United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.1/SR.16-20

Summary Records of the 16th to 20th Meetings of the First Committee

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume III (First Committee (Territorial Sea and Contiguous Zone))*

30. While on the subject of bays, he wished to point out in reply to the Netherlands representative (6th meeting) that the facts given in chapter V, section 2, of document A/CONF.13/15, concerning the delimitation of the frontier between Netherlands and Germany at the mouth of the river Ems, were perfectly correct. The problem was a special one which was at present under negotiation between the two countries.

31. Together with many other countries, the Federal Republic of Germany considered that there was a close link between the width of the territorial sea and the problem of the contiguous zone. In principle, it supported the establishment of such zones on the lines advocated by the Commission, but it considered that the coastal State's rights in that zone should be strictly defined and limited, since a vague formula conferring powers beyond the scope of article 66 might unduly restrict the principle of the freedom of the high seas.

The meeting rose at 12.5 p.m.

SIXTEENTH MEETING

Friday, 14 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. LAMANI (ALBANIA), MR. RUEGGER (SWITZERLAND), MR. MARTÍNEZ-MORENO (EL SALVADOR), MR. URIBE HOLGUÍN (COLOMBIA) AND MR. SADAKA (LEBANON)

1. Mr. LAMANI (Albania) said that a just and equitable codification of the international law of the sea would contribute to peaceful co-existence between States having different social systems and hence to the cause of peace. In the past, certain rules had been imposed by the great maritime Powers in their own interests. It was necessary now to take into consideration the changes that had occurred and to recognize the legitimate interests of other countries. The task of the present conference, which was attended by many new countries that had had no opportunity of expressing their views at The Hague Conference for the Codification of International Law in 1930, but had now successfully emerged from colonial or semi-colonial rule, would be greatly facilitated by the detailed draft prepared by the International Law Commission.

2. Albania, with over 250 miles of coastline and a growing export and import trade, was particularly interested in the law of the sea. Fisheries constituted an important source of food and were the basis of a valuable export trade. By an Act of 4 September 1952, Albania had fixed the breadth of its territorial sea at ten miles. His delegation considered reasonable the practice whereby States fixed the breadth of their territorial sea at distances varying between three and twelve miles. Some sixty countries had already done so. The contention that the three-mile limit constituted a fixed rule of international law was therefore without foundation. Article 3, paragraph 2, of the International Law Commission's draft left no room for doubt: International law allowed States to extend their territorial sea to twelve miles. His delegation therefore considered that the best international solution would be to adopt a rule permitting each State to fix the breadth of its territorial sea at a distance of between three and twelve miles in the light of its economic, security and other interests.

3. With regard to innocent passage, his view was that foreign warships had no right of passage without the prior authorization of the State to which the territorial sea belonged. There were many examples of foreign Powers using sea routes for other than peaceful ends; a foreign warship crossing the territorial sea without permission could not be said to be engaged in innocent passage.

4. In connexion with the freedom of the high seas, his delegation considered that nuclear tests were illegal. They represented a threat to the future of humanity; they polluted the oceans and interfered with the freedom of navigation and the freedom of flying over the high seas. Daily protests against those tests were issued by eminent scientists and others, and the Soviet Union had made specific proposals to abolish them. It was the duty of the Conference to call for the prohibition of nuclear tests on the high seas, a matter which was clearly within its competence.

5. Mr. RUEGGER (Switzerland) said that the present debate had been expanded to cover so wide a field that his delegation, which had originally intended to confine its remarks to certain articles in the International Law Commission's draft, thought that it too should make known its views on some of the major problems of a general character that had been raised, particularly as Switzerland, not being a member of the United Nations, had not taken part in the discussions in the Sixth Committee of the General Assembly.

6. As early as 1907, the Swiss delegate at the second Hague International Peace Conference had successfully established the thesis that his country, though landlocked, possessed economic interests in maritime trade which placed it in the front rank of the community of nations as it then existed. Now those interests had developed, and Switzerland had a merchant fleet flying its own flag on the seas. In 1957, through the port of Basle alone, 5 million tons of goods reached Switzerland from the sea and thence by the Rhine; to this should be added the heavy import and export traffic through Genoa, Marseilles and the northern ports, with the result that Switzerland, if not a maritime country, was at any rate an important user of the seas. It had therefore a very great interest in the establishment of a stable and definite code of law for the sea; in a word, in the greatest possible freedom over the widest possible spaces.

7. The Swiss Government appreciated all the more the courage of the United Nations General Assembly in deciding that the subject of the first great conference for the codification of international law should be the important but controversial one of the law of the sea inas-

much as it was that government which in 1949 had called the conference for the revision of the former Geneva conventions for the protection of war victims and the addition thereto of a new and essential convention dealing with the protection of civilians, a necessary if hazardous task. That conference had been crowned with success and its conclusions had already been ratified by the great majority of States.

8. It was essential that the present conference also should be successful. To that end, it would probably be necessary to divide up the articles of the draft into several groups, each of which could form the basis of a convention which though of limited application, would be of importance. In that way it would be easier to obtain the adoption, and above all the ratification, of a code of rules which would find general acceptance. More controversial matters could be included in instruments which, if the majority adopted them, would remain open to the signature of others in due course.

9. Switzerland, which — like other States — wished to make law the centre-piece of its foreign policy, felt that an arbitral or jurisdictional solution for disputes should be introduced for all articles in the draft. In 1920, by unanimous decision of the Swiss parliament, the Federal Government had been authorized to propose the conclusion of arbitration treaties with all other governments. A number of such treaties had subsequently been signed by the Confederation. For traditional reasons, Switzerland preferred the jurisdiction of the International Court of Justice, but would naturally accept other systems of arbitration. He hoped however that whatever system was chosen would be watertight and enforceable.

10. He suggested that the rules laid down in the resolution adopted at Amsterdam in September 1957 by the Institute of International Law concerning the distinction between the territorial sea and inland waters might well be included in the diplomatic instruments currently under discussion.

11. The Swiss delegation would indicate in due course its views on points of detail in the appropriate committees of the Conference, but as other delegations had already referred to the policy they were following in the other committees he would at the present stage say that in the Second Committee, his delegation intended to support in particular the proposal of the International Law Commission that there should be a genuine link between the State and a ship flying its flag, and to draw attention to Swiss maritime law, which contained very strict rules on the matter.

12. With regard to the conservation of the resources of the sea — a question falling within the competence of the Third Committee — Switzerland, while not directly interested in sea fishing, fully appreciated its importance, and in this connexion was sympathetic to the appeals addressed to the Conference with a view to the restriction of the slaughter of sea mammals. What was already protected by the laws of the more advanced countries might well form the subject of wider international agreement.

13. In the Fourth Committee, the Swiss delegation would vote for any proposal aiming at the establishment of a watertight system for the compulsory settlement of all disputes arising out of the application or interpretation of the articles adopted. With regard to the continental shelf, it was desirable that the decisions reached should not restrict the fundamental principle of freedom of navigation.

14. Turning lastly to the Fifth Committee and the question of free access to the sea for land-locked countries, he stated that the Swiss delegation would act in conformity with the views it had expressed during the preliminary Conference of land-locked countries held at Geneva. Realizing that general rules could not be drawn up without the agreement of coastal and transit States, the Swiss delegation hoped that principles in accordance with the spirit of those expressed in that preliminary meeting would be enshrined in the work of the present Conference for the good of all.

15. It was true that in the course of its development international law had been subject, and would always be subject, to the influence of the main economic trends; and law, in the course of its evolution, could never be separated from the social substratum which it was intended to protect. But the Conference should avoid falling into an error that was not exempt from danger, that of confusing existing law, which the Conference had been called to codify, with what many delegations legitimately regarded as the trend of law in the future. The International Law Commission had endeavoured not to propose any new rules except on questions arising out of new fields, and even then had taken great care to express its draft laws in such a manner as to be in accordance with the spirit of the existing law. The preamble at the beginning of the instruments incorporated in the final acts of the International Peace Conferences held at The Hague stated that the rules set down were the codification of existing practice. Similarly, the Conference should remember that its purpose was to codify existing rules; it should not aim at producing formulae which might give expression to individual desiderata, but which would not secure general agreement.

16. The representatives of all the great Powers had proclaimed their attachment to the principle of the freedom of the seas. He hoped that the same unanimity would prevail in ensuring that the free space of the seas should be as little restricted as possible. To claim sovereign rights might impose serious limitations on the rights of all and interfere with safety at sea and in the air.

17. In short, it was important to distinguish between the law as objectively stated — for example, by a judge — and the protection of interests which might appear to be legitimate. He had been greatly interested by the suggestion of the Spanish delegate (11th meeting) for the compilation of a list of interests which appeared to require legitimate protection.

18. The Swiss delegation could not share the opinion of those who maintained that the existing law of the sea had been created by a few maritime Powers for their own benefit. On the contrary, Swiss prosperity had waxed and grown under the régime of the traditional law of the sea. Care should be taken not to undermine the authority of that law by permitting breaches in it which would inevitably be followed by others. The protection of the special and legitimate interests of coastal States could perhaps be assured and recognized without any extension of national sovereignty and while eschewing all unilateral action.

19. Mr. MARTINEZ-MORENO (El Salvador) said that powerful new currents arising out of changed economic conditions were threatening to sweep aside traditional principles until recently considered sacrosanct. The principles in question were in fact those asserted by the great maritime Powers. The most important of those principles, that of the freedom of the seas, had given rise to many abuses.

20. The conflict of interests between the coastal States and the maritime Powers would no doubt produce valid rules of international law which, while respecting the freedom of navigation, the freedom of fishing, the freedom to lay submarine cables and pipe-lines and the freedom to fly over the high seas, would nevertheless recognize the rights of the coastal State.

21. His delegation considered that the rights of the coastal State should take precedence. His country had a very limited mainland, was densely populated and malnutrition was prevalent. The resources of the sea were therefore of vital importance to it, and it had accordingly joined the movement in favour of the extension of the territorial sea. Article 7 of its constitution fixed the territorial sea at 200 miles, with the explicit proviso that the freedom of the seas was not prejudiced thereby. In view of that provision, El Salvador could not agree to the articles proposed for the territorial sea. Representations had been made to his government requesting it to alter its stand in regard to the breadth of the territorial sea. Since, however, that breadth had been laid down in a clause of the Constitution, his government was not in a position to consider any modification.

22. Although there were still some countries which adhered to the three-mile rule, the majority claimed a territorial sea of a greater breadth. At any event, most States claimed certain rights in a much wider sea belt. Professor François, special rapporteur of the International Law Commission, in his second report on the high seas (A/C.N4/42), had expressed the view that the coastal State should have the right to adopt conservation measures and measures against pollution in a belt 200 miles wide. The countries of America had played an important part in the movement for extending the jurisdiction of the coastal State. In that connexion, he referred to resolution LXXXIV of the Tenth Inter-American Conference held at Caracas in 1954, and to the " Principles of Mexico on the juridical régime of the sea " which recognized that the distance of three miles as the limit of the territorial waters was insufficient and did not constitute a general rule of international law and that the enlargement of the zone of the sea traditionally called " territorial waters " was therefore justifiable. The validity of those principles had in no way been diminished by the inability of the Inter-American Specialized Conference held at Ciudad Trujillo in 1956 to reach a unanimous decision concerning the breadth of the territorial sea.

23. El Salvador was one of the States to which the Gulf of Fonseca belonged and, for that reason, was particularly interested in the question of historic bays. His delegation therefore supported the Panamanian proposal (3rd meeting) for the setting up of a special subcommittee to study the question.

24. In conclusion, he stressed that his country was more concerned with the enforcement than with the codification of international law. El Salvador preferred to have a wider territorial sea and to respect the rights of others in it. That situation was better than one in which a narrow territorial sea was combined with an abuse of the freedom of the high seas.

25. Mr. URIBE HOLGUÍN (Colombia) said that, by an Act of 31 January 1923, Colombia had established a territorial sea of twelve miles. A Customs Act of 19 June 1931 made provision for customs inspection and control within a sea belt 20 kilometres broad. Colombia therefore considered that the breadth of the territorial sea should be fixed at twelve miles.

26. That view was based on a number of arguments. Firstly, the International Law Commission itself had implicitly recognized in article 3, paragraph 2, that international law permitted an extension of the territorial sea up to twelve miles.

Secondly, a distance of twelve miles represented a compromise between the traditional three-mile rule and the claims of up to 200 miles advanced by certain Latin American States as well as those of other States to the epicontinental sea.

Thirdly, it was beyond dispute that the three-mile rule could no longer be regarded as traditional. The Norwegian and Swedish delegations, for instance, had pointed out at The Hague Conference of 1930 that the four-mile limit was much older.

Fourthly, many distinguished writers, among them Professor Gidel, had repudiated the doctrine that international law prescribed a three-mile limit.

Lastly, although international practice was not uniform, there was no doubt that the majority of States did not accept the three-mile rule. Even in 1930, its adherents had represented a minority.

27. Since the constitution of Colombia did not contain any provisions concerning the territorial sea, his country was attending the Conference with an open mind and was prepared to accept any proposals which might reconcile the different points of view expressed. The present conference, being the first United Nations conference on the codification of international law, must not be allowed to fail. The general debate had revealed profound differences of opinion, and a spirit of understanding was necessary in order that formulas might be adopted which would attract general support.

28. His delegation believed that the key to the problem was to dissociate the question of the breadth of the territorial sea from that of the rights of the coastal State in the matter of fisheries and the conservation of the living resources of the sea. The breadth of the territorial sea was closely connected with matters of security and national and continental defence; it was bound up with the exercise of state sovereignty. At the same time, certain States had a vital interest in the utilization of the resources of the sea, which were important for the welfare, and in some cases the actual subsistence, of their populations. Accordingly, international law recognized the coastal State's right to safeguard the living resources of the sea. In his delegation's opinion, the only formula which could reconcile the different points of view was that of the contiguous zone. That notion had been accepted for purposes of the enforcement of

customs, fiscal and sanitary regulations; it was all the more justified with respect to the conservation of the living resources of the sea.

29. His delegation could not support the Indian proposal (7th meeting) to recognize the right of States to fix the breadth of their territorial sea within certain minimum and maximum limits. In theory, the right of a State to fix a territorial sea of less than three miles could not be denied; in practice, all States would claim the maximum territorial sea if the Indian proposal were accepted.

30. The Colombian delegation was not satisfied with the text of articles 12 and 14 of the International Law Commission's draft. The latter treated the principle of equidistance as subsidiary, and gave first place to agreement between States. In fact, the principle of equidistance was the fundamental principle; it was, of course, open to States to depart from it if special circumstances justified it. His delegation would therefore propose certain amendments to those two articles. [1]

31. Lastly, the Colombian delegation considered it desirable to include in the draft convention a general article on compulsory jurisdiction or arbitration. Its drafting would be similar to the present article 73. The disputes mentioned in article 57 would be excluded from its scope.

32. Mr. SADAKA (Lebanon) said that those who advocated changes in existing international law had been accused of trying to bring about a revolutionary change. It was worth recalling in that connexion the statement by the eminent French jurist, Mr. François Gény, that the most decisive steps in the progress of civilisation and law had been achieved only at the price of revolutions. The advocates of change had delved into history in order to show that certain rules of international law had only been established as an instrument of domination or as a means of enrichment. It was in the general interest to avoid polemics of that nature. The Conference should limit its discussions to the question of determining whether, at the present time and in the immediate future, a given rule was adequate and, if that was not the case, whether it was possible to formulate a better rule and ensure its observance. Revolutionary changes in international law could only be brought about by war. The peaceful atmosphere of a conference must necessarily produce its results by way of compromise. The States possessing the highest shipping tonnage could not, of course, dictate to the others but there would be little use in voting a majority convention if the maritime Powers were to refuse to approve and apply it.

33. Professor Gidel had stated that the freedom of the seas was not sacrosanct; it was subject to such limitations as were necessary for the protection of legitimate interests. Neither those who adhered to the three-mile rule nor those who advocated a territorial sea of 200 miles were acting realistically. Neither view was likely to prevail in the present state of public opinion. The only practical solution was a plural one with regard both to time and to space. It was necessary to recognize the right of a State to modify the extent of its territorial sea in time of war. In addition, States had to be allowed to fix the breadth of their territorial sea between a minimum of three miles and a maximum to be agreed — one, however, which should not in any case exceed ten or twelve miles.

34. It had been stated that the Conference should concentrate on the purely legal aspects of the law of the sea. That suggestion was not in keeping with resolution 1105 (XI) of the General Assembly which required that the Conference should take into consideration not only legal points but the technical, biological, economic and political aspects as well. So long as public opinion everywhere failed to accept the concept of the solidarity and interdependence of all peoples, international law was unfortunately doomed to remain chiefly an instrument of national policy. It was significant that article 1 of the International Law Commission's draft began with an assertion of the sovereignty of the State. If the intention had been to set up a world legal order, provision would have been made for collective conservation measures, for the internationalization of the continental shelf and for a general system for the settlement of maritime disputes. It was therefore not surprising that the codification which the Conference was undertaking amounted in effect to a digest of national legal provisions. It would represent the highest common factor of national trends rather than a self-contained body of rules.

35. It had been pointed out that on the whole the draft articles gave precedence to the rights of the coastal State over those of the international community. That was inevitable because the international community did not possess the necessary organs to enable it to assume the appropriate responsibilities.

36. Lastly, the Conference must not be expected to achieve the impossible. Only a realistic approach would enable progress to be made.

The meeting rose at 5.30 p.m.

SEVENTEENTH MEETING

Monday, 17 March 1958, at 10.30 a.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. BHUTTO (PAKISTAN), MR. MUÛLS (BELGIUM), MR. DREW (CANADA), MR. CAABASI (LIBYA) AND MR. NGUYEN-QUOC-DINH (REPUBLIC OF VIET-NAM)

1. Mr. BHUTTO (Pakistan) said that, if the Conference wished to succeed, it should concern itself strictly with the issues dealt with in the International Law Commission's report (A/3159). The process of codification used in national law could not without qualification be applied to international law. Only well

[1] Subsequently submitted as documents A/CONF.13/C.1/L.120 and A/CONF.13/C.1/L.127.

recognized and settled rules of law were capable of being codified. New laws in their embryonic and formative stages could not be codified, but had to mature before they could be embodied in a code.

2. Pakistan was deeply concerned with the law of the sea, since both East and West Pakistan had long coastlines. It was perhaps because the two parts of Pakistan were heavily dependent on maritime communication between them that the freedom of the high seas had a far greater significance for his country than for many others. Pakistan's fishing industry was developing rapidly and was of considerable economic importance, from the point of view of both domestic consumption and export. The wealth of the territorial sea and continental shelf of Pakistan and their subsoil were being explored by modern technological means.

3. It was the Conference's primary duty to reconcile the conflict which existed between the doctrine of the freedom of the high seas and the right of the coastal State to a territorial sea. It was indispensable for the security and socio-economic well-being of the coastal State that it should exercise sovereign rights over its territorial sea. In conformity with the principle of the freedom of the high seas, it was no less indispensable to the international community that the high seas should be open to all nations without discrimination and without let or hindrance.

4. The freedom of the high seas had been the first of President Woodrow Wilson's Fourteen Points, and had been re-emphasized in the Atlantic Charter. However, that freedom was not absolute in form or content. Ships on the high seas were, for example, subject to the jurisdiction of the flag State, and piracy and the slave trade were not tolerated on the high seas. It had been contended in recent times that the doctrine of the contiguous zone and the alleged right to explore the continental shelf had made further inroads on the freedom of the high seas.

5. Turning to the question of the breadth of the territorial sea, he said that the defenders of the three-mile limit contended that it was the only recognized limit permissible under international law and that article 3 of the International Law Commission's draft articles endorsed that view. Article 38, paragraph 1 (*b*), of the Statute of the International Court of Justice had been quoted in support of the inference drawn from the Commission's draft article 3 and the commentary thereon that as long as certain territorial claims were not based on a generally recognized rule of international law they could not be valid *erga omnes*. On the other hand, his delegation had carefully considered all the arguments advanced against the three-mile limit, and noted that those States which defended the twelve-mile limit rested their claim chiefly on the ground that that limit was the recognized norm of international law as set out in article 3. Article 3 was therefore subject to conflicting interpretations.

6. His delegation also noted that those States which regarded the three-mile limit as a relic of the past denounced that rule for the following reasons: first, they had been under colonial domination when that rule had been formulated; secondly, the three-mile rule should be abandoned for security reasons; thirdly, economic needs demanded an extension of the territorial sea in the interest of the conservation of the living resources of the sea; and lastly, regional needs and circumstances required such action.

7. In his opinion, a country upon becoming an independent State could not unilaterally denounce certain rules imposed on it before it became a member of the international community.

8. The three-mile rule could not be condemned and discarded on the ground that its usefulness for security purposes had disappeared. Even although there had at one time been a vague historical connexion between the three-mile limit and the range of cannon shot, that connexion had long been lost. In the age of intercontinental ballistic missiles, even an extension to 200 miles would be hopelessly inadequate for the purposes of security. Referring to the statement of the United States representative in the Sixth Committee of the General Assembly,[1] he emphasized that ancient laws were not always redundant merely because they were old. As the United States representative had said, the onus of proving their redundance rested on those who challenged their validity.

9. Extensions of the territorial sea had been defended on economic grounds. But, he said, if extensions of the territorial sea were claimed for the purpose of exclusive exploration and exploitation, then the aim of conservation was defeated. The high seas were free to all, and the newly independent States should have the same faith as the United States of America had had when it had gained its independence and subscribed to the freedom of the high seas although unable at that time to take full advantage of that freedom or to compete with the great maritime Powers.

10. It had been contended in certain quarters that regional conditions necessitated an extension of the breadth of the territorial sea. If that view were to prevail, then that uniformity which should be the object of all law would never materialize.

11. The objections to the unlimited extension of the territorial sea applied equally to claims to a breadth of twelve miles and to a breadth between a minimum of three and a maximum of twelve miles. The true meaning of article 3 became clear from a reading of the report of the International Law Commission covering the work of its seventh session,[2] which indicated that the three-mile rule was implicitly recognized as the only binding rule of international law, as the only rule valid *erga omnes*. If article 3 was interpreted as permitting any breadth between a minimum of three miles and a maximum of twelve, the result would be uncertainty and confusion. The law of the sea would undergo a drastic change with each change in the limits of the territorial waters.

12. In the Pakistan delegation's opinion, article 3 was a bare statement of fact and it was for the Conference to determine the legal position according to the rules of customary international law. Pakistan recognized the three-mile limit under that law, considering that those States which wished to enlarge their territorial seas to the utmost extent were in fact trespassing on, and even

[1] See *Official Records of the General Assembly, Eleventh Session, Sixth Commission*, 498th meeting, para. 20.

[2] *Ibid., Tenth Session, Supplement No. 9* (A/2934).

usurping, the rights of the international community. By contrast, the States exercising sovereignty over the minimum breadth of the territorial sea were very properly subordinating particular interests to more general international interests. In his delegation's opinion, the three-mile limit was the only valid limit legally recognizable by the community of nations.

13. Turning to the question of the contiguous zone, he said that his delegation supported the recommendation of the International Law Commission that a zone of twelve miles should be accepted ; at the same time, however, his delegation considered that the coastal State should be empowered to make regulations governing fishing in that zone. He added that his delegation would support the Panamanian representative's proposal (3rd meeting) that a sub-committee be set up to examine the question of historic bays, provided that proposal was supported by the majority of the Latin American States.

14. Mr. MUÛLS (Belgium) said that Belgium had for over fifty years played a part in the international unification of the rules of private maritime law, a task of codification which had led to the adoption of the Brussels Conventions. Belgium was equally interested in the task of the present conference, which concerned the codification of the international law of the sea.

15. His delegation was convinced that all the questions before the Conference were matters of international law which could not be left to the unilateral decision of States. The Conference had to keep that fact in mind if it wanted to succeed. His delegation hoped that the Conference would concern itself primarily with the traditional rules which had hitherto governed the seas, navigation and fisheries.

16. The Belgian Government was firmly attached, both in principle and in practice, to the freedom of the seas in its widest interpretation. It considered, therefore, that the sovereignty of the coastal State could only be exercised in a narrow belt of territorial sea. Belgium had always observed the three-mile rule and saw no reason to abandon it. The conservation of the living resources of the sea did not require the extension of the sovereign powers of the coastal State beyond the limit of three miles; that conservation could be ensured by other means. The coastal State's right to exercise supervision for certain specific purposes in a narrow contiguous zone beyond that limit could be recognized, provided that it did not prejudice the freedom of the seas in the matter of navigation and fisheries.

17. In accordance with the same principles, a system of straight baselines which could result in excessive inroads into the high seas, was not acceptable to Belgium. Equally, any system which would extend the territoriality of bays beyond the strict limits laid down by the International Law Commission was unacceptable to his government. In all the cases he had mentioned, nothing could justify the appropriation of certain sea areas to the detriment of those who had been traditionally using them in accordance with international law.

18. The Belgian delegation supported the suggestion made by the representative of the United Kingdom, for which the Greek delegation had likewise expressed support, to the effect that in adopting any text, the Conference should avoid any contradiction with the provisions of pre-existing instruments. Those instruments included the Brussels Conventions to which he had referred.

19. Lastly, the right of the coastal State to exercise sovereignty over the continental shelf for the purpose of exploring and exploiting the shelf's natural resources had to be subordinated to the fundamental rights of the international community with regard to the freedom of the seas and the protection of its collective patrimony.

20. Mr. DREW (Canada) said that, although the Conference was not bound to accept every recommendation of the International Law Commission without challenge, and some subjects had been left open by the Commission for decision by the Conference, he wished respectfully to suggest that where the Commission had reached a definite decision and had made a clear and positive recommendation, the latter should be accepted unless there were clear and compelling reasons to the contrary.

21. It was of the utmost importance to Canada that there should be clearly defined laws of the sea universally applied throughout the world. Canada was bounded by three oceans and had an immense coast-line. Old and historic fishing areas lay off Canada's coasts which had been fished for centuries by nationals of many countries. Its own fishing industry was a vital part of Canada's economy. Furthermore, Canada was directly interested in everything which related to the navigation of the seas and the freedom of the sea, for a great deal of its trade was sea-borne and, in addition, Canada's commercial airlines were rapidly extending their services to many parts of the world.

22. His delegation hoped that the Conference would reach agreement on every important question before it. He wished to suggest, for the sake of obtaining a broad basis of agreement early in the proceedings, that the articles known to be contentious should be deferred so that the various committees could quickly reach agreement upon the less controversial subjects. The spirit of friendly co-operation which would be generated in that way might well make it easier for the Conference to deal with more difficult problems later. There would also be opportunities for all, in the meantime, to discuss privately the various possible solutions of those particular questions.

23. His government had the utmost sympathy for the aspirations of the landlocked States and would do everything in its power to secure recognition of their right to use the high seas and to enable them to carry their trade with other nations in their own ships.

24. He then referred to the Canadian proposal, which had been submitted to the Sixth Committee of the General Assembly on 7 December 1956,[3] and was repeated in the Canadian Government's comments dated 10 September 1957 (A/CONF.13/5, sect. 2), and which had received the general approval of all parties in the Canadian Parliament. In that proposal, Canada had sought exclusive fishing rights within a contiguous zone

[3] *Ibid., Eleventh Session, Sixth Committee,* 493rd meeting, para. 57.

of twelve miles from the baselines as defined in the International Law Commission's articles 4 and 5, and had asked that such rights be established as law for all States. His government believed that article 66 should be supplemented by a clause adding the control of fishing to the subjects already covered by paragraph 1.

25. In seeking exclusive national jurisdiction over fishing within a twelve-mile limit from the baseline, Canada was not disregarding the arguments which had been put forward in favour of the retention of a three-mile limit applicable to fishing as well as to the territorial sea. He had been impressed by the statements made by the United Kingdom representative and other representatives concerning the effect of such an extension of national jurisdiction over fishing upon their own fishing in distant waters. He hoped that satisfactory alternative arrangements could be made by agreement between the States corcerned to meet the particular requirements of the nations which had expressed such concern. Ever since 1911, for the protection of its shore fisheries, Canada had enforced a ban on fishing by its own trawlers within a twelve-mile limit. It was only natural that his government should seek an international law which would impose the same restriction upon trawlers of other countries fishing in the waters of Canada's coasts.

26. Many other countries had already adopted the same contiguous zone for other purposes. It might be debatable whether a twelve-mile zone was required for most conservation plans. However, it seemed reasonable that a country should have some prior claim upon the stocks of fish heavily concentrated in an area where the local population was dependent on them for a livelihood. The International Law Commission had recognized the twelve-mile limit to the extent of declaring that neither contiguous zones nor territorial seas should be extended beyond that distance.

27. His delegation understood the natural desire of less developed countries, which depended so greatly upon the food resources of the sea, to exercise the widest possible control over the waters which supplied their food, particularly when they lacked the financial resources to equip and maintain long-range fishing fleets. The representatives of certain Latin American and other countries had explained their own particular fishing problems and the reasons why they sought control over contiguous zones much wider than that mentioned in the International Law Commission's report. However, his delegation was inclined to think that in view of the Commission's recommendations it was most unlikely that there could be general agreement upon anything more than a twelve-mile contiguous zone. He therefore urged those wishing to extend their zone of control to accept the twelve-mile zone as the widest belt upon which there was likely to be agreement; their acceptance would not, of course, prejudice arrangements relating to conservation and other similar special matters.

28. The question of the territorial sea was the most contentious of the questions before the Conference. At first glance it might seem that if it was desirable to extend the area of control over fishing, the simplest way would be to extend the territorial sea to whatever distance was required. He felt, however, that very unhappy results could follow the adoption of that apparently simple rule of thumb. As the Canadian representative had said at the 493rd meeting of the Sixth Committee, on 7 December 1956, the general extension of the breadth of the territorial sea could have important consequences for the freedom of sea and air navigation. The same point had been raised in the Canadian Government's comments dated 10 September 1957. Those consequences could impose very serious limitations on the freedom of the sea as well as on the flight of commercial aircraft. He hoped that in the discussions on article 3 there would be no uncertainty about the fact that exclusive fishing rights, as well as those rights mentioned in article 66, could be exercised up to the twelve-mile limit whatever the measure of the territorial sea might be below that figure.

29. Referring to the various arguments he had heard during the general debate, he said he could not agree with the suggestion that the territorial sea should be extended to the same width as the contiguous zone established for the control of fishing. Nor was it a tenable argument to say that the territorial sea should be extended because the range of land-based weapons now exceeded the three miles which had been accepted by many as the range of gun-shot at the time when this measurement was adopted. In the days of guided missiles and jet aircraft it would be necessary to extend the territorial sea for thousands of miles if that principle were to be applied.

30. The principle of the freedom of the seas had prevailed for many centuries. The extension of the full freedom of the high seas to within three miles of a coastal State had been the ultimate development of that principle. It would be a tragedy if the Conference now turned backwards after that steady march of progress. He could not agree with the suggestion that certain powerful nations were acting for selfish motives in so strenuously defending the three-mile rule, and wished to point out that Canada would be as conscious as any other country of an attempt to limit the rights of the less powerful nations for the particular advantage of any one nation or group of nations.

31. Referring to the suggestion that every State should be free to determine unilaterally the breadth of its territorial sea between a minimum of three miles and a maximum of twelve miles, he noted that nothing had been said about the distinction between a contiguous zone, covering fishing and other important matters, and the measurement of the territorial sea, which carried with it entirely different consequences. He hoped that all representatives would consider carefully the distinction between full control over fishing in a contiguous zone and the idea of making the territorial sea subject to some variable rule such as had been suggested. Delegates should give very careful consideration to the consequences of adopting that proposal. The acceptance of the doctrine that any State might at any time, according to its own whim, establish a territorial sea extending from three to twelve miles from the baseline along its coast would result in nothing short of legalized anarchy.

32. He earnestly hoped that, after careful consideration, the great majority of representatives would reach agreement on exact, precise figures for the measurement of

the contiguous zone and the territorial sea. He also hoped that representatives would find merit in the Canadian proposal concerning a twelve-mile contiguous zone in which there would be complete national control over fishing and freedom of the seas up to three miles from the accepted baselines.

33. Mr. CAABASI (Libya) said that neither the conservative group of States, consisting of the major maritime Powers which adhered to the three-mile rule, nor the progressive group which wanted to extend the breadth of the territorial sea, could deny that, as the International Law Commission had pointed out in article 3 of its draft, international practice was not uniform with regard to the delimitation of the territorial sea.

34. The question of the utilization and conservation of natural resources was one of the most urgent problems of international law, particularly in view of the technical progress made in the exploitation of those resources. Libya had a long seacoast, its fisheries were of great importance as a source of food; fish and sponges constituted, in addition, valuable Libyan exports. His country had therefore a great interest in that question.

35. Under the federal law of Libya, the breadth of the territorial sea was twelve miles. Libya was constantly faced with the problem of foreign fishermen who were wrongfully exploiting the resources of its territorial sea. His delegation therefore favoured a rule of international law which recognized the right of the coastal State to extend its territorial sea to a distance not exceeding twelve miles. That view was supported by the statement, made in paragraph 5 of the commentary on article 3, that " where the delimitation of the territorial sea was justified by the real needs of the coastal State, the breadth of the territorial sea was in conformity with international law ".

36. The real clash of views was between the advocates of a three-mile belt of territorial sea coupled with an additional contiguous zone of nine miles, and the advocates of a twelve-mile territorial sea without any contiguous zone. The first group had pointed out that an extension of the territorial sea beyond three miles would restrict the extent of the air space free for aerial navigation. To meet that objection, the Libyan delegation suggested that, notwithstanding the extension of the territorial sea itself to twelve miles, the coastal State's sovereignty over the air space should be limited to a distance of three miles from the coast.

37. Lastly, it was not necessary that the breadth of the territorial sea should be the same for all States, for the geographical characteristics and the needs of the various States were not uniform.

38. Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam) said his country was particularly interested in the codification of the international law of the sea. Its 1,500 miles of coast-line, its geographical position and numerous harbours made it an active crossroads of international trade. Its fisheries made an important contribution to the feeding of its population, whose diet, like that of many other Asian peoples, was composed almost exclusively of fish and rice. His government was using, as a source in the codification of its national rules of maritime law, the provisions of the valuable draft prepared by the International Law Commission.

39. It was unfortunate that the discussions in the Conference were taking the shape of a debate on the three-mile rule. A similar turn in its discussions had been the cause of the failure of The Hague Conference of 1930, and it was desirable that the present conference should avoid the attempt to solve from the outset the question of the breadth of the territorial sea.

40. The Netherlands delegation, supported by the French delegation (6th meeting), had proposed that the juridical status of the territorial sea should be dealt with before any decision was taken on its breadth. His delegation supported that proposal, on condition that the juridical status of the contiguous zone was considered at the same time as that of the territorial sea. If the problems connected with both those adjacent maritime belts were solved, the subsequent consideration of the problem of the breadth of the territorial sea would be facilitated.

41. It was necessary to reconsider the existing rules concerning both the territorial sea and the contiguous zone. In the past, a sharp distinction had been drawn between the territorial sea, which was subject to the exclusive jurisdiction of the coastal State, and the contiguous zone, in which that State exercised its powers concurrently with other States. It was that sharp distinction, established by existing law, which rendered agreement difficult. It had led certain States to demand a strict limitation of the breadth of the territorial sea in the name of the freedom of the sea, and certain other States to claim an extended breadth for the territorial sea. Professor Georges Scelle had pointed out that the sea was naturally a homogeneous whole, a fact which implied the need for areas of successively decreasing jurisdiction rather than areas having contrasting régimes.

42. In the light of that remark, the Conference should endeavour to reduce the contrast between the territorial sea and the contiguous zone so as to transform that zone into a genuine intermediate zone between the territorial sea and the high seas. Article 66 of the International Law Commission's draft was insufficient in that respect because it did not provide for an intermediate régime. In particular, it made no reference to the rights of the coastal State in the matter of fisheries. And those rights, in the opinion of his delegation, included not only the right to enact conservation measures but also exclusive fishing rights in that zone. The coastal waters of Viet-Nam were shallow and hence particularly rich in fish, a vitally important food, and the whole coastline was dotted with fishing villages. It was therefore important for Viet-Nam to reserve the coastal fisheries for its nationals.

43. It had been argued that the coastal State's claim to exclusive fishing rights constituted interference with the freedom of the seas. In fact, freedom of navigation — with its modern corollary, freedom of air navigation — constituted the essence of the freedom of the seas. Initially, that freedom had been asserted as a means of enabling all States to carry their trade on the high seas. The freedom to fish had not been claimed until later, as a consequence, and not as the basis, of the freedom of the seas. In any event, a limitation of

the freedom of aliens to fish in certain waters would not in any way affect the freedom of navigation. True freedom was not possible without equality. The fishermen of Viet-Nam, in spite of the technical assistance provided by their government, would for a very long time remain in a position of inequality when compared to fishing fleets using the most modern technical equipment.

44. It was therefore just and proper that the Conference, by a general rule or by a rule with limited application, should recognize the coastal State's exclusive fishing rights in a sufficiently large part of the contiguous zone. That course would greatly facilitate the discussions regarding the breadth of the territorial sea.

45. It had been proposed that the Conference should recognize the coastal State's right to fix its territorial sea between a minimum breadth of three miles and a maximum breadth of twelve miles; his delegation might accept that formula for want of a better one, but would only do so as a last resort. The International Law Commission, in article 3, paragraphs 2 and 3, had merely recorded a disagreement which existed in fact; it was the duty of the Conference to fill the gap which the Commission had not been able to fill. If the Conference were to repeat the Commission's statement of fact, it would be turning a record of dissent into a rule of law.

46. It was true that the three-mile rule did not constitute a universally accepted rule of international law. But it was equally true that no other distance could be regarded as sanctioned by international custom, within the meaning of article 38, paragraph 1 (*b*), of the Statute of the International Court of Justice. On the contrary, if the votes of those States which, at The Hague Conference of 1930, had unconditionally supported the three-mile rule, were added to those of the States which had accepted the three-mile limit with a contiguous zone, it would be seen that a large majority of States had then supported the traditional rule. His delegation believed that if the coastal State's right to reserve exclusive fishing rights for its nationals in the contiguous zone was recognized the three-mile rule could be accepted by the great majority of the States represented at the present conference. The rule could thus gain recognition as an international custom, evidencing a general practice accepted as law in preference to any other practice in accordance with the terms of article 38, para. 1 (*b*) of the Statute of the International Court of Justice.

47. The adoption of a uniform breadth for the territorial sea would alone bring the existing chaos to an end. His country, eager like other new States to observe international law, was somewhat disappointed with the uncertainty of the law and was therefore extremely desirous of contributing to the success of the Conference. If the Conference were to fail, the great loser would be not so much the three-mile rule as the international community itself.

The meeting rose at 1.5 p.m.

EIGHTEENTH MEETING

Monday, 17 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. STABELL (NORWAY), MR. MORRISSEY (IRELAND), MR. TREJOS (COSTA RICA), MR. BECKMAN (FINLAND), MR. VELILLA (PARAGUAY) AND MR. GRIGOROV (BULGARIA)

1. Mr. STABELL (Norway) urged that in view of the wide divergency of views on the crucial problems on which the Conference was engaged, it was essential at the outset to approach those problems in a spirit of prudent moderation and avoid adopting anything in the nature of a rigid or immutable position. The general debate should give some idea of the limits within which there was a possibility of reaching general agreement, and so enable delegations to adjust their original views to the extent that their vital interests permitted. His delegation was profoundly convinced of the urgent need to do everything possible to facilitate a successful conclusion. Few countries had as much at stake as Norway, which, with its meagre natural resources, depended greatly on its manifold and far-flung maritime activities.

2. Though his delegation did not agree fully with everything in the International Law Commission's excellent draft, it believed that that document with its admirably marshalled facts and considerations would be of great assistance even in those matters in which Norway dissented from the Commission's recommendations. Economic interests in Norway itself did not always coincide where the crucial issue of the breadth of the territorial sea was concerned, so that his government, in formulating its point of view and its initial position, had already had occasion to weigh against each other the same kind of conflicting interests which the Conference would have to reconcile in order to find a just solution. In considering how that balance should be struck, he wished to put forward some general considerations.

3. He wholly agreed with the United Kingdom representative that the proper test of any proposal must be whether it would be likely to increase or diminish the possibilities of friction and misunderstanding. Unfortunately, the Commission had failed to submit a definite proposal concerning the breadth of the territorial sea, though it had helped considerably by stating that in its opinion international law did not permit extensions beyond twelve miles. The Norwegian Government would strongly oppose any extension beyond that breadth. He could not agree with the construction placed by some speakers on the Commission's statement in article 3 — namely, that every country was at liberty under existing international law to extend its territorial sea to twelve miles. The Commission's statement did not lend itself to interpretation *a contrario*. His government believed that a just and reasonable reconciliation of the con-

flicting interests would lead to the adoption of a far narrower belt.

4. Having stated the upper limit of the range which seemed to embrace those alternatives having any chance of obtaining general acceptance, he would also like to say a few words about its lower limit. In his opinion, it would hardly be realistic to hope for general agreement on a uniform breadth which would deprive any country of stretches of sea over which it at present enjoyed long-established and uncontested jurisdiction. He emphasized that point because the Norwegian territorial sea extended to a distance of four miles, whereas a number of governments had contended, somewhat dogmatically, that the limit under existing international law was and should remain three miles, and that breadths in excess of that figure were nothing but unilateral extensions involving departures from an existing rule and having no validity for countries which did not see fit to recognize them. His government considered that the Norwegian four-mile limit was securely founded on immemorial usage coupled with general recognition, and there were probably many other instances of a territorial sea exceeding three miles and possessing the same status in international law.

5. There was another aspect of the delimitation of the marginal seas to which his government attached considerable importance. It was generally recognized that a coastal State must be allowed to extend its jurisdiction beyond the limits of its territorial sea for certain limited purposes, and in article 66 of its draft, the Commission proposed to sanction that usage to a maximum distance of twelve miles. The Commission had made an analogous proposal in articles 67 to 73, the underlying principle in both cases obviously being that the rights and jurisdiction of the coastal State in the marginal seas should not necessarily be geographically delimited in the same way in all relationships but should be determined by striking a reasonable balance between its various needs and those of the world community. His delegation felt that it would be useful to consider giving that functional approach a wider application than was envisaged by the Commission.

6. Under the existing rules of international law, the outer boundary of the territorial sea delimited a belt within which the coastal State was entitled to exercise a certain control and jurisdiction and where it was at liberty to reserve to its own nationals all rights in regard to fisheries. It appeared that the claims for extensions were almost exclusively inspired by fishery considerations. Under those circumstances, it might be worth considering whether the functional splitting-up of the marginal zone might not reasonably be carried a little further, enabling the coastal States to extend their jurisdiction for fishery purposes somewhat beyond the general limit of the territorial sea. The width of that special extension and the privileges it would entail would of course be matters for detailed and careful consideration. The advantage of such an approach would be that it avoided any curtailment of the essential freedom of the high seas unwarranted by the interests of the coastal State.

7. He had listened with great interest to the proposal put forward during the preceding meeting by the Canadian representative, which had made it clear to him that the Canadian Government was thinking along roughly the same lines as his own in that respect. He would like to study the proposal a little more closely, but he could state forthwith that the Norwegian delegation favoured a rule permitting the establishment of a fishery zone extending to a distance of 12 miles from the coast.

8. There seemed to be an inexplicable inconsistency in the formulation of some of the draft articles falling within the competence of the First Committee. Articles 5, 11 and 66 were drafted in permissive language, while articles 7 and 8 were given in an obligatory form. In his opinion, all those provisions ought to be given a permissive form. The same applied — in his opinion — to the crucial rule which was to be laid down in regard to the breadth of the territorial sea. If a breadth of four miles, for example, were chosen, there would be no reason why States now adhering to the three-mile limit should be compelled to extend their territorial sea. However, in as much as the coastal State also had certain obligations in its territorial sea, particularly in regard to the protection of innocent passage, it would also appear necessary to establish a minimum breadth. It would be only reasonable to allow the coastal State a certain latitude in fixing the breadth according to its needs and the means at its disposal for exercising sovereignty.

9. If, as he hoped, the rule relating to the outer limit of the territorial sea were formulated as a maximum, then the rules proposed in articles 12 and 14 would have to be modified accordingly, and it would become possible to draft them in far simpler and more precise terms, which would be less open to controversy. It would suffice to lay down in regard to straits and the delimitation of the territorial sea between adjacent States, that no State was entitled to extend the boundary of its territorial sea beyond the median line. Though such a provision might in special cases lead to unreasonable results, that did not detract from its merit as a general rule. Adjustments would have to be sought in agreement with the other interested States, while in other instances rights to waters beyond the median line would be established on the basis of prescriptive usage. The principle of the median line seemed equally applicable to other conflicts arising from the extension of coastal zones, and might be embodied in a single article for the purposes of regulating such conflicts.

10. In accomplishing its task, the Conference must pay due regard to the principles set forth in Article 13 of the United Nations Charter, which spoke of the encouragement of the progressive development and codification of international law. Hence, it should proceed cautiously and endeavour to fill in the gaps and remedy the deficiencies of existing international law. It would be a betrayal of its mandate to brush existing rules aside in order to create entirely new laws adapted to what the majority conceived to be their interests at the moment. " Progressive development " meant building securely on existing foundations, for international law was an organic whole which the Conference had no legislative authority to change at will.

11. Mr. MORRISSEY (Ireland) said that already at the Conference for the Codification of International Law, held at The Hague in 1930, there had been considerable

divergence of view about the breadth of the territorial sea. Since that time more and more States had abandoned the traditional limit of three miles for an accumulation of reasons, including the fear of being left behind in the race, the desire to exercise sovereignty over a greater area, the hope of increasing natural wealth by claiming exclusive fishing rights, and the need for greater protection. On the other side, there were the great maritime and fishing States which regarded themselves as the champions of the three-mile limit, of the right of innocent passage, of the freedom of the high seas, and as the opponents of all arbitrary action threatening to subject further areas of the sea to the sovereignty of a particular State. Agreement between those seemingly opposed views would only be possible by means of reciprocal concession. Each Member of the United Nations had the responsibility of acting with due regard to the rights of other States, and it followed that only for weighty reasons should coastal States take action that might affect others adversely. Similarly, States with large fishing fleets must respect the legitimate interests of the poorer States off whose coasts they fished.

12. Effective measures were clearly needed to ensure that the activities of large fishing fleets caused no harm to the fishing grounds adjacent to the coasts of less powerful States. Ireland, which adhered to the three-mile limit and had never claimed exclusive fishing rights over a wider belt, was giving much emphasis to the development of the fishing industry but was aware that adjacent fishing grounds were being over-fished or threatened by the methods used by foreign fleets despite the existence of international conventions aimed at conservation. It was not surprising that a country in that position should begin to consider enforcement measures which would not only protect its own vital interests, but would also benefit the foreign fishing fleets in the long run.

13. The unilateral powers which the Commission proposed to confer on coastal States for the enforcement of conservation measures did not go far enough; in particular, the conditions justifying unilateral action were unnecessarily restrictive. The requirements of article 55 compelled the questions: " How long would it take to collect scientific evidence showing that there was an urgent need for conservation measures or that the measures adopted were based on appropriate scientific evidence ? " and " How could a coastal State with comparatively modest resources embark upon an elaborate programme of scientific research? " Nor had the vital issue of enforcement been solved.

14. His government believed that the only adequate economic safeguard would be to empower the coastal State to exercise exclusive fishing rights in an area not exceeding twelve miles from the baseline. It did not agree with the view that such a provision was unlikely to contribute greatly to conservation. Naturally, the coastal State could, if it thought fit, allow fishing by foreign fishermen in areas under its control. Accordingly, he had been keenly interested in the Canadian proposal put forward at the previous meeting, and believed that it might not only solve the problems of the coastal State but also furnish the basis of a generally acceptable compromise.

15. While recognizing the force of the arguments advanced by certain learned authors in defence of the legal concept of the contiguous zone as contemplated in the Commission's draft, it did not seem so great a step forward to confer in addition upon coastal States the powers for conservation to which he had referred. If a contiguous zone as contemplated in the draft articles was not juridically reconcilable with exclusive fishing rights, was there any reason why a new concept should not be evolved at the Conference which need not necessarily confine itself to codifying existing law ? The history of his own country could provide legal justification for the right of a coastal State to control and regulate fisheries outside its own territorial sea. He quoted as an example the special powers exercised by the authorities to protect the oyster fisheries off the Wexford coast. Thus, although a territorial sea of three nautical miles measured from the coast, or, where justifiable, from straight baselines, was adequate for Ireland, the latter believed that coastal States should be entitled to establish an exclusive fishery zone extending beyond the territorial sea within a distance of twelve miles from the baseline.

16. His delegation found the remaining articles assigned to the Committee acceptable, broadly speaking. It agreed with the principle of straight baselines and did not dispute the right of innocent passage through newly created internal waters hitherto used by international traffic. It would have some suggestions of detail to make at a later stage, chiefly in the interests of precision.

17. Mr. TREJOS (Costa Rica) said that for his country, with coasts on both the Atlantic and the Pacific Ocean, international maritime law was a matter of vital importance. The national economy being increasingly dependent on the sea and its resources, his government earnestly hoped that the Conference would prove more successful than had been that held at The Hague in 1930.

18. The draft articles prepared by the International Law Commission were, for the most part, acceptable to his delegation. There could be no disputing the correctness of the statements contained in article 1. Article 2, however, required some amplification. He fully appreciated the reasons which had prompted the Commission not to repeat in that article the second paragraph of article 1, but he hoped that the text could be clarified along the lines suggested by France (A/CONF.13/C.1/L.6).

19. The Commission's recommendations regarding straight baselines were fundamentally excellent. It had been proved that off exceptionally sinuous coasts the straight baseline system was scientifically the most satisfactory, and the adoption of article 5 would certainly facilitate international navigation. He felt, however, that paragraph 3 of that article should be clarified by the inclusion of a clause stating that the exercise of the right of innocent passage would be subject not merely to article 15, but to all the provisions contained in section III.

20. With regard to article 66, the maximum extent of the contiguous zone suggested by the Commission was somewhat inconsistent with the statement in article 3, paragraph 2. Article 66 should therefore recognize that the proper point of departure for the measurement of

the contiguous zone was not the baseline from which the breadth of the territorial sea was measured but the outer limit of the territorial sea.

21. The question of the breadth of the territorial sea should prove easier to solve than it had been at The Hague, as the institution of the contiguous zone was now generally accepted, and the special interests of the coastal State in adjacent fishing areas were no longer seriously disputed. Certain basic differences of opinion subsisted, however. He concurred in the view that the three-mile rule was certainly not the only one known to international law, but would urge that its existence and past importance could not be denied. Nor could he accept the argument that the three-mile limit no longer applied solely because of modern developments in ballistics. The fact was that it had ceased to be a satisfactory standard because it no longer commanded sufficiently wide acceptance to be regarded as a rule of customary international law binding on the entire community of nations. It was not even recognized by a majority of States ; the only point on which there was agreement was that three miles represented an irreducible minimum.

22. The truth of the matter was that no generally accepted rule had yet been evolved. That fact had been duly recognized by the Commission in article 3 and in paragraph 9 of the commentary thereto. That being so, there seemed to be some justification for the thesis that each State could determine the breadth of its territorial sea at its discretion, provided that it allowed innocent passage, and did not take any action inconsistent with international law. In practice, however, a rule of that nature would have no chance of acceptance. The duty of all States, therefore, was to approach the problem in a spirit of compromise and to be prepared to make concessions. Costa Rica, which had no provision fixing the breadth of its territorial seas in its legislation — the Constitution merely stipulating that the State exercised sovereignty in its territorial seas in conformity with international law — was prepared to consider any reasonable proposal, provided there was unequivocal recognition of its special interests in its adjacent waters and in the living resources contained therein.

23. Mr. BECKMAN (Finland) said his government considered the International Law Commission's draft articles entirely satisfactory except on certain points of detail. Finland — like several other countries in Northern Europe — claimed a territorial sea four miles broad, measured from the low-water mark or from the outer limit of inland waters. That limit was vital to Finland because the special configuration of its coast made navigation close to the shore virtually impossible. Outside the territorial sea, Finland had established a customs zone extending for a further two miles. Finnish legislation was thus very conservative, but his delegation would be prepared to consider a rule recognizing the rights of States to a somewhat wider territorial sea if it appeared that a modest extension might facilitate general agreement. In any event, the breadth of the territorial sea should be at least regionally uniform.

24. The distance of fifteen miles suggested in draft article 7, paragraph 2, as the length of the closing line of bays, seemed excessive. The corresponding rule applied in Finland set the maximum length of the closing line in such circumstances at eight miles, which was twice the breadth of the territorial sea. Another statement which seemed somewhat inconsistent with general practice was that contained in article 9, to the effect that roadsteads which were normally used for the loading, unloading and anchoring of ships and which would otherwise be situated wholely or partly outside the outer limit of the territorial sea, were part of that sea. It was also regrettable that the Commission had failed to define the juridical status of aids to navigation placed by a coastal State outside its territorial sea. Finally, his delegation accepted the draft articles on the right of innocent passage, which were fully consistent with Finnish legislation and practice.

25. Mr. VELILLA (Paraguay) said that, although a land-locked State, Paraguay had always enjoyed free access to the sea and was anxious to co-operate in solving the problems which had been referred to the Conference, problems which concerned the whole family of nations. It was essential to adopt just solutions which would contribute to the peace and happiness of all the countries of the world. His government, having regard to the advances made by humanity in the spheres of science, law, politics and technology, considered that all the important matters before the Conference should be solved by general agreement rather than by unilateral declarations.

26. All the problems referred to the Conference should be considered in the light of their relation to the basic principle of the freedom of the seas; such questions as the territorial sea, the contiguous zone, the continental shelf, fisheries and the conservation of the natural resources of the sea should all be considered and regulated on lines which would not derogate from that basic right.

27. He would conclude by expressing the conviction that the Conference could not achieve positive results for the good of humanity as a whole unless its members displayed a spirit of understanding and co-operation.

28. Mr. GRIGOROV (Bulgaria) said that, since the Second World War, the Bulgarian Government had made serious efforts to develop its fishing industry and had already obtained some encouraging results. Consequently, and in view of its determination to ensure further economic development, Bulgaria was vitally interested in an equitable solution of all the problems of international maritime law. If such solutions were to be found, the Conference would have to adhere strictly to the instructions contained in General Assembly resolution 1105 (XI).

29. The problems of the law of the sea could only be solved by decisions jointly agreed by all the States concerned. Moreover, general agreement would reduce the likelihood of conflicts of interests, which were apt to disturb friendly relations between peoples. The work of the International Law Commission represented a very important stage in the development of the law of the sea. The draft articles contained, on the one hand, some generally accepted rules and, on the other hand, some new proposals designed as part of the process of the "progressive development" of international law. The basic document before the Conference was therefore soundly conceived, but it was always necessary to take

into account the international situation and the lawful needs of States.

30. He could not agree with those who had suggested that the Conference should not adopt certain rules proposed by the International Law Commission, solely on the ground that similar rules were already contained in other conventions or dealt with questions of detail or technical matters. Acceptance of that view would be a negation of the very idea of codification, the basic purpose of which was to consolidate universally recognized rules dispersed in a multitude of international instruments.

31. The juridical regulation of territorial waters had been based from the very outset on the principle of the sovereignty of the coastal State. The principle of the freedom of the high seas only applied in territorial waters to the extent that the coastal State was required to allow the exercise of the right of innocent passage, which should be considered merely as an exception to the principle of sovereignty. For those reasons, the Bulgarian delegation firmly endorsed article 1, paragraph 1, and article 2, which recognized the sovereignty of the coastal State in its territorial waters. But the second paragraph of article 1 lent itself to the interpretation that sovereignty could only be exercised in a manner expressly authorized by treaty or by other rules of international law. That interpretation clearly could not be correct, for if it were the provision would conflict with the principle of the sovereignty of the coastal State. In the Bulgarian delegation's view, the only correct construction that could be placed on the paragraph was that the coastal State exercised sovereignty over the territorial sea in conformity with and subject to its national legislation, universally recognized rules of international law and multilateral and bilateral conventions. In order to eliminate all doubt, a statement to that effect should be inserted in the commentary to the article.

32. His government believed that each coastal State had the right to determine the breadth of its territorial sea, in the light of historical and geographical circumstances or economic and security considerations, within a limit of three to twelve miles. The principle of the freedom of the high seas could be safeguarded by the recognition of the right of innocent passage. He would refer delegations which contended that the three-mile rule was the sole rule of international law to paragraphs 2, 3 and 4 of the Commission's draft article 3. As the three-mile limit was not universally recognized or applied, extensions beyond that breadth were permissible under international law up to a maximum of twelve miles, and as each sovereign country enjoyed juridical equality with the others, unilateral delimitations within those limits were in accordance with international law. States which had powerful fleets and were in a privileged position as regards the use of the high seas could not impose their rule on others, and a solution must be found generally acceptable to all States, many of which had only recently attained independence. Bulgaria, for its part, had fixed its territorial sea at twelve miles.

33. His government could not accept the provision in article 7, paragraph 2. It regarded as more realistic the Commission's suggestion at its seventh session which would have fixed a maximum length of 25 miles for the closing line of a bay.[1] The line should be fixed at twenty-four miles, or double the maximum breadth of the territorial sea. A different régime should be established for historic bays.

34. During the eleventh session of the General Assembly, his delegation had raised the question of the need for the regulation of navigation through the territorial sea in the vicinity of closed ports.[2] The right to declare certain ports closed having been recognized by the 1923 Geneva Convention on the International Régime of Maritime Ports, it would be logical to adopt a rule recognizing that the coastal State was entitled to fix certain specific routes for navigation.

35. The right of innocent passage facilitated international navigation, but should not derogate from the rights of the coastal State; above all, it should not threaten that State's security. A number of countries had enacted special rules to be observed by foreign vessels. In that connexion, there were a number of points in the Commission's draft requiring further elucidation.

36. He would emphasize that the rules for government ships must necessarily differ from those relating to private vessels. The wording of article 33 substantiated that contention, which would be expounded in greater detail at a later stage.

Though the tendency during the general debate had been to stress what was unacceptable, he believed that on many points there was much similarity of view. That afforded ground for hoping that acceptable solutions could be found given an honest effort at collaboration and concession.

The meeting rose at 5.15 p.m.

[1] See *Official Records of The General Assembly, Tenth Session, Supplement No. 9* (A/2934), chap. III, art. 7, para. 3.

[2] *Ibid., Eleventh Session, Sixth Committee,* 490th meeting, para. 33.

NINETEENTH MEETING

Tuesday, 18 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. ANDERSEN (ICELAND), MR. HOOD (AUSTRALIA), MR. ZOUREK (CZECHOSLOVAKIA), MR. PONCE Y CARBO (ECUADOR) AND MR. USTOR (HUNGARY)

1. Mr. ANDERSEN (Iceland) said that at the eleventh session of the United Nations General Assembly his delegation had proposed that that body itself should deal with the report of the International Law Commission, because some of the questions treated by it were in urgent need of settlement; but the Assembly had preferred to convene the present Conference in order to allow greater time for preparation and to bring to-

gether the necessary experts. It was to be hoped that positive results would now be achieved.

2. In stating his government's position on the vital issue of jurisdiction over coastal fisheries, he wished first to describe its importance for his country, and secondly to examine whether the Commission's draft offered a solution. Iceland lacked natural resources and most necessities had to be imported and paid for by exports, 97% of which consisted of fisheries products. The country was situated on a continental shelf, the outline of which roughly followed the coast and which provided ideal conditions for spawning and nursery grounds. The economic and social importance of sea fisheries to Iceland would be appreciated from the following facts; the total annual catch was 300 tons per 100 inhabitants with a per capita value of $206 compared to 48 tons per 100 inhabitants with a per capita value of $24 for the country next on the list. Almost 25% of the gross national product derived from sea fisheries, about five times more than in any other country. Fisheries also provided employment for a large section of the population. Indeed, in areas around the coast fishing was the sole occupation, so that whole communities depended on it for their livelihood, while in areas around the capital other industries were purely ancillary to it or depended on imported raw materials and machinery.

3. For those reasons, his people had viewed with grave concern the rapid decline in stocks due to over-fishing, amounting to 80% in respect of haddock and plaice during the inter-war period. Although the means of protection had formerly been adequate, they had been disastrously reduced when most needed, since the original fishery limits of thirty-two miles had been progressively reduced to twenty-four, sixteen and, during the latter part of the nineteenth century, to four, though all bays had always been closed to foreign fishing. In 1901, an agreement with the United Kingdom had provided for a ten-mile rule in bays and a three-mile fishery zone around the coast, but it had expired in 1951, by which time it had become clear that the Conventions for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish of 1937 and 1946 were not being particularly effective in counteracting the ruinous effects of over-fishing.

4. In view of the gravity of the situation, the Icelandic Parliament had, in 1948, authorized the Ministry of Fisheries to establish definite zones within the limits of the continental shelf where all fishing should be subject to Icelandic jurisdiction and control. The resultant regulations had laid down a four-mile zone measured from straight baselines. Though the measures mentioned had clearly been beneficial, there were signs that even a slight increase in fishing would require further action.

5. While the Commission's draft was a valuable contribution to international law, it provided no clear solution of the problem. His delegation had repeatedly stated that there was no need to relate the protection of coastal fisheries to the concept of the territorial sea and that there might be serious drawbacks in doing so. It had no objection to a narrow territorial sea, provided that its vital interests in regard to coastal fisheries were adequately safeguarded. But, in article 66, the Commission had clearly excluded that point from its recommendations regarding the contiguous zone. Again the provisions concerning the continental shelf envisaged only rights connected with the exploitation of mineral resources of the sea-bed and subsoil as well as the so-called sedentary fisheries. It was difficult to understand why foreign nationals should be prevented from pumping oil from the seabed of the continental shelf when they were allowed to trawl there and destroy valuable living resources of the sea.

6. Thus, it had yet to be decided whether the articles pertaining to conservation adequately safeguarded the interest of the coastal State as to fisheries. His government had long been interested in conservation and had been a party to all international agreements on the subject. Though conservation measures could theoretically be enforced with equal efficacy whether adopted unilaterally or by international agreement, in practice the second method had given rise to great difficulties. Fifteen years previously, when conservation was being debated, stocks had been systematically destroyed in the very areas in question. For that reason, his government considered that the coastal State was the best placed to adopt and enforce any necessary measures up to a reasonable distance from the coast, though international agreement would, of course, be required for conservation on the high seas, and in that respect the Commission's draft articles would be a valuable supplement to the coastal State's jurisdiction.

7. Even if adequate conservation measures were fully enforced, there still remained the problem created when the maximum sustainable yield was not sufficient to satisfy the requirements of all those who wished to fish in a certain area. It would hardly be either fair or reasonable to call for equal restraint on the part of all when the coastal population depended for its livelihood upon the resources of the area. In other words, a clear distinction must be made between conservation and utilization so that in the latter case the interest of the coastal State would be regarded as having priority within such a distance from the coast as would satisfy the requirements of its population. The distance would have to be determined in each case according to the relevant local considerations. For instance, no one could dispute that the entire Icelandic economy was based on the coastal fisheries, that the country was remote from others and that its continental shelf provided the necessary environment for fisheries resources and hence that the Icelandic Government had acted perfectly reasonably in establishing ten years previously the necessary control for proper conservation and in excluding foreign fishing vessels within the area necessary to satisfy the country's requirements.

8. Referring to the Commission's commentary entitled "Claims of exclusive fishing rights, on the basis of special economic circumstances" (A/3159, p. 38), he expressed agreement with the principle of abstention, and hoped that the Conference, which was being attended by experts in all the relevant fields, would be able to reach a solution for a problem which the Commission had stated in realistic terms, but for which it had made no definite proposal on the ground that it lacked competence in the fields of biological science and economics.

9. He emphasized that his government was not seeking

to encroach upon the freedom of the seas, to which it firmly adhered, and that its suggestion would not interfere with ordinary navigation. The principle of coastal jurisdiction, whatever form it took, had equal weight with the principle of the freedom of the seas and neither derogated from the other. He was sure that with reciprocal understanding some formula could be devised recognizing the vital economic needs of coastal States, accompanied by criteria to prevent abuse.

10. Mr. HOOD (Australia), describing some of the geographical features of his country which had a very distinct bearing on the issues under discussion, stated that in the south, the Australian coast fell away sharply to deep water, whereas in the north, the continental shelf stretched out to sea for many miles. The north coast was strewn with islands, rocks and reefs, which formed the Great Barrier Reef. There were numerous large bays and gulfs, and Australia had certain island territories as well, in Papua and the Territory of New Guinea. The national economy was based upon both primary and secondary industries, the development and extension of which depended heavily upon overseas trade. Fisheries both sedentary and pelagic, though for the most part of the coastal type, were becoming an increasingly important element in the economy.

11. For the reasons outlined, Australia rated the freedom of communication highest amongst the freedoms of the high seas. The doctrine that the freedom of the seas was an expression of rule by the Great Powers was the reverse of the truth, for that principle had enabled countries in the process of development to enjoy security and to prosper.

12. The task of the Conference was to formulate existing law and to make new law where that appeared necessary for the well-being of the international community, for which, as for individual countries, any effective legal order consisted in the intelligent adjustment of interests. Nor must law be imposed by power; it must be accepted as the rational and realistic expression of legal precept.

13. Australia had long accepted as just and reasonable the principle of the freedom of the seas, in particular the rule that States should not be permitted to extend their territorial seas so as to affect that principle. It had adopted a three-mile limit because that distance preserved the freedom of communication as completely as possible in present circumstances. For the Conference to succeed, each State must conscientiously consider for what purpose it required certain rights and whether the interests of the international community would be affected by their exercise. Clearly, although extensions of the territorial sea would augment the exclusive fishing rights of coastal States, they would seriously curtail the freedom of navigation.

14. Given Australia's firm preference for the three-mile limit and the desirability of taking into account the legitimate demands of coastal States for an increased zone where they had exclusive fishing rights, his delegation would support the Canadian proposal provided that the three-mile rule was upheld for purposes of navigation. The legitimate demands of coastal States in regard to exclusive fishing rights could be met by adopting the principle of the contiguous zone recognized by the International Law Commission for purposes of customs and health control. Coastal States would then be able not only to exercise complete control over fisheries in an increased area of the high seas, but also to take the necessary action of conservation. Such demands must be taken into account despite the difficulties that the Canadian proposal might create for States whose economy depended upon fishing activities near the coasts of other States.

15. It had been suggested that where a group of islands belonged to a single State, the territorial waters should be measured from a straight baseline connecting the outermost points. He doubted whether the Committee would have the necessary time or information to consider that important issue in adequate detail. His government had a direct interest in it and might have wished to express its views if they were raised in some other forum. In the Anglo-Norwegian fisheries case, the International Court of Justice had admitted as legitimate the use of straight baselines as the starting point for delimiting the territorial sea on a coastline fringed with islands, but an entirely different question would be raised by applying the same principle to an archipelago in the middle of an ocean with large distances between one island and the next. His government could not recognize claims based on that principle to large areas of water hitherto traditionally regarded as high seas; it had already made an official declaration regarding the specific instance brought up in the Committee.

16. Mr. ZOUREK (Czechoslovakia) said that he was satisfied with articles 1 and 2 of the International Law Commission's draft recognizing the well-established principle of international law that territorial waters formed a part of the coastal State's territory. He also pointed out the fact that the Commission had followed international law in recognizing that the State's sovereignty extended not only to territorial waters, but also to the air space over the territorial sea. That principle was expressly affirmed in the Chicago Convention on International Civil Aviation of 7 December 1944, and should be regarded as universally accepted.

17. While he did not agree with those who contended that the problems of the territorial sea and of the contiguous zone were the only issues on which the success of the Conference depended, it was certainly regrettable that the International Law Commission had not succeeded in solving the problem of the breadth of the territorial sea. In his government's opinion, it was neither possible nor necessary to fix a uniform breadth. The breadth adopted by each State was the result of a long process of historical development and reflected the varied needs of States. Those needs were different not only in different parts of the world, but even within separate regions. The breadth of territorial waters depended in each case on a whole set of decisive factors such as geographical conditions, the needs of navigation, the economic and fiscal interests of the coastal States and their security. Czechoslovakia, as a land-locked State, was only concerned to see that a satisfactory solution of the question should be found in the interest of international harmony and of the development of international law.

18. He doubted the advisability of any attempt to unify the breadth of all territorial waters by purely mechanical rules, especially if the basis adopted was a limit

observed only by a minority of States. Such a method would be unjustified scientifically, and doomed to failure. The three-mile rule had never enjoyed general recognition in international law, as was shown, for example, by the long-established usage of the Scandinavian States, Spain and Russia. The difficulty of solving the problem arose from the fact that a balance had to be maintained between two important principles of international law — namely, the principle of the sovereignty of the coastal State and that of the freedom of the high seas. It was false to assert that any breadth of territorial waters exceeding three miles was an encroachment on the freedom of the seas. On the other hand, the difficulty would not be resolved merely by a statement that the coastal State could fix a breadth of its territorial sea at its discretion, without applying any objective criterion. The only sound method of seeking a solution was to examine the practice of States, which gave an indication of the lines along which international law should be codified in the matter at issue. In the opinion of the Czechoslovak delegation, the question should be solved on the basis of present practice, and in drawing up the rule concerning the breadth of the territorial sea the following principle should be borne in mind. First, each State was competent to fix the breadth of its own territorial sea in the exercise of its sovereign powers, taking into account its genuine needs; secondly, as the principle of the freedom of the high seas constituted a restriction on the powers of the coastal State in the delimitation of its territorial waters, the breadth of those waters, if it were to be consistent with international law, must not violate that principle; and thirdly, wherever the breadth of the territorial sea was at present between three and twelve miles, that breadth was consistent with international law. If those principles were applied, it would be possible to solve the question of the breadth of the territorial sea in each specific case in the light of varying circumstances.

19. The regulations on the breadth of territorial waters would have to take into account the special position of island States, which should be authorized to extend their territorial seas within archipelagos beyond a twelve-mile limit. Such an exception seemed fully justified on geographical, economic and security grounds. Moreover, it would not be a case of creating closed areas, as the right of innocent passage would be assured for the merchant ships of all States.

20. Similarly, a solution satisfying the legitimate interests of coastal States would have to be found for the problem of the régime of bays. In the view of his delegation, economic, geographical and historic factors should be taken into account, as also the distance between the bays and major international shipping routes and the degree to which the waters within a given bay were linked with the land domain. However, if the Committee wished to consider only the maximum length of the closing line across a bay, his delegation would be prepared to consider a length of 24 miles, except in the case of the régime of historic bays.

21. Another vital problem was that of innocent passage. The right of such passage could be exercised by the merchant ships of all States, whether maritime or landlocked. But that rule did not apply to warships, as there was no rule in international law obliging coastal States to allow the passage of warships. The Commission had made a special effort to provide that rule in article 24, which recognized the right of the coastal State to make the passage of warships through the territorial sea subject to previous authorization or notification. The Czechoslovak delegation fully supported that proposal.

22. From the point of view of international law it was impossible to justify a distinction in immunity between State ships operated for commercial purposes and other government ships. For that reason, he felt that draft article 22 did not reflect prevailing international law, and he could not accept the views of those who refused to recognize the immunity of government ships operated for commercial purposes. The question of the immunity of such ships was part of a larger question, that of the immunity of the State and its property. The legal basis of State immunity was its sovereignty and the equality and independence of States. The sovereign equality of States was expressly recognized in Article 2, paragraph 1, of the United Nations Charter; and at the San Francisco Conference, the report of Committee 1 to Commission I, which was approved by the Conference, in its interpretation of the clause in question had stressed the fact that States enjoy all the rights inherent in their sovereignty and that the personality of the State, as well as its integrity and political independence, must be respected.[1] That respect undoubtedly implied that no State could subject other States or their property to the jurisdiction of its national tribunals unless the foreign States freely accepted that jurisdiction. The general principle of the immunity of the State and its property obviously applied also in the case of government ships, whether warships or merchantmen. As far as immunity was concerned, no distinction between the one and the other could ever be validly drawn.

23. Those rules of international law had unfortunately only been recognized by the Commission in article 33. In its commentary to article 22, the Commission stated that it had followed the rules of the Brussels Convention of 1926 concerning the immunity of government ships, but that instrument had only been ratified by eleven States, and its provisions could not therefore be regarded as general rules of international law. In fact, they were exactly the contrary: they were a conventional derogation from the general rule of customary law, according to which all State ships were immune. In his view, which was supported by numerous decisions of the courts in the United States and the United Kingdom, that immunity was also recognized in the practice of the majority States. Draft article 22, instead of codifying the rule, codified an exception to the rule. The Czechoslovak delegation hoped that the defect would be remedied at the Conference.

24. With regard to the contiguous zone, he considered that the institution of such zones corresponded to the practice of many States, and should consequently be recognized. A zone not more than twelve miles broad, measured from the baseline of the territorial sea, should also be authorized, however, for purposes of security.

25. Mr. PONCE Y CARBO (Ecuador), recalling the clash that occurred at The Hague Conference in 1930

[1] *United Nations Conference on International Organization*, I/1/34, p. 12.

between the advocates of the three-mile limit and those who claimed that such a limit had never been recognized as a rule of international law, observed that that Conference had been unable to break the deadlock through a liberal interpretation of the notion of the contiguous zone, then in its infancy.

26. In his various reports to the International Law Commission, the Special Rapporteur on the régime of the territorial sea, after first proposing a breadth not exceeding six miles and various other solutions, had suggested in his final report (A/CN.4/77) a basic limit of three miles, but had included a further clause stating that a State could extend its territorial sea to a breadth of twelve miles, provided that it did not claim exclusive fishing rights outside a three-mile belt.

27. Since none of those proposals had proved acceptable to the International Law Commission, the various members of which had favoured nine different solutions, the report before the Conference merely recognized that international practice in the matter was not uniform. It was, nevertheless, an established fact that the majority of States were now determined to exercise their rights in new regions of the seas and to benefit from the wealth contained therein. The Ecuadorian delegation, for its part, believed that in the absence of any international agreement which would eliminate the conflicts to which unilateral action might give rise, each State had the right to fix its own territorial sea within reasonable limits and in the light of geographical, geological and biological factors, the economic needs of its population and its security requirements.

28. The problems of the contiguous zone, though of more recent origin, were equally acute. As early as the 1930 Conference, it had become clear that some States required such a zone not solely for the control of their territorial waters and the enforcement of their customs and public health regulations, but also for the exercise of special fishing rights. In his second report on the régime of the high seas (A/CN.4/42), the special rapporteur appointed by the International Law Commission had not supported the idea of a contiguous zone for fishing purposes, but had recognized the close interdependence between that problem and the protection of the resources of the high seas and had suggested that the coastal State might be expressly authorized, subject to certain provisos, to impose prohibitions for conservation purposes in a zone of 200 miles adjacent to its territorial waters. At the Commission's third session in 1951, however, when faced with a concrete proposal along those lines, its members had failed to agree, with the result that the matter had merely been mentioned in the Commission's report.[2] Subsequently, in 1953, the Commission had adopted a compromise proposal, stressing that existing rules did not afford adequate protection to the coastal State against abusive and destructive exploitation by the nationals of other States.

29. In recent years, the need for protecting the special interests of the coastal State in its adjacent waters had been gaining increasing recognition. Since 1952, special measures had been enacted in the Republic of Korea, Australia, the Soviet Union and India. But the first and best known such step, and that with the widest international repercussions, had been President Truman's proclamation of 28 September 1945 on the continental shelf. That proclamation had been followed by similar measures on the part of the Governments of Argentina, Chile, Peru and Honduras, all of which had expressly referred to the United States document. President Truman's proclamation had been accompanied by a second one on fisheries, which recognized the need for the conservation and protection of marine resources. That second proclamation, like its sister document, expressly stated that the waters in the zones where special rights had been claimed would remain parts of the high seas and that the freedom of navigation would be maintained. But regardless of its exact wording, it represented the first major assertion of authority by a coastal State in defence of the maritime resources off its coasts. It had since been interpreted as a direct claim to a right to exclude foreign fishermen from specified fishing zones.

30. The Ecuadorian Government fully appreciated the motives behind the United States action. It shared the view that protection and conservation were vital, and that the particular circumstances of each region and the special rights of the coastal State had to be considered. That was why his government, jointly with the Governments of Chile and Peru, had — seven years after President Truman's proclamation — claimed special conservation rights in an area extending 200 miles from the coast. In view of the precedent for the action taken by those three governments, the champions of the "freedom of the seas", who contended that a defensive measure of that kind was an intolerable encroachment, should seek other arguments. Furthermore, the doctrine of the freedom of the seas had never meant what they alleged. Its very origins were indeed questionable, as it derived from the failure of successive Powers to assert a *dominium maris* by force. By contrast, there had recently been a marked tendency to restrict that freedom, as was amply demonstrated by the Commission's draft articles on the continental shelf and by the growing conventional recognition of the principle of abstention. Further evidence of the danger of absolute and uncontrolled freedom could be found in history; and international law, like national law, had to recognize that freedom of action was always subject to the legitimate rights of others.

31. It was always necessary to bear in mind that changing customs and conditions should be reflected in new legislation. But certain principles — the "general principles of law" referred to in article 38 of the Statute of the International Court of Justice — were timeless. The law of nations had to be founded on reason and justice, and it was as vital to save the riches of the sea for those nearby States which needed them most for their development and survival as it was to maintain the fundamental freedom of communications. Both of those objectives could be attained if special provision were made for special conditions and if the question of the breadth of the territorial sea and that of conservation and fishery rights were separated.

32. Lastly, he stressed his delegation's support for the proposals formulated by the representatives of Denmark (4th meeting), Colombia (16th meeting), Canada (17th meeting), Viet-Nam (17th meeting), and those put

[2] *Official Documents of the General Assembly, Sixth Session, Supplement No. 9* (A/1858).

forward at the present meeting by the representative of Iceland, and proposed that consideration of articles 1, 2, 3 and 66 should be deferred until some progress on related matters had been made in other committees.

33. Mr. USTOR (Hungary) said that a successful solution of the problems facing the Conference would be in the interest of all nations and would further the cause of peace by contributing to the development of navigation, international trade, economic co-operation and the conservation of the living resources of the sea. He could not concur in the view that the Conference should avoid dealing with matters that were not the subject of firmly established rules of international law, and agreed with the representative of Ceylon that in resolution 1105 (XI) the General Assembly had deliberately refrained from mentioning "codification" because, apart from the principle of the freedom of the high seas, few other provisions had acquired the status of a rule of international law. A restrictive interpretation of the Commission's mandate would greatly reduce the scope and value of its work. He also dissented from the United Kingdom delegation's contention that topics already regulated by existing international instruments should be discarded. The Conference must deal with the régime of the sea in its entirety. Thus, although provisions relating to the rights of land-locked States were mostly embodied in bilateral or multilateral agreements, they should be incorporated in the final instrument to be drawn up by the Conference.

34. He dissociated himself from the narrow approach of those who sought to limit the breadth of the territorial sea to a minimum, and contested the thesis that the three-mile limit was a valid rule of existing international law. The frequently quoted passage from the Court's judgement on the Anglo-Norwegian fisheries case with regard to the international aspect of the delimitation of sea areas[3] simply laid down that the act of delimitation was necessarily unilateral; that only the coastal State was competent to undertake it; that the validity of the delimitation was absolute within the internal domain of the coastal State, and that the delimitation with regard to other States depended upon international law. Hence, the crucial question of the actual provision of a rule limiting the power of coastal States to fix the breadth of their territorial sea remained unanswered. Indeed, the Court had not been concerned with that issue since there had been complete agreement between the parties to the dispute on the four-mile limit of the Norwegian territorial sea. The Court had given no indication of what rule it was referring to when stating that the delimitation of the territorial sea depended upon international law. It might be true that there was some restriction on the freedom of the coastal State, but it was not necessarily three miles or even any other specific figure, and he would suggest that what the Court had had in mind was simply that the generally accepted principle of the freedom of the sea must not be infringed.

35. Champions of the three-mile limit had also failed to prove that it was sanctioned by "constant and uniform usage" in the sense laid down by the Court in the Columbian-Peruvian asylum case.[4] Similarly, the Conference must take into account the consideration put forward by the Court in an advisory opinion[5] that the development of international law had been influenced by the requirements of international life. Clearly, the three-mile rule took no account of the existing practice, according to which every State was empowered to fix the breadth of its territorial sea within reasonable limits — say up to twelve miles — taking account of the needs of international navigation, and of historic and geographic circumstances as well as economic and security considerations.

36. His delegation opposed articles 22 and 23 in the Commission's draft, which denied immunity to government ships operated for commercial purposes, despite the fact that apart from a few European countries most applied the doctrine of the absolute immunity of such ships and other State property from foreign jurisdiction. That was a principle so deeply rooted in international law that any deviation from it would hardly be appropriate. In addition, the proposed provisions would cause practical inconvenience, and the phrase "government ships operated for commercial purposes" was obviously open to diverse interpretations. In support of his argument, he quoted from the judgement of the United States Supreme Court in the case of the Berizzi Brothers *v.* SS Pesaro.

37. Finally, although the Conference could not deal with the whole problem of nuclear tests, it must consider the problem of tests on the high seas which had a direct bearing on its terms of reference. His delegation would wholeheartedly support any proposal aimed at the prohibition of nuclear tests on the high seas, on which matter the Conference should remedy the gap in the Commission's draft.

The meeting rose at 6 p.m.

[3] *I.C.J. Reports, 1951*, p. 132.
[4] *Ibid., 1950*, p. 276.
[5] *Reparations for injuries suffered in the service of United Nations, ibid.*, 1949, p. 174.

TWENTIETH MEETING

Wednesday, 19 March 1958, at 10.30 a.m.

Chairman: Mr. K. H. BAILEY (Australia)

In the absence of the Chairman, Mr. Gutiérrez Olivos (Chile), Vice-Chairman, took the chair.

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. GARCÍA ROBLES (MEXICO), MR. ZAKARIYA (IRAQ) AND MR. TADJ-BAKHCH (IRAN)

1. Mr. GARCÍA ROBLES (Mexico) said that a careful examination of the International Law Commission's report (A/3159) gave the impression that, in the composition of that Commission, the desirable balance had not yet been attained between the advocates of the so-called traditional principles of international law and

the advocates of the dynamic development of international law.

2. In many of the articles, it was apparent that the jurists who defended rules which the majority of States now considered out of date had imposed provisions difficult for the Conference to accept. In several instances, abstract freedoms and rights which in practice gave a privileged position to the great maritime Powers were formulated without any limitation; by contrast, the rights of the coastal State were only partially recognized or made subject to conditions which compromised their effectiveness.

3. For example, article 27 proclaimed the freedom of the high seas, but the vital question of the limitations to which that freedom was subject was relegated to the commentary. That was particularly significant in view of the fact that article 1, immediately after acknowledging the sovereignty of the State over the territorial sea, added that that sovereignty was exercised " subject to the conditions prescribed in these articles and by other rules of international law ".

4. Article 68 very properly stated that the coastal State exercised sovereign rights over the continental shelf. However, the important fact that that sovereignty was exclusive in character and did not depend on occupation, effective or notional, or on any express proclamation by the coastal State, was only mentioned in the commentary.

5. The right of the coastal State to adopt unilateral conservation measures in respect of the marine resources of the high seas was made subject by article 55 to so many conditions that it would be very difficult, and in some cases even impossible, to exercise that right in practice.

6. Similarly, article 66, which recognized the right of States to exercise control for certain purposes over the contiguous zone, did not refer to the exclusive fishing rights of the coastal State in that zone, with the consequence that the zone was of little value.

7. But the most significant example of the deficiency of the Commission's draft was article 3. The terms in which that article was drafted were not in keeping with the aim set forth in the Charter of encouraging the progressive development of international law.

8. The Mexican delegation agreed with those delegations which had stated that the so-called three-mile rule had never been generally observed, even at the time when it had received its widest application. All that could be said was that during the nineteenth century and in the early twentieth century the majority of the then existing States had accepted the distance of three miles as the limit of the *de facto* jurisdiction of the coastal State rather than as a legal principle. Actually, the question of the antiquity of the so-called three-mile rule was not relevant from the point of view of the discussions of the Conference. The task of the Conference was in fact to codify international law in a manner consistent with conditions existing in 1958. It had to establish what the present position was with regard to the delimitation of the territorial sea, and to determine what breadth was at present regarded by the majority of the governments represented at the Conference as satisfying the needs of their respective countries.

9. After the Conference for the Codification of International Law held at The Hague in 1930, it had been stated by so distinguished an authority as Professor Gidel that it was no longer possible to regard the three-mile rule as a rule of positive international law in the sense of a maximum limit for the territorial sea. It could only be regarded, Gidel had said, as a rule of national law for those States which had adopted it, or as a rule of conventional international law for those States which had explicitly accepted it by treaty for the purpose of their mutual relations.

10. The Inter-American Council of Jurists, at its third meeting held at Mexico City in January 1956, had adopted certain principles concerning the law of the sea. The Inter-American Council of Jurists had on that occasion decided:

Firstly, that the distance of three miles as the limit of the territorial sea was insufficient; secondly, that that distance did not constitute a general rule of international law; thirdly, that the enlargement of the territorial sea was therefore justifiable; fourthly, that each State was competent to establish its territorial sea, taking into account geographical, geological and biological factors, provided that it did so " within reasonable limits ". The Inter-American Specialized Conference on " Conservation of Natural Resources: The Continental Shelf and Marine Waters ", held at Ciudad Trujillo in March 1956, had not invalidated the principles of Mexico, as one representative had mistakenly stated. That conference had merely noted that " there exists a diversity of positions among the States represented at this Conference with respect to the breadth of the territorial sea ", and had added that " this conference does not express an opinion concerning the positions of the various participating States on the matters on which agreement has not been reached ". Actually, the principles of Mexico had been accepted not only by Latin American, but also by Spanish and Portuguese jurists, at the Third Hispano-Luso-American Congress on International Law held at Quito, in October 1957.

11. The summary table to be prepared by the Secretariat in accordance with the resolution adopted by the Committee at its 14th meeting would throw light on prevailing State practice. It could, however, already be safely asserted that about two-thirds of the 74 maritime States represented at the Conference had established or claimed a territorial sea of a greater breadth than three miles; in the majority of cases, that breadth did not exceed twelve miles.

12. Article 3 of the International Law Commission's report called, more than any other, for the exercise of the Conference's legislative function. Indeed, the Commission had stated in paragraph 4 of that article " that the breadth of the territorial sea should be fixed by an international conference ". Article 3, paragraph 1, stating that international practice was not uniform, and article 3, paragraph 3, stating that many States (the Commission should have said " a minority of States ") did not recognize a breadth greater than three miles, constituted mere statements of fact. The only paragraph of article 3 which contained a legal rule was paragraph 2, which implicitly recognized the right of States to extend the territorial sea up to twelve miles, although the Commission stated in paragraph 3 that it did not take any decision as to the breadth of the territorial sea up to that limit. Paragraph 2 in fact provided

the only basis for a solution of the problem of the breadth of the territorial sea.

13. The Mexican delegation agreed with the International Court of Justice that the delimitation of the territorial sea had an international aspect. The most important task before the Committee was to determine what was the existing rule of international law relating to the breadth of the territorial sea and to formulate the relevant provisions to be incorporated in the convention or conventions to be adopted by the Conference. The breadth of the territorial sea had never been codified in a general international instrument. The so-called three-mile rule had merely represented the general practice of the majority of States at the end of the nineteenth century. In 1958, the general practice of the great majority of States had abandoned the three-mile rule, and it was essential that the relevant provision to be drafted by the Conference should agree with the existing rule of customary international law. He referred to the statement made by Mr. Padilla Nervo, a member of the International Law Commission, clearly affirming the existence of a rule of international law which entitled every State to establish the breadth of its territorial sea up to a certain maximum.[1]

14. The International Law Commission had been careful to note that its draft regulated the law of the sea in time of peace only, and it was desirable that the Conference should bear that fact constantly in mind in its deliberations.

15. Lastly, he regretted the rigid attitude adopted at the Conference by some of the States which adhered to the so-called three-mile rule. That attitude would not help to produce a generally acceptable compromise solution. Such a solution could only be arrived at through mutual concessions. The international community could not accept the situation which had obtained in the past when a small number of Powers had claimed the right to formulate international rules. The United Nations was based on the principle of the sovereign equality of all its Members. It was only by observing that principle that the Conference could succeed.

16. Mr. ZAKARIYA (Iraq) said that, although Iraq had a very short coastline and only one port, it was becoming increasingly aware of the importance of the sea as a means of communication and a source of wealth. A maritime transport corporation, financed by the Government, had recently been set up; a new code governing maritime trade had been adopted, and on 24 November 1957 the government had proclaimed its sole jurisdiction over the natural resources of the seabed and the sub-soil of the continental shelf contiguous to the coastline of Iraq.

17. Iraq's interest in the work of the Conference was heightened by the fact that all its sister States of the Arab world possessed considerable maritime interests, and the Iraqi Government was anxious to ensure that the legal rights and interests of those States were duly recognized and fully secured.

18. His government was fully aware of the need for the peaceful elimination of all friction which might arise from the application of varying standards of conduct by different States in the matter of the law of the sea. It shared the widely felt desire that the diverse practices and usages prevailing at the moment should be superseded by a uniform international legislation that would command the respect and support of all nations.

19. Turning to the draft articles, he said that the general debate had once again shown that the question of the delimitation of the territorial sea was the most critical question facing the Conference. Iraq had not yet declared any fixed limit for its territorial sea and would not take such action until after the Conference had come to a decision. However, it supported the view of the International Law Commission, as expressed in article 3, and favoured the extension of the territorial sea to a breadth beyond the three-mile limit set by traditional international law.

20. He had listened with interest to the representatives who supported the three-mile rule, but he considered that, in order to be effective, a law must be adaptable to the ever-changing conditions of life. Once it was widely recognized as axiomatic that the law was not static and immutable, the Committee should have no great difficulty in working out a solution.

21. For fifty years, more than half the nations of the world had not subscribed to the three-mile rule; that fact in itself was sufficient answer to the argument that that limit had never been seriously challenged or widely contested. Some speakers had been at pains to show that there was considerable doubt whether the three-mile doctrine had ever been a well-established rule of international law. Even if it had been, the very fact that it no longer commanded the respect and obedience of a large number of States made it imperative that the rule should be revised and, if necessary, abolished.

22. Mr. TADJ-BAKHCH (Iran) said that, while different representatives had expressed widely divergent views on the question of the breadth of the territorial sea, all had agreed with the International Law Commission's statement in article 3 that international practice was not uniform as regards the delimitation of the territorial sea. That fact should encourage the Committee to speed up its efforts and find an equitable and practical solution.

23. The representatives of the maritime Powers supported the three-mile rule, but the Iranian delegation, like many others, held that that rule was neither universally applied nor had the preponderant authority attributed to it by its supporters. As the Chairman of the Iranian delegation had said at the 11th meeting of the Second Committee, "... it was [the maritime Powers] alone which benefited from the freedom of the high seas; in fact, they were laying claim to hegemony of the high seas." To accept a three-mile limit would be incompatible with the law of Iran and of many other countries.

24. Mr. GARCÍA AMADOR (Cuba), exercising his right of reply, said, with reference to a statement made at the 14th meeting by the Argentine representative, that when he (Mr. García Amador) had referred to a scientific absurdity in connexion with the principles of Mexico on the juridical régime of the sea, he had had in mind part B (continental shelf) of the resolution embodying those principles. That part referred to " all marine animal and vegetable species that live in a

[1] See *Yearbook of the International Law Commission, 1956*, Vol. I (A/CN.4/SER.A/1956), 362nd meeting, para. 53.

constant physical and biological relationship with the shelf, not excluding the benthonic species". In fact, however, benthonic species comprised all animal and vegetable species that lived in a constant and biological relationship with the shelf. It was therefore absurd to talk of all those species and to add the words "not excluding the benthonic species". The unsatisfactory drafting of that part of the principles of Mexico was attributable to the fact that the members of the Inter-American Council of Jurists were not specialists in marine biology.

25. The representative of Mexico had stated that the resolution of Ciudad Trujillo did not in any way impair the validity of the principles of Mexico. He (Mr. García Amador) drew attention in that connexion to the final paragraph of that resolution containing the important recommendation "that the American States continue diligently with the consideration of the matters referred to in paragraphs 2, 6 and 7 of this resolution with a view to reaching adequate solutions". The paragraph 7 in question was the paragraph stating that there existed a diversity of positions among the States represented at the Conference with respect to the breadth of the territorial sea. It was therefore clear that the Conference of Ciudad Trujillo had not adopted the principles of Mexico concerning the breadth of the territorial sea.

26. Mr. GARCÍA ROBLES (Mexico) said that the Conference of Ciudad Trujillo had explicitly refrained from expressing "an opinion concerning the positions of the various participating States on the matters on which agreement has not yet been reached". That language did not contradict in any way the principles of Mexico, which stated that "each State is competent to establish its territorial waters within reasonable limits". The position in the Americas was that certain States, including Cuba, adhered to the three-mile limit; others, like Mexico, had a territorial sea of nine miles; yet others, like Venezuela, claimed twelve miles.

The meeting rose at 12.20 p.m.

TWENTY-FIRST MEETING

Wednesday, 19 March 1958, at 3.15 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 1 to 25 and 66) (A/3159) *(continued)*

General debate (conclusion)

STATEMENT BY MR. LOUTFI (UNITED ARAB REPUBLIC) AND MR. KORETSKY (UKRAINIAN SOVIET SOCIALIST REPUBLIC)

1. Mr. LOUTFI (United Arab Republic) said that his delegation, while approaching the task before the Conference in a spirit of co-operation and conciliation, was alive to the difficulties which would be encountered before success could be achieved. Above all, it believed that the Conference should concentrate on general points where agreement was most likely and not enter into a discussion of special cases or political aspects.

2. The International Law Commission's draft clearly covered the law of the sea in time of peace only. That fact was expressly recognized in paragraph 32 of the Commission's report, and, as the representative of Lebanon had already pointed out (4th meeting), the law applicable in time of war had not been taken up.

3. The central question before the Committee was that which had unfortunately caused the failure of the 1930 Conference for the Codification of International Law — namely, the breadth of the territorial sea. The general debate had brought out a considerable diversity of opinion on that issue. His delegation could not share the view of those who were trying to perpetuate the three-mile limit by asserting that it was the traditional rule, observed by many States and as such the only possible juridical point of departure for the Committee's discussions. Not only was the validity of the three-mile limit as a rule of law doubtful, but it did not enjoy universal application. That fact had already been adequately stressed by the representative of Sweden (6th meeting).

4. Several learned authors, including Gidel,[1] had repeatedly stated that there was no rule of international law regarding the maximum breadth of adjacent waters, and that three miles constituted only the minimum, on which there was general agreement. Gidel had even said explicitly that, in international law, States were competent to fix a breadth greater than three miles. In the face of such expert evidence, it could not be argued that any one limit constituted a rule of international law. That conclusion was further confirmed by international conventions and custom, which were the two main sources of the law of nations; there was certainly no multilateral convention stipulating that the territorial sea must necessarily be restricted to three miles, and the absence of agreement in practice and custom had already been proved at The Hague Conference and further demonstrated by the fact that the majority of the new countries that had gained their independence since that time had adopted a limit in excess of three miles. The argument that the three-mile rule constituted a principle of international law was thus devoid of substance. Even the International Law Commission had recognized the lack of uniformity in the practice of States, and had merely said that international law did not permit an extension beyond twelve miles. In those circumstances, the final decision was one solely for the Conference, and the delegation of the United Arab Republic believed that a rule recognizing the right of States to fix any limit between three and twelve miles at their own discretion could offer a satisfactory solution.

5. He had dwelt on the question of the limits of territorial waters because it was a matter of great importance to the security and economy of his country. The United Arab Republic possessed long coasts on the Mediterranean and Red Sea, and as its population was increasing rapidly, the government had decided to intensify its

[1] *Le Droit international public de la mer*, Vol. III, La mer territoriale et la zone contiguë. Paris, Librairie Sirey, 1934, pp. 123 *et. seq.*