United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Document:
A/CONF.13/C.2/SR.16-20

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

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume IV (Second Committee (High Seas: General Regime))*

45. As regards article 26, the Soviet Union delegation was not opposed to paragraph 2 being referred to the First Committee for insertion in part I of the draft.

46. The amendment to article 26 submitted by the Ukrainian and Romanian delegations was perfectly clear. It dealt with the special régimes of navigation which might be required for seas bounded by a limited number of states and communicating with the high seas only by a channel skirting the shores of the coastal states. It should not be overlooked that those waters had in the past been used for aggressive purposes by states which did not border the sea in question. The importance of a special régime of navigation for those seas was due to the security requirements of the coastal states which had to be borne in mind in consequence of numerous historical circumstances or the conclusion of international agreements. He would also remind the Committee of the statement on that subject contained in paragraph 2 of the Commission's commentary on article 26, where it was pointed out that the rules defining the regime of navigation might be modified "for historical reasons or by international arrangement". The joint proposal of the Ukrainian S.S.R. and Romania was thus well founded and the Committee would be fully justified in adopting it.

47. As regards the amendment submitted jointly by the Albanian, Bulgarian and U.S.S.R. delegations (A/CONF. 13/C.2/L.32), the head of the Soviet Union delegation had drawn the attention of the Committee in the general debate (7th meeting) to the fact that certain states were violating the principle of the freedom of the high seas by establishing huge manoeuvre and training zones on the high seas for air and naval forces. In view of those facts, the Committee should take its stand on the principle of the freedom of the seas and decide to prohibit the designation of military training areas in the neighbourhood of the coasts of foreign states and on international sea routes which curtailed the freedom of navigation and menaced the security of other states. The Soviet Union delegation had no doubt that those delegations which sincerely subscribed to the principle of the freedom of the high seas would support the three-power proposal.

The meeting rose at 6 p.m.

SIXTEENTH MEETING

Wednesday, 26 March 1958, at 10.50 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 26 (DEFINITION OF THE HIGH SEAS) AND 27 (FREEDOM OF THE HIGH SEAS) (A/CONF.13/C.2/L.3, L.6, L.7, L.15, L.21, L.26, L.29, L.30, L.32, L.34, L.45, L.54, L.63 to L.68) (continued)

1. Mr. KEÏLIN (Union of Soviet Socialist Republics) suggested that the proposal submitted by Poland, U.S.S.R., Czechoslovakia and Yugoslavia (A/CONF.13/C.2/L.30) should be considered separately.

2. The CHAIRMAN said that that proposal, which dealt with a separate problem, could be examined after the Committee had concluded its consideration of articles 26 and 27. He suggested that the United Kingdom proposal (A/CONF.13/C.2/L.64) could be considered at the same time.

It was so decided.

3. Mr. GARCIA-SAYAN (Peru) said that his delegation's amendment to article 27 (A/CONF.13/C.2/L.34) had been drafted to take into account the existence of the rights of coastal states. The text of article 27 in its present form was too categorical, and stated the freedoms of the high seas as if they were unlimited. That was not the case, however, owing to the existence of generally recognized rights which implied the exercise of special competence or prerogatives based on sovereignty, which might itself be subject to certain limitations, as was clear from article 68. Similarly, it was obvious that although the rules referred to in paragraph 5 of the Commission's commentary on article 27 comprised a body of special — and to a certain extent exclusive — rights exercised by states on the high seas, none of those rights implied an unrestricted exercise of sovereignty. They were all, without exception, compatible with the fundamental principle that the high seas were open to all states. That principle, by which the Peruvian delegation stood firm, had been embodied in its proposal. The latter therefore started with the statement of that principle, but omitted over-emphatic and categorical prohibition contained in the first sentence of the article.

4. Another point to be noted was that his delegation's proposal used the word "right" instead of the word "freedom" used in the Commission's article 27, the object being to bring the wording of the article into line with that used in sub-sections A and B and in article 61.

5. Next, his delegation had tried, in paragraph 2 of its proposal, to indicate that the right to fish was not unrestricted. That would seem to be clear from articles 54 and 55 which, subject to certain requirements, recognized the right of a coastal state to adopt unilateral conservation measures "in any area of the high seas adjacent to its territorial sea". His delegation had intended to submit an amendment to those articles in the Third Committee, specifying the coastal state's inherent right to adopt measures for the conservation and utilization of the living resources in the high seas adjacent to its territorial sea. No decision had, however, been taken as yet on articles 54 and 55, and, since the Second Committee had already embarked upon its consideration of article 27, the Peruvian delegation felt that it would be better to amend paragraph 2 of its proposal to read "The right to fish, without prejudice to the rights of the coastal state under this convention".

6. That view, which was shared by a number of other Latin American delegations, was based on the 1945 proclamation of the President of the United States of America concerning the continental shelf and fisheries; in particular, the areas of jurisdiction and control to which the President had referred reflected the position of Peru and other countries on the subject. The claims and the natural and prior rights of the coastal states to adopt conservation measures in respect of the waters along their coasts must be recognized. Unfortunately,

as could be seen from the commentary on article 59 under the heading "Claims of exclusive fishing rights, on the basis of special economic circumstances", the Commission had merely noted the existence of the problem. That made it even more imperative for the Conference to examine the claims of those states, taking into account the technical, biological, economic and political aspects of the problem, in accordance with its terms of reference.

7. For those reasons, any rights specified in article 27 which were incompatible with the existence of other rights should be omitted. The article in its present form reflected obsolete standards of international law that had been adapted and modified at will by the great Powers. The Conference must ensure that the convention reflected the wishes of the smaller states as well.

8. Mr. RADOUILSKY (Bulgaria) said that his delegation supported the Polish proposal on article 27 (A/CONF.13/C.2/L.29).

9. He explained that the proposal submitted jointly by Albania, Bulgaria and U.S.S.R. (A/CONF.13/C.2/L.32) did not refer to areas of the high seas used for ordinary naval or air exercises of short duration. It was rather designed to establish international standards forbidding the designation of naval and air training areas for long periods on a unilateral basis. Such areas were designated quite frequently, and tended to close to navigation whole areas of the high seas near foreign coasts and on international sea routes. In point of fact, such unilateral action by a state or group of states subjected areas of the high seas to their sovereignty, and that was incompatible with generally accepted standards of international law. That practice was, furthermore, simply an attempt to provide a legal basis for action that was contrary to international law and the states concerned were merely trying to evade their responsibility *vis-à-vis* other states. It seemed that the purpose of designating naval and air ranges near foreign coasts and on international sea routes was to exercise pressure on other states. Such attempts should not be tolerated in time of peace since they were inconsistent with the principles of the United Nations Charter and resolution 1236 (XII) adopted by the General Assembly at its twelfth session, entitled "Peaceful and neighbourly relations among states".

10. Mr. COLCLOUGH (United States of America) said that his delegation would oppose any proposals that sought to incorporate in article 27 the sentence in paragraph 1 of the commentary on the article reading "States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states." That wording was, in his opinion, an unacceptable version of the phrase submitted for consideration to the International Law Commission by its rapporteur, Mr. François (Netherlands), since it rejected the test of reasonableness that had since time immemorial been used to determine whether the high seas were being used legally or illegally. It must be borne in mind that any use of the high seas by the nationals of one state affected their use by nationals of other states and that action taken by one state to protect its legitimate interests on the high seas might interfere with the interests of another. The enumeration of freedoms in article 27 was by no means exhaustive, and therefore if the Conference rejected the principle of reasonableness it would simply hamper the optimum use of the high seas by all states. His delegation accordingly supported article 27 in its present form, but was prepared to accept the Mexican proposal (A/CONF.13/C.2/L.3).

11. The three-power proposal (A/CONF.13/C.2/L.32) was completely at variance with the principle of the freedom of the high seas. He pointed out that military exercises which were lawful in one area of the high seas were not unlawful simply because they were carried out in another area. In that connexion he explained that the designation of certain areas for military training purposes by the United States did not close those areas to navigation but merely served as a warning to shipping.

12. Sir Alec RANDALL (United Kingdom) agreed that the sentence which the United States representative had quoted was too sweeping and should not be incorporated in article 27, since it could unjustly limit the exercise by governments of certain legitimate rights.

13. His delegation also agreed that the test of reasonableness should be applied, and therefore would propose an addition to article 27. . . .

14. Mr. BARTOS (Yugoslavia), speaking on a point of order, suggested that the United Kingdom representative had gone beyond the limits of the discussion fixed by the Chairman at the start of the meeting, in mentioning the addition to article 27 proposed by Poland, U.S.S.R., Czechoslovakia and Yugoslavia (A/CONF.13/C.2/L.30).

15. The CHAIRMAN explained that that was a misunderstanding; he ruled that the United Kingdom representative's remarks were in order, and invited him to proceed with his statement.

16. Sir Alec RANDALL (United Kingdom) confirmed that he was referring only to the test of reasonableness. The addition to article 27 which his delegation proposed read: "These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas." (A/CONF.13/C.2/L.68)

17. His delegation opposed the three-power proposal (A/CONF.13/C.2/L.32), and he pointed out that it was the practice of the United Kingdom to indicate in its notices to mariners when and where naval exercises were to take place. Shipping was never excluded from the areas affected.

18. Mr. GLASER (Romania) said that his delegation strongly supported the three-power proposal, which would ensure that all states enjoyed the freedom of the high seas. The practice of designating areas of the high seas for combat training purposes tended to restrict that freedom and should be condemned. Certain representatives had maintained that in conducting their military exercises they did not interfere with the freedom of navigation; he failed therefore to see why they should object to the three-power proposal.

19. In his opinion, the third sentence in paragraph 1 of the Commission's commentary on article 27 was a correct statement of the law, and its validity could not be reduced simply because certain states took exception to it. Coastal states were prohibited from hampering innocent passage through the territorial sea over which they exercised sovereignty; *a fortiori,* states should be prohibited from restricting the freedom of the high seas where they did not exercise such sovereignty.

20. In conclusion, he emphasized that the purpose of the three-power proposal was not to limit the right of states to conduct military exercises on the high seas, but simply to prevent such exercises on international sea routes and near foreign coasts.

21. Mr. BREUER (Federal Republic of Germany) said that his delegation would oppose the proposal by Romania and the Ukrainian S.S.R. (A/CONF.13/C.2/L.26). It was true that there were a number of special treaties between Baltic coastal states, but their provisions were binding only on the contracting parties and did not affect the legal status of the high seas in the Baltic. The convention prepared by the International Law Commission did not exclude other international agreements between States, and he could therefore see no reason why the amendment should be adopted. If it were adopted, article 26 would be somewhat obscure in meaning, since no one would know what was meant by the term "certain seas", what types of special régimes would be permissible, or which reasons were historical reasons.

22. Mr. WYNES (Australia) would also oppose the amendment proposed by Romania and the Ukrainian S.S.R. In his view, there was no connexion between the amendment and the text of article 26. Article 26 was simply a definition of the high seas, and there was no sound reason for introducing extraneous matters into it. Even if special régimes had been established previously for historical reasons or by virtue of international agreements, no good purpose would be served by referring to them in article 26 or in any other part of the convention. He feared, moreover, that if the amendment were adopted, its provisions might be used as a basis for claiming authority over large portions of the high seas.

23. Turning to article 27, he said that his delegation approved the draft text which the United Kingdom representative had just proposed, and hoped that it would be adopted. He would, however, vote against the three-power amendment.

24. Mr. SIKRI (India) said that his delegation found the Greek amendment to article 26 (A/CONF.13/C.2/L.54) acceptable.

25. With regard to article 27, and in particular to the obligation of states to refrain from any acts which might adversely affect the use of the high seas by nationals of other states, his delegation took the view that the "reasonableness" referred to by the United Kingdom representative introduced an undesirably subjective criterion. He tended rather to favour the wording of the amendments submitted by Yugoslavia (A/CONF.13/C.2/L.15) and Poland (A/CONF.13/C.2/L.29).

26. His delegation would oppose the three-power amendment on the ground that each state was entitled to use the high seas for naval exercises, but fully supported the proposals by Mexico (A/CONF.13/C.2/L.3) and Portugal (A/CONF.13/C.2/L.7) that freedom of the high seas should be made subject to the articles of the convention and the other rules of international law.

27. With those reservations, he approved the International Law Commission's text of article 27.

28. Mr. BULHOES PEDREIRA (Brazil), in explanation of the two amendments submitted by his delegation (A/CONF.13/C.2/L.66 and L.67), observed that they introduced two new features into the text of articles 26 and 27: firstly, the reference to "waters of the high seas" rather than "the high seas"; and secondly, a new approach to the definition of the high seas. Further, his delegation believed that the matters dealt with under article 27 were too numerous to be grouped together in a single article, and therefore suggested that article 27 be replaced by three articles, one on the legal status of the waters of the high seas, one on the exercise of authority by states over the waters of the high seas, and one on the use of the waters of the high seas.

29. Explaining the phrase "waters of the high seas", he recalled that for legal purposes the sea had long been regarded only from a two-dimensional aspect. The distinction between territorial seas and high seas, for instance, was based on a horizontal concept, in which a line drawn on the map represented the frontier between an area subject to the authority of a coastal state and an area open to all states. Recent technological and economic developments had given rise to discussions about the sea-bed, the living resources of the sea and the air space above the sea. The sea was thus coming to be regarded from a three-dimensional aspect, the demarcation line of the territorial sea was losing its traditional value as the sole frontier within which a coastal state could exercise its authority, and the traditional concept of the freedom of the high seas was at the same time undergoing some modification. The former idea of the high seas as an area in which freedom was not subject to any restrictions at all was gradually being replaced by the concept of the high seas as an asset for joint exploitation by all states.

30. In those circumstances, it was unlikely that any international agreement could be achieved if the legal régime relating to safety, navigation, fisheries, exploitation of the sea-bed, air space, etc., were made dependent solely on a horizontal demarcation line on the surface of the sea. Agreement could better be reached if the general concept of the sea were divided into four separate ones — waters of the sea, living resources of the sea, the sea-bed and the air space above the sea — and if an attempt were made to legislate for each separately.

31. His delegation's purpose in introducing the words "waters of the high seas" into article 26 was to restrict the application of articles 26 to 48 and 61 so that decisions taken by the Second Committee on the régime of the high seas would not apply automatically to the continental shelf and to fisheries. The present conference had displayed some indecision in getting to grips with the various topics discussed by each committee for fear that, if the principles approved by one committee were too wide in scope, they might prejudice the decisions of other committees.

32. The new text of article 27 proposed in the amendment was an attempt to define the true legal status of the high seas, not from the negative aspect of the freedom of the high seas, but regarding them positively as an asset for joint exploitation by all states.

33. The object of the new text proposed as article 27 A of his amendment was to induce the Conference to face the necessity of recognizing and defining the several aspects of the exercise of authority by states in different areas of the high seas, areas which would certainly exist if the interests of coastal states in the continental shelf and the living resources of the sea were recognized. International relations would be improved if the powers in question were frankly acknowledged and defined in detail.

34. Mr. GARCIA-MIRANDA (Spain) whole-heartedly approved the Greek proposal concerning article 26 (A/CONF.13/C.2/L.54).

35. With regard to his own delegation's amendment to article 27 (A/CONF.13/C.2/L.65), he pointed out that the text differed little from that proposed by the International Law Commission, with the exception that the freedoms mentioned were not arranged in a list since such arrangement, in spite of the use of the words "*inter alia*", appeared to have an exclusive character.

36. He approved the Mexican proposal (15th meeting) for the establishment of a working party to consider all the amendments to article 27.

37. Mr. LEE (Republic of Korea), speaking in support of the Peruvian amendment to article 27 (A/CONF.13/C.2/L.34), observed that in most of the main fishing areas of the world fishing was subject to so many restrictions that, unless article 27 contained some reservations on the freedom to fish, it would not be in accord with present-day realities.

38. He agreed with the United States and United Kingdom representatives in opposing the three-power amendment (A/CONF.13/C.2/L.32), since every state had the right to conduct naval exercises on the high seas.

39. Mr. FAY (Ireland) said that his delegation approved the Mexican proposal (A/CONF.13/C.2/L.3) that the freedom of the high seas should be made subject to the articles of the convention and other rules of international law.

40. Mr. GUARELLO (Chile) supported the Peruvian amendment to article 27, though he felt that the amendments submitted by Poland (A/CONF.13/C.2/L.15) and Yugoslavia (A/CONF.13/C.2/L.29) would introduce great clarity into the article. His delegation believed there was a genuine need for the establishment of a working party to decide on a final draft for article 27.

41. Mr. PUSHKIN (Ukrainian Soviet Socialist Republic) speaking in support of the three-power amendment submitted, pointed out that, while all states clearly had a right to carry out naval training in the open sea, the amendment referred not to training in the open sea but to naval and other exercises conducted for long periods of time near foreign coasts or on international sea routes. Training of that nature was clearly illegal under existing international law, since the designation of training areas by a state was tantamount to subjecting a part of the high seas to its sovereignty. Article 27 should therefore contain a specific provision forbidding the designation of training areas.

42. Mr. BARTOS (Yugoslavia) noted that for the most part the amendment submitted to article 27 differed more in wording than in content. There was considerable agreement in content, for example, between the amendments submitted by Mexico (A/CONF.13/C.2/L.3), France (L.6), Yugoslavia (L.15), the Netherlands (L.21), Poland (L.29) and Peru (L.34). He suggested that the sponsors of those amendments might co-operate in an effort to produce a single text for consideration by the Committee. The Mexican proposal for a working party was sound, but the working party should only consider amendments which were similar in content and not, for instance, that submitted by Albania, Bulgaria and the U.S.S.R.

43. Mr. KEÏLIN (Union of Soviet Socialist Republics) insisted that, if any working party were established to discuss the amendments to article 27, all delegations which had submitted amendments should be represented on it. Any classification of the amendments by content was legally unsound.

44. The CHAIRMAN observed that if a working party were established to consider the amendments to article 27, it would not be competent to reach decisions on questions of substance. The various proposals submitted be voted upon in the first instance by the Committee itself.

The meeting rose at 1 p.m.

SEVENTEENTH MEETING

Wednesday, 26 March 1958, at 3 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

NEW ARTICLE, TO BE INSERTED AFTER ARTICLE 27, PROPOSED BY POLAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, CZECHOSLOVAKIA AND YUGOSLAVIA (A/CONF.13/C.2/L.30) AND DRAFT RESOLUTION PROPOSED BY THE UNITED KINGDOM (A/CONF.13/C.2/L.64)

1. Sir Alec RANDALL (United Kingdom) introduced his delegation's draft resolution (A/CONF.13/C.2/L.64). The Conference was not of a political nature, and should therefore not pronounce upon any question relating to nuclear tests, a matter which was under consideration in the General Assembly and the Disarmament Commission. That fact had also to be borne in mind by the Committee when it considered the four-power proposal (A/CONF.13/C.1/L.30).

2. The question of nuclear tests had to be viewed as a whole and not as an isolated problem; so long as there were nuclear weapons, there would be nuclear tests. The real problem was that of disarmament.

3. The question of disarmament was being actively discussed by governments, and it was to be hoped that satisfactory results would be achieved.

4. The Conference could not pronounce on one isolated aspect of the question of nuclear tests independently of the question of nuclear tests as a whole, particularly while the General Assembly was still seized of the question.

5. Mr. BARTOS (Yugoslavia) said it would be stretching the interpretation of the freedom of the high seas too far to claim that it permitted the carrying out of nuclear tests on the high seas. Those tests were quite different from gunnery exercises, which were recognized as legitimate by international law, provided that shipping was duly warned.

6. There could be no doubt that nuclear tests interfered with the freedom of the high seas and the air space above them, with the freedom of navigation and with the free utilization of the high seas for fishing; above all, they caused damage to the living resources of the sea, which belonged to all mankind.

7. The United Kingdom draft resolution raised in effect a question of competence. It was true that the question of disarmament was a matter within the competence of the General Assembly, the Security Council and the Disarmament Commission. But the question before the Committee was not the political problem of disarmament or even the general question of the legality of nuclear weapons.

8. In his opinion, the use of nuclear weapons was contrary to international law, but the issue before the Committee was the much narrower one of the compatibility of nuclear tests with the freedom of the high seas; inasmuch as nuclear tests, conducted on the high seas, interfered with the exercise of that freedom, the Committee was manifestly competent to deal with that particular question.

9. The political competence of the General Assembly and the Disarmament Commission did not preclude another organ of the United Nations or a conference convened under its auspices from discussing technical provisions on the same subject and including them in the instruments being prepared. If that were not the case, questions such as human rights could not be dealt with by any other conferences or organs of the United Nations while the General Assembly held them in abeyance. That would be an absurd situation. The convention should contain a rule corresponding to the four-power proposal.

10. Mr. KAWASAKI (Japan) said his delegation would vote against the United Kingdom draft resolution, because it considered that the question of nuclear tests on the high seas came within the competence of the Committee.

11. There could be no doubt that nuclear tests seriously affected the use of the high seas. It was sufficient to mention that a number of Japanese fishermen had been maimed or killed by radiation resulting from those tests, and that tens of thousands of tons of contaminated fish, representing precious food for the Japanese people, had had to be destroyed as a result of those tests.

12. With regard to the four-power proposal, he said that the Japanese Government opposed all nuclear tests, whether conducted on land, at sea or in the air. The four-power proposal called for the prohibition of nuclear tests on the high seas only and so tended to give the impression that only those conducted on the high seas had an adverse effect on the use of the high seas; in fact, however, all nuclear tests had that adverse effect, even if conducted in the territorial sea or on an island.

13. The Japanese Government deeply regretted that although it had made repeated protests to the Union of Soviet Socialist Republics, that power had not as yet discontinued nuclear tests on land.

14. The Japanese delegation would abstain from voting on the four-power proposal because it was not only insufficient but also misleading. It could even be misconstrued as suggesting that nuclear tests conducted elsewhere than on the high seas were permissible.

15. Mr. LEE (Republic of Korea) said that the four-power proposal raised political rather than legal issues.

16. His delegation shared the view of the United Kingdom and United States delegations that the question of nuclear tests was part of the more general question of disarmament which was being discussed by the competent United Nations bodies. The question of nuclear tests could not be effectively eximined separately from that of disarmament.

17. Any use of a part of the high seas by one state temporarily deprived other states of its use. That was true of nuclear tests no less than of other uses of the sea. It was necessary to apply in that connexion the test of reasonableness, as had been stated by the United States representative.

18. The Soviet Union had vast land areas where it could conduct nuclear tests. Prohibition of such tests would, if limited to the high seas, benefit exclusively the Union of Soviet Socialist Republics. For those reasons, his delegation opposed the four-power proposal, and supported the United Kingdom draft resolution.

19. Mr. LIU (China), speaking on a point of order, said that, in accordance with rule 30 of the rules of procedure, the United Kingdom draft resolution had to be put to the vote before the four-power proposal was discussed. The United Kingdom draft resolution called for a decision on the competence of the Conference.

20. Mr. BARTOS (Yugoslavia), speaking on a point of order, said that, in accordance with a General Assembly ruling, motions calling for a decision on competence were voted on first, but discussion on substance was not separated from discussion on competence. It was only the votes that were kept separate.

21. The CHAIRMAN ruled that rule 30 of the rules of procedure did not apply. The United Kingdom draft resolution did not raise the issue of competence—it merely invited the Committee to say that it did not wish to deal with a question which was before the General Assembly. When the discussion was concluded, however, it would be reasonable to vote on the United Kingdom draft resolution first, because if the Committee adopted it, it would not need to vote on the four-power proposal.

22. Mr. ZOUREK (Czechoslovakia) said the Committee

was undoubtedly competent to deal with the four-power proposal. The Committee was not being asked to prohibit nuclear tests on the high seas; those tests were already prohibited by existing international law. The Committee was simply being asked to include in the articles a provision setting forth that existing rule of international law.

23. Nuclear tests on the high seas rendered vast sea areas dangerous and hence inaccessible for purposes of fisheries and navigation; they constituted a threat to the life and health of human beings; they constituted a source of pollution for the living resources of the sea.

24. His delegation could not accept the doctrine of reasonableness. That doctrine implied, in effect, that a State was free to violate international law whenever it considered such violation reasonable.

25. Mr. COLCLOUGH (United States) said his delegation supported the United Kingdom draft resolution. He drew attention to the statement in paragraph 8 of the International Law Commission's report on the work of its eighth session (A/3159) that the Commission "thought it could for the time being leave aside all those subjects which were being studied by other United Nations organs or by specialized agencies". That report constituted the basic document of the Conference.

26. The International Law Commission had stated, furthermore, in paragraph 3 of the commentary on article 27, that it did not wish to prejudge the findings of the Scientific Committee on the Effects of Atomic Radiation, set up under General Assembly resolution 913 (X).

27. The United States delegation was of the opinion that the Conference should not deal with the question of nuclear tests so long as that question was under consideration in the Disarmament Commission and the Scientific Committee.

28. His delegation could not understand how the Soviet Union delegation could co-sponsor the four-power proposal while the Soviet Union Government boycotted the Disarmament Commission. The United States delegation opposed the four-power proposal because its adoption would mean giving the stamp of approval to the delaying and avoiding tactics of the Soviet Union in regard to disarmament.

29. Mr. KEILIN (Union of Soviet Socialist Republics) said that the competence of the Committee to discuss nuclear tests on the high seas was unquestionable. The Conference was dealing with the codification of all questions concerning the law of the sea; one of those questions was that of nuclear tests on the high seas.

30. The United Kingdom draft resolution could only be construed as a suggestion that it was not appropriate for the Committee to consider a problem which was being dealt with by the General Assembly. It did not appear to raise an issue of competence. The arguments advanced in support of it would seem to lead, rather, to the conclusion that the Committee should deal with the question of nuclear tests on the high seas.

31. With reference to the statement of the Japanese representative, he said that the Soviet Union had been striving for a long time to arrive at an immediate prohibition of nuclear weapons and an immediate discontinuance of all nuclear tests. The four-power proposal referred only to the high seas simply because the Conference was dealing with the law of the sea. Hence, he could not understand how anyone who wished to see nuclear tests stopped could possibly abstain from voting on that proposal.

32. Mr. SEN (India), referring to the two proposals before the Committee, said that his delegation had expressed its views unequivocally on the question of nuclear tests, both in the First Committee (7th meeting) and in the Second Committee (8th meeting). India was opposed to all forms of nuclear tests, whether on land, in the air or at sea, and regarded tests at sea as an infringement of the freedom of the high seas.

33. The Indian delegation to the General Assembly had been one of the prime movers of General Assembly resolution 1148 (XII), which was cited in the United Kingdom delegation's draft resolution. His delegation could not agree with the statement in the operative paragraph of that draft resolution that the Committee should not pronounce itself on any question relating to nuclear tests. Both in fact and in law, nuclear tests carried out on the high seas seriously interfered with the freedom of the high seas. While he felt that the Conference would be failing in its duty if it did not pronounce itself on such tests, he recognized that it might be better, for the sake of achieving more general agreement, to leave the matter to the competence of the General Assembly, as suggested in the United Kingdom draft resolution. He intended, however, to submit certain amendments to that text.[1]

34. Mr. GHELMEGEANU (Romania) said it was the Committee's duty to discuss the problem of the prohibition of nuclear tests on the high seas.

35. The effects produced by the nuclear explosions in the Pacific had proved that such tests violated the principle of the freedom of the high seas in that they interfered with the freedom of navigation and fishing and with the conservation of the living resources of the sea, and endangered human life.

36. His delegation could not agree with the statement made by the United States representative (9th meeting) that the manner in which the United States conducted nuclear tests was sanctioned by international practice.

37. Over the past twelve years, ever-increasing areas of the Pacific had been declared prohibited areas for the purpose of nuclear tests. The United States Atomic Energy Commission itself had recognized that the atomic bomb tests had had unforeseeable results, and that they had contaminated wide areas of the sea. Discussions in the United Nations Trusteeship Council in connexion with the Trust Territories of the Pacific under United States trusteeship had referred to the harmful effects of nuclear tests, and United States newspapers had also referred to their evil effects.

38. The International Law Commission had categorically stated in paragraph 1 of its commentary on article 27 that States were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States.

---

[1] At the 18th meeting, a draft resolution was proposed by India (A/CONF.13/C.2/L.71).

39. In 1952, the Australian Government had notified other States that it intended to carry out nuclear tests in certain islands adjacent to its coasts, and in 1957 the United Kingdom Government had informed other governments of its intention to create a prohibited area around Christmas Island. His delegation, considering that the Conference should adopt international rules prohibiting such tests on the high seas, would vote against the United Kingdom draft resolution.

40. Mr. GARCIA ROBLES (Mexico) said that, in view of the terms of operative paragraph 1 (*a*) of General Assembly resolution 1148 (XII), which linked the question of nuclear tests to that of disarmament, and because it considered that the Conference was not the most appropriate place for discussion of that question, with which the General Assembly would doubtless continue to deal, the Mexican delegation would be unable to support the four-power proposal.

41. Mexico's position in regard to nuclear tests was well known. Those representatives who had attended the General Assembly's twelfth session would remember that Mexico had voted in favour of resolution 1148 (XII), the first paragraph of which urged the States concerned to give priority to reaching a disarmament agreement which would provide, firstly, for "the immediate suspension of testing of nuclear weapons with prompt installation of effective international control". Mexico had also voted, in the First Committee of the General Assembly, in favour of the draft resolutions submitted by India and Japan, the aim of which had been suspension of nuclear tests. Mexico's position had not since changed.

42. He suggested various amendments to the United Kingdom draft resolution, and recommended that the proposals mentioned by the Indian representative should be given careful consideration. He added that, as drafted, the operative part of the resolution, stating that the Committee should not decide upon any question relating to nuclear tests, was of so sweeping and categorical a nature that it might prevent the Committee from reaching any decision on article 48, paragraph 3 of the International Law Commission's draft, which would be inadmissible.

The meeting rose at 5.5 p.m.

EIGHTEENTH MEETING

Thursday, 27 March 1958, at 3.20 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

NEW ARTICLE, TO BE INSERTED AFTER ARTICLE 27, PROPOSED BY POLAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, CZECHOSLOVAKIA AND YUGOSLAVIA (A/CONF.13/C.2/L.30) AND DRAFT RESOLUTIONS PROPOSED BY THE UNITED KINGDOM (A/CONF.13/C.2/L.64) AND INDIA (A/CONF.13/C.2/L.71) (continued)

1. Mr. DEMEUR (Holy See) welcomed the Indian draft resolution (A/CONF.13/C.2/L.71). The Pope was apprehensive of the repercussions of the military application of the discoveries of nuclear science. The Pope had, however, warned the world against isolated and unrealistic attempts to deal with the problem, since they would not bring a solution any closer, and had stressed that such a solution should be sought through the channels of the United Nations. To propose that the Conference should condemn nuclear tests on the high seas was merely an attempt to cause a diversion, and the representative of India had been right in pointing out that it was for the General Assembly of the United Nations to endeavour to reach a solution of the problem.

2. Mr. ZOUREK (Czechoslovakia) said that, during the discussions on article 27, some representatives had stated that the Conference was not competent to deal with the question of nuclear tests, and the United Kingdom draft resolution (A/CONF.13/C.2/L.64) was an expression of that point of view. Those who argued thus were saying, in effect, that the Committee should surrender its right to discuss a question which concerned it, for surely nuclear tests on the high seas were an infringement of the freedom of the high seas. Such tests had serious consequences. They were a threat to life and health, polluted the air space and contaminated the living resources of the sea.

3. The codification of the rules applicable to the sea should include provisions explicitly prohibiting nuclear tests on the high seas. General Assembly resolution 1148 (XII) was not concerned with the legal aspect of the problem. The object of the four-power proposal (A/CONF.13/C.2/L.30) was to lay down a rule of law applicable to nuclear tests at sea; it did not prejudge future decisions by the General Assembly concerning nuclear tests generally.

4. The United Kingdom draft resolution failed to take world opinion into account. Nor was the Indian resolution acceptable. After stating that there was apprehension that nuclear explosions on the high seas constituted an infringement of the freedom of the seas, it went on to the surprising conclusion that the whole matter should be left to the General Assembly. In other words, though recognizing that nuclear tests at sea constituted a violation of the freedom of the seas, the Indian delegation did not apparently consider that any action on the part of the Conference was called for.

5. Under its terms of reference, the Conference was to study all aspects relating to the law of the sea, including, in his opinion, the question of nuclear tests at sea. That question should not, therefore, be referred to a later session of the General Assembly.

6. The four-power proposal took world opinion into account. It was both clear and explicit, and required a decision by the Committee.

7. Sir Claude COREA (Ceylon) said that his delegation agreed with the motives behind the joint proposal, and in the general debate (9th meeting) had strongly opposed nuclear tests on the high seas. But the joint proposal as it stood went no further than General Assembly resolution 1148 (XII), and was in fact merely a partial echo of that resolution, for it related exclusively to nuclear tests on the high seas.

8. He could not support the United Kingdom draft, since he felt that there was no doubt as to the competence of the Committee to deal with the subject. His delegation did not approach the subject from the legal, but from the humane, point of view. The question was, what was expedient in present circumstances? The subject of nuclear tests was now under discussion in the United Nations, and the Committee's purpose should be to attempt to further those discussions.

9. Believing that the question of a ban on nuclear tests in general was one affecting the entire world, his delegation considered that the proper forum for discussing that question was the General Assembly, not a specialized body such as the Conference. Accordingly, he supported the Indian proposal, though he considered that it should be drafted in more specific terms. He proposed that the operative paragraph of the Indian proposal should be replaced by the words: "Decides to refer this matter to the General Assembly for appropriate action." He also proposed that the words "on the high seas" in the second preambular paragraph of the Indian proposal should be deleted, since they were redundant, and since the application of the paragraph to the seas was made clear by the reference to the "freedom of the seas".

10. Mr. SEN (India) accepted the amendments proposed by Ceylon.

11. Mr. DEAN (United States of America) said that current nuclear explosions produced a minimal radioactive fall-out, and the Scientific Committee on the Effects of Atomic Radiation, which was studying the subject, might well find that the fall-out had been greatly reduced. He said that, according to a recent statement by President Eisenhower, the United Nations would be invited to send observers to future tests conducted by the authorities of the United States; those observers would be able to verify personally the reduction in fall-out. He added that further progress in the field of nuclear research, which included explosions, would be of benefit to agriculture and industry.

12. He considered that, in any case, whether the Conference was competent or not, it would be well to refer the whole question back to the Scientific Committee. He supported the Indian proposal, as amended by Ceylon, which was a constructive proposal; at the same time, he suggested that, since all past tests had been conducted in accordance with international law and had not in fact infringed the freedom of the high seas, the second preambular paragraph should be amended to read:

> "*Recognizing* that a serious and genuine apprehension has been expressed on the part of many states that nuclear explosions may constitute a potential infringement of the freedom of the seas."

13. Mr. MORRISSEY (Ireland) said that the continuation of nuclear explosions deeply disturbed public opinion. They constituted a hazard to health, and carried with them not only the danger of immediate contamination, but also unforeseeable consequences for the future. He would therefore support any move to end the tests, and would like to see the production of nuclear material stopped.

14. He doubted, however, whether the joint proposal would have that effect. It could not make a contribution to peaceful agreements for lessening the number of tests and reducing the likelihood of war. The states possessing nuclear materials could not be compelled to stop the tests, and although public opinion had an effect, the place for the expression of such opinion was the General Assembly. It was unfortunate that the Disarmament Commission had reached a deadlock, but debate in the Conference would have little influence on the work of that Commission. He supported the Indian proposal, as amended by Ceylon, and reserved his delegation's position on further proposed amendments.

15. Mr. BARTOS (Yugoslavia) said that the United Kingdom and Indian draft resolutions did not go far enough. The Conference had been called by the United Nations, and the United Nations dealt with all matters affecting human rights. The Conference itself was dealing with such questions as the safety of life at sea and the living resources of the seas. Those questions should be fully covered in the articles adopted by the Conference.

16. He did not deny the competence of the General Assembly or the Disarmament Commission to deal with the question of nuclear tests. Yet, while those United Nations bodies dealt with matters with which they were more specifically concerned, the Conference could, and should, lay down rules which would protect the high seas from the dangers inherent in nuclear tests. It was not, therefore, sufficient merely to leave the question to the General Assembly.

17. He therefore supported the preambular paragraphs of the Indian proposal, but would abstain in the vote on the operative paragraph.

18. Sir Alec RANDALL (United Kingdom) said that the Indian draft resolution, as amended by Ceylon, was on the whole acceptable to his delegation. Whether the apprehensions referred to in the second preambular paragraph were justified was a matter of opinion. Research into the results of the tests undertaken by the United Kingdom showed that there had been no infringement of the freedom of the high seas and no interference with shipping. The question of the radioactive fall-out was still being studied by the Scientific Committee.

19. It was nevertheless a fact that apprehensions, whether justified or not, did exist, and if India would accept the drafting changes suggested by the United States representative, the United Kingdom would withdraw its own draft and support the Indian proposal.

20. Mr. LIANG (Secretary of the Committee) said that, if it were intended to send the Indian proposal to the General Assembly, it should first be adopted by the Second Committee as a draft resolution for adoption by a plenary meeting of the Conference, since it would be more appropriate that the proposal should come from the Conference as a whole, rather than from the Committee.

21. The CHAIRMAN proposed that the words "the Committee" in the Indian resolution should be replaced by the words "the Conference on the Law of the Sea".

22. Mr. SEN (India) accepted the Chairman's amendment.

23. Mr. TUNKIN (Union of Soviet Socialist Republics), speaking in support of the joint proposal, said that there was a growing movement in the world in favour of the prohibition of the testing, manufacture and use of nuclear weapons. The peoples of the world wanted nuclear inventions to be used for peaceful purposes, not for destruction. It had been argued that the Committee should pass over the question of nuclear tests on the high seas; but surely, being engaged on the drafting of a definition of the freedom of the seas, the Committee could not ignore a question directly relevant to that freedom.

24. It was remarkable that, although it had been suggested several times that nuclear tests were an infringement of the principle of the freedom of the high seas, no one had tried to demonstrate that they were compatible with that principle. The United States representative had said that such tests were beneficial to mankind; that was a paradoxial conclusion.

25. It had been said that the Committee should not encroach on subjects which were the concern of the General Assembly. But the Committee had a duty to formulate provisions banning nuclear tests, not only because of public opinion, but because of the logic of law; for the freedom of the high seas would be a hollow thing unless it were safeguarded against violations.

26. Mr. LOUTFI (United Arab Republic) said that his country had at all times opposed nuclear tests by reason of their disastrous effects. The competence of the Committee to discuss the question of nuclear tests could not be denied. The joint proposal gave the Committee a chance to express its opposition to nuclear tests in a provision which would become part of international law. He agreed in substance with the second preambular paragraph of the Indian proposal, but not with the terms of the operative paragraph, on which he would be constrained to abstain.

27. Mr. DREW (Canada) expressed support for the Indian proposal as amended by Ceylon. The Conference, though competent in many ways, was not scientifically qualified to express a judgement on the subject of nuclear tests. Hence, it would be more practical to refer the matter to the General Assembly and to its Scientific Committee.

28. Admittedly, apprehension about nuclear tests was real, but the apprehension about armaments in general was no less genuine, and yet, though conventional armaments might well affect the high seas, no one was suggesting that they should be discussed by the Conference.

29. It would be unfortunate if the apprehension which had been expressed were held to refer to the experiments of any particular state.

30. Referring to a remark made by the Soviet Union representative, he said that the United States representative had not, he believed, described nuclear explosions as beneficial, but had stated that nuclear research had led to discoveries which would benefit mankind.

31. Mr. OZORES (Panama) said that, as amended by Ceylon, the Indian proposal was open to criticism. If the phrase "on the high seas" were deleted from the second preambular paragraph, the implication would be that nuclear tests, wheresoever conducted, were an infringement of the freedom of the high seas, which was not logical. Either the phrase "on the high seas" should stand or, if it was deleted, the phrase "constitute an infringement of the freedom of the seas" should be replaced by "may constitute a serious threat to mankind".

32. Mr. TOLENTINO (Philippines) said that there was no doubt that apprehension about nuclear explosions existed, and no doubt, either, that the Committee was competent to discuss the matter, in so far as it affected the freedom of the high seas. But since the question of nuclear tests in its totality was under review by the General Assembly, the Scientific Committee and the Disarmament Commission, and since all governments represented at the Conference were also represented in the Assembly, it would not be practical for the Committee to discuss what was only one aspect of the problem.

33. He therefore supported the amended Indian proposal, but added that he agreed with the suggestion put forward by the representative of Panama.

34. Sir Alec RANDALL (United Kingdom) asked whether India accepted the amendments suggested by the delegation of the United States of America, which were intended to remove the quite unsubstantiated implication that nuclear explosions in fact constituted an infringement of the freedom of the high seas.

35. Mr. SEN (India) said that he found it difficult to accept those amendments, for there was real apprehension that such explosions in fact constituted an infringement, not that they might do so. The purpose of his delegation's proposal was to voice the apprehensions of many states, including his own, but not to imply that those apprehensions were generally accepted as fact.

36. With reference to the suggestion made by the representative of Panama, he said that not only explosions on the high seas but also those in territorial seas and on coasts would affect the freedom of the high seas. It was for that reason that he had accepted the deletion proposed by Ceylon of the words "on the high seas" in the second preambular paragraph.

37. Mr. SOLE (Union of South Africa), whilst recognizing the competence of the Committee to discuss the question, regretted that so much time was being spent on what was largely a sterile exercise in propaganda. The International Law Commission had wisely refrained from dealing with the question of nuclear tests. The Committee's debate would have no practical effect, since the problem would be resolved by the decision of a very few governments. Referring the subject back to the General Assembly was no more than a procedural device.

38. Sir Alec RANDALL (United Kingdom) said that since the Indian representative had made it clear that it had not been established that nuclear explosions were an infringement of the freedom of the seas, the United Kingdom delegation would withdraw its proposal and support that of the Indian delegation.

39. Mr. DEAN (United States of America) stated that

the Indian proposal as amended by Ceylon was quite acceptable to his delegation. However, reports of the after-effects of nuclear explosions seemed to have been exaggerated. That was shown by recent scientific data.

40. Commenting on the Panamanian representative's suggestion, he said that if there were after-effects, it made little difference whether the explosion took place on land or at sea, because in either case the high seas were ultimately affected. Therefore the deletion of the phrase "on the high seas" was correct.

The meeting was suspended at 5.10 p.m., and was resumed at 5.25 p.m.

41. Mr. LIU (China) said that the second preambular paragraph of the Indian proposal was intended to reflect an actual situation. He suggested, therefore, that that paragraph should be altered to read "a serious and genuine apprehension has been expressed on the part of some states". Furthermore, the replacement of "many" by "some" was a more accurate statement of the facts.

42. Mr. TUNKIN (Union of Soviet Socialist Republics) took issue with the statement by the representative of South Africa that the question of nuclear tests had been raised for reasons of propaganda. The purpose of the joint proposal (A/CONF.13/C.1/L.30) was to establish a principle which would lead to the banning of nuclear tests.

43. Mr. LAMANI (Albania) said that nuclear tests were a serious threat to mankind, for they destroyed the living resources of the sea and polluted areas of the high seas. The volume of protest against such tests was increasing. The Conference was fully qualified to deal with the question, and should declare such tests to be contrary to law.

44. With reference to the remarks of the United States representative concerning the minimal radio-active fall-out of nuclear explosions, he read an account of the effects on twenty-two fishermen who had been exposed to such fall-out on the high seas as a result of the Bikini tests. Those effects had been disastrous.

45. He therefore supported the joint proposal, and considered that the Committee as a whole should do the same.

46. Mr. BARTOS (Yugoslavia) took exception to the statement of the representative of the Union of South Africa that the joint proposal was intended for propaganda purposes. Yugoslavia was entirely opposed to the use of nuclear weapons. The policy of Mr. Nehru and Marshal Tito, which was based on the principle of co-existence, was well known. Nuclear tests were an infringement of the freedom of the high seas, and were an evil which should be removed. It was precisely the object of the joint proposal to remove that evil. His delegation would have supported the proposal if it had been made by the delegation of the United States of America or by any other delegation.

The meeting rose at 5.55 p.m.

NINETEENTH MEETING

Friday, 28 March 1958, at 10.45 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 28 (THE RIGHT OF NAVIGATION), 34 (SAFETY OF NAVIGATION), 35 (PENAL JURISDICTION IN MATTERS OF COLLISION) AND 36 (DUTY TO RENDER ASSISTANCE) (A/CONF.13/C..2/L.6, L.11, L.18, L.24 and Add.1, L.25, L.36, L.39, L.40, L.43, L.44, L.49, L.50, L.56, L.59 and L.60)

1. Mr. BELLAMY (United Kingdom), explaining the two United Kingdom proposals for articles 34, 35 and 36 (A/CONF.13/C.2/L.49 and 50), said that, even after hearing the extremely helpful statement made at the 13th meeting by Mr. François, expert to the secretariat of the Conference, his delegation felt that it would be preferable for the Conference to express its views on those articles in the form of a resolution. His delegation fully appreciated the fact that the Commission, recognizing the existence of relevant international conventions, had rightly not attempted to study the various matters afresh with a view to incorporating detailed provisions in the draft. The only question before the Committee, therefore, was whether the Conference should confine itself to a reference to those relevant conventions, coupled with a recommendation as to their acceptance, or attempt to include in any final document which it might produce the principles underlying them. The Commission had followed the second course, and had tried to incorporate in the articles general principles underlying the conventions and not in conflict with them.

2. With regard to articles 35 and 36, the Commission had been largely succesful, for the reason that the two articles substantially repeated, in the same words, certain provisions of the conventions. There was thus no question of conflict in terms between the existing conventions and the articles, although the actual omission of the detailed provisions of those conventions could cause difficulties. For example, article 35 failed to mention the very important idea referred to at the end of paragraph 1 of the commentary — namely, that the power to withdraw or suspend certificates of competency for ships' officers rested solely with the state which had issued them. The French amendment to article 35 (A/CONF.13/C.2/L.6) was designed to cover that point, and if the United Kingdom proposal were not carried, his delegation would consider whether it could accept an amendment along those lines. In any case, it would have to reserve its position in that event under the agreements which the United Kingdom had made with other members of the Commonwealth concerning the issue and withdrawal of certificates.

3. In attempting to set down the underlying principles of certain longer and more technical conventions, the Commission had been less successful. That was particularly true of article 34, the opening words of which required states to issue regulations governing the mat-

ters referred to in the article. It was well known, however, that many states, including the United Kingdom, which applied the very highest standards, did not in fact issue regulations covering every aspect of the matters included in paragraphs 1 (*a*), 1 (*b*) and 1 (*c*). For example, the United Kingdom did not issue regulations governing the detailed construction of all its ships. The fact that the methods applied in the United Kingdom ensured that ships would be substantially and safely built was well known, but his government, like many others, did not issue regulations on every aspect of the matter. Furthermore, the United Kingdom had no detailed statutory regulations concerning the adequacy of ships' crews, although no ships could sail under the British flag or leave a British port undermanned. Nor did the Government legislate for the reasonable labour conditions which the article required but left those matters to the joint machinery set up by the seafarers and the shipowners, a system which had worked to the satisfaction of all concerned.

4. Paragraph 2 of article 34 required the observance and enforcement of internationally accepted standards. But it was not specified what those standards were. If they were those of the Convention of 1948 for the Safety of Life at Sea, of the 1930 Load Line Convention or of the 1948 Regulations for Preventing Collisions, it would not be difficult for maritime states to accept an undertaking requiring them to comply, but practically all of them had in fact already done so. On the other hand, if the standards referred to were those laid down in the many conventions and agreements prepared by the International Labour Organisation (ILO), there was the difficulty that although those agreements enjoyed a wide acceptance, the degree thereof varied substantially from one agreement to another. States might be genuinely unable to accept certain standards laid down in individual instruments. The article thus did not fully succeed in setting down internationally accepted principles, and might impose obligations which certain states could not accept. An attempt could perhaps be made to redraft the article so as to bring it more into line with the principles actually adopted by states, but his delegation felt that there was no harder task than that of trying to compress the work of so many countries on such an important and highly technical subject into a few simple principles. It would be better to endorse the labours and achievements which had produced such excellent results over so many years.

5. He had dwelt at length on article 34 because it showed that the articles had not in fact achieved the condition laid down by Mr. François in his statement — namely, that they should state the principles underlying the relevant conventions and thus avoid conflict. That point could be further illustrated by reference to article 21, which would be considered by the First Committee. Paragraph 3 of that article appeared to remove all limitation on the action which could be taken by a coastal State in respect of a ship on innocent passage outward bound from a port or lying stationary in territorial waters. That paragraph was completely at variance with the terms of the Brussels Convention of 1952 on the Arrest of Seagoing Ships. Whether the provisions of the 1952 Convention or those of article 21, which were based on a text prepared by The Hague Codification Conference of 1930, were more acceptable was a matter of judgement, but the fact that the article conflicted with the convention was a matter of established fact. The Brussels Convention had admittedly not yet been accepted by many states, but it was still comparatively new, and its provisions could not be ignored either in any statement of international law or as a development of international practice.

6. To accept articles 34, 35 and 36 as they stood would therefore mean the acceptance of conflict between the principles of the articles and those to which many states had bound, or might bind, themselves in their relationships with each other. The existence of those articles as statements of international law might well act as a brake on future development on those subjects, especially in such rapidly developing matters as safety at sea. Even article 36, which his delegation found broadly acceptable, might prove to be not fully in accord with the more up-to-date provisions of the 1948 Convention. Moreover, even where the relevant conventions had been repeated almost verbatim, the effect might be that unless the two instruments — the convention and the article — could be developed side by side, there would be a conflict between them.

7. In those circumstances, the Conference should consider most seriously whether to accept new binding obligations or whether it would not be equally effective to announce by means of a resolution the Conference's acceptance of the instruments which should rule the relationships of states in those matters. The International Law Commission had obviously been in no position to propose such a solution, but a world-wide conference could do so very effectively.

8. Lastly, he stressed that if the United Kingdom proposals were not accepted, his delegation would feel bound either to suggest amendments to the articles or to make its acceptance conditional on the stipulation that fulfilment of the requirements of the international instruments set forth in its draft resolutions would be deemed sufficient observance of the requirements of the articles themselves.

9. Mr. VRTACNIK (Yugoslavia) opposed the United Kingdom proposal to delete articles 34, 35 and 36. In his delegation's view, the draft should be comprehensive and should embody general rules binding on all states. Though it was true that certain matters of detail had already been regulated by treaties, those treaties had not been generally ratfied. Moreover, if one of the arguments used by the United Kingdom representative were accepted, then any provision in the draft which subsequently became the subject of a separate international instrument would have to be deleted, with all the inconvenience of amending procedure which that would entail. Accordingly, his delegation favoured the retention of those articles with the modifications proposed by the delegations of Denmark (A/CONF.13/C.2/L.36), France (L.6) and the Netherlands (L.24 and Add.1, L.25).

10. On the other hand, he would support the United Kingdom draft resolutions, which represented a positive step in the right direction.

11. The purpose of the Yugoslav amendment (A/CONF.13/C.2/L.18) to article 36, sub-paragraph (*b*) was to take into account circumstances which might

prevent a ship from proceeding "with all speed" to the rescue of persons in distress. The present wording was too absolute.

12. Mr. HANIDIS (Greece) favoured the deletion of articles 35 and 36 for the reasons given by the United Kingdom representative.

13. The amendment to article 34 (A/CONF.13/C.2/L.56) proposed by his delegation had been submitted in the belief that it was only necessary to state the general principle that all states were required to issue safety regulations. The detailed matters mentioned in the Commission's version of the article were purely technical, and were regulated by existing conventions which had been widely ratified and still remained open for signature.

14. Mr. OLDENBURG (Denmark) explained that his delegation's amendment to article 36 (A/CONF.13/C.2/L.36) aimed to fill a gap by referring to the need for adequate search and rescue services, which, the grievous experience of the last war had revealed, required co-ordination at the national and international level. That fact had been emphasized again in the recommendation adopted in the International Convention for the Safety of Life at Sea. It was clearly desirable to take into account further developments in that respect since 1948, and to express in a practical way appreciation for the vital contribution made by mariners everywhere to peaceful relations between nations.

15. Mr. GIDEL (France) had reservations about the practical application of the Danish proposal, because search and rescue servies, which existed in most well-developed countries, were organized in very different ways.

16. Mr. RIPHAGEN (Netherlands), speaking of his delegation's proposal concerning article 34 (A/CONF.13/C.2/L.24 and Add.1) explained that the reason for the amendment to paragraph 1 was that the phrase "under its jurisdiction" was not altogether correct, because foreign ships traversing a territorial sea were to some extent under the jurisdiction of the coastal state; but that state should not be obliged to issue regulations for them, and was only obliged to do so for vessels entitled to fly its flag.

17. The proposal to delete paragraph 1 (*b*) and add a paragraph 3 to article 34 had been prompted by the consideration that labour conditions were sometimes regulated by state legislation, sometimes by collective agreements between employers and seafarers, and sometimes by a combination of the two.

18. He did not regard as judicious the United Kingdom delegation's proposal for article 34, inasmuch as the right to sail on the high seas imposed certain obligations on the flag state, which must take the necessary measures to control the behaviour of vessels flying its flag. Hence, any attempt at codifying the law of the sea would be incomplete without a provision ensuring that the flag state exercised effective jurisdiction over its ships in an area where no state possessed sovereign rights.

19. Mr. GIDEL (France) said that the United Kingdom proposals concerning articles 34, 35 and 36 posed an interesting problem of juridical method. He had been impressed by Mr. François's defence of the Commission's solution and the comments of the Yugoslav and Netherlands representatives.

20. Referring to the French proposal (A/CONF.13/C.2/L.6), he explained that the amendment to article 34, paragraph (*a*), was designed solely to clarify a somewhat obscure text.

21. The first French amendment to article 35 was also one of form, but the second was one of substance and designed to ensure that, in disciplinary matters, only the state which had issued a master's certificate should be able to withdraw or suspend it, even if the holder was not one of its nationals. The principle had been recognized by the Commission in its commentary, but in the French delegation's opinion it should be embodied in the text of the article itself. There was, of course, nothing to prevent states from making special reciprocal arrangements for the recognition of certificates issued by other states, but that was a matter of detail.

22. He too had been disturbed by the requirement in article 36, paragraph (*b*) that a ship must proceed "with all speed" to the rescue of another: the matter must clearly be left to the judgement of the captain. The difficulty could be overcome by the suppression of that phrase of by the adoption of the Yugoslav amendment.

23. Article 36 would best be transposed to follow article 34 immediately since it too was concerned with more general provisions than those contained in article 35.

24. Mr. BREUER (Federal Republic of Germany) said that it would be preferable to transfer the substance of article 28 to the introductory part of the draft dealing with general principles and definitions. However, it that were not done, his delegation proposed (A/CONF.13/C.2/L.39) the deletion of the words "on the high seas" in article 28, because every state had the right to sail ships under its flag on the territorial sea as well.

25. Mr. SOLE (Union of South Africa) agreed with the principle laid down in article 35, paragraph 1 that, in the circumstances envisaged in that text, proceedings should not be instituted as of right against the captain or crew in the courts of any state other than the flag state or that of which they were nationals. But no provision had been made by the Commission for cases where the state of nationality waived its jurisdiction in favour of another state, although provision was made therefor in his own country's legislation, and probably in that of many others. Account should be taken of the fact that some states might prefer their nationals to be tried in a country where the courts had more experience of the problems at issue. He therefore proposed at the end of paragraph 1 an addition which might read: "A state may, however, waive its jurisdiction, either generally or in a particular case, over its own nationals who may be involved in penal or disciplinary responsibility for collision on the high seas."

26. Mr. SRIJAYANTA (Thailand) explained that his amendment to article 35 (A/CONF.13/C.2/L.59) had been submitted because normally the flag state was the most competent to deal with the matters envisaged in

that article. Moreover, a vessel on the high seas flying its flag was considered to be part of its territory.

27. Mr. GARCIA-MIRANDA (Spain) stated that the aim of the Spanish proposal (A/CONF./13/C.2/L.60) was to offer a more logical sequence of the provisions and to bring out the requirements which derived from the principle stated in article 28.

The meeting rose at 12 noon.

TWENTIETH MEETING

Friday, 28 March 1958, at 3.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

NEW ARTICLE, TO BE INSERTED AFTER ARTICLE 27, PROPOSED BY POLAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, CZECHOSLOVAKIA AND YUGOSLAVIA (A/CONF.13/C.2/L.30) AND REVISED DRAFT RESOLUTION PROPOSED BY INDIA (A/CONF.13/C.2/L.71/Rev.1) (concluded) [1]

1. Mr. DEAN (United States of America) moved that the proposal by Poland, the Union of Soviet Socialist Republics, Czechoslovakia and Yugoslavia, for a new article to be inserted after article 27 (A/CONF.13/C.2/L.30), and the revised draft resolution submitted by India (A/CONF.13/C.2/L.71/Rev.1) should be put to the vote before articles 26 and 27.

The proposal of the United States representative was adopted by 60 votes to none, with one abstention.

2. Mr. DEAN (United States of America) then proposed that the Indian revised draft resolution should be put to the vote first.

The proposal was adopted by 53 votes to 11, with 3 abstentions.

3. Mr. BARTOS (Yugoslavia) proposed that the last paragraph of the Indian draft resolution should be voted separately.

The proposal was rejected by 46 votes to 10, with 7 abstentions.

4. Mr. BARTOS (Yugoslavia) remarked that it was extremely rare for a proposal for such a procedure to be rejected.

5. The CHAIRMAN put the revised draft resolution proposed by the Indian delegation (A/CONF.13/C.2/L.71/Rev.1) to the vote.

The draft resolution was adopted by 51 votes to one, with 14 abstentions.

6. Mr. SEN (India) moved that, since the Committee had adopted the Indian draft resolution, the four-power proposal (A/CONF.13/C.2/L.30) should not be put to the vote.

The Indian proposal that the four-power proposal should not be put to the vote was adopted by 52 votes to 8, with 3 abstentions.

7. Mr. BIERZANEK (Poland), explaining why his delegation had abstained from voting on the Indian draft resolution, said that the attitude of his government in the matter — namely, that nuclear tests should be prohibited — was generally known. The Conference should, however, establish the fact that nuclear tests were not in conformity with international law, and should not refer the problem back to the General Assembly.

8. Sir Alec RANDALL (United Kingdom) had voted for the Indian draft resolution because it was right that the problem should be left to the General Assembly and the Disarmament Commission. He had withdrawn his proposal (A/CONF.13/C.2/L.64) at the 18th meeting, on the basis of the Indian representative's clarification of paragraph 2 of his resolution, to the effect that apprehension about nuclear tests was a fact, but that it had not been established how many states had such apprehensions, or whether they were justified. The United Kingdom Government, when carrying out its tests, had not closed any part of the high seas, but had warned states of the danger. It had, moreover, chosen areas remote from normal navigation routes. Nor had research produced any evidence of after-effects or of interference with navigation. For those reasons, it would be wrong to prejudge the issue currently before the General Assembly and the Disarmament Commission.

9. Mr. CERVENKA (Czechoslovakia) said that his delegation had abstained from voting on the Indian draft resolution because, first of all, it incorrectly linked the question of nuclear tests on the high seas, which was already settled by existing international law, with the proposal for the general prohibition of nuclear tests discussed in the past by the General Assembly of the United Nations. The Czechoslovak delegation did not consider it right that a special conference, convened by the General Assembly for the purpose of codifying the rules of international law concerning the régime of the sea, should refer one part of a question concerning the violation of the freedom of the high seas back to the General Assembly. Moreover, the resolution adopted did not represent the situation correctly in the phrase: "there is a serious and genuine apprehension on the part of many states that nuclear explosions constitute an infringement of the freedom of the seas", since many governments and delegations to the Conference had clearly expressed not only assumptions or apprehensions but indeed their deepest conviction that nuclear tests on the high seas constituted an infringement of international law. Furthermore, the reference in the Indian resolution to the Disarmament Commission, which for the time being was not in session, might mislead public opinion. For all those reasons, the Czechoslovak delegation had been unable to support the Indian draft resolution, and had therefore abstained from voting on it.

10. Mr. RADOUILSKY (Bulgaria) had abstained from voting on the Indian draft resolution because the question of nuclear tests was a fundamental one, which

[1] Resumed from the 18th meeting.

admitted of no compromise. It was the responsibility of all those present at the Conference to take a decision on the matter. The Indian resolution was inadequate, and hence the four-power proposal should have been adopted.

11. Mr. LEE (Republic of Korea) said that his delegation had been in favour of the United Kingdom draft resolution (A/CONF.13/C.2/L.64), which had been withdrawn. Although the last paragraph of the Indian resolution was acceptable, the rest differed considerably on many points from the United Kingdom proposal. His delegation had accordingly abstained from voting.

12. Mr. LOUTFI (United Arab Republic) regretted the decision not to vote the Indian draft resolution paragraph by paragraph. As the Yugoslav representative had said, it was very rare for that procedure not to be allowed. He had intended to vote for the Indian proposal. His government had always agreed with the views on disarmament expressed by India at the United Nations. But he had had to abstain from the vote owing to the last paragraph in the draft resolution.

13. Mr. SEN (India) said that he had abstained from voting on the United States proposals that his delegation's draft resolution should be voted first and that the four-power proposal should be voted before article 26, because his delegation took its stand on fundamental, and not on procedural, issues. It was well known that the Indian Government and Parliament were in favour of a complete cessation of nuclear explosions, which were a crime against humanity. Nuclear energy should not be used for destruction; it should be harnessed to the provision of the necessities of life, the lack of which caused the divisions that led to war. The Indian Government had renounced the manufacture of nuclear weapons, though it would be possible for it to produce them within a few years. It was therefore difficult for him not to support the four-power proposal, with which he agreed in substance. The question, however, was that of finding the best means to remove the danger of nuclear warfare. The decisions of a few powers — not of small nations nor of the Conference — would resolve the problem. The General Assembly provided a more favourable atmosphere, considering as it did the problem in its entirety, and he was optimistic that the spirit of good, or at least the instinct of self-preservation, would lead to agreement at the United Nations.

14. Mr. GHELMEGEANU (Romania) said that his delegation had abstained from the vote on the Indian draft resolution, because it believed in a general prohibition of nuclear tests and thought that the Conference should prohibit such tests. The Indian proposal was not fully satisfactory in that respect. It failed to take account of the Conference's competence to prohibit tests. The apprehension felt by many states that nuclear tests constituted an infringement of the freedom of the high seas, which was mentioned in the Indian resolution, should find expression in a definite prohibition.

15. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the Soviet delegation had abstained from voting on the Indian resolution because it believed that the Conference should deal with the question of nuclear tests and should adopt a positive rule, arising from the principle of the freedom of the high seas, which would prohibit such tests. Mere statements were not enough, and the U.S.S.R. had always advocated taking concrete steps. The Indian proposal fell short of the required minimum, and the Conference would better serve the cause of peace if it adopted the joint proposal.

16. Mr. WYNES (Australia) had voted for the Indian proposal as a whole because its operative paragraph referred the question of nuclear tests to the General Assembly. He would, however, have preferred a less sweeping proposal, and thought that the second paragraph should have stated that there was a diversity of opinion as to the effects of nuclear explosions. Although he regretted that the Indian delegation had not been willing to modify the second paragraph, he had voted for the proposal, since it appeared that the second paragraph amounted to no more than a statement of fact that apprehensions on the part of states did exist, but neither mentioned the number of those States nor expressed an opinion as to whether their apprehensions were justified or not.

ARTICLE 26 (DEFINITION OF THE HIGH SEAS)

(A/CONF.13/C.2/L.6, L.26, L.54, L.67) (concluded) [1]

17. Mr. GLASER (Romania) said that the Romanian People's Republic which, with the Ukrainian S.S.R., had proposed an amendment to article 26 (A/CONF.13/C.2/L.26), did not insist upon that amendment being put to the vote in the Conference on the Law of the Sea.

18. Mr. PUSHKIN (Ukrainian Soviet Socialist Republic) agreed on behalf of his delegation with what had been said by the Romanian representative.

19. The CHAIRMAN put to the vote the Brazilian delegation's proposal for article 26 (A/CONF.13/C.2/L.67).

The proposal of Brazil was rejected by 27 votes to 2, with 25 abstentions.

20. On a suggestion by Mr. TUNKIN (Union of Soviet Socialist Republics), the French proposal on article 26 (A/CONF.13/C.2/L.6) was voted upon in two parts.

The French proposal to amend paragraph 1 of article 26 was rejected by 19 votes to 17, with 20 abstentions.

The French proposal to delete paragraph 2 of article 26 was adopted by 23 votes to 6, with 22 abstentions.

The Greek proposal (A/CONF.13/C.2/L.54) to refer paragraph 2 of article 26 to the First Committee was adopted by 52 votes to 1, with 9 abstentions.

The International Law Commission's draft text of article 26, as amended, was adopted by 53 votes to none, with 2 abstentions.

The meeting was suspended at 5 p.m.
and resumed at 5.20 p.m.

[1] Resumed from the 16th meeting.

ARTICLE 27 (FREEDOM OF THE HIGH SEAS) (A/CONF. 13/C.2/L.3, L.6, L.7, L.15, L.21, L.29, L.32, L.34, L.45, L.63, L.65, L.68, L.70) (continued) [1]

21. Mr. BIERZANEK (Poland) reserved his delegation's right to return to its own proposal on article 27 (A/CONF.13/C.2/L.29) after a vote had been held on Yugoslavia's proposal (A/CONF.13/C.2/L.15).

22. Mr. CAMPOS ORTIZ (Mexico) withdrew paragraph 2 of his delegation's amendment (A/CONF.13/C.2/L.70), which concerned paragraph 2 (*c*) of the Yugoslav proposal.

23. The CHAIRMAN put paragraph 1 of the Yugoslav proposal (A/CONF.13/C.2/L.15) to the vote.

Paragraph 1 of the proposal was rejected by 25 votes to 19, with 12 abstentions.

24. The CHAIRMAN put paragraph 2 (*a*) of the proposal to the vote.

Paragraph 2 (a) of the proposal was rejected by 28 votes to 12, with 11 abstentions.

The meeting rose at 6 p.m.

TWENTY-FIRST MEETING

Monday, 31 March 1958, at 10.45 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLE 27 (FREEDOM OF THE HIGH SEAS) (A/CONF. 13/C.2/L.3, L.6, L.7, L.15, L.21, L.29, L.32, L.34, L.45, L.63, L.65, L.66, L.68, L.70) (continued)

1. The CHAIRMAN invited the Committee to resume the voting on the proposal of Yugoslavia (A/CONF.13/C.2/L.15), starting with paragraph 2 (*b*) for which the Yugoslav delegation accepted the text of the Mexican amendment (A/CONF.13/C.2/L.70).

Paragraph 2 (b), as amended, was rejected by 21 votes to 16, with 13 abstentions.

Paragraph 2 (c) was rejected by 25 votes to 20, with 10 abstentions.

Paragraph 3 was rejected by 27 votes to 18, with 9 abstentions.

Paragraph 4 was rejected by 21 votes to 18, with 16 abstentions.

2. The CHAIRMAN declared that, since all the paragraphs of the Yugoslav proposal had been rejected, the proposal was rejected as a whole.

3. In the light of the voting on the Yugoslav proposal, which embodied most of the points contained in a number of other proposals, he asked the sponsors of those proposals to reconsider their position. He felt that in the altered circumstances some of them might wish to withdraw their proposals.

4. Mr. BIERZANEK (Poland) said that paragraphs 2 and 3 of the text proposed by Poland for article 27 (A/CONF.13/C.2/L.29) should be voted on separately, since they were not covered by the Yugoslav proposal, and his country attached particular importance to the principles embodied in them. Article 27 of the International Law Commission's draft was not sufficiently clear.

5. The CHAIRMAN said that the Polish proposal would be put to the vote in due course.

At the request of the Bulgarian delegation, the vote on the proposal by Albania, Bulgaria and the Union of Soviet Socialist Republics (A/CONF.13/C.2/L.32) was taken by roll-call.

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

In favour: Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Hungary, Indonesia, Poland, Romania.

Against: Sweden, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, France, Federal Republic of Germany, Greece, Guatemala, Haiti, Iceland, India, Ireland, Israel, Italy, Republic of Korea, Liberia, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Spain.

Abstaining: Switzerland, Venezuela, Yugoslavia, Austria, Burma, Finland, Japan, Mexico, Saudi Arabia.

The proposal was rejected by 43 votes to 13, with 9 abstentions.

6. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the work of the Committee would be simplified if, from that stage onwards, it took the draft of the International Law Commission as a basis for voting. Some delegations might wish to reconsider their proposed amendments in the light of the result of the votes already taken. The remaining proposals should be put to the vote in the order in which they had been submitted.

7. Mr. BULHOES PEDREIRA (Brazil) withdrew his delegation's proposal (A/CONF.13/C.2/L.66) which concerned the form, rather than the substance, of article 27. Since his delegation's proposal for a similar amendment to article 26 (A/CONF.13/C.2/L.67) had already been rejected, there was no longer any point in the amendment to article 27.

8. Sir Alec RANDALL (United Kingdom) said that his delegation had submitted its proposal (A/CONF.13/C.2/L.68) because it considered that it contained a more accurate statement of the position than the third sentence of paragraph 1 of the International Law Commission's commentary of article 27. However, the proposed amendment was not indispensable as its sense was already implicit in the International Law Commission's draft of article 27. The United Kingdom delegation would have been prepared to withdraw its amendment had the Polish delegation withdrawn its proposal

[1] Resumed from the 16th meeting.