocean to what was a mere pinpoint in the Atlantic. That question arose with reference to the text of article 67 as amended by the Philippine proposal (A/CONF.13/C.4/L.26).

21. Miss WHITEMAN (United States) said that her delegation supported the basic concept underlying the International Law Commission's text of article 72, since it recognized the right of States to delimit the boundary of their continental shelf by agreement. The United States was opposed to omitting from the article the reference to special circumstances, since it was impracticable to expect that all special circumstances could be dealt with by agreement. There were similar references to special circumstances in articles 12 and 14 delimiting the territorial sea. Article 72 contained as well a provision for delimiting the boundary by a median line, which would enable equitable apportionment to be made of the seabed area to each coastal State concerned. That was an objective standard of reference and might well provide guidance in arriving at agreement on a boundary line even in the presence of special circumstances.

22. She could not support either the proposal that the boundary should be delimited only by agreement between the States concerned, or the Yugoslav amendment for deleting the reference to special circumstances, since account would have to be taken of the great variety of complex geographical situations that existed.

23. She could not agree with the representative of Italy that it was possible to include a provision in article 72 relating to islands, because she agreed with the representative of the United Kingdom that, in view of the great variety of size, grouping and position of islands, it would be impossible either to include or exclude all islands on the continental shelf, and that each case should be considered on its merits. She fully endorsed the International Law Commission's remark at the end of paragraph 1 of the commentary on article 72 that the rule adopted would have to be fairly elastic.

24. She did not consider the Iranian amendment (A/CONF.13/C.4/L.60) necessary; a reference to measurement from the high-water mark in certain cases would only introduce confusion into article 72, and such cases were in any event fully covered by the reference to special circumstances. Her criticisms of the Italian amendment applied equally to the similar proposal in the Iranian amendment.

25. Her delegation supported the first two paragraphs of the United Kingdom amendment (A/CONF.13/C.4/L.28), considering that the reference to the nearest points on the baselines rather than to the baselines themselves was a necessary clarification. She also agreed that paragraph 3 of the amendment would give the median line, once established, greater stability, but she wondered whether the United Kingdom representative would agree to change the words "shall be" in the third and last lines of that paragraph to "should be" in either case, since she did not feel that States should be bound in advance to reach agreement in a particular way.

26. Mr. KENNEDY (United Kingdom) agreed to the change proposed by the United States representative.

27. The CHAIRMAN, in reply to questions from the representatives of France and Chile, said that the French and Spanish texts of the change agreed by the United Kingdom and United States delegations would be made available at the next meeting.

28. Mr. CARBAJAL (Uruguay) remarked that the proposed method of defining a boundary was related entirely to the surface of the continental shelf and did not take account of the conditions obtaining on the sea bottom. A boundary thus drawn might cut across a mineral deposit in the ocean subsoil in a manner prejudicial to one of the States concerned.

29. Mr. CARTY (Canada) said that, following Mr. Kennedy's explanation, he was prepared to support paragraph 3 of the United Kingdom proposal. Certain other points of the proposal, however, still required elucidation. He was generally inclined to accept the International Law Commission's text unless there was strong reason to do otherwise. The United Kingdom proposal departed from that text in three ways: first, by using the term "submarine areas" rather than "continental shelf"; he wondered whether that term arose from the earlier United Kingdom proposal with regard to article 67 (A/CONF.13/C.4/L.24/Rev.1) and might

be dropped now that article 67 had been adopted. Secondly, the United Kingdom proposal, like the Yugoslav proposal (A/CONF.13/C.4/L.16 and Add.1) omitted any mention of special circumstances which might justify the adoption of other boundaries. Lastly, it spoke of "the nearest points of the baselines" rather than simply of "baselines". He welcomed the last-mentioned of those three departures from the text, but was not in favour of the second. Accordingly, he suggested that the United Kingdom proposal should be voted on in parts.

30. Mr. BARROS FRANCO (Chile) associated himself with the Canadian representative's remarks regarding the use of the term "submarine areas" in the United Kingdom proposal.

31. Mr. KENNEDY (United Kingdom) said that he would consider amending the wording of his proposal along the lines suggested by the representatives of Canada and Chile.

The meeting rose at 12.50 p.m.

THIRTY-THIRD MEETING

Wednesday, 9 April 1958, at 8.30 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 72 (A/CONF.13/C.4/L.16 and Add.1, L.23, L.24/Rev.1, L.25/Rev.1, L.28, L.42, L.60) (concluded)

1. Miss GUTTERIDGE (United Kingdom) announced that the United Kingdom delegation had revised its proposal concerning article 72 (A/CONF.13/C.4/L.28) in the light of suggestions made at the previous meeting. It had replaced the words "submarine areas" in the three paragraphs by the term "continental shelf", restored the reference in paragraphs 1 and 2 to "special circumstances" which might lead the States concerned to agree to adopt another boundary than the median line, and changed the words "shall be" in paragraphs 1 and 2 to "should be". She was sorry that so far it had only been possible to circulate the English text of the revised proposal.

2. Mr. ROUHANI (Iran) explained that his delegation in no way disputed the fact that islands could have a continental shelf; the question that arose, however, was how to trace the median line in relation to islands. It was clear that, if they were to be taken into account, serious complications would arise and the benefit of having adopted the median line rule would be lost by the difficulty of applying it. It was because such difficulties were always encountered that his delegation believed that the most convenient and most equitable solution was that proposed by Mr. Kennedy at the 32nd meeting (para. 3) — namely, not to permit islands situated much farther out than the territorial sea to have any influence on the boundary.

3. Mr. JHIRAD (India) said that he had not so far taken part in the debate because he fully approved of the statement made by the United States representative at the 32nd meeting (para. 21). According to the International Law Commission's text, the boundary was to be determined by agreement between the States concerned. The revised text of the United Kingdom proposal, on the other hand, provided that "the boundary . . . should, in the absence of agreement on any other boundary necessitated by special circumstances, be the median line . . ." The latter text accorded less with the views of the Indian delegation than article 72 of the draft.

4. Mr. PATEY (France) observed that, according to the United Kingdom's revised proposal, the boundary could be determined by agreement between the States concerned in special circumstances only. Article 72 of the draft, however, gave preference to delimitation by agreement and it was only in the absence of such agreement, and where special circumstances existed, that the median line was to be taken as the boundary. The French delegation found the Commission's text satisfactory, and would like to know whether, after the Indian representative's statement and his own, the United Kingdom delegation maintained its proposal in its latest form.

5. Miss GUTTERIDGE (United Kingdom) said that for the United Kingdom delegation the adoption of the median line as a boundary was the fundamental principle and the most equitable solution, to be departed from only if special circumstances so required.

6. Mr. MOUTON (Netherlands) thought that the United Kingdom amendment departed from the spirit of the International Law Commission's text. Agreement between the States concerned must be the cornerstone of the article. He asked whether the United Kingdom delegation was prepared to word paragraphs 1 and 2 of its proposal in accordance with article 72 of the draft. If so, he would vote for the amendment, since he approved of paragraph 3.

7. Mr. KANAKARATNE (Ceylon) pointed out that the words "special circumstances" had not been inserted in the United Kingdom revised proposal in the manner desired by certain delegations. According to that proposal, the boundary was fixed by agreement only if special circumstances necessitated it. The International Law Commission's draft, however, said: "In the absence of agreement . . ." The United Kingdom delegation seemed to have misinterpreted the Canadian representative's suggestion.

8. The delegation of Ceylon could not vote for paragraphs 1 and 2 of the amendment as they stood. It approved, however, of paragraph 3.

9. Miss GUTTERIDGE (United Kingdom) agreed to revise the proposal on the lines suggested by the Netherlands representative. Paragraph 1 would thus read: "Where the . . . the boundary . . . shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be the median line . . ." Paragraph 2 would be worded as follows: "In the case of adjacent States, the boundary . . . shall be

determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary..."

10. Mr. KANAKARATNE (Ceylon) thought that, even in the form just suggested, the United Kingdom proposal combined two elements which were separate in the draft and should be kept separate. Already, at the 32nd meeting (para. 16), the Netherlands representative had pointed out the close connexion between articles 72 and 73 of the draft, and it must be emphasized that the connexion between them was a very important one. According to article 72, if the parties could not agree and if one of them considered that the median line rule could not be correctly applied in the particular case, it could under article 73 refer the matter to the International Court of Justice. The United Kingdom amendment would preclude such a procedure and the Ceylon delegation accordingly could not vote for it.

11. Mr. QUARSHIE (Ghana) suggested that the United Kingdom delegation agree to take as the first two paragraphs of its proposal, paragraphs 1 and 2 of article 72 of the draft and keep only the original paragraph 3 of its amendment.

12. Mr. WERNER (Switzerland) considered that, where special circumstances obtained, the United Kingdom proposal in its latest form came to the same thing as the Yugoslav proposal.

13. The representative of the Netherlands might perhaps agree to include the words "the nearest points of" in article 72 of the draft.

14. He moved the close of the discussion, pointing out that the problem had been fully discussed and that the amendments proposed ran the whole gamut of possible solutions.

15. Mr. QUARSHIE (Ghana) and Mr. KANAKARATNE (Ceylon) spoke against the motion to close the discussion.

The motion was rejected by 23 votes to 9, with 19 abstentions.

16. Mr. MOUTON (Netherlands) said he was glad the Committee had so decided. He recalled that the Netherlands proposal (A/CONF.13/C.4/L.23) reproduced the text of article 72 of the draft with the addition in paragraphs 1 and 2 of the words "or other submarine areas", in case it was decided that article 67 should cover tunnels. The words "the nearest points of" in the United Kingdom proposal were a happy addition.

17. Mr. CAICEDO CASTILIA (Colombia) noted with appreciation the conciliatory attitude of the United Kingdom delegation, but thought that its amendment had been distorted by the successive alterations made to it. It would be better to put article 72 of the draft itself to the vote than to try to bring the United Kingdom proposal into line with it. The differences between the revised proposal as read out at the beginning of the meeting and the draft article made the former acceptable to the Colombian delegation. It hardly seemed possible to alter an amendment until it contained every suggestion, including those which were mutually incompatible. The Committee must take a vote on the changes proposed.

18. He appealed to the United Kingdom delegation to submit a final text. When an amendment was doctored on the spot in response to the suggestions of other members of the Committee the text thus arrived at was one with which no one was sufficiently familiar and it would be a risky thing for the Committee to take a decision on it.

19. Mr. BARROS FRANCO (Chile) stressed once again the need to observe rule 54 of the rules of procedure. Good as the interpretation was, it was impossible when such important questions were involved to take a decision on texts translated by word of mouth. He must protest against such a procedure and would abstain from voting on the United Kingdom proposal.

20. The CHAIRMAN pointed out that the Commission was bound to take a decision on the proposal.

21. Mr. PATEY (France) entirely agreed with the Chilean representative. A question of principle was involved. Quoting rule 27 of the rules of procedure, he moved that the discussion be adjourned until the text of the proposal had been circulated in the working languages.

22. The CHAIRMAN asked delegations to bear in mind that time was running short. He had already pointed out that repeated changes to amendments complicated the discussion.

The motion for adjournment was rejected by 21 votes to 15, with 20 abstentions.

23. Miss GUTTERIDGE (United Kingdom) said she was most anxious to submit a text acceptable to the Committee and would therefore withdraw paragraphs 1 and 2 of her amendment in favour of the Netherlands proposal with the addition of the words "the nearest points of". She would maintain the revised paragraph 3 which began "In delimiting the boundaries of the continental shelf, any lines..."

24. Mr. MOUTON (Netherlands), replying to a question from Mr. SCHWARCK ANGLADE (Venezuela), said that the words "or other submarine areas" appeared in the Netherlands proposal. He had already explained the purpose they served. A separate vote could be taken on that phrase.

25. Mr. CARTY (Canada) thought that it would be in harmony with the spirit of compromise shown by the United Kingdom and Netherlands delegations for the new text derived from their respective proposals to be considered as a joint amendment.

26. Miss GUTTERIDGE (United Kingdom) and Mr. MOUTON (Netherlands) agreed to the suggestion.

27. The CHAIRMAN put to the vote the amendments to paragraph 1 of article 72.

Paragraph 1 of the Venezuelan amendment *(A/CONF.13/C.4/L.42) was rejected by 32 votes to 5, with 19 abstentions.*

The Yugoslav amendment (A/CONF.13/C.4/L.16 and Add.1) was rejected by 39 votes to 9, with 8 abstentions.

28. The CHAIRMAN, at the request of Mr. MOUTON

(Netherlands), put to the vote separately the words "or other submarine areas" in paragraph 1 of the joint amendment by the Netherlands and the United Kingdom (A/CONF.13/C.4/L.23).

Those words were deleted by 31 votes to 7, with 18 abstentions.

The first paragraph of the joint amendment as amended was adopted by 29 votes to 17, with 8 abstentions.

The Italian amendment (A/CONF.13/C.4/L.25/Rev.1) was rejected by 31 votes to 3, with 18 abstentions.

The first part of the Iranian amendment (A/CONF.13/C.4/L.60) was rejected by 27 votes to 6, with 21 abstentions.

29. The CHAIRMAN put to the vote the amendments to paragraph 2 of article 72.

Paragraph 2 of the Venezuelan amendment (A/CONF.13/C.4/L.42) was rejected by 32 votes to 4, with 19 abstentions.

30. Mr. NIKOLIC (Yugoslavia) withdrew his delegation's amendment (A/CONF.13/C.4/L.16 and Add.1).

31. Mr. MOUTON (Netherlands) withdrew the words "or other submarine areas" in paragraph 2 of the joint amendment.

32. Miss GUTTERIDGE (United Kingdom) accepted that change.

Paragraph 2 of the joint amendment, as amended, was adopted by 29 votes to 16, with 9 abstentions.

33. The CHAIRMAN put to the vote the other amendments to article 72.

The last paragraph of the joint amendment by the Netherlands and the United Kingdom (A/CONF.13/C.4/L.28, para. 3) as amended, was adopted by 32 votes to 16, with 6 abstentions.

The second part of the Iranian amendment (A/CONF.13/C.4/L.60) was rejected by 33 votes to 2, with 21 abstentions.

34. The CHAIRMAN read out the text of paragraph 1 of article 72, as amended by the Netherlands and the United Kingdom, which was worded as follows:

"1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each country is measured."

The text was adopted by 38 votes to 2, with 16 abstentions.

35. The CHAIRMAN read out the text of paragraph 2 of article 72 as amended by the Netherlands and the United Kingdom, which read as follows:

"2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each of the two States is measured."

The text was adopted by 39 votes to 2, with 15 abstentions.

36. The CHAIRMAN put to the vote the revised text of article 72 as a whole.

The text was adopted by 36 votes to none, with 19 abstentions.

37. Mr. ROUHANI (Iran) stated that the acceptance of the principle of the median line as defined in paragraph 72 could in no case infringe the sovereign rights of his country over any island situated beyond any median line which might be established in the Persian Gulf.

38. Mr. MÜNCH (Federal Republic of Germany) said that, in view of the inexact nature of the outer limit of the continental shelf as defined by article 67, his delegation would have preferred the adoption of the Venezuelan amendment (A/CONF.13/C.4/L.42). When that amendment was rejected, the delegation of the Federal Republic of Germany had accepted the views of the majority of the Committee, subject to an interpretation of the words "special circumstances" as meaning that any exceptional delimitation of territorial waters would affect the delimitation of the continental shelf.

39. Mr. OSMAN (Indonesia) said that, unlike the various amendments submitted, the International Law Commission's text was sufficiently flexible to provide all States, whatever their geographical situation, with the necessary safeguards. The Indonesian delegation had therefore felt obliged to vote against all the amendments. He paid tribute to the International Law Commission, whose tireless efforts had finally made it possible to reach an equitable solution of the problem.

40. Mr. MOUTON (Netherlands) said that, in view of the decisions that had just been taken, his delegation withdrew its proposal to amend the heading of section III (A/CONF.13/C.4/L.17).

The meeting rose at 10.20 p.m.

THIRTY-FOURTH MEETING

Thursday, 10 April 1958, at 10.25 a.m.

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

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

ARTICLE 73 (A/CONF.13/C.4/L.51, L.59, L.61, L.62)

1. Mr. RUIZ MORENO (Argentina) pointed out that the commentary on article 73 in the International Law

Commission's draft showed that the Commission had failed to reach unanimity over that article. There was also discordance between the text of the article, which said that disputes "shall be submitted to the International Court of Justice", and the last sentence of paragraph 4 of the commentary which stated that "either party may refer the matter to the International Court of Justice". His government did not accept the idea that it should be obliged to have recourse to the International Court for disputes in which agreement had not previously been reached between the parties. It preferred to have complete freedom to resort to normal methods of settlement and, where those methods proved unavailing, to be able to choose whether to refer the dispute to the Court or to any other arbitration body.

2. Replying to a question by Mr. CALERO RODRIGUES (Brazil), he said that the Argentine amendment (A/CONF.13/C.4/L.51) was intended to apply only to articles 67 to 72. He would, if necessary, be prepared to make an insertion in the amendment to that effect.

3. Mr. LEE (Republic of Korea) said that his delegation was not in favour of adopting the idea of compulsory arbitration by the International Court of Justice. There was no reason to compel States to have recourse to the Court in the case of disputes arising over the continental shelf, when they were not obliged to do so in the case of disputes arising out of the articles relating to the conservation of living resources, which were much more controversial. Article 33 of the United Nations Charter laid down that recourse to the jurisdiction of the International Court was optional.

4. Another disadvantage of compelling States to submit disputes to the Court was that it would give some the opportunity to take unnecessary legal action as a means of bringing pressure to bear on others. That would work out detrimentally to small States. Moreover, if one contracting State did not agree with another contracting State to refer a dispute to the Court, or refused to accept a decision given by the Court, very difficult situations would arise.

5. He therefore considered that States should be able to choose whether or not to refer disputes to the Court. His delegation would vote for the Argentine amendment.

6. Mr. MOLODTSOV (Union of Soviet Socialist Republics) said that article 73 of the International Law Commission's draft had no organic connexion with the other articles referred to the Fourth Committee. Nevertheless, those articles would be ineffective without article 73 in one form or another.

7. The provisions in the articles relating to the continental shelf were new in international law, and had not so far been put to the test of experience. It was therefore not only unnecessary, but might be dangerous, to bind governments to accept compulsory arbitration by the International Court of Justice.

8. The Argentine amendment had the same aim as that proposed by his own delegation (A/CONF.13/C.4/L.59), and therefore, taking into account the wishes of the General Committee, his delegation would withdraw its amendment and would support that of Argentina.

9. Mr. BARROS FRANCO (Chile) said that the amendments to article 73 showed that there were two schools of thought on the question of arbitration — that which rejected and that which upheld the idea of compulsory arbitration by the International Court of Justice. His delegation supported and would vote for the Argentine amendment.

10. Mr. JHIRAD (India) said that the purpose of his amendment (A/CONF.13/C.4/L.61) was to add a proviso to article 73 to the effect that the jurisdiction of the International Court of Justice should be subject to Article 36 of the Court's Statute. In pursuance of that article, India had lodged a declaration recognizing the jurisdiction of the Court as compulsory on a reciprocal basis in all disputes other than those in which the parties had already agreed to have recourse to another form of settlement, those arising with other members of the Commonwealth, those which fell within the domestic jurisdiction of India and those relating to wars or military activity in which India had been involved. India had thus pledged itself to accept the compulsory jurisdiction of the International Court of Justice in relation to other States which had lodged similar declarations.

11. As he had already pointed out in the general debate, it was inevitable that expressions supporting subjective assessments should be introduced in the articles discussed and adopted by the Committee. The only remedy for conflicts which might arise from any dispute regarding the interpretation of such expressions was a judicial decision, which would bring to bear the necessary element of objectivity.

12. Mr. KANAKARATNE (Ceylon) asked for the clarification or certain points in the Netherlands amendment (A/CONF.13/C.4/L.62). So far as he could see, the only differences between paragraph 1 of that amendment and the text of the International Law Commission's draft article 73 lay in the substitution of the words "may be submitted" for "shall be submitted" and the words "by unilateral application" for "at the request of". He wished to be clear as to the exact purport of those changes.

13. Mr. GIHL (Sweden) said that his government had long recognized compulsory international arbitration as the most adequate solution for disputes concerning the interpretation and application of treaties. For the reasons set out in the International Law Commission's commentary to article 73, the establishment of a judicial system for settling disputes was especially necessary in the case of the articles on the continental shelf, since they embodied new rules of law, which were a result of compromises between conflicting interests.

14. The Argentine amendment wished to substitute the procedure stipulated in Article 33 of the United Nations Charter for that laid down in draft article 73. The Charter article, however, provided for a choice between various methods of peaceful settlement, including negotiation, arbitration and judicial settlement. A State might thus invoke it in order to avoid an impartial decision, and proceed to interpret a treaty as it wished. The effect of the Indian amendment might sometimes be the same as that of the Argentine amendment.

15. For those reasons, the Swedish delegation preferred the International Law Commission's draft to any of the amendments which had been proposed.

16. Mr. WERNER (Switzerland) said that Switzerland was by tradition in favour of the judicial settlement of international disputes. From the very beginning, she had always advocated the widest possible extension of the jurisdiction, first, of the Permanent Court of International Justice, and, later, of its successor, the International Court of Justice. For that reason, the Swiss delegation supported article 73 as drafted by the International Law Commission and opposed both the Argentine and the Indian amendments. If article 73 were not adopted as it stood, he was prepared to support paragraph 1 of the Netherlands amendment.

17. He would be interested to see the further proposal of a more general character concerning the settlement of disputes referred to in the note to the Netherlands amendment, particularly since his own delegation had on 9 April deposited with the President of the Conference a proposal for the establishment of a special protocol on the jurisdiction of the International Court for the settlement of all disputes regarding the interpretation or application of any of the provisions which might be adopted by the Conference. His delegation also suggested that it might be helpful if a single working party were set up to study, on behalf of the entire Conference, the whole question of the judicial settlement of disputes.

18. The view had been expressed that the work of the Conference might eventually have to be embodied, not in a single convention, but in a number of different instruments. Pessimists had forecast a failure comparable with that of The Hague Conference of 1930. It should not, however, be forgotten that although that conference had failed to produce a convention, it had nevertheless resulted in the question of the legal status of the territorial sea being settled for all practical purposes. The present conference was also likely to produce at least one positive result, the adoption of the articles concerning the continental shelf, and in that case the development of international law relating to the continental shelf would be due to the work of the Fourth Committee.

19. It would therefore be worthwhile for the Committee to make the provisions relating to the continental shelf as complete as possible, and for that reason the Commission's draft of article 73 should be included as it stood.

20. Mr. CAICEDO CASTILLA (Colombia) said that his country had always accepted the principle of peaceful settlement of international disputes on a legal basis, and had frequently brought its disputes with other States before international arbitration bodies. He thus accepted the idea of compulsory arbitration by the International Court of Justice, as embodied in the International Law Commission's draft article 73.

21. Miss WHITEMAN (United States of America) said that her delegation favoured the Commission's draft of article 73. That article stressed that disputes should be submitted to the International Court of Justice only if other methods of peaceful settlement were not previously agreed upon, and did not therefore exclude such methods. She saw no need for a provision to the effect that parties to a dispute should accept a settlement by the procedure laid down in the United Nations Charter. The States represented at the Conference had practically all accepted both the Charter and the Statute of the Court. There was thus no point in adopting amendments which merely repeated States' existing obligations.

22. Mr. RUIZ MORENO (Argentina) said that his country had a long tradition of submitting international disputes to arbitration, but it did not wish to be compelled to accept one particular method of settlement, since disputes were of different types. The International Court was a legal tribunal, whereas the subject with which the Fourth Committee was dealing and on which it was proposed that the Court should give decisions was technical. The whole problem raised by the International Law Commission's draft article 73 was whether disputes should be submitted to the International Court of Justice on a compulsory or a voluntary basis.

23. Mr. SCHWARCK ANGLADE (Venezuela) fully supported the Argentine proposal and was unable to accept the principle of compulsory jurisdiction embodied in the International Law Commission's text. That did not mean that the Government of Venezuela did not accept the jurisdiction of the International Court of Justice; on the contrary, it had a long tradition of honouring the decisions of the Court.

24. The fact that, as the representative of Argentina had pointed out, disputes connected with the continental shelf would often be of a technical rather than a purely juridical nature made it still more essential that article 73 should provide for all the methods of peaceful settlement envisaged in the Charter.

25. Mr. SHELDOV (Byelorussian Soviet Socialist Republic) also thought that the matters regulated by article 73 belonged to the sphere of procedural law and were governed by existing international law and practice in accordance with the principle of the sovereign equality of States. There was no reason why disputes relating to the continental shelf should be subject to a separate rule; still less why they should be submitted to the International Court of Justice at the request of only one of the parties.

26. Acceptance of the jurisdiction of the International Court was a sovereign prerogative of every State; no State could be asked to give its consent thereto regardless of the substance of any possible future dispute, particularly as matters of a purely technical nature were likely to be involved. The only appropriate solution would be one which took due account of the interests of those States which reserved the right to decide whether or not a particular dispute should be referred to the International Court. The text proposed by Argentina was the only one which satisfied that requirement, and his delegation would vote for it if the Committee insisted on adopting a special provision regarding the settlement of disputes relating to the continental shelf.

27. Mr. MÜNCH (Federal Republic of Germany)

remarked that the problem was one of principle on which most delegations had clearly defined opinions; some States adopted a position with regard to sovereignty which could only be described as reactionary, whereas others followed the more progressive course of favouring international jurisdiction. For his part, he associated himself fully with the representatives of Sweden and Switzerland.

28. The fact that the International Law Commission had seen fit to include the provisions of article 73 in its draft was to be welcomed; the very novelty of the laws relating to the continental shelf would undoubtedly lead to differences and disputes; particularly as the wording of some of the articles adopted by the Committee lacked clarity. Any instrument on the continental shelf must, therefore, provide for a definite method of settling disputes. A mere reference to Article 33 of the Charter would not, in the prevailing international situation, offer a definitive solution. A compulsory solution was essential. Far from constituting a threat to sovereignty, as some delegations seemed to fear, compulsory jurisdiction by the International Court would, in fact, protect smaller States from any pressure that more powerful States might be inclined to apply, particularly in matters involving economic interests; all States were equal in the eyes of the Court. It might be preferable, however, if — instead of being referred to the International Court of Justice — disputes relating to the continental shelf could be referred to the International Court of Arbitration, which, being a smaller and more flexible body, could be more easily adapted to deal with the specific problems such as would be likely to arise.

29. His delegation would vote in favour of the International Law Commission's text, or the Netherlands proposal.

30. Mr. CARBAJAL (Uruguay) agreed that it was necessary to establish compulsory jurisdiction because the questions dealt with in articles 67 to 72 were new in international law. He pointed out, moreover, that article 73 provided for compulsory jurisdiction only in the event that the parties to a dispute failed to agree on another method of peaceful settlement. Uruguay had always favoured peaceful solutions by arbitration and international settlement; international law was the only protection on which a small country could rely in cases of dispute. He would therefore vote in favour of the International Law Commission's draft.

31. Mr. SCHWARCK ANGLADE (Venezuela), replying to the representatives of the Federal Republic of Germany and Uruguay, said that, precisely because the problems relating to the continental shelf were new, it was essential that parties to a dispute should have at their disposal the full range of possibilities of peaceful settlement. Under the terms of article 73, it would be sufficient for one of the parties to refuse to accept another method of peaceful settlement for the compulsory jurisdiction of the International Court to come into operation.

32. Mr. NAE (Romania) was opposed to the principle of compulsory jurisdiction laid down in article 73, but his government's attitude towards the Court's jurisdiction was not in general negative. The optional nature of the Court's jurisdiction was laid down in the Charter and in Article 36 of the Court's Statute. The number of States which had accepted compulsory jurisdiction of the Court in respect of certain categories of disputes, never a very large one, was constantly diminishing; and those States which did accept such jurisdiction sought to limit its scope by introducing various reservations. Some States, on entering into bilateral or multilateral agreements, would consent to the insertion of a clause providing for compulsory jurisdiction of the Court in the case of disputes arising from those agreements; others might prefer to reserve the liberty to decide whether a particular dispute should or should not be referred to it. International law was developing in the direction of optional, rather than compulsory, recourse to the International Court, a fact which should be taken into account in drafting an international instrument.

33. The Romanian delegation therefore would support the Argentine proposal, which left States free to choose any method of peaceful settlement of disputes, including that of optional recourse to the jurisdiction of the International Court. He emphasized, however, that he saw no reason why the settlement of disputes relating to the continental shelf should form the subject of a special provision, and would have preferred such a provision to be omitted altogether.

34. Mr. RUIZ MORENO (Argentina) drew attention to articles 54 and 55, which provided for the settlement by a special procedure of disputes relating to the conservation of the living resources of the high seas. He saw no reason why disputes relating to the continental shelf, which would likewise be of a technical nature, should be singled out for compulsory reference to the International Court.

35. Replying to previous speakers who had emphasized the importance of arriving at a fruitful and realistic conclusion, he remarked that, if a clause providing for compulsory jurisdiction were imposed on the Committee by a majority decision, those States which felt unable to accept compulsory jurisdiction would have serious reservations with regard to the future convention as a whole. That, surely, was not desirable.

36. Mr. KWEI (China) said that all international disputes had to be settled either by agreement based on compromise or arbitration or by adjudication of the International Court established by agreement of all States parties to the United Nations Charter. The International Law Commission's text covered both possibilities; a correct reading of article 73 would show that compulsory jurisdiction was not the only solution it provided.

37. Miss SOUTER (New Zealand) was perturbed to find that many delegations were reluctant to accept the International Court as a last resort in the settlement of disputes relating to the continental shelf. It was true that nothing in the Charter compelled member States to accept the compulsory jurisdiction of the Court; but the Statute of the Court contemplated that States might accept its jurisdiction under a particular convention. Any convention was bound to represent a certain limitation of sovereignty; having adhered to a convention, a State would not suffer any further loss

of sovereignty by accepting compulsory jurisdiction of the Court if the parties to a dispute failed to agree on other methods of peaceful settlement.

38. The Indian proposal appeared to mean that States which had not issued declarations under article 36 of the Court's Statute were under no obligation whatever to accept the jurisdiction of the Court, thus invalidating article 73 as a whole. She would vote in favour of the International Law Commission's text and could not support any proposal which would have the effect of excluding compulsory jurisdiction by the Court in the case of disputes relating to the continental shelf.

39. Mr. JHIRAD (India) replied that his proposal was in no way motivated by mistrust of the International Court. He was anxious, however, that no State should be brought before the Court by another State which did not accept the jurisdiction of the Court on other issues. The Indian proposal constituted an addition to article 73; its purpose was to specify that the compulsory jurisdiction of the International Court should, in the case of States which had made declarations under article 36 of the Statute, be subject to the conditions contained in such declarations, which in most cases involved the lodging of reciprocal declarations by other States. The proviso suggested would not affect States which had not lodged any declaration at all, and the relationship between such States would be governed by the provisions concerning compulsory jurisdiction conferred by the first part of the article.

40. Mr. PETTS (Peru) expressed interest in the general proposal referred to in the note attached to the Netherlands proposal (A/CONF.13/C.4/L.62) and in that mentioned by the representative of Switzerland; it was desirable, he thought, to arrive at a general solution governing all disputes which might arise in connexion with the law of the sea. He would support the Argentine proposal which was sufficiently broad to cover not only disputes connected with the continental shelf, but also those relating to all other matters dealt with by the Conference.

41. The merits of compulsory jurisdiction of the International Court, on the one hand, and of other peaceful methods of settlement, on the other, had been discussed at length during the preparation of the Charter and the Court's Statute; a repetition of that discussion would be out of place in the present context. He did not agree, however, with the view that a reaffirmation of the Charter's provisions in article 73 would be superfluous, not merely because those provisions represented the best solution that could be reached, but also because a number of States participating in the Conference were not members of the United Nations and were not bound by the Charter.

42. Mr. BARROS FRANCO (Chile) emphasized that his previous statement should not be interpreted to mean that Chile was opposed to the peaceful settlement of international disputes by arbitration or other means. But he firmly believed that only among States that were equal in law could compulsory jurisdiction apply in due form. The Chilean delegation at the San Francisco Conference had endeavoured again and again to ensure that the principle of equality of all nations should be embodied in the United Nations Charter; but, given the rights vested in certain States in the Security Council under Articles 34 and 27 of the Charter, that could not be said to be the case. States were not equal in law in the supreme organ of the international community; that, perhaps, was the explanation of the reluctance shown by certain States to accept the compulsory jurisdiction of international courts.

The meeting rose at 12.30 p.m.

THIRTY-FIFTH MEETING

Thursday, 10 April 1958, at 3.10 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 73 (A/CONF.13/C.4/L.51, L.59, L.61, L.62) (concluded)

1. Mr. MOUTON (Netherlands), introducing his delegation's amendment (A/CONF.13/C.4/L.62), said that, while the Netherlands delegation fully supported the principle of the International Law Commission's draft of article 73, it could not accept the terminology, as it was not correct. The intention was that article 40 of the Statute of the International Court should apply; in other words, that one party could unilaterally invoke the jurisdiction of the Court. That was not clear from the existing text, which used the word "request" instead of the word "application" (French "requête") as in article 40 of the Statute. The existing text might give the impression that the "request" was to be addressed to the other party rather than to the Court. Moreover, the expression "shall be submitted" implied an obligation, whereas there was no obligation on a State to submit a dispute to the International Court. The first paragraph of his delegation's amendment accordingly made clear that the "request" was really the application to the Court, and used the word "may" instead of "shall". Both those changes were purely questions of drafting.

2. The second paragraph of the amendment added something new. A decision whether or not the "special circumstances" referred to in article 72 existed was not exclusively or necessarily a judicial decision, and might often be purely factual; a decision *ex aequo et bono* therefore appeared more suitable in such cases. The same might also be considered by some delegations to apply to articles other than article 72, and he would have no objection to including a reference to other articles if that were thought desirable.

3. The proposal in the note at the end of the amendment should be considered together with the draft final clause on the settlement of disputes set forth on page 3 of the secretariat note on final clauses (A/CONF.13/L.7). That draft too should be brought into line with the wording of Article 40 of the Statute of the International Court.

4. It was necessary to have a clause on international jurisdiction and the peaceful settlement of disputes not only in relation to the articles on the continental shelf, but also in relation to those on the high seas and the territorial sea. Special provision had been made in article 57 for arbitration in cases of disagreement relating to fishing and conservation. If there were a separate convention on the continental shelf, article 73 would have to be included, whereas if there were a general convention, there should be a general article covering all possible disputes with the exception of those dealt with under article 57.

5. With reference to the Argentine amendment (A/CONF.13/C.4/L.51), the procedures for peaceful settlement provided in the United Nations Charter were intended for the settlement of disputes that might threaten international peace, not of the disputes of a different character that might arise out of the articles they were discussing.

6. He understood that the Indian amendment (A/CONF.13/C.4/L.61) was based on some idea of reciprocity, but he could not see that it served any useful purpose. There were a number of treaties in which an attempt had been made to secure recognition by the signatories of the jurisdiction of the International Court in relation to a particular subject; in that way, the field in which international jurisdiction was accepted might gradually become enlarged. If the Indian amendment were adopted, he believed it would be impossible to apply the provisions of the present text of article 73.

7. Mr. ROSENNE (Israel) said that there were two separate problems: first, whether an arbitration clause was necessary to the régime of the continental shelf, and secondly, what should be the contents of such a clause if one were necessary.

8. There were agreements of which such clauses formed an essential part; for example, in a case like that covered by article 57 of the International Law Commission's draft. But it could not be said that there could be no régime of the continental shelf without such a clause. In fact, the part of the draft dealing with the continental shelf finished with article 72 and article 73 properly belonged to the final clauses. An arbitration clause could only be part of a convention; consequently, the Committee must be certain that its work would be embodied in a convention before it could decide to include an arbitration clause. A discussion on article 73 was premature.

9. Regarding the various proposals before the Committee, he was in favour of clauses conferring compulsory jurisdiction on the International Court in multilateral treaties. Article 33 of the United Nations Charter did not go far enough, since it dealt with the question of principle only, and left it to States to decide what means they would adopt for settling disputes. It was not incompatible with the Charter to include clauses which defined more precisely the way in which obligations should be fulfilled.

10. It was a striking fact that, generally speaking, judicial settlement had been successful in cases of territorial disputes, and he saw no reason why it should be considered an unsatisfactory method of settling disputes arising out of the continental shelf. Accordingly, he did not see any necessity for the introduction of the *ex aequo et bono* principle advanced by the Netherlands delegation.

11. The Indian amendment (A/CONF.13/C.4/L.61) was not technically, acceptable, since the jurisprudence of the International Court drew a clear distinction between its jurisdiction under paragraph 1 and its jurisdiction under paragraph 2 of Article 36 of its Statute.

12. Mr. PATEY (France) stated that, as a result of the explanations given by the Netherlands representative, he could now vote in favour of paragraph 1 of the Netherlands amendment; if it were rejected, he would support the text as drafted by the International Law Commission. On the other hand, he would abstain from voting on the second paragraph.

13. In his view, compulsory acceptance of the jurisdiction of the International Court was an essential element of the draft, although he conceded that there were other methods of settling disputes. For that reason, he would vote both against the Argentine amendment (A/CONF.13/C.4/L.51) and against the Indian amendment, since the latter contained reservations. Those who voted for article 73 must accept without reserve the compulsory jurisdiction of the International Court.

14. Mr. GOMEZ ROBLEDO (Mexico) said that he fully supported the Argentine proposal. Nothing would be gained by trying to progress too hastily, and there was no justification for introducing an arbitration clause in a convention on such a technical subject. He did not agree with the representative of Israel that international arbitration had frequently been successful in cases of territorial disputes; it was accordingly all the less likely that it would be successful in the new field of international law they were now considering. A compulsory arbitration clause was unnecessary for States that had deposited declarations under Article 36 of the Statute of the International Court, and was not likely to be acceptable to States that had not.

15. He also supported the Indian amendment, which brought article 73 into harmony with Article 36 of the Statute of the International Court. Mexico had deposited a declaration under Article 36, but it was not clear to him what would be the position of States that had not done so if the Indian amendment were adopted.

16. He could not support the Netherlands amendment (A/CONF.13/C.4/L.62). The first paragraph was merely a verbal variant of the International Law Commission's text, which provided for compulsory jurisdiction by the International Court, and the second paragraph appeared to be unnecessary, since the action proposed was already within the power of the International Court for States that had accepted compulsory jurisdiction under Article 36.

17. His delegation's objections to article 73 were in no way to be interpreted as a reluctance to accept international jurisdiction, as Mexico had agreed to international arbitration in relation to territorial disputes and had faithfully executed any awards. However, a mere verbal devotion to the idea of international jurisdiction would not lead to any real progress in international relations, and it would be useless to include such a provision as article 73 if the opposition to it was such

that it would be so hedged round with reservations as to become nugatory.

18. Mr. WERSHOF (Canada) said that he was inclined to agree with the representative of Israel that article 73 was not an essential part of the régime of the continental shelf, and should form a final clause in the general treaty if such an instrument were adopted. However, since article 73 had been referred to the Fourth Committee, no harm would be done if the Committee decided whether or not such an article were to be included and, if so, how it should be worded. It would still be open to the drafting committee to suggest appropriate changes.

19. He agreed that the first paragraph of the Netherlands amendment was a useful clarification. It would be perfectly in accord with Article 36 of the Statute of the International Court of Justice to include a clause of that nature in such a treaty as they were considering, and many similar treaties included such articles as article 73. His delegation accordingly supported article 73 and the amendment to it proposed by the Netherlands, which was an improvement.

20. He felt that the appropriate course for those States that opposed the inclusion of a clause providing compulsory jurisdiction in advance would be to vote against article 73 and paragraph 1 of the Netherlands amendment. It was pointless to substitute for the article a text that would have no binding force and that applied to the Indian and Argentine amendments. He would therefore vote against them.

21. There was considerable merit in the arguments advanced by the Netherlands representative in support of the paragraph 2 of his amendment. However, if the Conference adopted a compulsory jurisdiction clause, that would be a major achievement, and it was perhaps asking too much of the States that opposed such a clause to accept paragraph 2 of the Netherlands amendment in addition. He would therefore abstain from voting on it, but if the matter were raised again at a plenary meeting he might revise his position in the light of further study.

22. Mr. NIKOLIC (Yugoslavia) felt that the second paragraph of the Netherlands proposal was superfluous. Article 38 of the Statute of the International Court of Justice already gave the Court had power to decide a case *ex aequo et bono,* if the parties so agreed; consequently, there was no need to insert such a provision in article 73. If paragraph 2 of the Netherlands proposal were adopted, a State would run the risk of having a dispute settled in accordance with some vague set of rules, and might in consequence hesitate to apply to the International Court. He would therefore vote against paragraph 2 of the Netherlands proposal, while supporting paragraph 1.

23. Mr. KANAKARATNE (Ceylon) did not consider that an article such as article 73 was necessary in relation to the continental shelf. All other methods of peaceful settlement, as enumerated in Article 33 of the United Nations Charter, should be tried before referring a dispute to the International Court. That was not clear from the International Law Commission's draft, which placed other methods of peaceful settlement right at the end of the article after the clause for the submission of disputes to the International Court. For that reason, he preferred the draft final clause on settlement of disputes in the Secretariat's note on final clauses (A/CONF.13/L.7). Article 73 could be included as a final clause when the articles on the continental shelf had been adopted as a separate convention or as a part of a general convention. There was no justification for applying such a clause solely to articles 67-72, since expression open to different interpretations occurred in other draft articles, notably articles 20, 29, 47, 56, 60 and 61. There was provision in article 57 for special arbitration procedure relating to the technical subject of fisheries, but there were no such technical aspects to the continental shelf.

24. With regard to paragraph 2 of the Netherlands amendment, that solution was already provided for in paragraph 2 of Article 38 of the Statute of the International Court of Justice, and to specify such a procedure in the case of article 72 would imply that the provision of paragraph 2 of Article 38 of the Statute did not apply to the other articles on the continental shelf.

25. He supported the Argentine amendment, which accorded with the paragraph relating to respect for treaty obligations in the preamble to the United Nations Charter, and with Articles 36, 92 and 95 of the Charter. Since, however, the Charter did not actually provide a procedure, he suggested that the words "by the procedure provided for in" should be changed to "in accordance with the principles of".

26. Mr. RUIZ MORENO (Argentina) said that he accepted that amendment.

27. In reply to the representative of Canada he said that the Argentine amendment had been submitted not because his delegation considered article 73 necessary, but because it was normal practice to refer in the last article of such treaties to the peaceful settlement of disputes arising out of the treaty.

28. He considered that a compulsory jurisdiction clause was contrary to the United Nations Charter, which established no such obligation, being based on the principle of the sovereign equality of States. It would be a violation of that principle if two-thirds of the States attending the Conference compelled the remaining sovereign States to submit to international jurisdiction. No sovereign State could accept such a decision and it would only lead to reservations by the signatories to the final treaty. States could not be expected to apply to the International Court except in accordance with the principle of sovereign equality established by the United Nations Charter. Article 73 could well be omitted, or else left for the Conference to decide upon.

29. Miss SOUTER (New Zealand) said that there appeared to have been some misunderstanding of her remarks at the 34th meeting (para. 37). She assured the representative of France that her delegation's understanding of the International Law Commission's text coincided completely with his; in other words, New Zealand regarded that text as binding the parties to any convention in which it was included to accept the compulsory jurisdiction of the Court, and that there was no question of invoking reservations made under

article 36 of the Court's Statute. Some States had made reservations in the declaration provided in article 36 because they felt that certain types of dispute were not suitable for reference to the International Court, and as the provisions of article 73 would permit any State to agree to any alternative method of settlement, that point could be raised in cases where parties had made reservations under article 36, so that in certain special types of disputes the States would agree to settle their differences by some other means, instead of submitting them to the compulsory jurisdiction of the International Court.

30. Mr. OBIOLS GOMEZ (Guatemala) felt that some reference to peaceful means of settling disputes was necessary. He would vote in favour of the Argentine amendment (A/CONF.13/C.4/L.51), but if that were rejected, would vote against the other amendments and also against the International Law Commission's draft article. The Constitution of his country did not permit acceptance of compulsory jurisdiction, so that Guatemala could not ratify a convention containing such a provision. If article 73 were adopted, he would be obliged to make a reservation.

31. Mr. REGALA (Philippines) thought that, in the light of what the representative of Israel had said, a plenary meeting might decide whether or not article 73 might be incorporated in a general convention.

32. Mr. CARMONA (Venezuela) said that he wished to reaffirm his view that the best solution was that to be found in the Argentine proposal as amended; he was unable to vote for article 73 as it stood. Many States were not prepared to accept compulsory jurisdiction and preferred an optional clause; the majority of parliaments would refuse to ratify any convention that might emerge from the discussions if it contained the article in question. He entirely disagreed with the Netherlands proposal, first, because he could not admit the compulsory jurisdiction implied in paragraph 1, and, secondly, because he considered the principle of adjudication *ex aequo et bono* of disputes before the International Court to be a dangerous one. On the other hand, the proposal by India was interesting, and some such provision might be included by the drafting committee.

33. He regretted the withdrawal of the Soviet Union amendment (A/CONF.13/C.4/L.59) (34th meeting, para. 8), since he felt that it might have formed a useful addition to the text of the Argentine amendment.

34. Mr. BARROS FRANCO (Chile) wished to ask the Indian representative to clarify his proposal with regard to States which had not accepted the optional clause of the Statute of the International Court; would compulsory jurisdiction apply to them?

35. Mr. JHIRAD (India) said that to answer that question he would have to explain the reasons for the Indian amendment. His delegation did not believe that article 73 was necessary. Even if it were not adopted, India would be bound to submit to the International Court any dispute with any State that had made a similar declaration under article 36, paragraph 2, of the Statute of the International Court of Justice. For that reason, he preferred the Argentine amendment to the International Law Commission's draft. The Indian amendment was in the form of a proviso, to be attached to article 73 if adopted, because India was unwilling to accept a clause which would mean agreeing to compulsory jurisdiction even in respect of disputes with States that did not accept the jurisdiction of the Court in other matters. If the Indian amendment were adopted, the International Law Commission's text would remain unaltered except that there would be a limitation operating only in the case of States which had deposited declarations under article 36 of the Statute of the International Court. If a dispute arose between States which had not deposited such declarations, article 73 would then operate without the proviso.

36. Mr. CARBAJAL (Uruguay) said that he could not agree with the representative of Ceylon that article 73 placed greater emphasis on the submission of disputes to the international court than on other methods of peaceful settlement. Disputes were to be submitted to the international court only in the absence of agreement on other methods of peaceful settlement. He saw no reason why there should not be a special provision relating to disputes arising out of articles 67-72, since there were similar special provisions in other draft articles, for instance in articles 35, 57 and 43.

37. Mr. MOUTON (Netherlands) said that an article relating to the settlement of disputes in general would have to be included in any general convention, and since it was possible that there might be a separate convention on the continental shelf, it was necessary to include an article on the settlement of disputes, at any rate provisionally. A similar course had been followed in the case of article 70, which duplicated paragraph 2 of article 61. If a general convention were agreed upon, the drafting committee would be able to combine in a single article all the articles relating to the settlement of disputes, with the exception of the special provision in article 57.

38. Replying to the observations of the representative of Ceylon, he said that the International Law Commission had wished to provide for compulsory jurisdiction for disputes arising out of the articles on the continental shelf, because not all States accepted the compulsory jurisdiction of the International Court. The application of paragraph 2 of Article 38 of the Statute of the International Court was subject to the agreement of the parties. It was for that reason that his delegation had considered it necessary in paragraph 2 of its amendment to provide, in the absence of agreement, for compulsory jurisdiction *ex aequo et bono*.

39. He could not agree with the Argentine representative that article 73 conflicted with the principle of the sovereign equality of States, since if the article were adopted, all the parties to the convention would be equally bound to accept the compulsory jurisdiction of the Court in respect of the application of the articles on the continental shelf.

40. In the light of the observations of the representative of Yugoslavia, he asked that the two paragraphs of the Netherlands amendment should be voted on separately.

41. Miss GUTTERIDGE (United Kingdom) said that her delegation believed that none of the amendments

were improvements on the original text, with the possible exception of paragraph 1 of the Netherlands proposal. She would support article 73 as it stood.

42. Mr. RIGAL (Haiti) too was strongly of the opinion that article 73 should be adopted as it stood. There was a primacy of international obligations over the municipal law of the various States, which should be made to conform with them. It was made clear in the draft article that States were not compelled to accept the jurisdiction of the International Court, since there was a reference to other methods which could be adopted by mutual consent.

The Argentine proposal (A/CONF.13/C.4/L.51), as amended, was rejected by 30 votes to 25, with 5 abstentions.

43. Mr. CARMONA (Venezuela) took over the Soviet Union amendment (A/CONF.13/C.4/L.59), which had been withdrawn.

The Venezuelan amendment was rejected by 29 votes to 26, with 6 abstentions.

Paragraph 1 of the Netherlands amendment (A/CONF.13/C.4/L.62) was rejected by 29 votes to 25, with 7 abstentions.

Paragraph 2 of the Netherlands amendment was rejected by 44 votes to 3, with 13 abstentions.

The Indian amendment (A/CONF.13/C.4/L.61) was rejected by 25 votes to 11, with 25 abstentions.

44. The CHAIRMAN put to the vote the International Law Commission's draft of article 73.

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

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

In favour: Israel, Italy, Japan, Monaco, Netherlands, New Zealand, Norway, Pakistan, Philippines, Portugal, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia, Belgium, Cambodia, Canada, China, Colombia, Cuba, Denmark, Finland, France, Federal Republic of Germany, Ghana, Greece, Haiti, Iceland.

Against: Republic of Korea, Peru, Poland, Romania, Union of Soviet Socialist Republics, Venezuela, Albania, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Guatemala, India, Indonesia.

Abstentions: Jordan, Libya, Mexico, Morocco, Saudi Arabia, Spain, Tunisia, United Arab Republic, Australia, Brazil, Burma, Ceylon, Ecuador, Iran.

Article 73 was adopted by 33 votes to 15, with 14 abstentions.

45. Mr. CALERO RODRIGUES (Brazil) said that he had abstained from voting, both on the amendments and on the article, because he considered article 73 to be unnecessary. He saw no reason for a special procedure governing questions arising out of articles 67-72.

46. Mr. RUIZ MORENO (Argentina), in accordance with international practice, wished to state that Argentina did not accept the compulsory jurisdiction of the International Court.

47. Mr. JHIRAD (India) explained that he had voted against article 73, not because India did not recognize the jurisdiction of the International Court, but because it did not wish to accept compulsory jurisdiction in disputes with States which did not otherwise recognize generally the jurisdiction of the International Court. But India would still be bound by its declaration under Article 36 of the Statute to refer to the Court any dispute with a State that had also made such a declaration.

The meeting rose at 5.50 p.m.

THIRTY-SIXTH MEETING

Friday, 11 April 1958, at 2.45 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) *(concluded)*

NEW ARTICLE ON FISHERIES ABOVE THE CONTINENTAL SHELF (A/CONF.13/C.4/L.6)

1. Mr. RUIZ MORENO (Argentina), withdrawing his delegation's proposal concerning a new article on fisheries above the continental shelf (A/CONF.13/C.4/L.6), explained that it had been submitted at a time when it had not been certain, as it then was as a result of decisions taken by the Third Committee, that the Conference would adopt a series of articles relating to fisheries. His delegation had considered that the results of the Conference's work would be incomplete if they included provisions relating to the continental shelf but none relating to fisheries in the superjacent waters. His delegation would accordingly be content if the subject of the proposal were considered by the Third Committee.

ESTABLISHMENT OF THE DRAFTING COMMITTEE

2. The CHAIRMAN proposed that Mr. Wershof (Canada), Mr. Barros Franco (Chile), Mr. Patey (France), Mr. Jhirad (India), Mr. Molodtsov (Union of Soviet Socialist Republics) and Miss Whiteman (United States of America) should join the officers of the Committee in making such drafting changes as were necessary to the draft articles adopted by the Committee. He added that it would be necessary for the Committee to express in its report an opinion on the question whether those articles should be embodied in a convention relating to a number of subjects, in a convention relating solely to the continental shelf or in some other type of international instrument. The proposed drafting committee might discuss the matter and include an appropriate passage in its report to the Committee for the latter's further consideration.

It was agreed that the drafting committee proposed by the Chairman should be set up.