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Report of the Third Committee

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DOCUMENT A/CONF.13/L.19

**Second report of the Drafting Committee of the Conference:
articles and draft resolutions adopted by the Second Committee**

[Original text: English, French and Spanish]
[22 April 1958]

1. The Drafting Committee of the Conference met on 22 April and considered texts of articles 26 to 48 and 61 to 65 adopted by that committee, together with two draft resolutions also adopted by that committee (A/CONF.13/L.17).

2. The representative of the Union of Soviet Socialist Republics proposed that the text of the draft resolution relating to nuclear tests which, he stated, was very closely connected with article 27, should appear immediately following that article. This proposal was rejected by 5 votes to 2, with 2 abstentions. The representative of the USSR requested that it be mentioned in the report of the Drafting Committee that he had raised this matter as one of substance.

3. The Drafting Committee decided to postpone consideration of the changes proposed by the Fifth Committee to articles 27 and 28 (A/CONF.13/L.11, para. 26) until the Conference had decided upon the recommendations of that committee.

4. The representative of the USSR drew attention to paragraph 9 of the report of the Second Committee, in which the Committee stated in principle that the articles in general adopted by it did not override specific conventions in force.

5. The Drafting Committee recommends the changes of a drafting nature set out below to the texts adopted by the Second Committee. These are given as follows:

- (a) Those changes affecting the English, French and Spanish texts;
- (b) Those changes affecting the English text only;
- (c) Those changes affecting the French text only;¹
- (d) Those changes affecting the Spanish text only.¹

CHANGES AFFECTING THE ENGLISH, FRENCH AND SPANISH TEXTS

Article 42

Replace the second sentence by the following text: "the retention or loss of nationality is determined by the law of the State from which such nationality was derived".

CHANGES AFFECTING THE ENGLISH TEXT ONLY

Article 27

Delete the asterisk at the end of sub-paragraph (4).

Article 65

Add a comma after the word "pipeline".

Draft resolution relating to article 48

Operative paragraph: Add a comma after the word "protection".

¹ Changes affecting the French and Spanish texts only have not been reproduced in the present document.

DOCUMENT A/CONF.13/L.21

Report of the Third Committee

[Original text: English]
[23 April 1958]

I. OFFICERS OF THE COMMITTEE

1. At the first meeting of the Committee on 26 February 1958, Mr. Carlos Sucre (Panama) was elected as Chairman; at the 2nd meeting on 28 February, the Committee elected Mr. Elias Krispis (Greece) as Vice-Chairman and Mr. N. K. Panikkar (India) as Rapporteur.

II. TERMS OF REFERENCE OF THE COMMITTEE

2. The rules of procedure (A/CONF.13/35) established in rule 47 that the Third Committee should be a main committee of the Conference and that to it should be allocated those articles concerning the Law of the Sea, contained in the report of the International Law Commission, covering the work of its eighth session,¹ which dealt with fishing and conservation of living resources in the high seas. These were articles 49 to 60 inclusive.

¹ Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159).

III. ORGANIZATION OF THE WORK OF THE COMMITTEE

3. The Third Committee, having considered the recommendations of the General Committee on the organization of the work of the Conference (A/CONF.13/L.2), as adopted by the Conference, decided at its 3rd meeting to begin its work by a general debate on the articles referred to it. The Committee held forty-two meetings from 26 February to 22 April. Of these, ten (3rd to 12th) were confined to the general debate.

4. At the 13th meeting, the Chairman suggested that, after discussion, the articles should be voted on provisionally. They would then be referred to a drafting committee composed of the officers of the Committee assisted by the secretariat. The articles would subsequently be submitted to the Committee for a second and definitive vote. This working plan was accepted by the Committee. The drafting committee held one meeting on 16 April, and made a few drafting changes in the text of the articles adopted by the Committee on first reading.

5. The following is an account of the work of the Com-

mittee. The text of the articles and draft resolutions adopted will be found in the annex to this report.

IV. CONSIDERATION OF AND VOTING ON THE ARTICLES
AND AMENDMENTS RELATING THERETO

Article 49

6. Article 49 and the amendments thereto were considered and voted upon by the Committee at its 34th meeting. Six amendments had been submitted by Burma (A/CONF.13/C.3/L.7); the Netherlands (A/CONF.13/C.3/L.20); Italy (A/CONF.13/C.3/L.24) jointly by Burma, the Republic of Korea, Mexico and Venezuela (A/CONF.13/C.3/L.49); by India (A/CONF.13/C.3/L.50); and by the United Kingdom (A/CONF.13/C.3/L.72).

7. The amendments of Burma and the Netherlands and the joint amendment were withdrawn. The principle contained in the Italian amendment was adopted in connexion with article 53. The Indian amendment was withdrawn owing to the acceptance of a similar proposal by the First Committee.

8. The United Kingdom amendment, to add a second paragraph to article 49, was adopted. The text of article 49, as amended, was adopted on first reading by 50 votes to none, with one abstention.

9. During the discussion of article 51 at the 19th meeting, a proposal was submitted orally by Burma, the Republic of Korea, Mexico and Venezuela to insert before articles 49, 51 and 52 the following phrase: "Subject to the interests and rights of the coastal State, as provided for in this convention." This proposal was adopted but it was left to the drafting committee to insert the phrase in its proper place in the text of the articles. The drafting committee inserted the phrase in paragraph 1 of article 49.

10. Article 49 was adopted on second reading at the 40th meeting, by 50 votes to 8, with 5 abstentions. The article in its revised form includes the acceptance of the principle of the interests and rights of the coastal States. The additional paragraph places an obligation on all States to adopt for their nationals such measures for the conservation of the living resources of the high seas as may be necessary.

Article 50

11. Article 50 and the amendments thereto were considered during the 15th, 16th and 17th meetings. Two amendments were submitted, one by Sweden (A/CONF.13/C.3/L.8), the other jointly by Costa Rica, Mexico, Peru and the United Arab Republic (A/CONF.13/C.3/L.21). Voting on the amendments took place at the 17th meeting; the joint amendment was rejected and the Swedish amendment, the purpose of which was to add a second sentence to the article, was adopted. The text of article 50, as amended, was adopted on first reading by 50 votes to none, with 9 abstentions.

12. Article 50 was adopted on second reading at the 38th meeting, by 59 votes to none, with 4 abstentions. The article as revised stipulates that conservation programmes should be formulated in such a way that the question of securing food for human consumption receives first priority as against the uses of the living resources of the sea for other purposes.

Article 51

13. Article 51 and the amendments thereto were considered during the 15th, 17th, 18th and 19th meetings. Amend-

ments which had been submitted by France (A/CONF.13/C.3/L.3), the Federal Republic of Germany (A/CONF.13/C.3/L.4), Yugoslavia (A/CONF.13/C.3/L.9), Italy (A/CONF.13/C.3/L.24), the United Kingdom (A/CONF.13/C.3/L.28), Japan (A/CONF.13/C.3/L.32) and the Netherlands (A/CONF.13/C.3/L.39) were later replaced by a joint amendment (A/CONF.13/C.3/L.47). Amendments by Burma (A/CONF.13/C.3/L.7), Venezuela (A/CONF.13/C.3/L.22) and Mexico (A/CONF.13/C.3/L.35) were later withdrawn. An amendment by Spain (A/CONF.13/C.3/L.37) was rejected. The joint amendment, which was of a drafting nature, was adopted. The text of article 51, as amended, was adopted on first reading at the 19th meeting, by 58 votes to 2, with 4 abstentions.

14. Article 51 was unanimously adopted on second reading at the 38th meeting. The change effected in this article concerns the replacement of the concept of conservation with reference to areas by the more specific reference to fish stocks.

Article 52

15. In view of a decision by the Committee at its 14th meeting, discussion of paragraph 2 of article 52 was postponed until the Committee took up consideration of articles 57, 58 and 59.

16. Paragraph 1 of article 52 and the amendments thereto were considered during the 15th, 17th, 18th and 19th meetings. Amendments which had been submitted by France (A/CONF.13/C.3/L.3), the Federal Republic of Germany (A/CONF.13/C.3/L.4), Yugoslavia (A/CONF.13/C.3/L.10), Italy (A/CONF.13/C.3/L.24 and L.25), the United Kingdom (A/CONF.13/C.3/L.28), Japan (A/CONF.13/C.3/L.32), Sweden (A/CONF.13/C.3/L.36), Portugal (A/CONF.13/C.3/L.38) and the Netherlands (A/CONF.13/C.3/L.39) were later replaced by a joint amendment (A/CONF.13/C.3/L.48); amendments by Venezuela (A/CONF.13/C.3/L.23), the Republic of Korea (A/CONF.13/C.3/L.34) and Mexico (A/CONF.13/C.3/L.35) were withdrawn. An amendment was submitted by Spain (A/CONF.13/C.3/L.37), but the representative of Spain did not press for a vote on that proposal. The joint amendment, which was of a drafting nature, was adopted. Paragraph 1 of article 52, as amended, was adopted on first reading at the 19th meeting by 53 votes to none, with 5 abstentions.

17. Paragraph 2 and the amendments thereto were considered at the 33rd meeting. Amendments were submitted by Uruguay (A/CONF.13/C.3/L.31) and Spain (A/CONF.13/C.3/L.37); the joint amendment mentioned above (A/CONF.13/C.3/L.48) also related to paragraph 2. The proposal by Spain and the joint proposal, to fix one year as the reasonable period of time envisaged, were adopted jointly. Paragraph 2 of article 52, as amended, was adopted on first reading by 41 votes to none, with 15 abstentions; accordingly, the amendment of Uruguay was not voted upon.

18. At the 38th meeting, article 52 was adopted on second reading, by 48 votes to 8, with 7 abstentions. In paragraph 1, the position has been clarified that States will prescribe conservation measures only for their respective nationals. In paragraph 2, the change concerns the decision of the Committee to prescribe twelve months as "a reasonable period of time" indicated in the International Law Commission's text.

Article 53

19. In view of a decision by the Committee at its 14th meeting, discussion of the last paragraph of article 53 was

postponed until the Committee took up consideration of articles 57, 58 and 59

20. Paragraph 1 of article 53 and the amendments thereto were considered during the 15th and 17th to 20th meetings. Amendments by Portugal (A/CONF.13/C.3/L.38) and the United States (A/CONF.13/C.3/L.40) were withdrawn. Amendments by the Federal Republic of Germany (A/CONF.13/C.3/L.4), Yugoslavia (A/CONF.13/C.3/L.11), Italy (A/CONF.13/C.3/L.24), Poland and the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.29 and Add.1), and jointly by France, the Netherlands, Portugal, Sweden, the United Kingdom and the United States (A/CONF.13/C.3/L.55) were still before the Committee when the voting took place at the 20th meeting. The Yugoslav amendment to include the words "but shall not discriminate against them", was adopted. The six-power amendment, to modify the last phrase and add a new sentence, was adopted. The Italian amendment, to replace the word "nationals" by "national ships", was adopted but it was left to the Drafting Committee of the Conference to take a final decision on the wording thereof. The other amendments were rejected. Paragraph 1 of article 53, as amended, was adopted on first reading, by 32 votes to 7, with 13 abstentions.

21. Paragraph 2 of article 53 and the amendments thereto were considered at the 33rd meeting. Amendments by France (A/CONF.13/C.3/L.3) and Uruguay (A/CONF.13/C.3/L.31) were withdrawn. The representative of Yugoslavia did not insist that his amendment (A/CONF.13/C.3/L.11) be voted upon.

22. At the time of voting, the Committee had before it proposals by Japan (A/CONF.13/C.3/L.32), Sweden (A/CONF.13/C.3/L.36) and Spain (A/CONF.13/C.3/L.37) to fix one year as the reasonable period of time envisaged. These three proposals were adopted jointly. Paragraph 2 of article 53, as amended, was adopted on first reading, by 42 votes to 7, with 6 abstentions.

23. At the 38th meeting, article 53 was adopted on second reading, by 45 votes to 9, with 7 abstentions. The obligation of new States entering fisheries where conservation measures are in force has been made subject to certain conditions in the revised version of paragraph 1. A maximum period of seven months has been allowed for newcomers to put into effect the conservation measures. With this is combined an obligation to notify conservation measures to the Director-General of the Food and Agriculture Organization (FAO) if such measures are to be observed by others. The seven months allowed for new entrants will be from the time the conservation measures have been notified to FAO. In paragraph 2, the change relates to the decision of the Committee to prescribe twelve months as the reasonable period of time mentioned in the International Law Commission's text.

Article 54

24. In view of a decision by the Committee at its 14th meeting, discussion of paragraph 3 of article 54 was postponed until the Committee took up consideration of articles 57, 58 and 59.

25. Paragraphs 1 and 2 of article 54 and the amendments thereto were considered during the 21st and 24th meetings.

26. Amendments submitted by the Federal Republic of Germany (A/CONF.13/C.3/L.4), the Philippines (A/CONF.13/C.3/L.5), Yugoslavia (A/CONF.13/C.3/L.13), Japan (A/CONF.13/C.3/L.33), jointly by Costa Rica, Chile, Ecuador and Peru (A/CONF.13/C.3/L.41), and by the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.42) were withdrawn.

27. Other proposals were submitted by Italy (A/CONF.13/C.3/L.24), Sweden (A/CONF.13/C.3/L.36), Spain (A/CONF.13/C.3/L.37), jointly by the Netherlands, Portugal, the United Kingdom and the United States (A/CONF.13/C.3/L.43), by the Republic of Korea (A/CONF.13/C.3/L.45), and jointly by Burma, Chile, Costa Rica, Ecuador, Indonesia, the Republic of Korea, Mexico, Nicaragua, the Philippines, the Republic of Viet-Nam and Yugoslavia (A/CONF.13/C.3/L.65).

28. At the 23rd meeting, the Swedish amendment was rejected.

29. At the 24th meeting, the Spanish proposal was rejected; no vote was taken on the Italian proposal, since the principle it contained had been approved in connexion with article 53. At the same meeting, the four-power proposal to add a new paragraph 3 was adopted, as well as the eleven-power proposal to add a further new paragraph (paragraph 4 in the final text). Paragraphs 1 to 4 of article 54, as amended, were adopted on first reading, by 54 votes to 2, with 10 abstentions.

30. The last paragraph of article 54 and the amendments thereto were considered at the 33rd meeting. The amendment submitted by France (A/CONF.13/C.3/L.3) was withdrawn. The Committee had before it proposals by Japan (A/CONF.13/C.3/L.33) and Spain (A/CONF.13/C.3/L.37) to fix one year as the reasonable period of time envisaged. It also had before it a joint proposal by the Netherlands, Portugal, the United Kingdom and the United States (A/CONF.13/C.3/L.43), to insert the words "with respect to conservation measures". These proposals were adopted. The last paragraph of article 54, as amended, was adopted on first reading by 44 votes to one, with 11 abstentions.

31. Article 54 was adopted on second reading, by 41 votes to 8, with 15 abstentions, at the 38th meeting. The Committee added two new paragraphs to the International Law Commission text. Paragraph 3 places an obligation on a State fishing in the high seas adjacent to the territorial sea of a coastal State to enter into negotiations, if so requested by that coastal State, to prescribe, by common agreement, measures for conservation in the high sea applicable to its nationals. Paragraph 4 precludes a State whose nationals are fishing in the high seas adjacent to the territorial sea of a coastal State from adopting conservation measures which may be at variance with those adopted by the coastal State. Provision is made for negotiation between the States concerned for working out conservation measures by agreement.

Article 55

32. In view of a decision by the Committee at its 14th meeting, discussion of paragraph 3 of article 55 was postponed until the Committee took up consideration of articles 57, 58 and 59.

33. Paragraphs 1 and 2 of article 55 and the amendments thereto were considered during the 21st to 27th meetings. Amendments which had been submitted by France (A/CONF.13/C.3/L.3), Italy (A/CONF.13/C.3/L.26), Spain (A/CONF.13/C.3/L.37), the United Kingdom (A/CONF.13/C.3/L.44) and Norway (A/CONF.13/C.3/L.46) were later replaced by a proposal submitted jointly by Belgium, France, Greece, Italy, the Netherlands, Norway, Portugal, Spain and the United Kingdom (A/CONF.13/C.3/L.71/Rev.1): an amendment by Burma, Chile, Costa Rica, Ecuador, Indonesia, the Republic of Korea, Mexico, Nicaragua, the Philippines, the Republic of Viet-Nam and Yugoslavia (A/CONF.13/C.3/L.66) was later revised (L.66/Rev.1). In addition, amendments were sub-

mitted by Sweden (A/CONF.13/C.3/L.36) and the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.42/Rev.1). An amendment by the Republic of Korea (A/CONF.13/C.3/L.45) was withdrawn.

34. The voting took place at the 27th meeting.

35. The eleven-power proposal was adopted. Its purpose was (a) in paragraph 1, to fix six months as the reasonable period of time envisaged; (b) to redraft paragraph 2; (c) to insert a new paragraph after paragraph 2 whereby the measures envisaged should remain in force pending the settlement of any disagreement as to their validity; and (d) to add a paragraph relating to principles of geographical demarcation.

36. The Committee also adopted an oral amendment by Norway to add a paragraph whereby the measures envisaged in the article would not apply to seas adjacent to the coasts of uninhabited territories (this paragraph was made paragraph 4). The USSR proposal was rejected. The nine-power proposal and that of Sweden were not put to the vote.

37. Article 55 (last paragraph excepted), as amended, was adopted on first reading, by 27 votes to 22, with 8 abstentions.

38. The original paragraph 3 of article 55 was considered at the 33rd meeting. The drafting of this paragraph was left to the drafting committee.

39. The second reading took place at the 39th meeting. Paragraph 4 of the text adopted on first reading was deleted. Article 55, as amended, was adopted by 34 votes to 20, with 5 abstentions. The article as now adopted differs from the International Law Commission's original text in the following respects:

(a) Paragraph 1 of the International Law Commission's text gave powers to the coastal States to take unilateral measures for the conservation of fish stocks adjacent to their territorial seas, if negotiations with the other States concerned had not led to an agreement within a reasonable period of time. This period has now been prescribed as six months.

(b) Paragraph 2(a) has been redrafted, changing the need for scientific evidence for urgent conservation measures to the need for urgent application of conservation measures based on available information on the fishery concerned.

(c) Paragraph 3 ensures the continuance of the conservation measures adopted subject to paragraph 2 of article 58, which provides for the suspension of the measures pending arbitral decision in case of disputes.

(d) The Committee also accepted the principle of geographical demarcation in respect of the application of conservation measures by coastal States.

Article 56

40. In view of a decision by the Committee at its 14th meeting, discussion of paragraph 2 of article 56 was postponed until the Committee took up consideration of articles 57, 58 and 59.

41. Paragraph 1 of article 56 and the amendments thereto were considered at the 15th, 17th, 18th and 21st meetings. Amendments by Poland and the USSR (A/CONF.13/C.3/L.30) and by Sweden (A/CONF.13/C.3/L.36) were rejected. Amendments by France, to add a phrase relating to the mentioning of scientific reasons (A/CONF.13/C.3/L.3) and the Netherlands, of a drafting nature (A/CONF.13/C.3/L.39) were adopted. The principle contained in

the Italian amendment (A/CONF.13/C.3/L.24) had been adopted in connexion with article 53. Paragraph 1 of article 56, as amended, was adopted on first reading, by 45 votes to 2, with 14 abstentions.

42. Paragraph 2 was considered at the 33rd meeting. The Committee had before it amendments by Poland and the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.30) and by Uruguay (A/CONF.13/C.3/L.31) which were withdrawn and not put to the vote. Amendments by Japan (A/CONF.13/C.3/L.33) and Spain (A/CONF.13/C.3/L.37), to fix one year as a reasonable period of time, were jointly adopted. Paragraph 2 of article 56, as amended, was adopted on first reading, by 46 votes to 7, with 4 abstentions.

43. The second reading took place at the 39th meeting, when article 56 was adopted by 42 votes to 8, with 6 abstentions. There is no material difference between the original and revised texts. The article provides that a State may request another State whose nationals are fishing in any area of the high seas to take conservation measures provided it is interested in the conservation of the living resources of that area. The revised version requires such requests to be accompanied by a mention of the scientific reasons therefor and the special interest which the requesting State has in the adoption of conservation measures.

Article 57

44. Article 57 and the amendments thereto were considered at the 28th, 29th and 30th meetings. Amendments by France (A/CONF.13/C.3/L.3), the Philippines (A/CONF.13/C.3/L.5), Thailand (A/CONF.13/C.3/L.19), Sweden (A/CONF.13/C.3/L.36), and the Netherlands (A/CONF.13/C.3/L.59) were withdrawn. Amendments by Mexico (A/CONF.13/C.3/L.1), Yugoslavia (A/CONF.13/C.3/L.14), the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.62) and the Republic of Korea (A/CONF.13/C.3/L.64) were rejected.

45. After some drafting changes had been introduced orally, a joint amendment by Greece and the United States (C.3/L.67) was adopted by 38 votes to 14, with 10 abstentions. The adoption of this amendment made it unnecessary to vote on the International Law Commission's text, which it replaced entirely.

46. The second reading took place at the 38th meeting (C.3/SR.38). An amendment to replace the word "constituted" by the word "appointed" in paragraph 5 was adopted. Article 57, as amended, was adopted by 39 votes to 10, with 6 abstentions. The following changes were made by the Committee in the International Law Commission's text:

(a) The Committee designated the arbitral commission mentioned in the International Law Commission's text as a "special commission".

(b) In the first paragraph, the number of members of the commission has been changed from seven to five. For seeking other means of peaceful settlement in case of disagreement between States, specific reference has also been made to Article 33 of the Charter.

(c) Paragraphs 2 and 3 entirely replace the International Law Commission's text. There is a difference in procedure for selection of the members of the commission and participation by the parties to the dispute.

(d) There is no material change in paragraph 4 of the original and revised texts. Paragraph 5 provides for new time limits for the decision of the special commission (five months) and the extension of that time limit (three months).

(e) Paragraphs 6 and 7 of the revised article 57 are new. These relate to the need for the commission to be guided by the articles relating to fisheries and to any special agreements which may exist between the disputing sides. Decision by majority vote is stipulated in paragraph 7.

Article 58

47. Consideration of article 58 and the amendments thereto took place at the 31st and 32nd meetings. Amendments by Mexico (A/CONF.13/C.3/L.1), France (A/CONF.13/C.3/L.3), Yugoslavia (A/CONF.13/C.3/L.15), Thailand (A/CONF.13/C.3/L.19), Sweden (A/CONF.13/C.3/L.36), the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.61) and the Republic of Korea (A/CONF.13/C.3/L.64) were withdrawn. At the 32nd meeting a joint proposal by Greece, Pakistan and the United States (A/CONF.13/C.3/L.68) was adopted, after some drafting changes had been introduced, by 30 votes to 16, with 3 abstentions. The adoption of this amendment made it unnecessary to vote on the International Law Commission's text, which it replaced entirely.

48. The second reading took place at the 38th meeting, when article 58 was adopted by 40 votes to 17, with 5 abstentions. There are substantial differences between the International Law Commission's text and the revised text as adopted by the Committee:

(a) Both the old and new texts agree on the need for the adoption of the criteria listed under article 55 for the solution of disputes arising as a result of measures under that article;

(b) In other disputes, the International Law Commission's text suggested criteria according to the circumstances of each dispute. The article as accepted by the Committee includes, under paragraphs 1 (a) and 1 (b), specific criteria applicable on the one hand to disputes under articles 52, 53 and 54 and, on the other hand, to disputes under article 56;

(c) Paragraph 2 has also been suitably modified in accordance with paragraph 3 of article 55. There is a provision for the continued application of conservation measures already adopted under article 55 except when there is no *prima facie* evidence justifying the urgent need for such measures;

(d) The powers of the special commission to suspend the measures in dispute, which was unqualified in the International Law Commission's text, have been made conditional on the above situation.

Article 59

49. Article 59 and the amendments relating to it were considered at the 33rd meeting.

50. The amendments submitted by Mexico (A/CONF.13/C.3/L.1) and the Republic of Korea (A/CONF.13/C.3/L.64) were not voted upon in view of the results of the vote on articles 57 and 58. For the same reason, the representatives of Yugoslavia and the Union of Soviet Socialist Republics withdrew their respective proposals (A/CONF.13/C.3/L.16 and L.61). A proposal by Thailand (A/CONF.13/C.3/L.19) had been previously withdrawn. The Committee adopted a proposal by Uruguay (A/CONF.13/C.3/L.73) to redraft the first sentence of article 59.

51. Article 59 was adopted, as amended, on first reading, by 35 votes to none, with 10 abstentions.

52. On the second reading, which took place at the 38th meeting, article 59 was adopted by 53 votes to none, with

7 abstentions. Except for the reference to paragraph 2 of Article 94 of the Charter as being applicable to the decisions of the special commission, there is no difference between the International Law Commission's text and the new text.

Article 59 A

53. Article 59 A was originally a proposal by Norway (A/CONF.13/C.3/L.62) which was discussed and voted upon at the 33rd meeting. It was adopted on first reading at the same meeting, by 39 votes to 2, with 9 abstentions. It was adopted on second reading at the 39th meeting by 49 votes to none, with 6 abstentions.

54. This is a new article which provides for re-examination of decisions of the special commission if the factual basis of decisions has altered in the condition of stock or stocks of fish or other living marine resources. Renewed negotiations between the States concerned have been suggested, together with procedures for renewed arbitration in case of disagreement, under article 57, not earlier than two years after the original arbitral award.

Article 60

55. Article 60 and the amendments thereto were considered and voted upon at the 34th meeting. The Committee had before it proposals by Burma, India, Ghana and Portugal (A/CONF.13/C.3/L.7, L.51, L.74 and L.75). The last-named was withdrawn.

56. The Committee adopted the proposal by Ghana to add (a) at the end of the first sentence, the phrase "except in areas where such fisheries have by long usage been exclusive enjoyed by such nationals; and (b) a new paragraph 2. The Indian proposal was also adopted; however, the Committee later considered its adoption incompatible with the Ghanaian proposal and the vote was cancelled. The Burmese proposal was rejected.

57. Article 60, as amended, was adopted on first reading at the 34th meeting, by 49 votes to 1, with 7 abstentions.

58. On second reading, at the 38th meeting, article 60 was adopted by 51 votes to 1, with 5 abstentions. The text as adopted by the Committee takes into account the need to protect the rights of fishing by the use of equipment embedded in the floor of the seas in areas where such fisheries have by long usage been exclusively enjoyed by the nationals of coastal States. In the International Law Commission's text, there was no definition of fisheries conducted by means of equipment embedded in the floor of the seas; paragraph 2 of the new text gives a definition of such fisheries.

V. PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BY VIRTUE OF SPECIAL CONDITIONS

59. These proposals were considered by the Committee at its 35th, 36th, 37th, 39th, 40th, and 42nd meetings. Proposals submitted by Yugoslavia (A/CONF.13/C.3/L.12), the Republic of Korea (A/CONF.13/C.3/L.45), India (A/CONF.13/C.3/L.50), the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60), jointly by Burma, Chile, Costa Rica, Ecuador, Indonesia, the Republic of Korea, Mexico, Nicaragua, the Philippines, the Republic of Viet-Nam and Yugoslavia (A/CONF.13/C.3/L.66), the United States and Canada (A/CONF.13/C.3/L.69), Portugal (A/CONF.13/C.3/L.70) and Ecuador (A/CONF.13/C.3/L.89) were withdrawn.

60. A new article was originally proposed by Iceland (A/CONF.13/C.3/L.79); after discussion at the 36th

meeting, it was later submitted in a revised form (L.79/Rev.1).

61. The Committee took the following decisions :

(a) At its 39th meeting, it adopted, by a roll-call vote of 25 to 18, with 12 abstentions, the revised proposal of Iceland to add an article concerning the preferential rights of a people overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development. On second reading, at the 40th meeting, the Icelandic proposal was adopted by a roll-call vote of 29 to 21, with 11 abstentions. This proposal became article 60 A, and recognizes the preferential rights of coastal States in special situations where the people are overwhelmingly dependent upon its coastal fisheries. An arbitration clause has been provided to resolve disputes arising from possible misuse.

(b) At its 40th meeting, the Committee considered two draft resolutions :

(i) A draft resolution by the United Kingdom (A/CONF.13/C.3/L.87) which was adopted by 49 votes to none, with 11 abstentions : this refers to international fishery conservation conventions.

(ii) A draft resolution submitted jointly by Canada and the United States (A/CONF.13/C.3/L.88), which was adopted by a roll-call vote of 38 to 17, with 8 abstentions : this refers to the procedure of abstention.

(c) At its 42nd meeting the Committee adopted, by 46 votes to none, with 1 abstention, a draft resolution by Portugal (A/CONF.13/C.3/L.92) concerning conservation measures in the adjacent high seas.

VI. DRAFT RESOLUTION CONCERNING THE HUMANE KILLING OF MARINE LIFE

62. A proposal by Nepal (A/CONF.13/C.3/L.6) relating to humane methods of catching and slaughtering the living creatures of the sea was discussed at the 34th and 35th meetings. The principle it contained was unanimously adopted by the Committee at the 34th meeting. A sub-committee composed of the representatives of Australia, Monaco and Nepal was set up at the same meeting to draft a resolution which was submitted and unanimously adopted at the 35th meeting (A/CONF.13/C.3/L.85).

VII. CONSIDERATION OF THE KIND OF INSTRUMENT REQUIRED TO EMBODY THE RESULTS OF THE COMMITTEE'S WORK

63. The Committee considered this question at its 39th to 42nd meetings. At its 41st meeting it decided, by 28 votes to 16, with 7 abstentions, that it should make recommendations to the Conference regarding the kind of instrument required to embody the results of its work.

64. At its 42nd meeting the Committee had before it a proposal by India (A/CONF.13/C.3/L.90) which read as follows :

"The Third Committee

"Recommends to the Conference that the articles adopted by the Committee be embodied in a convention on fishing and the conservation of the living resources of the sea."

It also had a proposal by Cuba (A/CONF.13/C.3/L.91), which read as follows :

"The Third Committee

"Recommends to the Conference that the articles on conservation of the living resources of the sea (articles 49 to 59 inclusive) adopted by the Committee be embodied in a single instrument."

65. After discussion, the representative of India added a second paragraph to his text and the representative of Cuba withdrew his proposal. The Indian proposal, as amended, was adopted by 44 votes to 4, with 6 abstentions. The text is reproduced below :

"The Third Committee

"Recommends to the Conference :

"1. That the articles adopted by the Committee be embodied in a convention on fishing and the conservation of the living resources of the sea ;

"2. That the convention shall consist of two sections, one dealing with articles 49 to 59 A inclusive, and the other dealing with article 49, paragraph 1, article 60, article 60 A, and such other new articles as may be adopted by the Conference."

VIII. FINAL CLAUSES

65. At its 42nd meeting the Committee decided, by 31 votes to 3, with 20 abstentions, no to make any recommendations concerning final clauses, but to leave the question to the Conference for decision.

Annex

I

TEXT OF THE ARTICLES CONCERNING FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE SEA AS ADOPTED BY THE THIRD COMMITTEE

Article 49

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this convention and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

2. All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 50

As employed in the present articles, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

Article 51

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt, for its own nationals, measures in that area when necessary for the purpose of the conservation of the living resources affected.

Article 52

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.

2. If States concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 53

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and, in any case, to any State specified by the State initiating the measure.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 54

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for conservation purposes in that area, even though its nationals do not carry on fishing there.

3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State, but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.

5. If the States concerned do not reach agreement with respect to conservation measures within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 55

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

(a) That there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;

(b) That the measures adopted are based on appropriate scientific findings;

(c) That such measures do not discriminate in form or in fact against foreign fishermen.

3. These measures shall remain in force pending the settlement, in accordance with the pertinent provisions of this convention, of any disagreement as to their validity.

4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.

5. The principles of geographical demarcation as defined in articles 12 and 14 shall be adopted when coasts of different States are involved.

Article 56

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State or States whose nationals are engaged in fishing there to take the necessary measures of conservation under articles 51 and 52 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.

2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 57.

Article 57

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.

2. The members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization, from amongst well-qualified persons being nationals of countries not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

3. Any State party to a proceeding under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

4. The commission shall determine its own procedure, assuring each party to the proceeding a full opportunity to be heard and to present its case, and it shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on these questions.

5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend that time limit not to exceed three months.

6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing sides regarding settlement of the dispute.

7. Decisions of the commission shall be by majority vote.

Article 58

1. The special commission shall, in disputes arising under article 55, apply the criteria listed in paragraph 2 of that article. In disputes under the remaining fishery articles the commission shall apply the following criteria, according to the issues involved in the dispute:

(a) Common to the determination of disputes arising under articles 52, 53 and 54 are the requirements:

(i) That scientific findings demonstrate the necessity of conservation measures;

(ii) That the specific measures are based on scientific findings and are practicable; and

(iii) That the measures do not discriminate against fishermen of other States.

(b) Applicable to the determination of disputes arising under article 56 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.

2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 55, the measures shall only be suspended when it is apparent to the commission on the basis of *prima facie* evidence that the need for the urgent application of such measures does not exist.

Article 59 A

1. If the factual basis of the arbitral award is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.

2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the arbitration procedure contemplated by article 57 provided that at least two years have elapsed from the original arbitral award.

Article 60

1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.

2. Fisheries conducted by means of equipment embedded in the floor of the sea in this article means those using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently, or if removed, restored each season on the same site.

Article 60 A

Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement any interested State may initiate the procedure provided for in article 57.

II

TEXT OF THE DRAFT RESOLUTIONS ADOPTED BY THE THIRD COMMITTEE

International fishery conservation conventions

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as expressed in paragraph 43 of its report,¹ as to the efficacy of international conservation organizations in furthering the conservation of the living resources of the sea ;

Believing that such organizations are valuable instruments for the co-ordination of scientific effort upon the problem of the fisheries and for the making of agreements upon conservation measures,

Recommends :

(1) That States concerned should co-operate in establishing the necessary conservation régime through the medium of such organizations covering particular areas of the high seas or species of living marine resources and conforming in other

respects with the recommendations contained in the Report of the Rome Conference.

(2) That these organizations should be used so far as practicable for the conduct of the negotiations between States envisaged under articles 52, 53, 54 and 55, for the resolution of any disagreements and for the implementation of agreed measures of conservation.

Procedure of abstention

The United Nations Conference on the Law of the Sea,

Mindful of the conclusion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955, that : "Where opportunities exist for a country or countries to develop or restore the productivity of resources, and where such development or restoration by the harvesting State or States is necessary to maintain the productivity of resources, conditions should be made favourable for such action";²

Recognizing that in special situations, where an exceptional effort and substantial restraints on fishermen are required to bring about the development of the productivity of resources or the restoration of resources reduced by natural factors or by past depletion, a special incentive will be a determining factor in encouraging States to undertake such action ;

Believing that the procedure known as abstention, as described by the delegations of Canada and the United States of America during the deliberations of this Conference, would in special situations serve the general interests of conservation by encouraging States to inaugurate and continue constructive conservation programmes through ensuring to such States the product of their efforts ;

Recognizing, however, that because the abstention procedure is a relatively new concept and because the special situations in which it would be beneficial are at present relatively limited in number, there is some question that incorporation of the concept in the articles adopted by this Conference is required ; but

Believing that, as the science of fishery conservation advances and the harvesting of the living resources of the sea becomes more efficient, opportunities for application of abstention may become more numerous ;

Decides to commend the abstention procedure to States for utilization where appropriate as an incentive to the development and restoration of the productivity of living resources of the sea.

Conservation measures in the adjacent high seas

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as reported in paragraphs 43 (a), 54 and others of the report (A/CONF.10/6), that any effective conservation management system must have the participation of all States engaged in substantial exploitation of the stock or stocks of living marine organisms which are the object of the conservation management system or having a special interest in the conservation of that stock or stocks,

Recommends to the coastal States that, in the cases where a stock or stocks of fish or other living marine resources inhabit both the fishing areas under their jurisdiction and areas of the adjacent high seas, they should co-operate with international conservation agencies as may be responsible for the development and application of conservation measures in the adjacent high seas, in the adoption and enforcement, as far as practicable, of the necessary conservation measures on fishing areas under their jurisdiction.

Humane killing of marine life

The United Nations Conference on the Law of the Sea,

Requests States to prescribe, by all means available to them, those methods for the capture and killing of marine life, especially of whales and seals, which will spare them suffering to the greatest extent possible.

¹ United Nations publication, sales No : 1955.II.B.2.

² *Ibid.*, para. 61.