

# **United Nations Conference on the Law of the Sea**

Geneva, Switzerland  
24 February to 27 April 1958

Documents:  
**A/CONF.13/C.1/SR.61-66**

## **Summary Records of the 61<sup>st</sup> to 66<sup>th</sup> 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))*

sea, but as an absolute maximum. Hence, a six-mile limit based on the assumption that a territorial sea of twelve miles was normal would be unacceptable to the United Kingdom.

40. In the Portuguese amendment to article 12, paragraph 4 (A/CONF.13/C.1/L.101), the word to be inserted between the words "large-scale" and "charts" should be "navigational" rather than "sailing".

41. With regard to the Chilean proposal relating to paragraph 3 (A/CONF.13/C.1/L.123), he did not see how the same purpose would be served by deleting the paragraph as by inserting the additional text proposed as an alternative. His delegation would find it difficult to accept the alternative, which might have the effect of removing any limit on the width of straits that might become part of the territorial sea of one or two States. There must be some such limit, and he did not think the moderate limit of two miles proposed by the International Law Commission should be exceeded.

42. Mr. TUNCEL (Turkey) said that, although he would be prepared to accept the Yugoslav and Portuguese proposals to delete the reference to special circumstances, the Fourth Committee had adopted a text for article 72 which included such a reference. He believed that Yugoslavia intended to reinstate in the Plenary Conference its original proposal (A/CONF.13/C.4/L.16) to delete that reference from the text adopted for article 72. He deprecated the holding of plenary meetings before the First Committee had finished its work, so that the smaller delegations could not hear the discussion of the reports of other committees. He hoped that the General Committee would be able to remedy that situation.

43. He supported the Chilean proposal relating to article 12, paragraph 3 (A/CONF.13/C.1/L.123), but preferred the insertion of the additional text to the deletion of paragraph 3, since States possessing such straits would prefer to have some guarantee of their legal status. If the territorial sea of one State was wider than that of the other, the result might be to establish a zone as part of the high seas, which might lead to disputes and be greatly to the disadvantage of the coastal State. The safeguards for international navigation provided under article 17, paragraph 4, were sufficient, and it was necessary also to safeguard the security of the coastal States. If a crime were committed in an enclave of high seas where commercial or fishing vessels could anchor, the coastal State would have no jurisdiction.

44. Mr. STABELL (Norway) emphasized that his delegation's proposal contained two main substantive amendments: the first would apply the rule of the median line where States with opposite or adjacent coasts had territorial seas of different breadths; and the second would delete the reference to special circumstances. He agreed with the representative of the United Kingdom that a uniform application of the median line method of delimitation might have unfortunate results in a few cases, but so might any other general rule.

45. The merging of articles 12 and 14 was merely a matter of drafting; the substance of the two articles was so similar that they would be better combined.

46. The proposals by Portugal and Yugoslavia to delete the reference to special circumstances would meet his

delegation's wishes. He did not much mind whether the second sentence of paragraph 1 of the Norwegian proposal were adopted or, alternatively, the reference to special circumstances were deleted. However, whether the relevant sentence in the Norwegian proposal were adopted or not, in some cases a State might be entitled by historical title or prescriptive usage to go further in delimiting its territorial sea from that of neighbouring or opposite States than the median line would allow. Historic title or prescriptive usage might affect the application of many of the articles on the law of the sea, and for that reason he would prefer to see the reference to it in the Norwegian proposal maintained.

47. Apart from the substantive changes he had referred to, the aim of the Norwegian proposal had been to adjust the International Law Commission's text only as far as was necessary to merge articles 12 and 14.

48. In reply to the representative of Mexico, he said that the principle of prescriptive usage applied only to the line of delimitation between the territorial seas of two opposing or adjacent States.

49. In reply to the representative of Turkey, he said that a median line could be drawn to any length from the point where the land frontier ended. It was a mathematically defined line, beyond which neither of the two adjacent States could establish their territorial seas. There was no point in drawing it beyond the limit of the territorial sea.

The meeting rose at 12.50 p.m.

## SIXTY-FIRST MEETING

Tuesday, 22 April 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 (A/3159) (continued)

ARTICLE 12 (DELIMITATION OF THE TERRITORIAL SEA IN STRAITS AND OFF OTHER OPPOSITE COASTS); ARTICLE 14 (DELIMITATION OF THE TERRITORIAL SEA OF TWO ADJACENT STATES) (A/CONF.13/C.1/L.60, L.63, L.97, L.101, L.116, L.121, L.123, L.124, L.129, L.146) (continued)

1. Mr. STABELL (Norway), in reply to the remarks made by the United Kingdom representative at the previous meeting, said that a drafting change was necessary in paragraph 3 of the Norwegian proposal (A/CONF.13/C.1/L.97) to clarify its meaning. The paragraph should be revised to read: "The principle of the preceding paragraph shall also be applicable. . . ."

2. Mr. BOAVIDA (Portugal) accepted the United Kingdom representative's suggestion that the word "sailing" should be replaced by the word "navigational" in the Portuguese amendment to article 14 (A/CONF.13/C.1/L.101).

3. It had been suggested that the International Law Commission's text of article 12, paragraph 2, would produce absurd situations in cases in which two States

opposite each other had adopted different breadths for their territorial seas. In fact, the solution of the problem would be the same under the Commission's text and under the Norwegian proposal.

4. Mr. GUTIERREZ OLIVOS (Chile) said that the purpose of the Chilean proposal (A/CONF.13/C.1/L.123) that article 12, paragraph 3, should be deleted was to make it clear that the position of straits having a single coastal State was governed by the existing rules of international law established either by custom or treaty. If that proposal were rejected, his delegation would maintain its alternative proposal.

5. Mr. SHUKAIRI (Saudi Arabia) said that his delegation preferred the International Law Commission's text to that proposed by Norway. The Commission had had the benefit of expert opinion on a subject which involved a number of technical rather than legal issues.

6. He agreed with the United Kingdom representative that the rule to be adopted had to be flexible. The rules had to be adapted to the coasts and not the coasts to the rules.

7. His delegation supported the amendment of the Federal Republic of Germany adding a reference to historic rights (A/CONF.13/C.1/L.129). Indeed, the last sentence of paragraph 1 of the Norwegian proposal appeared to have been drafted with the intention of meeting that point.

8. His delegation had some doubts regarding the Norwegian proposal that articles 12 and 14 should be amalgamated, for they dealt with different problems. To facilitate the Committee's work, however, his delegation would be prepared to accept the proposal provided that all the elements of the International Law Commission's text of articles 12 and 14 were retained.

9. His delegation opposed the various proposals under which article 12, paragraphs 2 and 3, would be deleted. The existence of pockets of high seas surrounded by territorial sea would create very grave legal and practical difficulties. The question had been raised at The Hague Conference and that conference had agreed to assimilate to the territorial sea pockets of high seas which were not more than two miles across.

10. The alternative proposal by the Chilean delegation (A/CONF.13/C.1/L.123) contained a useful reference to internal or historic waters. He appealed to the Norwegian representative to incorporate that reference into his proposed text.

11. Sir Gerald FITZMAURICE (United Kingdom) said that hydrographical experts were agreed that special circumstances of a technical and geographical character frequently arose which made the adoption of a rigid median line very difficult. He therefore suggested that the second sentence of paragraph 1 of the Norwegian proposal should be revised so as to refer to "prescriptive usage or other special circumstances".

12. Mr. COMAY (Israel) said that his delegation supported the proposals having the effect of deleting article 12, paragraphs 2 and 3. There was nothing to justify the appropriation by States of portions of the high seas on the grounds that they constituted pockets sur-

rounded by territorial sea. A provision of that type would create more problems than it solved.

13. Sir Claude COREA (Ceylon) said that his delegation opposed the Yugoslav amendment deleting the reference to special circumstances (A/CONF.13/C.1/L.60). Such special circumstances did exist and had to be taken into account. The reference to "prescriptive usage" in the Norwegian proposal was inadequate because it covered only one of the many special circumstances which could justify a departure from the median line rule.

14. The Fourth Committee had included a reference to special circumstances in the text which it had adopted at its 33rd meeting for article 72 dealing with the delimitation of the continental shelf, and it was desirable that the provisions on the delimitation of the territorial sea should not be different from those on the delimitation of the continental shelf.

15. Mr. URIBE HOLGUIN (Colombia) said that, in the text of article 66 as adopted at its 58th meeting, the Committee had deliberately omitted all reference to special circumstances in the provisions concerning the delimitation of the contiguous zone. If the Committee were to adopt a different course with regard to the delimitation of the territorial sea, there would be a flagrant contradiction between two decisions of the same committee.

16. The provision contained in paragraph 2 of the Norwegian proposal applied to the delimitation of the territorial sea between States with opposite or adjacent coasts. It was desirable to state that fact explicitly. His delegation suggested that the principle set forth in paragraph 2 should similarly be made explicitly applicable not only to the territorial sea but also to the contiguous zone. The passage in question would then state that, where the delimitation of the outer boundaries of the territorial seas or contiguous zones of two States enclosed an area of the sea which would normally form part of the contiguous zone or of the high seas, the area in question should be divided between the two States concerned and be given the character of territorial sea, contiguous zone, or partly contiguous zone and partly sea.

17. Mr. AGO (Italy) said that the text of article 72 containing a reference to special circumstances had been adopted by the Conference at its 9th plenary meeting by a large majority. If therefore the Committee were to adopt a contrary principle with regard to the delimitation of the territorial sea, it would be running counter to a decision of the Conference. He appealed to the Yugoslav representative not to insist on his amendment.

18. His delegation would support the Portuguese amendment (A/CONF.13/C.1/L.101) provided that a reference to special circumstances were included in it.

19. His delegation preferred the objective formulation of the International Law Commission to the subjective terms of the Norwegian proposal. The Commission's text laid down the median line rule, whereas the Norwegian proposal placed the emphasis on the right of the two States concerned to extend their territorial sea as far as the median line.

20. Mr. VERZIIL (Netherlands) said that his delegation preferred the text of the Norwegian proposal to that of the International Law Commission in so far as it replaced the mandatory provisions of the latter by a statement that the two States concerned were not entitled to extend their territorial sea beyond the median line. The Norwegian proposal made it clear that a State was not obliged to extend the limit of its territorial sea to the median line if it did not wish to do so.

21. He proposed that the term "median" be deleted from the first sentence of paragraph 1 of the Norwegian proposal. The paragraph was applicable not only to the case of opposite coasts but also to the case of adjacent coasts and, in the latter case, it was clearly inappropriate to speak of a median line.

22. It was true that a reference to special circumstances had been included in article 72 on the delimitation of the continental shelf. The articles on the continental shelf, however, were subject to a jurisdiction clause, so that the question of the existence of special circumstances could be decided by the competent court. In the case of the delimitation of the territorial sea, no provision had been made for arbitration or judicial settlement, and the situation was therefore quite different.

23. His delegation considered it dangerous to introduce into international law the notion of prescriptive usage; it was preferable to refer to historic title.

24. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that the idea proposed by the Norwegian delegation of dealing in a single paragraph with the delimitation of the territorial sea between States with opposite coasts and of that of States with adjacent coasts was not a sound one. The International Law Commission's text dealt in two separate articles with those two different situations and was therefore preferable to the Norwegian text.

25. His delegation preferred the objective formulation of the median line rule by the International Law Commission to the text of the Norwegian proposal.

26. The second sentence of paragraph 1 of the Norwegian proposal appeared to deny the principle embodied in the first sentence of that same paragraph. In addition, it referred to "prescriptive usage", without giving any criteria for its practical application.

27. In 1957, the Soviet Union and Norway had satisfactorily settled by agreement the question of the delimitation of the territorial sea in the north of the two countries. The agreement had been ratified. That example showed that innovations in the matter were not necessary.

28. Mr. BOAVIDA (Portugal) said that, in deference to the remarks of several representatives, he would add, after the words "Failing such agreement" in the Portuguese amendment to article 14 (A/CONF.13/C.1/L.101) the words "and unless another boundary line is justified by special circumstances".

29. Mr. STABELL (Norway) said that the main object of his delegation's proposal was to fill the gaps in the International Law Commission's text. The Commission itself had stated in paragraph (7) of its commentary to article 12 that "the rule established by the present article does not provide any solution for cases in which

the States opposite each other have adopted different breadths for their territorial seas".

30. None of the proposals before the Conference regarding the breadth of the territorial sea having a substantial support specified a uniform breadth. All those proposals merely specified a maximum beyond which a State could not extend its territorial sea and thus envisaged the possibility of States adopting different breadths. In those cases, as the International Law Commission had itself stated, the provisions drafted by that Commission would not be applicable. It was therefore necessary for the Conference to adopt some provision along the lines of paragraph 1 of the Norwegian proposal.

31. He amended the text of the second sentence of paragraph 1 of his delegation's proposal to read:

"This provision shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision."

32. He asked for a separate vote on the words "or other special circumstances". His delegation would vote against those words which it had introduced merely to facilitate the voting.

33. He was grateful to the Soviet Union representative for drawing attention to the agreement between Norway and the Soviet Union concerning the delimitation of the territorial sea of their adjacent coasts. The only other similar situation affecting Norway was that of the delimitation of the territorial sea on the frontier with Sweden, a matter which had been settled by arbitration some fifty years previously. The Norwegian delegation, in making its proposal, was only interested in correcting as a matter of principle the deficiencies in the International Law Commission's text.

34. The essence of the Norwegian proposal was well illustrated by the example of a strait eight miles wide the coasts of which belonged to two different States, one having a territorial sea of three miles and another having a territorial sea of six miles; in that case, article 12 as drafted by the International Law Commission would give the second State a territorial sea of four miles, or one mile more than it considered necessary. The Norwegian proposal would leave a one-mile belt of high seas on the side of the median line nearest to the narrower territorial sea.

35. Mr. KRISPIS (Greece) said that his delegation supported the Yugoslav amendment deleting the reference to special circumstances. His opinion on that point had been strengthened by the statement of the Netherlands representative regarding the absence of a provision on arbitration or judicial settlement.

36. He pointed out that the agreement referred to in article 12, paragraph 1, was a peculiar one since it would be valid *erga omnes*. On the other hand, the special circumstances were assumed to be objective and thus to be known to all. Accordingly, if a strip of sea were claimed by two opposite States on the ground of special circumstances, ships of other nationalities passing through that strip would be obliged to comply with the laws and regulations of one or the other of those two States. But, in complying with the laws of

one of those States, the ships — and the governments of the countries to which they belonged — would encounter complaints from the other State that, in so doing, they were upholding the claim of the opposite State. This would cause serious difficulties in practice. Special circumstances, where they existed, should be taken into account in the agreement to be entered into between the States concerned.

37. Mr. YINGLING (United States of America) considered that the Mexican amendment (A/CONF.13/C.1/L.124) whereby “six miles” would be substituted for “two miles” in article 12, paragraph 3, was contrary to the basic principle of the freedom of the high seas and, if adopted, would have very serious consequences.

38. Mr. COMAY (Israel) asked whether the representative of Portugal accepted the interpretation, given by the United Kingdom representative at the previous meeting, of the words “special circumstances”. He also inquired whether the representative of Norway accepted that interpretation, since he (Mr. Comay) found it difficult to reconcile it with the phrase “by reason of historic title or other special circumstances” in the amended text of the Norwegian proposal.

39. Mr. KUSUMAATMADJA (Indonesia) shared the doubts expressed by speakers at the previous meeting regarding the wisdom of combining articles 12 and 14. He suggested that Mr. François, who had been the Special Rapporteur of the International Law Commission, should be asked to explain why the Commission had drafted two separate paragraphs on the question.

40. Mr. MUHTADI (Jordan) moved the closure of the debate.

*The motion was adopted by 28 votes to 16 with 15 abstentions.*

41. Mr. SIKRI (India) asked whether the explanation requested by the Indonesian representative could be given by Mr. François before the Committee voted on articles 12 and 14.

42. The CHAIRMAN ruled that since the debate was closed the Committee must proceed to vote on those articles.

43. Mr. PONCE Y CARBO (Ecuador) asked for a separate vote on the phrase “historic title or other” in the second sentence of the Norwegian proposal (A/CONF.13/C.1/L.97) as amended by its sponsor during the course of that meeting.

*The first sentence of paragraph 1 of the Norwegian proposal (A/CONF.13/C.1/L.97) was adopted by 39 votes to 19 with 9 abstentions.*

*The phrase “historic title or other” in the second sentence of the amended Norwegian proposal was adopted by 25 votes to 13 with 31 abstentions.*

*The phrase “special circumstances” in the second sentence was adopted by 38 votes to 7 with 22 abstentions.*

*The second sentence of paragraph 1 of the Norwegian proposal as amended was adopted by 32 votes to 15 with 19 abstentions.*

44. The CHAIRMAN pointed out that in consequence of the adoption of paragraph 1 of the amended Norwegian proposal it was unnecessary to vote on the amendments to article 12 submitted by Yugoslavia (A/CONF.13/C.1/L.60), the Federal Republic of Germany (A/CONF.13/C.1/L.121), and Portugal (A/CONF.13/C.1/L.101).

*Paragraph 1 as a whole of the Norwegian proposal, so amended, was adopted by 39 votes to 13 with 14 abstentions.*

*Paragraph 2 of the Norwegian proposal was rejected by 26 votes to 24, with 14 abstentions.*

*The proposals to delete paragraph 3 of article 12 of the International Law Commission's draft submitted by the delegations of Greece (A/CONF.13/C.1/L.63), the United States of America (A/CONF.13/C.1/L.116), Chile (A/CONF.13/C.1/L.126) and Turkey (A/CONF.13/C.1/L.146) were adopted by 30 votes to 25, with 13 abstentions.*

45. The CHAIRMAN put to the vote article 12, paragraph 4, of the International Law Commission's text; he added that the decision on that paragraph would be subject to the drafting committee's report on the amendments submitted by Portugal (A/CONF.13/C.1/L.101) and the United States of America (A/CONF.13/C.1/L.116) to that paragraph.

*Article 12, paragraph 4 was adopted by 67 votes to none.*

46. The CHAIRMAN said that in consequence of the vote on paragraph 1 of the Norwegian proposal it was unnecessary to consider amendments affecting article 14 of the International Law Commission's text.

47. Mr. COMAY (Israel), explaining his vote, said that it was his Government's contention that article 12 did not apply to bays or gulfs bordered by more than two coastal States.

ARTICLE 13 (DELIMITATION OF THE TERRITORIAL SEA AT THE MOUTH OF A RIVER) (A/CONF.13/C.1/L.101, L.108, L.125)

48. Mr. VERZIJL (Netherlands) said that his delegation proposed (A/CONF.13/C.1/L.108) the deletion of article 13 of the International Law Commission's draft because the meaning of the article was obscure.

49. Mr. BOAVIDA (Portugal) said that the object of his delegation's amendment (A/CONF.13/C.1/L.101) was to clarify the meaning of article 13.

50. Mr. YINGLING (United States of America) said that the United States amendment (A/CONF.13/C.1/L.125), although of a technical nature, involved a drafting change and should therefore be referred direct to the drafting committee together with his delegation's comments on the amendment.

51. Mr. FRANCOIS (Expert to the secretariat of the Conference) replying to a question by Mr. SIKRI (India) said that the French text of article 13 of the Commission's text was much clearer than the English text, and did not include the expression *inter fauces terrarum*. The Commission had had some difficulty in drafting the article, paragraph 2 of which had been taken from the Report of the Second Sub-Committee

of the Second Committee of the Hague Conference of 1930 for the Codification of International Law.<sup>1</sup> The term "estuary" had been used by that conference and had been embodied in the Commission's text as a term familiar to geographers.

*The Netherlands amendment to article 13 (A/CONF.13/C.1/L.108) was rejected by 43 votes to 6, with 18 abstentions.*

52. Mr. GARCIA ROBLES (Mexico) proposed that the Committee should adopt article 13 as drafted by the International Law Commission, and refer the United States amendment (A/CONF.13/C.1/L.125) and the Portuguese amendment (A/CONF.13/L.101) to the drafting committee for consideration by technical experts; the drafting committee should report back to the Committee on whether questions of substance were involved in those amendments.

53. Mr. GUTIERREZ OLIVOS (Chile) thought that the United States amendment to article 13 was more than a drafting amendment. He considered the International Law Commission's text to be logical. Besides, if paragraph 2 were deleted, what article should apply to a river flowing into an estuary the coasts of which belonged to a single State?

54. Mr. YINGLING (United States of America) said that it was his understanding that an estuary was that part of a river where the effects of the tides were felt. His delegation had suggested the deletion of paragraph 2 because opinions differed as to the precise meaning of the word "estuary"; the reference to article 7 only complicated matters.

55. Mr. GROS (France), supporting the United States amendment, said that article 13 should not mention the term "estuary".

56. Mr. BING (Ghana) suggested that the English text of article 13 should be brought into line with the French and Spanish texts.

57. Mr. MARTINEZ MONTERO (Uruguay) emphasized the difficulty of defining the term "estuary". The term had been studied very carefully in his country but it had been found impossible to reach a precise definition. He therefore associated himself with the remarks of the United States representative.

58. Mr. RUBIO (Panama) agreed that the term "estuary" was hardly definable and supported the French representative's suggestion that the term should not appear in article 13.

59. Mr. BOAVIDA (Portugal) said that his delegation opposed the deletion of article 13, paragraph 2, and considered that the amendment should be debated by the First Committee.

*The Mexican representative's proposal to adopt article 13 and to refer the United States and Portuguese amendments to the drafting committee was adopted.*

#### **Consideration of the kind of instruments required to embody the results of the First Committee's work**

60. Mr. TUNCEL (Turkey) proposed that the question of the final clauses to be adopted should be referred to the plenary Conference.

61. Mr. NIKOLAEV (Union of Soviet Socialist Republics) supported the Turkish representative's proposal.

62. Mr. GARCIA ROBLES (Mexico) also supported the Turkish representative's proposal and drew attention to paragraph 101 of the report of the Second Committee (A/CONF.13/L.17).

63. Mr. TAYLHARDAT (Venezuela) considered that the First Committee should decide what final clauses should be included in the instruments to be adopted by the Conference.

64. Mr. LOUTFI (United Arab Republic) moved the adjournment of the meeting.

*The motion was adopted.*

The meeting rose at 6.40 p.m.

### **SIXTY-SECOND MEETING**

*Wednesday, 23 April 1958, at 2.45 p.m.*

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

#### **Consideration of the kind of instruments required to embody the results of the First Committee's work (continued)**

1. Sir Reginald MANNINGHAM-BULLER (United Kingdom) thought that it might be helpful to have a tentative discussion in the Committee of the kind of instrument required before the matter was referred to the plenary Conference. One important question which should be given careful consideration was how many ratifications or accessions would be required before a proposed convention enter into force.

2. Mr. GARCIA AMADOR (Cuba) said that the Committee should defer consideration of the final clauses until it had received the report of its drafting committee on all the articles submitted to it.

3. Mr. LOUTFI (United Arab Republic) associated himself with the remarks of the United Kingdom representative regarding accessions and ratifications and said that the question of reservations, denunciations and so forth should also be discussed. He thought it would be preferable to refer the question to the plenary Conference.

4. Mr. DEAN (United States of America) pointed out that some committees had taken the view that a convention should be adopted relating to certain articles and one of them had considered that a declaration was sufficient. In view of the importance of the work entrusted to the First Committee he agreed that some discussion of the final clauses should be held before the matter was submitted to the plenary Conference.

5. Mr. GARCIA ROBLES (Mexico) agreed that it might be useful to have a brief preliminary discussion in the First Committee when the drafting committee

<sup>1</sup> See L.o.N.P. 1930.V.16, p. 206.

had submitted its report. The matter could then be referred to the plenary Conference.

6. Mr. DREW (Canada) said that, apart from possible clarifications of certain specific points, it was unnecessary to have a general discussion of the question of final clauses in the First Committee.

7. The CHAIRMAN suggested that the discussion of the final clauses proposed by the Secretariat in document A/CONF.13/L.7 should be deferred until the Committee had considered the report of its drafting committee.

*It was so decided.*

**Title of articles (A/CONF.13/C.1/L.5, L.61)**  
(continued)<sup>1</sup>

8. The CHAIRMAN said that it would greatly facilitate the work of the drafting committee if a decision could be taken on the proposal of Saudi Arabia (A/CONF.13/C.1/L.5) concerning the title of the articles and on the amendment submitted by Yugoslavia (A/CONF.13/C.1/L.61).

9. Mr. SHUKAIRI (Saudi Arabia) recalled that the International Law Commission's commentary to part I, section III, of its draft expressly stated that all the regulations were applicable only in time of peace. The purpose of his delegation's proposal was to ensure that the title of the articles limited the application of the provisions to time of peace. He suggested that the proposal should be referred to the drafting committee or to the plenary Conference.

10. Mr. GARCIA AMADOR (Cuba) suggested that both the Saudi Arabian proposal and the Yugoslav amendment should be considered by the plenary Conference since they referred to all the articles and not only to those considered by the First Committee.

11. Mr. DEAN (United States of America) said that the Committee might recommend to the plenary Conference that the title of the articles be as proposed by the delegation of Saudi Arabia.

12. Sir Reginald MANNINGHAM-BULLER (United Kingdom) said that while it was desirable that it should be made clear that the Conference was dealing with the law of the sea in time of peace, he would not like it to be thought that all the provisions of the articles agreed upon by the Conference would automatically become inapplicable in the event of war or in the event of a borderline condition which might not come within the description of either peace or war. Subject to that proviso, he could support the Saudi Arabian proposal.

13. Mr. KATICIC (Yugoslavia) introduced the Yugoslav amendment (A/CONF.13/C.1/L.61) to the Saudi Arabian proposal. The purpose of that amendment was to add to the proposal the following: "They shall also apply in case of armed conflict unless the applicable rules of international law otherwise provide."

14. Mr. VERZIJL (Netherlands) said that, as many of the articles would also apply in time of war, he

would not be able to support the Saudi Arabian proposal.

15. Mr. SALAMANCA (Bolivia) said that the sense of the proposal submitted by Saudi Arabia was already embodied in the articles drafted by the International Law Commission.

16. The CHAIRMAN suggested that the General Committee of the Conference should be asked to decide in which body the proposal and the amendment thereto should be debated.

*It was so decided.*

**Motion for reconsideration of the United States proposal concerning article 3 (A/CONF.13/C.1/L.159/Rev.2)**

17. Mr. DEAN (United States of America) said that, after consultation with many delegations, he wished to invoke rules 32 and 53 of the rules of procedure and move the reconsideration of the United States proposal concerning article 3 (A/CONF.13/C.1/L.159/Rev.2); in his delegation's opinion, it was essential that the Committee should reach a decision on the question to which the proposal related.

18. Mr. SHUKAIRI (Saudi Arabia) said that the United States proposal had been debated at length and no valid argument had been advanced in support of the motion for its reconsideration. It was improper to reopen a matter which was closed.

19. It was still possible that the question of the breadth of the territorial sea might be settled by compromise and conciliation, but the motion introduced by the United States representative would not help matters. A motion for reconsideration could only be introduced if new facts had been brought to light, a condition not fulfilled in the particular case.

20. He urged the United States representative seriously to think over his motion. The question of the breadth of the territorial sea should be left open for negotiation between States at a high level. The Conference could be reconvened later and the question debated in an atmosphere of friendly understanding.

21. Mr. SIKRI (India) said that the proposal which the United States representative sought to reintroduce patently conflicted with the part of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) which the Committee had accepted. The United States motion was therefore out of order. Perhaps the United States delegation might consider re-submitting its proposal in the plenary Conference.

22. The CHAIRMAN ruled that the motion for reconsideration of the United States proposal was in order, and that the Committee was competent to decide to reconsider that proposal.

23. Mr. DREW (Canada) said that on more than one occasion it had been emphasized that the Conference was important, and the Conference had met with a greater measure of success than was fully appreciated. Almost all the articles drafted by the International Law Commission had been dealt with, and a substantial measure of agreement had been reached upon the type of convention that would have binding sig-

<sup>1</sup> Resumed from the 51st meeting.

nificance for all nations represented at the Conference. It would be tragic if at the present stage of the Conference it was brought to failure by a procedure which was entirely inconsistent with the whole spirit and purpose of the United Nations. The clear concept of the Charter of the United Nations was that all nations, large and small, should have the right to meet, to debate and to reach conclusions in an orderly manner under rules that would assure the smaller nations the same rights as were accorded to the more powerful nations.

24. He recalled the heated discussion which had taken place at the Committee's 57th meeting when the representative of Ecuador had wished to change his vote, and felt that the ruling applied at that time should be applied now.

25. Delegations had come to the meeting unprepared to expect the motion for reconsideration. The manoeuvre which had taken place should be deplored by every representative present who hoped to see recognition in the future of the dignity and responsibility of the United Nations in conferences similar to the Conference on the Law of the Sea. There would be ample opportunity under the rules of procedure for the discussion of the subject covered by the United States proposal in plenary meeting.

26. Owing to their absence at a plenary meeting the representatives of many of the smaller nations were not able to participate in the First Committee's meeting and would therefore be unable to vote if the United States proposal was reconsidered. The tactics employed by the United States representative obviously operated to the disadvantage of the smaller delegations and made it difficult for them to assert their position. He emphasized that it was not the first time that an attempt had been made in the First Committee to circumvent the rules of procedure. In the present case an attempt was being made to bring forward a proposal which would supersede one that had already been accepted.

27. The future of the Conference was in the hands of the First Committee and he strongly urged the United States representative, in the interests of conciliation and understanding, to withdraw his proposal and to rely upon regular procedure and place his arguments before the plenary meeting, when all representatives would be prepared to discuss it with the prior knowledge of what they were going to discuss.

28. Mr. GARCIA ROBLES (Mexico) moved the adjournment of the meeting under rule 27 of the rules of procedure. He said that the reconsideration of the revised United States proposal might well mean that the Conference would end on a note of frustration.

*A vote was taken by roll-call at the request of the representative of Mexico.*

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

*In favour:* Albania, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, Colombia, Czechoslovakia, Ecuador, Ghana, Guatemala, Hungary, Iceland, India, Indonesia, Iraq, Jordan, Libya, Federation of Malaya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of

Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia.

*Against:* Australia, Belgium, Brazil, Cambodia, China, Cuba, Denmark, Dominican Republic, France, Federal Republic of Germany, Greece, Haiti, Holy See, Honduras, Ireland, Israel, Italy, Japan, Republic of Korea, Laos, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Pakistan, Paraguay, Portugal, San Marino, Spain, Sweden, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam.

*Abstentions:* Austria, Bolivia, Costa Rica, El Salvador, Finland, Iran, Lebanon, Nicaragua, Philippines, Switzerland.

*The motion was rejected by 38 votes to 35, with 10 abstentions.*

29. Mr. NIKOLAEV (Union of Soviet Socialist Republics), speaking on a point of order, said that none of the delegations had come to the meeting prepared to discuss the important United States motion.

30. He therefore invoked rule 29, which required that proposals should be introduced in writing and should not be discussed or put to the vote unless circulated not later than the day preceding the meeting. That rule had been applied to minor amendments and it was only proper to apply it to the United States motion.

31. The CHAIRMAN ruled against the point of order raised by the Soviet Union representative. The purpose of rule 29 was to enable the actual text of resolutions to be examined by delegations before the discussion in Committee. The text of the revised United States proposal had been before the Committee for several days.

32. The United States motion for reconsideration was therefore in order.

33. Mr. LOUTFI (United Arab Republic) moved the adjournment of the debate under rule 25 of the rules of procedure, on the grounds that delegations had not come prepared to discuss the United States motion for reconsideration.

34. The CHAIRMAN said that under rule 25 he would allow two representatives to speak in favour of the motion and two representatives to speak against the motion.

35. Mr. BING (Ghana) supported the motion for the adjournment of the debate. Votes which divided the Committee into two almost equal blocs would hardly help to produce a compromise solution on the important question of the breadth of the territorial sea.

36. Mr. SINACEUR BEN LARBI (Morocco) moved the adjournment of the meeting under rule 27.

37. The CHAIRMAN said that the rules of procedure did not preclude a second motion for the adjournment of the meeting at that stage. He therefore put the Moroccan representative's motion to the vote without debate under rule 27.

*At the request of the representative of Poland, a vote on the Moroccan motion for the adjournment of the meeting was taken by roll-call.*



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

*In favour:* Albania, Argentina, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, Colombia, Czechoslovakia, Ecuador, Ghana, Guatemala, Iceland, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia.

*Against:* Australia, Belgium, Brazil, Cambodia, China, Cuba, Denmark, Dominican Republic, France, Federal Republic of Germany, Greece, Haiti, Holy See, Honduras, Ireland, Israel, Italy, Japan, Republic of Korea, Laos, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Pakistan, Paraguay, Portugal, San Marino, Spain, Sweden, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam.

*Abstentions:* Austria, Bolivia, Costa Rica, El Salvador, Finland, Nicaragua, Philippines, Switzerland.

38. Mr. USTOR (Hungary), speaking on a point of order relating to the voting, said that he had been absent when the name of Hungary had been called. He wished his affirmative vote to be recorded.

39. The CHAIRMAN ruled that it was not possible to record the vote of the Hungarian representative because, at the time of his request, the voting had ended. The situation was the same as with a ballot vote already taken. He regretted that he was unable to comply with the Hungarian representative's request. The opinion of the Hungarian delegation on the motion would, however, be placed on record.

*The Moroccan motion to adjourn the meeting was rejected by 38 votes to 36, with 8 abstentions.*

40. Mr. SHUKAIRI (Saudi Arabia), speaking on a point of order, said that the motion for the reconsideration of the revised United States proposal was in order. He questioned, however, the advisability of its being considered by the Committee at that stage, particularly in view of the provisions of rule 29 of the rules of procedure which were intended to ensure that a committee should have due time to consider a motion before it was discussed and voted upon.

41. The CHAIRMAN ruled that the Committee was competent under rule 32 of the rules of procedure to discuss and to vote on the United States motion at that meeting.

42. The Committee had still before it the motion of the United Arab Republic for the adjournment of the debate. Under rule 25 of the rules of procedure, one more representative could speak in favour of the motion and two representatives could speak against it.

43. Mr. RUEDEL (France) opposed the motion for the adjournment of the debate. Rule 32 applied to the motion for the reconsideration of the United States proposal. At its 57th meeting, the Committee had entertained a motion for the reconsideration of another proposal without any difficulty and he was surprised at

the strenuous opposition against a motion of the same character at the present meeting.

44. Sir Claude COREA (Ceylon) supported the motion for the adjournment of the debate. That adjournment would help to create a favourable atmosphere and contribute to the efforts being made to arrive at a compromise.

45. Mr. AGO (Italy) opposed the motion for adjournment and asked that it should be put to the vote.

46. Mr. DEAN (United States of America) said that his delegation would agree to its motion for the reconsideration of the revised United States proposal being discussed at the Committee's next meeting.

47. Mr. LOUTFI (United Arab Republic) said that, in view of the United States representative's statement, he would withdraw his delegation's motion for the adjournment of the debate.

48. The CHAIRMAN said that, if there was no objection, the debate on the United States motion for reconsideration of the revised United States proposal (ACONF.13/C.1/L.159/Rev.2) would be held over until the following meeting.

*It was so agreed.*

The meeting rose at 6.30 p.m.

## SIXTY-THIRD MEETING

*Thursday, 24 April 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 (A/3159) (continued)**

ARTICLE 7 (BAYS) (A/CONF.13/C.1/L.104, L.158/Rev.1) (concluded)<sup>1</sup>

1. The CHAIRMAN recalled that, at the 48th meeting, consideration of article 7, paragraph 4, had been deferred, together with the Japanese amendment to that paragraph (A/CONF.13/C.1/L.104) and the joint draft resolution submitted by Panama and India, recommending a study of historic waters (A/CONF.13/C.1/L.158/Rev.1).

2. Miss LEFEVRE (Panama) introducing the revised joint draft resolution, said that it had been drafted with due regard for the comments made by representatives when the original joint draft resolution (A/CONF.13/C.1/L.158) had been discussed at the Committee's 48th meeting. She referred to the statement made by the representative of Panama at that meeting.

3. Mr. SIKRI (India) said that there was general agreement on the recommendation that the Conference should refer the matter to the General Assembly, with the request that the Assembly make appropriate arrangements for a study. There had been some dif-

<sup>1</sup> Resumed from the 48th meeting.

ference of opinion, however, on what should be done when the study was completed. It had, for example, been suggested that a set of draft rules should be prepared on the basis of the study and that another conference should be convened to deal with the subject.

4. The co-sponsors of the joint draft resolution had considered it sufficient to send the results of the study to all States Members of the United Nations. Any State could then request the General Assembly to take such action as it deemed appropriate.

5. Mr. TUNCEL (Turkey) said that his first impression had been that the study would be purely geographical. His delegation had some doubts regarding the words "the study of the juridical régime of historic waters, including historic bays". If the Conference were to adopt article 7, paragraph 4, it would be implicitly establishing the juridical régime of historic bays, since that paragraph stipulated that paragraphs 1, 2 and 3 of article 7 did not apply to such bays.

6. Mr. SIKRI (India) said that the study recommended in the revised joint draft resolution would not be of a purely geographical character; historical factors would also be considered, as well as any other relevant factors. A study would probably have to be made of each historic bay, examining both its history and its geographical situation.

7. Luang CHAKRAPANI (Thailand) said that his delegation supported the Japanese amendment (A/CONF.13/C.1/L.104), the purpose of which was to define historic bays. It was necessary to insert a definition in the text of paragraph 4, which exempted such bays from the rules generally applicable to bays. It was clear that the question of defining historic bays could not be left to the courts.

8. Mr. TUNCEL (Turkey) asked whether the Committee would still examine article 7, paragraph 4, if the revised joint draft resolution was adopted.

9. The CHAIRMAN said that paragraph 4 was merely a declaration that the previous paragraphs did not apply to the so-called "historic bays"; it left entirely open the question of the régime applicable to such bays. In his opinion, therefore, it would be quite appropriate for the Committee to vote on paragraph 4, even if it adopted the revised joint draft resolution.

10. Mr. YOKOTA (Japan) said that the definition contained in the Japanese amendment (A/CONF.13/C.1/L.104) had been prepared with the aid of the secretariat memorandum on historic bays (A/CONF.13/1). If the Committee adopted the revised joint draft resolution, which provided for a study of the juridical régime of historic bays, his delegation would not press for a vote on its amendment. His delegation hoped, however, that the proposed definition would be placed before whatever body was called upon to undertake the study in question.

11. The CHAIRMAN put the revised draft resolution submitted by Panama and India (A/CONF.13/C.1/L.158/Rev.1) to the vote.

*The revised draft resolution was adopted by 54 votes to 2, with 10 abstentions.*

12. The CHAIRMAN said that the Japanese proposal would be included among the documents of the Conference and would be available for consideration by any body set up by the General Assembly to study the juridical régime of historic waters.

13. Mr. VERZIJL (Netherlands) pointed out that the Japanese proposal contained two amendments, one defining historic bays and the other deleting the following phrase in the International Law Commission's draft of paragraph 4: "or in any cases where the straight baseline system provided for in article 5 is applied." He asked whether the Japanese representative withdrew both these amendments.

14. Mr. YOKOTA (Japan) explained that his delegation had withdrawn its other amendment in the working party on article 5.

15. The CHAIRMAN pointed out that no further amendments to article 7, paragraph 4, had been submitted. In the absence of any objection, he would therefore consider paragraph 4 as drafted by the International Law Commission to be adopted.

16. Sir Gerald FITZMAURICE (United Kingdom) wished to record his dissent regarding that part of article 4 which read: "or in any cases where the straight baseline system provided for in article 5 is applied."

*Paragraph 4 of the International Law Commission's draft article 12 was adopted, the dissent of the United Kingdom representative being noted.*

ADDITIONAL ARTICLE 14 A PROPOSED BY JAPAN  
(A/CONF.13/C.1/L.130, L.151)

17. Mr. YOKOTA (Japan) withdrew his delegation's proposal for an additional article 14 A (A/CONF.13/L.130) dealing with the settlement of disputes concerning articles 5 and 7, because there were three proposals before the plenary Conference regarding the judicial settlement of disputes (A/CONF.13/BUR/L.3, L.5 and L.6) which his delegation fully supported.

18. The CHAIRMAN said that, as a result of the withdrawal of the Japanese proposal, the Yugoslav amendment (A/CONF.13/C.1/L.151) to that proposal automatically lapsed.

The meeting rose at 4.30 p.m.

**SIXTY-FOURTH MEETING**

*Friday, 25 April 1958, at 1.10 p.m.*

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

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

ARTICLE 66 (CONTIGUOUS ZONE) (concluded)

1. Mr. GASIOROWSKI (Poland) drew attention to the comments on article 66 by the drafting committee,

in the report by the Secretariat (A/CONF.13/C.1/L.167). It would be seen that there was some inconsistency between the text of article 66, paragraph 3, as adopted following the adoption of point 2 of the Yugoslav proposal (A/CONF.13/C.1/L.54), and that of article 12, paragraph 1, as adopted following the adoption of the Norwegian proposal (A/CONF.13/C.1/L.97). Since a matter of substance was involved, the drafting committee was seeking the First Committee's approval for the replacement of article 66, paragraph 3, by a text corresponding to the wording of article 12.

2. Mr. STABELL (Norway) said that he had pointed out at the 60th meeting that, if his proposal on article 12 was adopted, the drafting committee might have to make some consequential changes in the wording of article 66 as adopted. He agreed that the matter was one of substance, and accepted the revised text proposed by the drafting committee.

3. Mr. KATICIC (Yugoslavia) had no objection to the text proposed by the drafting committee.

4. Mr. LEDESMA (Argentina) recalled that he had voted against the Yugoslav proposal on article 66 because he considered that the contiguous zone, being part of the high seas, should not be subject to any delimitation. He wondered whether article 66, paragraph 3, could not be reconsidered with a view to deletion.

5. The CHAIRMAN said that lack of time would prevent the Committee from reconsidering any items it had already approved. He invited the Committee to vote on the revised text of article 66, paragraph 3, proposed in the report by the Secretariat on the work of the drafting committee.

*The revised text of article 66, paragraph 3, was adopted by 24 votes to 6, with 9 abstentions.*

6. Sir Gerald FITZMAURICE (United Kingdom) said that he had voted against the Yugoslav proposal on the same grounds as the representative of Argentina. The delimitation of a zone of the high seas presupposed the existence of exclusive rights in that zone; he saw no reason for delimiting a zone in which the coastal State exercised rights of control only.

7. Mr. TUNCEL (Turkey) explained that he had been unable to participate in the voting because the French text of the document under consideration had not been distributed.

8. Mr. HSUEH (China) said that he had abstained from voting because he did not think that the arguments advanced by the Norwegian representative in favour of his proposal on article 12 applied to article 66, paragraph 3; the provisions of article 66 were permissive, while those of article 12 were mandatory in consequence of the definition of the territorial sea given in article 1.

9. Mr. MARTINEZ MONTERO (Uruguay) asked that his negative vote should be recorded.

10. Mr. KRISPIS (Greece) said that he had abstained from voting.

**Draft report of the First Committee: part one (articles 3 and 66) (A/CONF.13/C.1/L.168)**

11. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), Rapporteur, presented part one of the draft report of the Committee (A/CONF.13/C.1/L.168).

12. Mr. GARCIA ROBLES (Mexico) drew attention to a discrepancy between the opening words of paragraphs 23 and 26 of the draft report,<sup>1</sup> and suggested that the former paragraph should be amended to correspond to the latter.

13. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), Rapporteur, regretted the discrepancy, which was due to hurried drafting. He thought it would be more correct to bring the opening words of paragraph 26 into line with those of paragraph 23, since it was not the Committee's function to recommend an article to the plenary Conference, but only to report its adoption.

14. Mr. NUTT (Canada) remarked that a definition of the contiguous fishing zone was given in paragraph 9,<sup>2</sup> but not in the last sentence of paragraph 14;<sup>3</sup> he therefore suggested that the words "in which it has the same rights in respect of fishing and the conservation of the living resources of the sea as it has in its territorial sea" be added at the end of that paragraph.

15. Mr. BOAVIDA (Portugal) requested the insertion of a reference to the fact that the Portuguese proposal (A/CONF.13/C.1/L.144) had been submitted as an amendment to the original Canadian proposal (A/CONF.13/C.1/L.77/Rev.1); the revised Portuguese proposal (A/CONF.13/C.1/L.144/Rev.1) had been submitted as an amendment to the joint proposal by Canada, India and Mexico (A/CONF.13/C.1/L.77/Rev.2) and, having been orally revised at the 55th meeting, had been subsequently withdrawn.

16. The representatives of MEXICO and the UNITED STATES OF AMERICA having suggested some drafting changes, Mr. KORETSKY (Ukrainian Soviet Socialist Republic), Rapporteur, said that all the suggestions made would be taken into account; he invited members of the Committee to inform him of any other drafting changes they considered necessary.

*Part one of the draft report of the Committee (A/CONF.13/C.1/L.168) was adopted.*

The meeting rose at 2.5 p.m.

<sup>1</sup> Paragraphs 25 and 28 of the final report (A/CONF.13/L.28/Rev.1).

<sup>2</sup> Paragraph 10 of the final report

<sup>3</sup> Paragraph 15 of the final report.

**SIXTY-FIFTH MEETING***Friday, 25 April 1958, at 9 p.m.**Chairman: Mr. K. H. BAILEY (Australia)***Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)****ADOPTION OF THE REPORT BY THE SECRETARIAT ON THE WORK OF THE DRAFTING COMMITTEE OF THE FIRST COMMITTEE (A/CONF.13/C.1/L.167)**

1. Mr. CARMONA (Venezuela), speaking to a point or order, said that the Secretariat's report on the work of the drafting committee of the First Committee (A/CONF.13/C.1/L.167) had not been circulated in Spanish, so that Spanish-speaking representatives would be at a great disadvantage in discussing it on the basis of the English and French texts.

2. The CHAIRMAN explained that great pressure of work had made it impossible to prepare the Spanish version in time for the meeting.

3. After some discussion, Mr. SAVINON (Dominican Republic), speaking on behalf of the Spanish-speaking representatives, announced that, in view of the exceptional circumstances, they were willing to rely as far as was possible on the English and French texts.

4. The CHAIRMAN thanked those representatives, and assured them that their conciliatory gesture would in no way prejudice the fundamental right of any country to call for documents in the working language of its choice.

5. Mr. El ERIAN (United Arab Republic) and Mr. COMAY (Israel) paid tributes to the generosity of the Spanish-speaking delegations.

6. The CHAIRMAN invited the Committee to consider the recommendations of the drafting committee article by article.

*Introduction**The text of the introduction was approved.**Heading of Part I**The text of that paragraph was approved.**Articles 1, 2 and 3**The recommendations of the drafting committee relating to those articles were adopted without comment.**Article 4*

7. Sir Gerald FITZMAURICE (United Kingdom) pointed out that it had been agreed in the drafting committee to delete the word "normal" before "baseline".

*The above change was agreed to.*

8. Mr. PONCE Y CARBO (Ecuador) said that his delegation accepted article 4 as drafted on the understanding that its terms in no way conflicted with the

domestic legislation of Ecuador regarding the choice of baselines.

*The recommendations of the drafting committee relating to article 4 were adopted.**Article 5*

9. Mr. YINGLING (United States of America) recalled that the drafting committee had agreed to replace, in paragraph 7 of article 5, the word "drawn" by the word "applied".

10. The CHAIRMAN, confirming that recollection, said that the change should be made.

11. Mr. STABELL (Norway) suggested that paragraph 5 would more appropriately follow paragraph 7.

12. The CHAIRMAN agreed, subject to the deletion of the word "such".

*The recommendations of the drafting committee relating to article 5 were adopted.**Articles 5 A and 6**The recommendations of the drafting committee relating to articles 5 A and 6 were adopted without comment.**Article 7*

13. Sir Gerald FITZMAURICE (United Kingdom) pointed out that the last two sentences of paragraph 3 repeated those of paragraph 2.

14. The CHAIRMAN said that the oversight would be rectified.

*The recommendations of the drafting committee relating to article 7 were adopted.**Articles 8 and 9**The recommendations of the drafting committee relating to articles 8 and 9 were adopted without comment.**Article 10*

15. Mr. KRISPIS (Greece) drew attention to the text of paragraph 2 recommended by the drafting committee, and pointed out that the word "where" could refer to a locality, or could mean "when" (*dans le cas où* as it was worded in the French text). In neither case did the text make sense.

16. The International Law Commission had proposed the words "Every island has its own territorial sea", and the first Committee had expressed its agreement with that principle by rejecting a Burmese proposal concerning article 10 (A/CONF.13/C.1/L.3). To avoid ambiguity he proposed that paragraph 2 be amended to read:

*"The territorial sea of an island is measured in accordance with the provisions of these articles."*

17. Mr. YINGLING (United States of America) objected that an island within a baseline had no territorial sea, and supported the committee's draft.

18. Mr. KRISPIS (Greece) said that an island within

internal waters had no territorial sea, because a State exercised more extended jurisdiction over such waters than over the territorial sea. There was no other case in which an island had no territorial sea of its own.

19. Mr. PONCE Y CARBO (Ecuador) agreed with the representative of Greece, maintaining that the International Law Commission's postulate was correct and should be upheld. Its truth was not affected by the existence of islands lying within the territorial sea of a mainland. The drafting committee's wording implied the contrary: that in certain cases an island might not have its own territorial sea. He favoured either the text proposed by Greece, or a return to the Commission's statement with the addition of the drafting committee's words governing measurement.

20. Mr. WESSELS (Union of South Africa) also supported the Greek representative's argument. The drafting committee's text was likely to cause confusion, for it contained nothing to show that islands lying outside a State's main territorial waters had their own territorial sea.

21. Mr. PONCE Y CARBO (Ecuador) recalled that all the amendments proposed to article 10, even that of the United States of America (A/CONF.13/C.1/L.112), had expressly or implicitly laid down the principle that every island had its own territorial sea. He therefore suggested that the Committee should approve paragraph 1 of the drafting committee's text, defining an island, using in paragraph 2 the International Law Commission's words "Every island has its own territorial sea", followed by the drafting committee's provision for measurement.

22. Mr. STABELL (Norway) supported the Greek proposal. The first part of paragraph 2 was bad, because it left open the question of when an island had a territorial sea of its own. It would, however, be difficult to revert to the International Law Commission's original text, which was open to certain objections. For example, if an island lay within the territorial sea as measured from a coastline, it would be difficult to say that it had its own territorial sea.

23. Sir Gerald FITZMAURICE (United Kingdom) said that the point at issue was purely a matter of drafting. All were agreed that islands normally had their own territorial seas; but it was a fact that those lying within straight baselines did not. A possible alternative would be to revert to paragraph 2 as drafted in document A/CONF.13/C.1/L.162, since the provisions of articles 4 and 5 also applied to islands. But he thought that the proposal made by Greece and supported by Norway would meet all objections.

24. The CHAIRMAN observed that a point of law was involved. It had been decided that it was not correct to say that every island had its territorial sea. The only action required of the Committee was to accommodate the text to the implications of that decision.

25. Mr. BOAVIDA (Portugal) suggested the wording "Every island lying outside the baseline has its own territorial sea."

26. Mr. YINGLING (United States of America) said that the alternative drafting suggested by the Greek delegation and supported by other delegations was entirely satisfactory to his own delegation. He would be unable to accept the reinstatement of the first sentence of the International Law Commission's draft.

27. Luang CHAKRAPANI (Thailand) proposed the following text: "The territorial sea of an island lying outside the main baseline is measured in accordance with the provisions of these articles."

28. Sir Gerald FITZMAURICE (United Kingdom) much preferred the wording suggested by the representative of Greece, since the expression "main baseline" was vague. Besides, an island might be intercepted by a baseline. He appealed to the representatives of Portugal and Thailand to withdraw their suggestion.

29. Mr. EL ERIAN (United Arab Republic) supported the views expressed by the United Kingdom representative.

30. The CHAIRMAN asked the Committee whether it accepted the amendment proposed by the representative of Greece and supported by a number of other delegations.

*The amendment was accepted.*

*The recommendations of the drafting committee relating to article 10, so amended, were adopted.*

31. Mr. DE CASTRO (Philippines) wished to place it on record that the Philippine Republic constituted a single country irrespective of the breadth of the waters between different islands composing the Philippine archipelago. All such waters were territorial waters, and the Republic of the Philippines had full sovereignty over them, for they were included in the boundaries of the Philippines as provided for in his country's Constitution.

32. Sir Gerald FITZMAURICE (United Kingdom) said that, while he did not wish to controvert the statement by the representative of the Philippines, he considered that it might have implications. He would therefore reserve the position of the United Kingdom Government on it.

#### *Articles 11 and 12*

*The recommendations of the drafting committee relating to article 11 and 12 were adopted without comment.*

#### *Article 13*

33. Mr. PONCE Y CARBO (Ecuador) said that his delegation had already drawn attention to the advisability of supporting the United States amendment in document A/CONF.13/C.1/L.125, proposing the deletion of paragraph 2 of the International Law Commission's text. That solution was the most practical, the simplest and the most correct, since it avoided the difficulties arising from the Commission's draft.

34. Mr. MARTINEZ MONTERO (Uruguay) recalled that during the discussion on article 13 a number of delegations, including his own, had expressed the view that "estuary" was not an adequately defined term.

He had supported the United States proposal that the second paragraph be deleted, and that was still his delegation's position.

35. Mr. BOAVIDA (Portugal) said that his delegation was in complete agreement with those members of the drafting committee who were of the opinion that a question of substance was involved. Estuaries were in fact a special type of well-marked indentation, in which the coastal State was greatly interested owing to the existence in them of ports and roadsteads. If, however, all the provisions of article 7 were applicable to estuaries, paragraph 2 of article 13 would be redundant. The fact was that only paragraphs 4 and 5 of article 7 were applicable to estuaries, and he therefore proposed that the words "paragraphs 4 and 5 of" should be inserted before "article 7" in paragraph 2 of the text proposed by the drafting committee.

36. Mr. KATICIC (Yugoslavia) thought it would be wrong to restrict the reference to article 7 to paragraphs 4 and 5 thereof. Paragraph 1, or even paragraph 6, might also be applicable. It would therefore be preferable to leave the reference to article 7 as it stood.

37. Sir Gerald FITZMAURICE (United Kingdom) supported the views expressed by the representative of Portugal. An estuary was difficult to define, but everyone knew what it was. While the shape of an estuary was not that of a bay as defined in article 7, an estuary might be of considerable width, and in principle the rules applicable to bays should apply equally to estuaries. The terms of article 13, paragraph 1, did not adequately cover estuaries.

38. In his opinion, the representative of Portugal had been right in suggesting that specific reference to paragraphs 4 and 5 of article 7 should be made, but if the Yugoslav delegation preferred a general reference to article 7, the United Kingdom delegation would not object.

39. Mr. NIKOLAEV (Union of Soviet Socialist Republics) observed that paragraph 1 had already been approved, and suggested that paragraph 2 be put to the vote.

*Paragraph 2 of the text of article 13 suggested by the drafting committee was adopted by 26 votes to 7, with 10 abstentions.*

*The recommendations of the drafting committee relating to article 13 were adopted.*

40. Mr. COX (Secretary of the Committee) said that it had been agreed in the drafting committee that the title of sub-section A should be amended to read: "Rules applicable to all ships".

#### Article 15

*The recommendations of the drafting committee relating to article 15 were adopted without comment.*

#### Article 16

41. Mr. COX (Secretary of the Committee) observed that the text prepared by the drafting committee omitted to mention that the words "within its ter-

ritorial sea" should be inserted in paragraph 2. Paragraph 2 should accordingly read as follows:

"The coastal State is required to give appropriate publicity to any dangers to navigation within its territorial sea of which it has knowledge."

*The recommendations of the drafting committee relating to article 16 were adopted.*

#### Article 17

*The recommendations of the drafting committee relating to article 17 were adopted without comment.*

#### Article 18

42. Sir Gerald FITZMAURICE (United Kingdom) pointed out that it had been decided to replace the phrase "with the laws and regulations" by the phrase "with such laws and regulations".

43. The CHAIRMAN acknowledged the correction.

*The recommendations of the drafting committee relating to article 18 were adopted.*

#### Article 19

44. Mr. YINGLING (United States of America) pointed out that in paragraph 2 the word "only" should be placed not before the words "as payment" as suggested in the report of the drafting committee, but after those words.

45. The CHAIRMAN acknowledged the correction.

*The recommendations of the drafting committee relating to article 19 were adopted.*

#### Article 20

46. Mr. TUNCEL (Turkey) recalled that during the discussion of article 20, a number of delegations had expressed the view that sub-paragraph 1 (d) should be made a separate paragraph, since the other cases listed referred only to offences committed within the territorial sea, and in the case of the suppression of illicit traffic in narcotic drugs it was desirable to empower the coastal State to exercise its criminal jurisdiction even if the offence had been committed outside the territorial sea. He wondered whether the drafting committee had taken those considerations into account.

47. The CHAIRMAN said that the matter had not been specifically referred to the drafting committee, and had not been discussed by it. The text had been adopted by the First Committee in its present form and the drafting committee had seen no reason to amend it.

48. Mr. STABELL (Norway) recalled that during the discussion of the article he had requested that sub-paragraph 1 (d) be deleted. One of his arguments had been that the suppression of illicit traffic in narcotic drugs was not a matter which related specifically to ships in innocent passage. The text as it stood had been drafted along the lines suggested by the Pakistani delegation, and it would be improper to change the sense of the Pakistani proposal in the absence of the representative of that country.

49. Mr. MARTINEZ MONTERO (Uruguay) confirmed the reservation made by his delegation at the 38th meeting during the discussion of the article. Uruguay had signed with various American countries treaties whose provisions conflicted with the present text of article 20.

*The recommendations of the drafting committee relating to article 20 were adopted.*

#### Article 21

50. Sir Gerald FITZMAURICE (United Kingdom) pointed out that in paragraph 2 the word "assumed" should come after "obligations or liabilities", and not after "obligations" as suggested in the report of the drafting committee.

51. Mr. GUTIERREZ OLIVOS (Chile) observed that the recommended Spanish translation of the words "should not" in article 20, paragraph 1, was *no deberia*; whereas the Spanish translation of the same words in article 21, paragraph 1, was *no debera*. He would like to ask the English-speaking members of the Committee whether the discrepancy was due to a difference in meaning of the English words used in the two articles.

52. Mr. YINGLING (United States of America) expressed the view that in both article 20, paragraph 1, and article 21, paragraph 1, the force of the words "should not" was hortatory and not mandatory.

53. The CHAIRMAN agreed and said that the Spanish text of article 21, paragraph 1 would be amended accordingly.

*The recommendations of the drafting committee relating to article 21 were adopted.*

#### Article 22

54. Mr. IOSIPESCU (Romania) said that for reasons which his delegation had already stated at the 39th meeting during the discussion of its amendment (A/CONF.13/C.1/L.44), he could not accept, and would have to vote against, the draft of article 22 prepared by the International Law Commission, because it did not take into account the immunity from foreign civil jurisdiction enjoyed by government ships, whatever the purpose for which they were used.

55. The CHAIRMAN observed that no vote had yet been taken on article 22. He therefore put the article to the vote.

*Article 22 of the International Law Commission's draft was adopted by 31 votes to 6, with 2 abstentions.*

#### Article 23

56. Mr. STABELL (Norway) was rather disappointed that the drafting committee had not solved the problem to which the representative of the Philippines had drawn attention during the discussion of the article at the 41st meeting. As the article now stood, the articles of sub-section B other than article 19 would not be applicable to the government ships in question, and the question arose whether, with regard to government ships operated for non-commercial purposes, the coastal

State would be unrestrained by the restrictions laid down in articles 20 and 21. That was not, of course, the intention, but nevertheless the drafting was unfortunate.

*Article 23 of the International Law Commission's draft, as amended at the 48th meeting, was adopted.*

#### Articles 24, 25 and 66

*The recommendations of the drafting committee relating to articles 24, 25 and 66 were adopted without comment.*

*The report by the Secretariat on the work of the drafting committee of the First Committee (A/CONF.13/C.1/L.167) was adopted as amended during the course of the discussion.*

#### Consideration of the kind of instruments required to embody the results of the First Committee's work (continued)<sup>1</sup>

57. Mr. SIKRI (India) moved that the matter be left to the Conference.

58. Mr. GARCIA ROBLES (Mexico) and Mr. NIKO-LAEV (Union of Soviet Socialist Republics) seconded the Indian representative's motion.

*The Indian motion was carried.*

The meeting rose at 11.35 p.m.

<sup>1</sup> Resumed from the 62nd meeting.

### SIXTY-SIXTH MEETING

Saturday, 26 April 1958, at 9 p.m.

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

#### Draft report of the First Committee: part two (articles 1, 2, and 4 to 25) (A/CONF.13/C.1/L.168/Add.1)

1. The CHAIRMAN invited the Committee to consider seriatim the texts of the articles concerning the territorial sea and contiguous zone as adopted by the Committee, which were to be found in the annex to part two of the Committee's draft report (A/CONF.13/C.1/L.168/Add.1).

2. Following a brief procedural discussion, he proposed that the heading of the annex be amended to indicate that it was an annex to part two only of the report, and that the texts of articles 3 and 66 be deleted and replaced by a reference to paragraphs 25 and 28 respectively of part one of the Committee's report.

*It was so decided.*

3. Mr. GUTIERREZ OLIVOS (Chile) proposed that any changes in the Spanish text of the articles in the annex should be agreed by the Spanish-speaking members of the Committee and submitted to the drafting committee after the meeting.

*It was so decided.*

*Article 20*

4. Mr. STABELL (Norway) proposed the deletion of the words "proceeding from a foreign port" from article 20, paragraph 5. He recalled that the text of that paragraph was based on the Yugoslav proposal (A/CONF.13/C.1/L.20), the intention of which, as he understood it, had been that the provisions of paragraph 5 should apply to foreign ships passing through the territorial sea without entering internal waters, whether or not they were proceeding from a foreign port.

5. Mr. KATICIC (Yugoslavia) concurred in that interpretation of his proposal.

6. Mr. SIKRI (India) wondered whether, if the Norwegian proposal were adopted, paragraph 5 would not be reduced to a mere duplication of paragraph 2 of article 20.

7. Sir Gerald FITZMAURICE (United Kingdom) supported the Norwegian proposal; its intention, he thought, was to make paragraph 5 cover the case of a foreign ship which, having left the internal waters of the coastal State concerned and having navigated on the high seas without calling at a foreign port, re-entered the territorial sea of that State.

8. Mr. GUTIERREZ OLIVOS (Chile) pointed out that such cases were relatively rare; it would be undesirable at that stage to make a substantive change in any article entailing a limitation of the general principles of article 1.

9. Mr. STABELL (Norway) withdrew his proposal.

*Article 21*

10. Sir Gerald FITZMAURICE (United Kingdom) recalled that, at the 28th and 40th meetings, he had proposed the deletion of article 21 but had later agreed to its retention provided that the Committee adopted a resolution to the effect that the provisions of the convention resulting from the Conference would not affect those of other conventions already in existence (A/CONF.13/C.1/L.37). Since it appeared likely that more than one convention would result from the Conference's labours, he wondered whether it would not be appropriate to bring that point once more to the attention of the Drafting Committee of the Conference.

11. The CHAIRMAN proposed that the Committee recommend the Drafting Committee of the Conference to adopt a provision to that effect, in appropriate form, with regard to the articles resulting from the work of the First Committee. Such a recommendation would not prejudice any decision which might be reached concerning the kind of instrument in which those articles would be embodied.

*It was so decided.*

*Article 24*

12. Mr. TUNCEL (Turkey) objected to the words "any State other than its flag State" in paragraph 2 of article 24; the coastal State was, in fact, the only State which could be meant.

13. Mr. STABELL (Norway) suggested that the difficulty could be overcome by replacing the words "any State other than its flag State" by the words "the coastal State".

14. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), Rapporteur, explained that the wording of paragraph 2 was intended to cover cases in which a third State exercised certain rights within the territorial sea of the coastal State, for instance, by reason of possessing a naval base in that area. The paragraph under consideration had formed the subject of extensive discussion in the drafting committee of the First Committee; the present text, even if imperfect, was the best that could be arrived at.

15. Mr. STABELL (Norway) withdrew his proposal.

*Article 66*

16. Mr. STAR BUSMANN (Netherlands) wondered whether the Committee should make any recommendation regarding the convention in which article 66 should be embodied. While that article was closely linked, by its substance, with the articles on the territorial sea, there might also be a case for including it in the convention resulting from the work of the Second Committee on the general régime of the high seas.

17. Mr. GARCIA ROBLES (Mexico) proposed that that question should be referred to the Drafting Committee of the Conference.

*It was so decided.*

*The annex to part two of the draft report (A/CONF.13/C.1/L.168/Add.1) was adopted.*

18. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), Rapporteur, presented the Committee's draft report (A/CONF.13/C.1/L.168/Add.1).

19. Mr. TUNCEL (Turkey) believed that the report should have reflected the discussions which had taken place and provided a commentary on the articles adopted. The time available not having permitted that, the report lacked the legal value it might otherwise have possessed.

20. With regard to the section relating to article 20, he drew attention to the fact that there was no mention of the Turkish proposal (A/CONF.13/C.1/L.88) which had been rejected by the Committee. Since his government attached great importance to the principle embodied in that proposal, he asked that the report should record the fact that Turkey did not accept paragraph 5 of article 20.

21. Mr. GUTIERREZ OLIVOS (Chile) said that reference should also be made to the fact that article 20 as adopted conflicted with provisions of Chilean law relating to penal jurisdiction.

22. Mr. MARTINEZ MONTERO (Uruguay) said that reference should also be made to his delegation's objections to article 20.

23. Mr. NUTT (Canada) said that it was stated with reference to article 5 that the revised version of the United Kingdom proposal (A/CONF.13/C.1/L.62/Corr.1) closely followed the International Law Com-



mission's text. That was not strictly true, since the proposal added the important provision that the length of the straight baseline should not exceed fifteen miles. He therefore proposed the deletion of the phrase he had referred to, in which case the first sentence of paragraph 37 would end at the words "the views of other delegations".

*It was so agreed.*

24. Mr. KORETSKY (Ukrainian Soviet Socialist Republic), Rapporteur, shared the Turkish representative's

regrets that the short time available had made it impossible to produce a fuller report.

*Part two of the draft report of the Committee (A/CONF.13/C.1/L.168/Add.1,) as amended, was adopted.*

#### **Completion of the Committee's work**

25. The *CHAIRMAN* declared the work of the Committee completed.

The meeting rose at 12.25 a.m.

