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Summary Records of the 31st to 37th Meetings of the Second Committee

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concerning the route to be followed by submarine cables. It was clear that the coastal State and other States which laid cables or pipelines had a great interest in seeing that they were laid in such a manner that they did not affect the performance of those already installed or the exploration and exploitation of the continental shelf. High-voltage power cables and pipelines, if injured or broken, caused extensive damage to the living resources of the sea over a wide area, and their laying should thus be carefully regulated.

23. The Venezuelan amendment recognized that States wishing to install new cables or pipelines must respect the routing of those which had already been installed. In addition, the amendment recognized the coastal State's obligation not to impede the laying or maintenance of cables and pipelines on the continental shelf. Articles 62 to 65 of the International Law Commission's draft obliged the coastal State to legislate on such matters as the breaking and injury of submarine cables, their repair, the construction and use of fishing gear and compensation for loss of such gear. It was, therefore, entitled to be consulted on the proposed route of all submarine cables and pipelines. That, he stressed, was a provision which went no further than what had been stated by the International Law Commission itself in paragraph 1 of its commentary to article 70.

24. Mr. HEKMAT (Iran) agreed with the arguments advanced against the proposed United States amendments to articles 62 to 65. The International Law Commission, in whose proceedings he had taken part, had not forgotten the existence of the 1884 Convention when it drew up articles 62 to 65. It had nevertheless felt that the provisions embodied in those articles were more in line with twentieth-century conditions. The group of Afro-Asian States now numbered more than thirty, whereas in 1884 there had not been more than five or six independent States in that part of the world. In the days of the 1884 Convention, international law had been largely a matter of concern to western countries. It was important that it should now be applicable and accepted on a world-wide basis. His delegation would, therefore, vote for the International Law Commission's draft of articles 62 to 65 as they stood.

25. Mr. COLCLOUGH (United States of America) said that, as there seemed to be general agreement that the provisions of the 1884 Convention would not be regarded as repealed by the International Law Commission's draft articles 62 to 65, and in view of the new proposal of which the United Kingdom delegation had given notice, he was prepared to withdraw his delegation's amendments to articles 62, 63 and 65.

26. The provisions of the draft article 64, however, did not come under the 1884 Convention, but under resolution I of the 1913 London Conference. He felt it to be essential that a uniform standard be adopted for trawling equipment and thus wished to make it clear that he did not withdraw the United States amendment to article 64 (A/CONF.13/C.2/L.111).

The meeting rose at 11.35 a.m.

THIRTY-FIRST MEETING

Friday, 11 April 1958, at 8.35 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)*

ARTICLE 46 (RIGHT OF VISIT) (A/CONF.13/C.2/L.69, A/CONF.13/C.2/L.117) (concluded) [1]

1. The CHAIRMAN put to the vote the amendments to article 46.

The proposal of the United Arab Republic (A/CONF. 13/C.2/L.69) to delete sub-paragraph (b) of paragraph 1 was rejected by 22 votes to 16, with 11 abstentions.

The Bulgarian proposal (A/CONF.13/C.2/L.117) was rejected by 36 votes to 11, with 4 abstentions.

2. The CHAIRMAN, in reply to Mr. Grant (United Kingdom), suggested that any redrafting of article 46 necessary as a result of the amendment to article 45, adopted at the 29th meeting, could be left to the drafting committee.

The text of article 46 as submitted by the International Law Commission was adopted by 39 votes to 4, with 9 abstentions.

ARTICLE 47 (RIGHT OF HOT PURSUIT) (A/CONF.13/C. 2/L.4, L.20/Rev.1 and L.61/Rev.1, L.35, L.53, L.89, L.94, L.95, L.96/Rev.1, L.98, L.99, L.105, L.115, L.116) (concluded) [1]

3. The CHAIRMAN made the following suggestions for the organization of voting on the proposals relating to article 47. The only logical arrangement appeared to be to break up the proposals into two or more parts according to the separate amendments contained therein, and to group together the amendments to the same paragraph of the International Law Commission's draft. The Netherlands proposal (A/CONF.13/C.2/L.98) — being of a different nature from the other proposals — would, however, be put to the vote as a whole.

4. Mr. KNACKSTEDT (Federal Republic of Germany) proposed that the vote on article 47 be postponed until the First Committee had agreed upon the text of article 66, since it was necessary to know the extent of the contiguous zone and the rights which the coastal State would exercise within it. There would be no reason for a right of hot pursuit in the contiguous zone if the First Committee adopted article 66 of the International Law Commission's draft.

5. The CHAIRMAN said that this point should have been submitted during debate ; nevertheless, he would put it to the vote.

The German proposal to postpone the voting on article 47 was rejected by 25 votes to 5, with 14 abstentions.

[1] Resumed from the 28th meeting.

6. Mr. GRANT (United Kingdom) requested that paragraph 2 of the Netherlands proposal (A/CONF.13/C.2/L.98) might be voted upon separately.

7. Mr. GHELMEGEANU (Romania) opposed the United Kingdom representative's suggestion; if one part of the Netherlands proposal were accepted and the rest rejected, the essential purpose of the proposal would be frustrated.

8. The CHAIRMAN ruled that the Netherlands proposal must be taken as a whole.

The Netherlands proposal (A/CONF.13/C.2/L.98) was rejected by 36 votes to 13, with 7 abstentions.

Paragraph 1

9. The CHAIRMAN invited the Committee to vote next on proposals referring to paragraph 1 of article 47.

The Indian proposal (A/CONF.13/C.2/L.95) was rejected by 24 votes to 18, with 11 abstentions.

10. Mr. GARCÍA-SAYÁN (Peru) withdrew his delegation's amendment (A/CONF.13/C.2/L.35) since it was dependent on action which might be taken in the Third Committee.

The Mexican proposal (A/CONF.13/C.2/L.4) was rejected by 25 votes to 24, with 8 abstentions.

The Israel proposal (A/CONF.13/C.2/L.116) was rejected by 23 votes to 18, with 14 abstentions.

The proposal of Poland and Yugoslavia (A/CONF.13/C.2/L.20/Rev.1 and L.61/Rev.1) was adopted by 33 votes to 9, with 16 abstentions.

The proposal of the Federal Republic of Germany (A/CONF.13/C.2/L.115) was adopted by 48 votes to 8, with 5 abstentions.

The proposal of Iceland (A/CONF.13/C.2/L.89) was rejected by 34 votes to 7, with 12 abstentions.

11. The CHAIRMAN announced that that part of the proposal of Denmark (A/CONF.13/C.2/L.99) which related to paragraph 1 had been withdrawn.

Paragraph 1 of article 47 of the International Law Commission's draft, as amended, was adopted by 50 votes to 3, with 9 abstentions.

Paragraph 2

12. The CHAIRMAN invited the Committee to vote on proposals dealing with paragraph 2 of article 47.

The proposal by Pakistan (A/CONF.13/C.2/L.94) was rejected by 18 votes to 12, with 30 abstentions.

13. Mr. RIEMANN (Denmark) withdrew his delegation's proposal for paragraph 2 (A/CONF.13/C.2/L.99).

Paragraph 2 of article 47 of the International Law Commission's draft was adopted by 60 votes to 1, with 1 abstention.

Paragraph 3

14. The CHAIRMAN put to the vote proposals relating to paragraph 3 of article 47.

15. Mr. GARCÍA-SAYÁN (Peru) withdrew his delegation's proposal with reference to that paragraph (A/CONF.13/C.2/L.35).

16. Mr. CAMPOS ORTIZ (Mexico) withdrew his delegation's first amendment to paragraph 3 and asked for a roll-call vote on the second amendment.

A vote was taken by roll-call on the second amendment by Mexico to paragraph 3 (A/CONF.13/C.2/L.4).

The Byelorussian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, Colombia, Czechoslovakia, Ecuador, Guatemala, Hungary, Iceland, India, Indonesia, Iran, Ireland, Republic of Korea, Mexico, Nicaragua, Panama, Paraguay, Peru, Philippines, Portugal, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Argentina, Brazil, Bulgaria, Burma.

Against: Denmark, Finland, Federal Republic of Germany, Greece, Italy, Japan, Netherlands, New Zealand, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Belgium.

Abstaining: China, Dominican Republic, France, Ghana, Holy See, Israel, Liberia, Pakistan, Poland, Spain, Switzerland, Thailand, Turkey, Union of South Africa, Australia, Austria.

The amendment was adopted by 35 votes to 13, with 16 abstentions.

17. The CHAIRMAN suggested that, as the third Mexican amendment to paragraph 3 seemed to be purely a drafting question, it might be left to the Secretariat.

It was so agreed.

The amendment proposed by Iceland (A/CONF.13/C.2/L.89) was rejected by 33 votes to 3, with 18 abstentions.

The Indian proposal (A/CONF.13/C.2/L.95) was adopted by 20 votes to 15, with 22 abstentions.

18. The CHAIRMAN announced that the proposals of the United States of America (A/CONF.13/C.2/L.105) and the Federal Republic of Germany (A/CONF.13/C.2/L.115) had been withdrawn.

The first amendment by Israel to paragraph 3 (A/CONF.13/C.2/L.116) was rejected by 37 votes to 11, with 8 abstentions.

The second amendment by Israel was rejected by 37 votes to 6, with 11 abstentions.

Paragraph 3 of article 47 of the International Law Commission's draft, as amended, was adopted by 47 votes to 2, with 11 abstentions.

Paragraph 4

Paragraph 4 of article 47 of the International Law Commission's draft was adopted by 62 votes to none.

Paragraph 5

19. The CHAIRMAN requested the Committee to vote on proposals referring to paragraph 5 of article 47.

The proposal by Iceland referring to paragraph 5 (b) (A/CONF.13/C.2/L.89) was adopted by 25 votes to 11, with 22 abstentions.

The proposal by Iceland to add a sub-paragraph (c) to paragraph 5 was rejected by 37 votes to 10, with 11 abstentions.

Paragraph 5 of article 47 of the International Law Commission's draft, as amended, was adopted by 59 votes to 1, with 5 abstentions.

Paragraph 6

Paragraph 6 of article 47 of the International Law Commission's draft was adopted by 62 votes to none.

Additional paragraphs

20. The CHAIRMAN invited the Committee to vote on proposals to add a paragraph 7 to article 47.

Paragraph 7 proposed by the United Kingdom (A/CONF.13/C.2/L.96/Rev.1) was adopted by 30 votes to 6, with 20 abstentions.

21. Mr. MINTZ (Israel) withdrew his delegation's proposal (A/CONF.13/C.2/L.116), as it was to the same effect as that just adopted.

22. Mr. CARDOSO (Portugal) said that his delegation's proposal (A/CONF.13/C.2/L.53) could be left to the drafting committee.

The text of article 47 submitted by the International Law Commission, as amended, was adopted by 58 votes to 2, with 3 abstentions.

ARTICLE 48 (POLLUTION OF THE HIGH SEAS) (A/CONF. 13/C.2/L.6, L.79, L.96/Rev.1, L.103, L.106, L.107, L.115, L.118, L.119) (concluded) [1]

Paragraph 1

23. Mr. COLCLOUGH (United States of America) withdrew his delegation's proposal (A/CONF.13/C.2/L.106), with the understanding that it was not the intention of paragraph one of article 48 to interfere with the work being done or to be done on the subject by interested intergovernmental organizations and groups with competency in the field. The United States believed that it was the intention of that paragraph that each government should take immediate steps to minimize the evil of oil pollution and should adopt or promote definite and effective programmes to that end.

24. Mr. GRANT (United Kingdom) withdrew his delegation's proposal (A/CONF.13/C.2/L.96/Rev.1) and said he would support the International Law Commission's draft.

25. The CHAIRMAN pointed out that, in that case, the proposal by Yugoslavia (A/CONF.13/C.2/L.119) need no longer be voted on since its purpose was to add a paragraph at the end of the draft resolution proposed by the United Kingdom.

The proposal by Italy (A/CONF.13/C.1/L.103) was rejected by 32 votes to 6, with 17 abstentions.

The proposal by the Federal Republic of Germany (A/CONF.13/C.2/L.115) was rejected by 25 votes to 10, with 19 abstentions.

The proposal by Uruguay (A/CONF.13/C.2/L.79) was adopted by 51 votes to none, with 8 abstentions.

Paragraph 1 of article 48 of the International Law Commission's draft, as amended, was adopted by 61 votes to none, with 1 abstention.

Paragraphs 2 and 3

26. The CHAIRMAN invited the Committee to vote on the draft resolution proposed by the United States of America and the United Kingdom (A/CONF.13/C.2/L.107).

27. Mr. SOLE (Union of South Africa) asked for a vote by roll-call. His request was based on the fact that a number of statements made concerning the competence of the International Atomic Energy Agency in that matter seemed to him to be at variance with the attitude of the same government's representatives in the governing board of that agency.

28. Mr. KANAKARATNE (Ceylon), on a point of order, drew attention to the fact that the resolution proposed to delete paragraphs 2 and 3 of the International Law Commission's draft article 48 and did not suggest anything in their place. He proposed that separate votes should be taken, first on the deletion of paragraphs 2 and 3, and secondly on the draft resolution itself.

29. Mr. COLCLOUGH (United States of America) objected to the proposal of the representative of Ceylon, since the draft resolution formed a whole and its intention was to delete paragraphs 2 and 3 and to substitute the resolution.

30. Mr. KEÏLIN (Union of Soviet Socialist Republics) supported the representative of Ceylon.

31. Mr. CERVENKA (Czechoslovakia) requested a vote by roll-call on the proposal by the representative of Ceylon.

A vote was taken by roll-call.

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

In favour: Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Czechoslovakia, France, Hungary, India, Indonesia, Mexico, Peru, Poland, Romania, Sweden, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Argentina.

Opposing: Australia, Brazil, Canada, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Federal Republic of Germany, Greece, Guatemala, Iceland, Israel, Italy, Republic of Korea, Liberia, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Portugal, Spain, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstentions: Austria, Finland, Ghana, Holy See, Iran, Ireland, Japan, Netherlands, Saudi Arabia, Switzerland, Union of South Africa, Venezuela.

The proposal by the representative of Ceylon was rejected by 31 votes to 22, with 12 abstentions.

[1] Resumed from the 29th meeting.

A vote was taken by roll-call on the draft resolution of the United States of America and the United Kingdom (A/CONF.13/C.2/L.107).

The Federal Republic of Germany, having been drawn by lot by the Chairman, was called upon to vote first.

In favour : Federal Republic of Germany, Greece, Guatemala, Iceland, Ireland, Israel, Italy, Republic of Korea, Liberiae New Zealand, Nicaragua, Pakistan, Panama, Paraguay, Philippines, Portugal, Spain, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Canada, China, Colombia, Cuba, Dominican Republic, Ecuador.

Opposing : Ghana, Hungary, India, Indonesia, Iran, Japan, Netherlands, Norway, Peru, Poland, Romania, Saudi Arabia, Sweden, Tunisia, Ukranian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Argentina, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Czechoslovakia, Denmark, Finland, France.

Abstentions : Holy See, Mexico, Switzerland, Venezuela, Austria, Brazil.

The resolution was adopted by 30 votes to 29, with 6 abstentions.

32. The CHAIRMAN indicated that, in consequence of the deletion of paragraphs 2 and 3, no vote was possible on the proposals by Czechoslovakia (A/CONF. 13/C.2/L.118) and France (A/CONF.13/C.2/L.6).

33. Mr. CERVENKA (Czechoslovakia), explaining his vote, said that efforts to avoid the most important questions were not unknown in the Committee. The situation was similar to that when the question of tests with nuclear weapons was being discussed. The Conference had been denied competence to express itself in favour of the adoption of an obligation to prevent pollution of the seas by radio-active waste ; but the sponsors of the resolution must be aware of the fact that tests with nuclear weapons were the main source of such contamination. Clearly, the acceptance of an obligation prohibiting the dumping of radio-active elements in the sea would render such tests very difficult. His country co-operated with the International Atomic Energy Agency, but he failed to see why that agency should have to solve the legal aspects of the pollution of the seas, when it was the purpose of the present conference to codify the law of the sea. The resolution was a most retrograde step. His delegation felt it to be necessary to declare that pollution of the seas by radio-active waste was a violation of the principle of the freedom of the high seas.

34. Mr. WYNES (Australia) said that, in voting for the resolution, his delegation had particularly in mind the reference in the operative paragraph of the resolution to " consultation with existing groups and established organs having acknowledged competence in the field of radiological protection ". It appeared to his delegation that the United Nations Scientific Committee to study the effects of atomic radiation might be consulted upon the matters involved which still required a great deal of scientific investigation before adequate standards could be established.

35. Mr. KANAKARATNE (Ceylon) said that his delegation had been unable to see in what way paragraphs 2 and 3 of article 48 of the International Law Commission's text were inconsistent with the resolution. His delegation would have voted both for paragraphs 2 and 3 and for the draft resolution. He regretted the deletion of paragraphs 2 and 3 ; but for that, he would have voted for the resolution.

36. Mr. JHIRAD (India) said that he had voted against the resolution because it embodied a clear attempt to shirk the responsibility which the International Law Commission — an impartial body — had specifically included in their draft. The pollution of the high seas by the dumping of radio-active waste was in any case contrary to international law.

37. Mr. KEÏLIN (Union of Soviet Socialist Republics) explained that he had voted against the joint draft resolution because he believed that even if the International Atomic Energy Agency drew up regulations to prevent the pollution of the seas with radio-active substances and wastes, that would in no way relieve States of their obligation to refrain from taking any action capable of causing such pollution. States were obliged to issue appropriate rules forbidding the pollution of the waters of the sea through the dumping of radio-active materials or wastes, and were under the further obligation to co-operate with one another in drafting such rules. Those important principles had been recognized by the International Law Commission, and the attempt to depart from them was undoubtedly a backward step much to be regretted.

38. Mr. BARROS FRANCO (Chile) explained that he had voted against the proposal by the United States of America and the United Kingdom because he considered it useful to maintain paragraphs 2 and 3 of article 48 and he quoted paragraph 3 of the commentary by the International Law Commission on that article. He could not understand how the deletion of those paragraphs could find any support ; it semed that some States were not ready to co-operate in the regulations contained in those paragraphs for the prevention of pollution of the sea. It was not a political matter : All members of the international community were under legal obligation to prevent such contamination.

39. Mr. BELTRAMINO (Argentina) had also voted against the resolution because he thought that paragraphs 2 and 3 should be retained. He hoped that that decision could be reconsidered later. The question of nuclear tests was entirely separate.

40. Mr. ASANTE (Ghana) had felt obliged to vote against the resolution in accordance with the policy of his government to consider all questions on their merits ; the International Law Commission's draft was simple and to the point.

The meeting rose at 10.55 p.m.

THIRTY-SECOND MEETING

Saturday, 12 April 1958, at 10.25 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 61 TO 65 (SUBMARINE CABLES AND PIPELINES) (A/CONF.13/C.2/L.58, L.97/Rev.1, L.101, L.102, L.108, L.111, L.120) (concluded) [1]

1. Mr. JHIRAD (India) understood the new article proposed by the United Kingdom (A/CONF.13/C.2/L.120) to be prompted by a desire to allay the apprehensions expressed by the representative of the United States and others lest articles 61 to 65, if adopted, should have the effect of abrogating existing conventions, particularly the Convention of 14 March 1884. He did not think those apprehensions well-founded; a new convention could not be construed as abrogating the provisions of existing conventions unless it did so expressly or by necessary implication; that was not so in the case of the articles under consideration. Anxiety had also been expressed as to the possibility that the inclusion of an express provision of that sort referring only to articles 61 to 65 might lead to the conclusion that other articles did have the effect of abrogating previous conventions. In order to meet that difficulty, he proposed an amendment to replace the words "the foregoing articles 61 to 65" in the United Kingdom proposal by a more general statement mentioning the articles within the purview of the Second Committee. The actual wording might be left to the Drafting Committee.

2. Sir Alec RANDALL (United Kingdom) was prepared to accept the Indian amendment. He drew attention, however, to a decision adopted without dissension by the First Committee at its 40th meeting to the effect that any instrument resulting from the Conference should contain a clause of general application affirming the principle that the provisions of the articles in general did not override those of special conventions already in force. He wondered whether the Committee would accept an analogous motion in preference to the United Kingdom proposal.

3. Mr. GLASER (Romania) said that a text adopted by a conference dealing with general rules of international law could not derogate from special rules established by virtue of international conventions. If that was the meaning of the First Committee's decision he would have no difficulty in subscribing to it. He would support the United Kingdom proposal only if it incorporated the Indian amendment which removed any doubt regarding the underlying intention.

4. Mr. KEÏLIN (Union of Soviet Socialist Republics) accepted the Indian amendment in principle, but felt that the best course would be to adopt a decision similar to that adopted by the First Committee.

5. The CHAIRMAN invited the Committee to vote on the principle that the articles under consideration did not override conventions already in force.

That principle was adopted without opposition.

6. Sir Alec RANDALL (United Kingdom) withdrew his proposal (A/CONF.13/C.2/L.120).

7. Mr. FRANCOIS (Expert to the secretariat of the Conference), commenting on the Italian proposal on article 64 (A/CONF.13/C.2/L.102), stated that the International Law Commission had considered but had rejected the possibility of inserting a similar text. It had felt that a number of States would object to being placed under the obligation in question since it might put them at a serious disadvantage in the event of war. A refusal to indicate the position of submarine cables or pipelines meant, of course, that no one could be held responsible for causing damage to them; but States could not, in the International Law Commission's view, be obliged to record their position.

8. Mr. VITELLI (Italy), having regard to Mr. François' remarks, withdrew his proposal on article 64.

9. Sir Alec RANDALL (United Kingdom) agreed with the observations concerning article 64 made by the United States representative at the 30th meeting. The text of the article was far from clear. One possible interpretation was that States would be required to regulate the actual operation of trawlers or, in effect, to prohibit trawling in areas of the high seas where there were submarine cables or pipelines. Given the extensive network of cables beneath the high seas, such a provision would be impracticable, and the International Law Commission could hardly have intended article 64 to have that meaning. The other possible interpretation — though it did not clearly emerge from the text of the article — was that States would be required to regulate the construction and maintenance of fishing gear. That was a highly technical problem with which the Committee was not in a position to deal. Everyone agreed that it would be desirable to reduce the danger of fouling submarine cables or pipelines; but that cause would not be advanced by the adoption of an article which appeared to place an affirmative duty upon States without giving any clear indication as to how they could discharge it.

The Italian proposal on paragraph 1 of article 61 (A/CONF.13/C.2/L.102) was rejected by 28 votes to 8, with 17 abstentions.

The United States proposal on paragraph 1 of article 61 (A/CONF.13/C.2/L.108) was adopted by 36 votes to 6, with 9 abstentions.

The Venezuelan proposal on paragraph 2 of article 61 (A/CONF.13/C.2/L.58) was rejected by 21 votes to 11, with 16 abstentions.

The Danish proposal to add a new paragraph 3 to article 61 (A/CONF.13/C.2/L.101) was adopted by 26 votes to 7, with 20 abstentions.

The text of article 61 submitted by the International Law Commission, as amended, was adopted by 44 votes to none, with 7 abstentions.

The Italian proposal on article 62 (A/CONF.13/C.2/L.102) was rejected by 21 votes to 19, with 13 abstentions.

[1] Resumed from the 30th meeting.

The Netherlands proposal on article 62 (A/CONF. 13/C.2/L.97/Rev.1) was adopted by 40 votes to 3, with 12 abstentions.

The text of article 62 submitted by the International Law Commission, as amended, was adopted by 54 votes to none, with 3 abstentions.

The Italian proposal on article 63 (A/CONF.13/C.2/ L.102) was rejected by 24 votes to 11, with 20 abstentions.

The Danish proposal on article 63 (A/CONF.13/ C.2/L.101) was adopted by 30 votes to 3, with 20 abstentions.

The text of article 63 submitted by the International Law Commission, as amended, was adopted by 53 votes to none, with 2 abstentions.

The United States proposal to delete article 64 (A/CONF.13/C.2/L.111) was adopted by 24 votes to 19, with 11 abstentions.

The text of article 65 as submitted by the International Law Commission was adopted by 49 votes to one, with 2 abstentions.

Additional article proposed by Denmark (A/CONF.13/C.2/L.100) (concluded) [1]

10. Mr. RIEMANN (Denmark) amended his proposal (A/CONF.13/C.2/L.100) by deleting the words "and to enforce them against anybody, irrespective of nationality, who navigates in these waters".

11. Mr. KEÏLIN (Union of Soviet Socialist Republics) remarked that the proposal spoke of responsibilities assumed by international agreement or custom; the special rights deriving from those responsibilities could likewise be regulated, as far as necessary, by custom and agreement. He did not think that the amendment indicated by the representative of Denmark altered the substance of the proposal; the remaining text implied the provision which had been deleted. If the regulations for the issuance of which the proposal sought to obtain authority were necessary, agreement could doubtless be reached with regard to them. A general provision in international law was not required.

12. Mr. GIDEL (France) reiterated the remarks he had made at the 30th meeting. He urged the Committee not to adopt any decision capable of having far-reaching consequences on a matter which, by its special nature, required thorough consideration.

The Danish proposal, as amended (A/CONF.13/ C.2/L.100), was rejected by 22 votes to 6, with 23 abstentions.

Additional article proposed by Colombia (A/CONF.13/C.2/L.75)

13. Mr. VASQUEZ ROCHA (Colombia), introducing his delegation's proposal (A/CONF.13/C.2/L.75), said that it should be considered in relation to a similar proposal by Colombia in the First Committee (A/ CONF.13/C.1/L.148), and to article 73 which had been adopted by the Fourth Committee and for which Colombia had voted. It had been his country's policy to support the inclusion of such a clause in all international conventions. That was not a mere theoretical principle; Colombia had submitted many international disputes to international arbitration and had accepted the decisions of the International Court or of arbitration tribunals. He referred to the International Law Commission's view, expressed in paragraph 4 of the commentary to article 73, that such a provision was essential in relation to the articles on the continental shelf. It was fully in accord with Article 33 of the United Nations Charter. His delegation considered that article 73 should apply to all the articles of the proposed convention on the law of the sea, with the exception of articles 52 to 56 which were governed by the special provision contained in article 57; the Colombian proposal was therefore intended to apply to all the articles, and he referred to the note by the Secretariat containing examples of final clauses, A/CONF.13/L.7, which set forth a model of a final clause relating to the settlement of disputes. It was appropriate, however, that each committee should consider the question in relation to the articles allotted to it, as the Fourth Committee had done in the case of article 73. It would be for the Drafting Committee of the Conference to reconcile any differences between the articles on the settlement of disputes adopted by the different committees.

14. Mr. CERVENKA (Czechoslovakia) said that the codification of international law and the peaceful settlement of disputes were two separate problems. The peaceful settlement of disputes had been referred to in many bilateral and multilateral agreements between States, but it would be an unnecessary complication to introduce that question into a convention codifying international law. Moreover, the Colombian proposal in practice restricted the peaceful settlement of international disputes to proceedings before the International Court of Justice. The notion that that was the only method of solving disputes relating to the law of the sea did not represent the view of the majority of States. It was far too narrow and would be contradictory to the interests of States and the realities of the world situation. In accordance with the principle of the sovereignty of States, any country could accept the optional clause relating to compulsory jurisdiction under article 36 of the Statute of the International Court of Justice. That covered disputes of all kinds, including those relating to the law of the sea. He therefore proposed that the Colombian proposal should not be discussed, and that the question of such a final clause should be left to the Drafting Committee of the Conference.

15. Mr. SOLE (Union of South Africa) said that, although he sympathized with the aims of the Colombian proposal, he believed it should necessarily be considered in the light of what the Second Committee decided with regard to the form in which the results of its work were to be embodied. The terms of reference of the Conference did not restrict that form; and the South African delegation believed that the conclusions of the Second Committee might better be embodied in a declaration than in a convention, since the Committee was in fact dealing with the codification of rules and practices in international law of which many were of long standing. His delegation had supported in the Fourth

[1] Resumed from the 30th meeting.

Committee a similar proposal to that of Colombia for article 73 where the continental shelf was concerned, because that was a relatively new concept in international law, and it was therefore desirable that the relevant articles should appear in a convention. If the Second Committee decided that its work should take the form of a declaration it would not be possible to include such a clause as that proposed by Colombia, and he would therefore have to vote against it.

16. He did not think it necessary to take a decision at the present meeting on the Czechoslovak proposal, which could be considered when the final draft of the articles and the form of the instrument in which they were to be embodied were being decided.

17. Mr. RADOUILSKY (Bulgaria) said that the notion of compulsory jurisdiction by the International Court in the Colombian proposal resembled the provisions contained in articles 57 and 73 and that his delegation had objected to that idea in the Sixth Committee of the General Assembly.[1]

18. The proposal had no basis in existing international law, whereby no government was obliged to accept the compulsory jurisdiction of the International Court with regard to the law of the sea. Such a proposal would not contribute to the progressive development of international law because it was contrary to the principles upon which relations between States were based. Many governments did not accept the idea of compulsory jurisdiction by the Court, since they held that it conflicted with the principle of the sovereignty of States. If the Colombian proposal was considered in relation to articles 57 and 73, it was clear that the Court, by its decisions and interpretations, would be creating new rules, and thus taking on a function that had not been conferred on it. Articles 57 and 73 dealt with disputes of a special nature, relating to fishing and the continental shelf, which might need to be settled quickly, but that did not apply to disputes relating to the régime of the high seas. The disputes arising in relation to the high seas had no special character that would differentiate them from any other type of international dispute, and could more suitably be dealt with under Article 33 of the United Nations Charter and the Statute of the International Court. A provision such as that proposed was unlikely to be accepted by some governments and might therefore be an obstacle to ratification of the convention. He would accordingly vote against the proposal.

19. Mr. KEÏLIN (Union of Soviet Socialist Republics) saw no need for the Colombian proposal, which conflicted with the established procedure for the settlement of disputes. He agreed with the Bulgarian representative that the proposal went beyond the scope of the Committee's work, and thought that it should not be considered until the final stages were reached. Since the proposal referred only to articles 26-48 and 61-65, it appeared to be based upon the belief that each committee should establish whatever procedure for the settlement of disputes it considered suitable. The proposal was unacceptable to his delegation, and he would vote against it.

20. Mr. FRÖLICH (Switzerland) said that the matters raised in the Colombian proposal were of concern to all States and to all five committees of the Conference. His delegation had therefore submitted a proposal (A/CONF.13/BUR/L.3) to the President of the Conference that a decision on that question should be reached at the top level of the Conference rather than in individual committees.

21. Mr. VAN PANHUYS (Netherlands) welcomed the Colombian proposal. His country had always supported the extension of international arbitration and jurisdiction. He was disappointed that so many delegations considered that the trend to settle international disputes by international arbitration did not contribute to the progressive development of international law. In his view, multilateral treaties should lay down procedures for the settlement of disputes arising out of them, and the fact that many such treaties did so proved that the question was not as difficult and complicated as some speakers had maintained. The Colombian proposal was in line with clauses included in previous treaties and also with the proposal in the Secretariat's note (A/CONF.13/L.7), and he felt that the principle it embodied should be adopted by the Conference.

22. The Czechoslovak representative had said that under article 36 of the Court's Statute it was for governments to decide whether or not to accept compulsory jurisdiction of the Court. That was true under paragraph 2 of that article, but under paragraph 1, the jurisdiction of the Court could be accepted in treaties and conventions. It had also been said that it should be left to the States concerned te decide how the dispute was to be settled, but in the Colombian proposal, as in article 73, all other peaceful means of settlement were, in point of fact, left open to States.

23. The Bulgarian representative had referred to Article 33 of the Charter, but that article related to disputes likely to endanger international peace, whereas not all the questions arising under the convention under consideration were likely to be of that nature. Nor did he believe that the proposal conflicted with the principle of the sovereignty of States, since in many treaties States had, in the exercise of their sovereignty, accepted the jurisdiction of the Court. The fact that article 73 had been adopted made it clear that such a provision was within the Conference's mandate.

24. He agreed with the Swiss representative that the question should be studied from the point of view of the Conference as a whole, in a plenary meeting or in some special committee or other body of the Conference. That would not preclude the Second Committee from expressing the view that the disputes arising within the articles submitted to it were suitable for submission to the International Court of Justice.

25. If, as the representative of the Union of South Africa had suggested, the articles relating to the régime of the high seas were embodied in a declaration rather than a convention, it would still be open to the States at the Conference to sign a simple convention accepting the jurisdiction of the Court for the rules embodied in the declaration, since they would constitute rules of international law, and there was no reason for limiting the jurisdiction of the Court to rules laid down in treaties.

[1] See *Official Records of the General Assembly, Eleventh Session, Sixth Committee*, 490th meeting, para. 40.

26. His delegation would therefore vote for the Colombian proposal on the understanding that subsequent consideration would be given to the question of including a more general provision in whatever instrument was adopted by the Conference.

27. Mr. GLASER (Romania) referred to the views expressed by his delegation in the Sixth Committee of the General Assembly.[1] The Netherlands representative appeared to consider that the proposal was in conformity with the progressive development of international law, but such an eminent authority as Professor Waldock, Chief Editor of *The British Year Book of International Law,* had expressed the opinion in an article entitled " Decline of the Optional Clause " [2] that fewer countries were accepting the jurisdiction of the International Court of Justice than in previous years, and that countries such as the United States, the Union of South Africa and the United Kingdom, although in theory they accepted the compulsory jurisdiction of the Court, had left themselves free to withdraw that acceptance if it suited them.

28. The Second Committee was dealing with general law — not special law — and previous votes had shown that decisions in the Committee had been made very largely on political grounds. All countries accepted the principle of the freedom of the high seas, but its application was a question of interpretation rather than legislation. Some representatives had expressed the view at the 31st meeting that that freedom entitled them to pollute the sea with radio-active waste or carry out tests that interfered with navigation and might even kill human beings. Others took the view that the freedom of the high seas should rule out such activities. It could not be seriously suggested that on such questions the International Court of Justice would be able to hand down decisions that would be accepted by the States concerned. In those cases, interpretation by the Court would amount to legislation. Such issues might easily lead to disputes that might threaten international peace and should accordingly be governed by Article 33 of the United Nations Charter.

29. Not even the International Law Commission, although it had included — as he thought, without sound reasons — references to arbitration and compulsory jurisdiction in other sections of the draft articles, had considered any such references appropriate in relation to the régime of the high seas. His delegation would therefore vote against the Colombian proposal.

30. Mr. LÜTEM (Turkey) congratulated the Colombian representative on his proposal, and said that his country was ready to accept the jurisdiction of the International Court of Justice. He would therefore vote for the proposal. He agreed with the Netherlands representative that the Second Committee should express its views on that important matter, and he asked for a vote by roll-call on the Colombian proposal.

31. Mr. VAN PANHUYS (Netherlands) understood that the views of Professor Waldock, quoted by the Romanian representative, related to paragraph 2 of article 36 of the Court's Statute rather than to paragraph 1; the *Yearbook* of the International Court showed that there were each year a number of bilateral or multilateral treaties that included clauses on compulsory jurisdiction. Even if Professor Waldock held the view that acceptance of compulsory jurisdiction was on the decline, that was no reason why the present conference should encourage such a trend. Article 33 of the Charter did not exclude settlement of disputes by reference to the Court, to which many disputes on less important matters might well be submitted.

32. Mr. GLASER (Romania) said that it might be a very delicate matter to decide which disputes were likely to endanger international peace and which were not. The difference between paragraphs 1 and 2 of article 36 of the Statute of the International Court was reflected in the difference between the Colombian proposal, on the one hand, and the procedure suggested by the representative of Switzerland, on the other.

33. Mr. CERVENKA (Czechoslovakia) said that against the arguments adduced by the Netherlands representative could be set the fact that even the International Law Commission had intentionally avoided the introduction into its draft of any proposal concerning the settlement of disputes. It had only departed from that attitude in two special cases: over fisheries (article 57) and over the continental shelf (article 73). In neither case were the specific conditions comparable with the rules governing the régime of the high seas. Moreover, even in those special cases, the International Law Commission had only proposed the jurisdiction of the International Court of Justice in article 73, which dealt with the continental shelf. In article 57, where the settlement of disputes arising from fisheries was concerned, it had recommended an arbitral procedure.

34. Mr. MINTZ (Israel), emphasizing the gravity of the subject under discussion, moved that voting be postponed to give time for further consideration.

35. The CHAIRMAN put to the vote the proposal by the representative of Israel that voting on the Colombian proposal (A/CONF.13/C.2/L.75) be postponed until the next meeting.

The proposal was adopted by 23 votes to 18, with 15 abstentions.

ADDITIONAL ARTICLE PROPOSED BY PORTUGAL (A/CONF.13/C.2/L.38/Rev.2) (continued) [3]

36. Mr. CARDOSO (Portugal) said that his delegation's proposal involved a definition at present under discussion in the First Committee, and he therefore proposed that voting on it be postponed.

ADDITIONAL ARTICLE 33 A (A/CONF.13/C.2/L.113) (continued) [4]

37. Mr. GRANT (United Kingdom) referred to his delegation's proposal for a new article 33 A (A/CONF. 13/C.2/L.113) adopted by the Second Committee at its 27th meeting. A difficulty had now arisen in the

[1] *Ibid., 497th meeting, para. 20.*

[2] *The British Year Book of International Law, 1955-6,* p. 244.

[3] Resumed from the 26th meeting.

[4] Resumed from the 27th meeting.

First Committee at its 39th meeting in relation to a similar proposal for an article 20 A (A/CONF.13/C.1/L.37). His delegation's proposal for article 33 A had been submitted late and, unlike article 33 itself, had not been discussed. The United Kingdom had therefore asked for the voting to be postponed so as to ensure uniformity between the First and Second Committee, but that request had not been accepted.

38. The United Kingdom now wished to withdraw its proposal for article 33 A, and he accordingly proposed that, under rules 32 and 53 of the rules of procedure, article 33 A should be reconsidered by the Committee. He still believed that an article containing the necessary definitions should appear somewhere in the Convention and, while thanking those representatives who had voted for his delegation's proposal for article 33 A, he hoped that the Committee would agree that in the circumstances reconsideration was the best course.

39. The CHAIRMAN ruled that rules 32 and 53 did not apply to the reconsideration of decisions.

40. Mr. GRANT (United Kingdom), supported by the representatives of Mexico and the Union of Soviet Socialist Republics, appealed against the Chairman's ruling.

41. The CHAIRMAN then put to the vote the proposal that the decision to reconsider the adoption of article 33 A should be taken by a simply majority.

The proposal was adopted by 32 votes to 9, with 7 abstentions.

42. The CHAIRMAN put to the vote the proposal by the United Kingdom to reconsider the adoption of article 33 A.

The proposal was adopted by 43 votes to none, with 11 abstentions.

The meeting rose at 1.0 p.m.

THIRTY-THIRD MEETING

Monday, 14 April 1958, at 10.30 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)*

ADDITIONAL ARTICLE PROPOSED BY COLOMBIA (A/CONF.13/C.2/L.75) (concluded)

1. Mr. COLCLOUGH (United States of America) said that his government was willing, on its part, to accept the further obligation to submit itself to the jurisdiction of the International Court of Justice. He felt, however, that the applicability of the Colombian proposal (A/CONF.13/C.2/L.75) would depend on the nature of the instrument eventually adopted to embody the conclusions reached by the Second Committee. The wording of the Colombian proposal would thus have to be left for consideration by the Drafting Committee after a decision had been reached on the question of the instrument. With that proviso, his delegation was prepared to support the Colombian proposal.

2. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the Colombian proposal could not be put to the vote for the following reasons. Firstly, it must await a decision as to the kind of instrument of international law required to embody the results of the Committee's work concerning the régime of the high seas. Secondly, consideration must be given to the proposal made by the Swiss delegation in its letter of 9 April to the President of the Conference (A/CONF.13/BUR/L.3) on the same question as had been raised by the Colombian delegation — namely, the interpretation of the decisions taken by the Conference and arrangements for the settlement of disputes. The Committee should refrain from taking any decision on the matter, and leave it to the plenary conference.

3. Naturally, the Soviet Union delegation found the Colombian proposal unacceptable from a substantive as well as a procedural point of view.

4. Mr. VASQUEZ ROCHA (Colombia) said that his delegation's proposal affected all the articles before the Conference. In view of the fact that some representatives had suggested that it should not be voted on by the Second Committee, but by the General Committee, and in view of the further fact that the Swiss letter on the question of judicial settlement coincided on many points with the Colombian proposal and had still to be studied by the General Committee, he moved that his delegation's proposal be voted on later in plenary session.

5. He thanked the representatives of the Netherlands and Turkey for their support of the Colombian proposal.

6. Mr. SOLE (Union of South Africa) moved an amendment to the Colombian representative's motion to the effect that the Committee should defer voting on the Colombian proposal until it had decided what form of instrument it would recommend to the Conference for the incorporation of the Committee's conclusions. The Colombian proposal should, he felt, be considered in the light of whatever instrument was adopted. That was not purely a drafting question, and it would save the time of the Conference if the Second Committee were to take a decision on the Colombian proposal at the end of its discussions.

7. With the agreement of the Colombian representative, the CHAIRMAN put to the vote the South African representative's motion.

The motion was carried by 46 votes to none, with 2 abstentions.

ADDITIONAL ARTICLE 33 A (A/CONF.13/C.2/L.113) (concluded)

8. The CHAIRMAN said that, in accordance with the decision taken at the previous meeting, the Committee would reconsider the additional article 33 A which it had adopted at the 27th meeting.

9. Mr. KEÏLIN (Union of Soviet Socialist Republics) drew attention to the circumstances surrounding the submission of the United Kingdom's proposal for

article 33A (A/CONF.13/C.2/L.113) and the additional article proposed by Portugal (A/CONF.13/C.2/L.38/Rev.2). The original Portuguese proposal (A/CONF.13/C.2/L.38) had been submitted on 21 March. On 25 March, it had been submitted in a revised form (A/CONF.13/C.2/L.38/Rev.1); and on the same day the United Kingdom had submitted a similar proposal to the First Committee (A/CONF.13/C.1/L.37). The same proposal (A/CONF.13/C.2/L.113) had then been submitted by the United Kingdom to the Second Committee at its 27th meeting on 9 April; and on the same day the Portuguese representative had once again submitted a revision (A/CONF.13/C.2/L.38/Rev.2) of his proposal. At the 39th meeting of the First Committee on that day, the United Kingdom representative had spoken on his proposal and stressed its importance. The representative of Turkey in the First Committee had opposed the United Kingdom proposal, pointing out that government non-commercial ships as defined therein included such vessels as fleet auxiliaries, military supply ships and troopships, which the Montreux Convention had classified as warships. Some surprise had been caused when the Second Committee had adopted the United Kingdom proposal (A/CONF.13/C.2/L.113) at its 27th meeting on 9 April. At the 39th meeting of the First Committee on that day, the United Kingdom proposal to that committee (A/CONF.13/C.1/L.37) had been withdrawn. It had now been decided that the whole question should be reconsidered in the Second Committee.

10. The illogical nature of the definition of ships on government non-commercial service proposed by the United Kingdom delegation and of that proposed by the Portuguese delegation was quite apparent. Since when, he asked, had warships ceased to be government ships? That lack of logic was not without a purpose, however. The United Kingdom's classification was intended to combine both warships and other government ships under the same heading, as could be seen from sub-paragraph (i) of the proposal where yachts were placed in the same category as various kinds of warships. The classification used in sub-paragraphs (i), (ii) and (iii) was quite arbitrary. Why should patrol vessels be included in sub-paragraph (i) and fishery protection vessels in sub-paragraph (ii), when it was well known that both types of ship belonged to the military fleets of States?

11. The classification was also incomplete. No mention was made of icebreakers, floating docks or, most important, floating wireless stations which some governments were sending to the shores of other States to make broadcasts of a far from harmless nature directed towards those States.

12. Finally, the definition of commercial vessels was also open to question. To put merchant ships in a special category apart from government ships was to ignore the fact that government merchant ships had long existed, and were continually increasing in numbers.

13. The only conclusion that could be drawn was that the United Kingdom classification was intended to give States freedom of passage and navigation for the largest possible number of warships in the territorial and internal waters of other States. The classification was, in fact, an attempt to camouflage certain warships. Its effect would be to confer immunity on certain classes of government ship, while at the same time depriving government merchant ships of such immunity, although that was violation of accepted international law. It was for that purpose that government ships and merchant ships had been placed in separate categories.

14. For those reasons, the classification of ships used in the proposal was unacceptable to his delegation. It would be harmful to the interests of most States represented, and contained a serious danger of conflict. It was to be hoped that the authors of the two proposals would withdraw them, but if they did not do so, he would urge that the classification of ships should be referred to the First Committee, or that a joint meeting should be held between the First and Second Committees to solve the whole problem.

15. Mr. GRANT (United Kingdom) said that the discussions in the First Committee had shown how difficult it was to reach a satisfactory definition of government ships and merchant ships. He thought that the United Kingdom proposal (A/CONF.13/C.2/L.113) provided the best definition possible.

16. The discussions in the First and Second Committees appeared to indicate a choice between two alternative courses. The idea of including a definition of ships — apart from warships which had already been defined in article 32 — might be abandoned, and, if the Committee thought that that was the best procedure, the United Kingdom would withdraw its proposal.

17. Alternatively, the Committee could accept the Soviet representative's suggestion that the question of definitions should be considered jointly by the drafting committees of the First and Second Committees.

18. Mr. SOLE (Union of South Africa) said that it was unwise to attempt to draft definitions after articles of a substantive character had been adopted. He pointed out that the International Law Commission had not attempted to draw up any definition such as that contained in the United Kingdom proposal. If the Conference had had more time at its disposal, it might have been worth referring the problem of definition to the First Committee or to a joint drafting committee of the First and Second Committees. But in the circumstances, he would urge the United Kingdom to withdraw its proposal.

19. It might be possible later to reconsider the question of definitions after a decision had been taken on the nature of the instrument embodying the Committee's conclusions. But since there was wide disagreement over the definitions, it would probably only create more difficulties to proceed any further in the matter.

20. Mr. TUNCEL (Turkey) congratulated the United Kingdom delegation on its attempt to define government ships. However, since that attempt had met with difficulties, the United Kingdom delegation was to be commended for its offer to withdraw its proposal.

21. Turkey had drawn attention in the First Committee to the differences between the United Kingdom's proposed definitions and the points of agreement reached in the Montreux Convention and the Treaty for the Limitation of Naval Armaments of 1936. It was true that warships might be placed on non-military,

non-commercial government service, but such service had not been clearly defined. It was essential that the difference between ships on such service and commercial ships should be made clear, since an armed ship constituted a danger to other States when passing through the territorial sea. It was for those reasons that Turkey had drawn the United Kingdom delegation's attention to the inconsistencies in its proposed definitions, and he was gratified by the United Kingdom's response.

22. The CHAIRMAN noted that the United Kingdom was prepared to withdraw its proposal (A/CONF.13/C.2/L.113).

ADDITIONAL ARTICLE PROPOSED BY ARGENTINA, CEYLON, INDIA AND MEXICO (A/CONF.13/C.2/L.121/Rev.1)

23. Mr. KANAKARATNE (Ceylon) explained that the additional article proposed jointly by Argentina, Ceylon, India and Mexico (A/CONF.13/C.2/L.121/Rev.1) substantially reproduced paragraphs 2 and 3 of article 48, which had been deleted by a majority of only one vote at the 31st meeting, when he had asked for two separate votes to be taken; first, on the deletion of articles 2 and 3, and secondly, on the draft resolution sponsored by the United States and the United Kingdom (A/CONF.13/C.2/L.107). Furthermore, in explaining his vote, he had stated that his delegation saw no reason for deleting the two paragraphs which, he felt, expressed something to which every State could subscribe. Many delegations had been disturbed on the occasion of that vote, and thought that the Committee should be given an opportunity to re-incorporate the two paragraphs in question.

24. Accordingly, the new joint proposal reproduced paragraphs 2 and 3 of the International Law Commission's article 48 almost verbatim. The only change in paragraph 1 was the addition of a reference to the "norms and regulations formulated by the competent international organizations". In that way, the sponsors felt that they had embodied the spirit of the United States and the United Kingdom resolution.

25. Paragraph 2 of the joint proposal reproduced paragraph 3 of the International Law Commission's text word for word, except that a reference had again been inserted to the "competent international organizations". The sponsors of the proposal were ready to consider any constructive amendments to it; but his delegation was anxious that the convention should include a specific article in which States would be required to take every possible measure to prevent the dumping of radio-active waste.

26. Mr. GARCIA ROBLES (Mexico) said that, while the resolution sponsored jointly by the United States and United Kingdom was very useful, it had had the most unfortunate result of eliminating paragraphs 2 and 3 of article 48. The new four-power proposal would be an improvement on the original paragraphs 2 and 3, which dealt with a different matter from that covered by paragraph 1. Moreover, under the new proposal, States would be obliged not only to draw up regulations, but also to take into account the regulations formulated by competent international organizations and to collaborate with those organizations. It was indispensable that the final instrument should contain some reference to regulations on the whole subject.

27. He also would be ready to consider any constructive suggestions to amend the proposal, in order to achieve what he hoped would be unanimous approval. If other delegations desired to hold informal discussions on it, he was ready to agree that consideration of the new article should be postponed for the time being.

28. Mr. VAN PANHUYS (Netherlands) said that his delegation had voted against the deletion of paragraphs 2 and 3 of the original draft. The new proposal was in substance the same as those two paragraphs. He asked whether it was in order to reconsider the matter.

29. The CHAIRMAN said that he preferred not to give a ruling; the best course would be to continue the discussion.

30. Mr. SOLE (Union of South Africa) felt grateful to the sponsors of the new proposal, which was acceptable to his delegation on the understanding that the United States and United Kingdom resolution would still stand. The Mexican representative's suggestion that the sponsors might undertake informal discussions in order to secure unanimous endorsement was very useful. A few improvements could certainly be made — for example, it was possible to argue that any release of radio-active material involved pollution; but there were circumstances in which a measure of such discharge represented no danger either to man or to his resources.

31. If the sponsors agreed, a vote might be taken on the principle of their proposal. The final text could then be prepared by the sponsors. The matter could be left in abeyance until the full texts of the drafts of all the committees, as submitted by the drafting committees, were available.

32. Mr. JHIRAD (India) stated that his delegation had been greatly disturbed by the fact that the joint resolution of the United States and United Kingdom had been pressed to a vote. He could not believe that those two countries, with their wonderful record for the maintenance of human values, would be apprehensive of accepting the responsibility laid dwon in an international instrument for the prevention of the pollution of the seas by radio-active waste. He could not credit that that had been their real intention. There was, in fact, no inconsistency between that resolution and the proposal now under discussion, and he made a special appeal to the United States and United Kingdom delegations to support the proposal. He would be ready to listen to any suggestions or comments in that connexion.

33. Sir Alec RANDALL (United Kingdom) assured the representative of India that the action taken by the United Kingdom delegation in connexion with article 48 in no way implied the lack of a deep feeling of responsibility on the question of pollution by radio-active materials. His government took the greatest care to avoid such pollution as far as possible, and he did not think that any harm had resulted from his country's activities.

34. He supported the South African representative's

suggestion, except that he would prefer a vote on the proposal to be postponed until a widely acceptable draft had been prepared. He was sensible of the strong feeling in the Committee that the resolution by itself was not enough; he yielded to that feeling and agreed that articles on the subject were needed in the final instrument. The subject was one of vital importance and, if possible, a unanimous decision should be reached.

35. Mr. COLCLOUGH (United States of America) also wished to reassure the Indian representative about his government's attitude. He was most anxious that there should be full understanding of its deep sense of responsibility in the matter. It was making very great efforts to obviate any harmful effects.

36. He supported the new article as a supplement to the resolution, but thought an attempt should be made to evolve a draft which would achieve unanimous acceptance.

37. Mr. KANAKARATNE (Ceylon) could not agree with the suggestion by the South African representative that a vote should first be taken on the principle of the proposal. The best solution would be for consideration to be deferred until the co-sponsors had had discussions with the United States, the United Kingdom, and other delegations, with a view to evolving a text which would achieve unanimous approval.

38. He felt obliged to recall that it was the United States representative who had opposed his delegation's suggestion for a division of the vote on the United States and United Kingdom resolution.

39. Mr. CERVENKA (Czechoslovakia) agreed with the explanations offered by the representative of Ceylon when introducing the four-power proposal. His delegation would suggest two amendments: first, in paragraph 1, to insert after the words "radio-active" the words "elements and"; secondly, in paragraph 2, to replace the words "experiments or activities" by the words "any activities".

40. The purpose of those amendments was to stress the significance of the peaceful uses of atomic energy and the measures to be taken to prevent the pollution of the seas by waste resulting from such activities. He could not believe that there would be any objection to it. His country, which took an active part in the International Atomic Energy Agency, was willing to co-operate in evolving a text that would secure a unanimous vote.

41. Mr. COLCLOUGH (United States of America) regretted the interpretation placed by the representative of Ceylon on the United States delegation's attitude towards the division of the vote on the joint resolution. He had objected purely on the "parliamentary" aspect and not on the substance of the matter. He reiterated his delegation's support for the four-power proposal.

42. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the voting on article 48 at the 31st meeting gave the impression of being more or less fortuitous; that could be the only explanation of the fact that paragraphs 2 and 3 of the article had been deleted by a majority of one vote.

43. In that connexion, attention must be drawn to the positive importance of the joint proposal of Argentina, Ceylon, India and Mexico. The vital interests of the peoples required that effective measures should be taken to eliminate pollution of the seas by radio-active substances and waste matter. It was a question of saving human lives, protecting health and conserving the very important food resources of the sea. The Soviet Union delegation considered that it was the duty of all governments to issue appropriate regulations forbidding the pollution of the sea by the dumping of radio-active substances and waste matter and to collaborate in the drawing up of such regulations. The dispositions of the additional article proposed by the four powers were directed towards the achievement of those important aims, and the Soviet Union delegation would therefore support the proposal.

44. Moreover, in view of the considerations advanced by one of the delegations, the Soviet Union delegation wished to point out that it was clearly a case of a new proposal and consequently there could be no question of its adoption requiring a reconsideration of the decision taken earlier.

The meeting rose at 12 noon.

THIRTY-FOURTH MEETING

Tuesday, 15 April 1958, at 2.45 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)*

ADDITIONAL ARTICLE PROPOSED BY PORTUGAL (A/CONF.13/C.2/L.38/Rev.2) (concluded) [1]

1. Mr. CARDOSO (Portugal) said that he was prepared to withdraw his proposal (A/CONF.13/C.2/L.38/Rev.2), on the understanding that the Drafting Committee would be asked to consider whether an article on definitions was necessary in the light of the decisions taken by the Second Committee itself and by the other committees.

2. Mr. KEÏLIN (Union of Soviet Socialist Republics) emphasized that the Portuguese proposal, not being a matter of drafting, could not be referred to the Drafting Committee without danger of serious controversy. The course proposed by the Portuguese representative was contrary to the rules of procedure. A drafting committee must confine itself strictly to matters of form, and was not empowered to take decisions of substance. The withdrawal of the Portuguese proposal meant that there was no substantive provision now before the Committee.

3. Mr. CARDOSO (Portugal) explained that he had withdrawn the substance of his proposal altogether, and only wished the Drafting Committee to consider whether, in the light of the articles adopted by the Committee, an article on definitions was required.

[1] Resumed from the 32nd meeting.

4. The CHAIRMAN observed that the Drafting Committee would only be required to discuss any drafting points that remained outstanding. The United Kingdom proposal for an additional article 33 A, containing a definition (A/CONF.13/C.2/L.113) had been withdrawn at the preceding meeting.

5. Mr. MINTZ (Israel) said that the Drafting Committee's attention should be drawn to the existence of government vessels operated by port services — a category which had not been mentioned in either the Portuguese or the United Kingdom proposal.

6. Mr. GLASER (Romania) said that, in case the Drafting Committee should decide that an article on definitions was required, he wished to state his view that such an article in an instrument of codification was not solely a matter of form, but affected issues of substance. For example, the definition of merchant ships withdrawn by the Portuguese representative raised important problems of substance by excluding government ships operated — as was the practice of a number of States — for commercial purposes.

7. The CHAIRMAN, sharing the view of the Soviet Union representative, assured him that the Drafting Committee would be called upon to examine only points of drafting.

ADDITIONAL ARTICLE PROPOSED BY ARGENTINA, CEYLON, INDIA AND MEXICO (A/CONF.13/C.2/L.121/Rev.2) (concluded)

8. Mr. GARCIA ROBLES (Mexico) announced that, a result of informal discussions between the authors of the four-power proposal and the representatives of the United Kingdom and the United States, agreement had been reached on a revised text (A/CONF.13/C.2/L.121/Rev.2). The words "experiments or" in paragraph 2 had been deleted as suggested by the Czechoslovak representative at the preceding meeting. He hoped that a similar spirit of conciliation would prevail in the settlement of other outstanding matters before the Conference.

9. Sir Alec RANDALL (United Kingdom) expressed appreciation of the initiative taken by the authors of the joint proposal and the conciliatory attitude they had displayed in meeting the views of the United States and United Kingdom delegations. His government, following the lead given by the President of the United States, had from the outset taken an active part in the establishment of the International Atomic Energy Agency (IAEA), and considered that the problem of pollution by radio-active waste should be referred to that agency; such a course was preferable to the adoption of provisions in very general terms. The authors of the joint resolution on the subject (A/CONF.13/C.2/L.107) had certainly not wished to cause delay, for they too believed that the matter should be given urgent attention. His delegation respected the apparently general desire for a draft article in addition to the resolution adopted at the 31st meeting and welcomed the four-power proposal, which was in line with the International Law Commission's intention not to prejudge the recommendations of the United Nations Scientific Committee on the Effects of Atomic Radiation; only an impartial international body could carry out the type of disinterested scientific study required. The joint proposal, in conjunction with the resolution, would provide the proper foundation for the widest possible co-operation on a vital problem, the complexity and scope of which were bound to increase.

10. Mr. COLCLOUGH (United States of America) supported the revised version of the proposed additional article which, in conjunction with the joint resolution already adopted, would ensure orderly progress towards the solution of a very important problem.

11. Mr. GIDEL (France) shared the satisfaction expressed at the agreement reached on the revised proposal, but urged that the Drafting Committee consider substituting the words "contamination by" for the words "the dumping of" in the text of paragraph 1.

12. Mr. HEKMAT (Iran) was gratified by the agreement reached on an important issue affecting the whole of humanity, and declared his support for the four-power proposal, which would usefully supplement the Commission's draft.

The additional article proposed by Argentina, Ceylon, India and Mexico (A/CONF.13/C.2/L.121/Rev.2) was adopted by 58 votes to none.

13. Mr. OHYE (Japan) explained that his support of paragraph 2 of the joint proposal in no way affected his government's position concerning the prohibition of nuclear tests.

14. Mr. SOLE (Union of South Africa) said that, in anticipation of an affirmative vote by the plenary Conference on the draft resolution adopted at the 31st meeting and the additional article that had just been adopted, arrangements had already been made to place on the provisional agenda for the next meeting of the Board of Governors of IAEA at the end of April an item entitled: "Pollution of the seas by radio-active waste: consideration of conclusions and recommendations of the United Nations Conference on the Law of the Sea". He hoped that the Board of Governors would take prompt steps in furtherance of the initiative taken at the Conference.

Appointment of a Drafting Committee

15. The CHAIRMAN proposed the appointment of a Drafting Committee composed of the officers of the Second Committee and the following representatives: Mr. Pluymers (Belgium), Mr. Kanakaratne (Ceylon), Mr. Uribe Holguín (Colombia), Mr. Jhirad (India), Mr. Campos Ortiz (Mexico), Mr. Keïlin (Union of Soviet Socialist Republics), and Mr. Colclough (United States of America).

The Chairman's proposal was adopted.

Consideration of the kind of instrument required to embody the results of the Committee's work

16. The CHAIRMAN drew the Committee's attention to the recommendation contained in the report of the General Committee (A/CONF.13/L.9, para. 5) that each committee should decide as soon as possible on any recommendations it might wish to make to the

Conference regarding the kind of instrument or instruments required to embody the results of its work.

17. Mr. ROJAS (Venezuela) said that, in his delegation's view, the Committee should refrain from making any recommendation whatever. The decision was one solely for the plenary Conference and, in any event, no recommendation could possibly be formulated before the Committee's rapporteur had submitted his draft report.

18. Mr. SOLE (Union of South Africa) thought that if every committee were to leave the matter to the plenary Conference, its business would never be concluded before the closing date. It was the Committee's duty to examine every point at issue, on the clear understanding that any recommendations agreed upon would be in no way binding on the delegations and might have to be modified in the light of decisions taken by other committees.

19. In the opinion of the South African delegation, the most appropriate instrument in which to embody the results of the Second Committee's work would be a simple declaration, adopted by a two-thirds majority. The articles on the régime of the high seas — unlike those relating to new concepts such as the continental shelf — nearly all had a long history behind them, and represented reasonably well-established principles of the law of nations, which could be affirmed in an instrument less cumbersome than a convention. Moreover, a declaration would probably prove more widely acceptable.

20. The most important argument in favour of a declaration, however, was that a formal convention would require parliamentary approval and ratification and raise the difficult problem of reservations, while a less categorical document which merely stated what the majority believed to be the applicable law would require none of those formalities and yet afford equally valuable guidance to any court dealing with a dispute. In that connexion, the South African delegation favoured the traditional system of leaving the application of international law to municipal tribunals and felt serious misgivings regarding the procedures for the settlement of disputes suggested by Colombia (A/CONF.13/C.2/L.75), Switzerland (A/CONF.13/BUR/L.3) and certain other delegations. The adoption of any such proposal would necessitate an additional protocal, which — besides re-opening the issues of ratification and reservations — probably could not be agreed upon in the time available.

21. He therefore hoped that the Drafting Committee would consider the possibility of a declaration and examine such questions as the type of preamble needed and the majority by which the document should be approved.

22. Sir Alec RANDALL (United Kingdom) said that his delegation supported the general purport of the South African suggestion; it believed that a declaration would be all the more suitable because of the decision taken by the Committee at its 32nd meeting that nothing should be done to prejudice existing conventions on maritime matters. He thought, however, that many delegations might find some difficulty in subscribing to such a declaration without referring the matter to their governments. That being so, the declaration should perhaps remain open for signature for a period of six months or a year.

23. Mr. FROELICH (Switzerland) observed that the Swiss delegation had some difficulty in following the South African representative's contention that a declaration would not require any parliamentary approval or other constitutional process. No document could ever be binding on a State which had not approved it in the manner prescribed by its constitution. The term " declaration " was in itself both felicitous and of traditional significance, but an instrument bearing that heading would be subject to the same procedural requirements as any other multilateral agreement.

24. Mr. SOLE (Union of South Africa) replied that it was indeed the express design of the South African delegation that the articles on the régime of the high seas should be embodied in some instrument that would not require any ratification or other time-consuming action by parliamentary assemblies.

Mr. FROELICH (Switzerland) hoped that the manifest misunderstanding of the meaning of the term " declaration " would be cleared up by the Drafting Committee.

The meeting rose at 4.30 p.m.

THIRTY-FIFTH MEETING

Wednesday, 16 April 1958, at 3.10 p.m.

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

Consideration of the kind of instrument required to embody the results of the Second Committee's work (A/CONF.13/C.2/L.150) *(concluded)*

1. Mr. WAITE (New Zealand) said that importance should be attached to consideration of the kind of instrument in which the text was to be embodied, as well as to the discussion of the International Law Commission's draft articles themselves. The question of form could affect the status accorded to the Committee's work, and it was important to ensure that that status correctly reflected its true nature.

2. The Second Committee, to a far greater extent than any other committee, had been more concerned with the codification of existing principles of law than with the development of new doctrines, although of course codification could not take place without elements of development. As well as the benefits which could come out of the Conference, there was a danger that doubt might be cast on accepted principles of customary international law; the form in which the work of the Committee was to be presented should be chosen with that risk in mind.

3. The alternatives seemed to be, broadly, either to embody the articles in an international instrument which would be binding on States which became parties to it; or to enunciate them as a formulation, by the Conference, of the law relating to the régime of the high seas.

4. It was true that States becoming parties to a convention would have accepted a contractual obligation to apply the provisions of the articles. Commitments of that kind, however, were usually associated with the acceptance of some new obligation ; when it was a question of codification, the position might be rather different. It had been said by Sir Cecil Hurst that the intrinsic value of a rule formulated by an authoritative body might sometimes suffice to give that rule the necessary force, even if it was not embodied in a convention. That statement might be true of the articles on the régime of the high seas adopted by the Conference. The very act of adopting them might in itself be the best way of ensuring their permanence and authority. His delegation would be interested to see whether other delegations believed that an act of a declaratory nature would be the best way of assuring such permanence and authority. If that view met with substantial support, the Drafting Committee could examine further the best way in which to give effect to it.

5. Mr. LÜTEM (Turkey) thought that the Committee was competent to make recommendations on the type of instrument required to embody the results of its work ; on the other hand, it could leave the matter entirely to the plenary Conference. There was little use in discussing the type of instrument before it was known what the other committees had decided. It was even possible that the plenary Conference would confine itself to submitting a report in general terms to the United Nations General Assembly, in order that the Member States might be able to come to a conclusion. He thought the Committee should go no further than to submit its report to the General Committee, so that it could be discussed at a plenary meeting. It would then be known whether or not any instrument would be required.

6. Mr. TAYLHARDAT (Venezuela) said that his delegation was opposed to a decision being taken on the kind of instrument required. The problems before the Conference formed a whole, and any decision adopted should be the same in the case of all five committees. It had been urged that the plenary Conference would not have enough time to decide on the kind of instrument required ; but that was one of the most important questions before the Conference, and as much time as possible should be devoted to it. His delegation was also opposed to the proposal by the Union of South Africa (A/CONF.13/C.2/L.150) that the instrument should take the form of a declaration. That proposal seemed to be in conflict with the views expressed by the South African representative in the Fourth Committee.

7. The Committee undoubtedly was competent to take a decision, since there was a recommendation that it should do so ; but he agreed with the representative of Turkey that it was under no compulsion. In the opinion of his delegation, the Committee should not take a decision, but should leave it to the plenary Conference to decide the question.

8. Mr. VASQUEZ ROCHA (Colombia) said that, whatever might be the position of those representatives who felt that the results of their work should be embodied in a declaration, the Government of Colombia had sent a delegation to the Conference with full powers to negotiate and to commit that country juridically, precisely because it expected that the work of the Conference would be embodied in a convention. The draft of the International Law Commission was a codification of the international maritime law at present in force and the purpose of the Conference was to formulate the best possible rules. If all its labours brought forth nothing more than a declaration, which would be of moral value only, imposing no obligations and having no legal force, it would disappoint the hopes of the public. The Universal Declaration of Human Rights had been generally approved, yet its provisions were often disregarded because there was no power to compel States to observe them.

9. A mere declaration would be inappropriate to the type of draft which they had been considering. The draft contained a series of rules of law, imposed specific obligations, and gave States the right to ensure that they were fulfilled. A declaration would make the work of the International Law Commission nugatory. It was true that, when the appropriate time came, a convention or conventions could be drawn up embodying those articles which had received the approval of the majority of the States represented at the Conference. He could not follow the argument that a declaration would shorten the process of incorporating the decisions of the Conference in the law of each State. In Colombia, ratification by the competent constitutional bodies would be essential, and a declaration such as that recommended in the South African proposal would not be legally binding. In his opinion the results of the Conference's work should be embodied in a convention, the implementation of which could be legally enforced.

10. Mr. GIDEL (France) doubted whether any useful decisions could be reached in the Committee ; it was a question for the Conference itself to decide. It would, indeed, be unfortunate if the decision was not taken by the plenary Conference ; for however varied its component parts might be, the law of the sea formed a unified whole, and it would be a mistake if one part of the text was not associated with the other parts. Whatever decision was taken, it should conform with the rules governing international instruments.

11. Mr. BIERZANEK (Poland) pointed out that some declarations, such as the Atlantic Charter of 1941, were not ratified ; others, like the Declaration of Paris of 1956, were ratified and only differed in title from treaties. He could not agree that the articles adopted by the Committee were merely an expression of the principles of the existing international law of the high seas. For example, article 35 stated exactly the opposite principle to that upheld by the Permanent Court of International Justice in the *Lotus* case.[1] Again, with regard to article 29, it could hardly be suggested that the doctrine of the " genuine link " was not a new one. Whatever the final instrument was called, its legal status must be clear.

12. Mr. VITELLI (Italy) considered that the articles should be embodied in a convention, which would be open for signature by all States wishing to accede to it

[1] *Publications of the Permanent Court of International Justice, Series A, No. 10.*

and would be subject to ratification ; moreover, arbitration clauses should be included. A declaration would not bind States to take the necessary legal and administrative measures.

13. Mr. MATINE-DAFTARY (Iran) agreed that a declaration would be of less value than a convention, since it would have no binding force.

14. Mr. VAN PANHUYS (Netherlands) said that the problem was of a general nature and would thus require consideration by the plenary Conference in any case. He had misgivings as to the legal value of a declaration which would be neither signed nor ratified and thus could not have the normal status of a treaty.

15. There was a third solution, which he would embody in a proposal, though he would not, for the time being, put it forward as such. His proposal would be worded as follows :

> " The Second Committee resolves to recommend to the plenary session of the Conference that the draft articles adopted by the Committee might appropriately be embodied in a declaration to be signed and ratified by States, and containing in its preamble a statement of the following tenor:
>
> " The signatory States, considering that it is desirable to arrive at a codification of the rules of existing international law concerning the régime of the high seas and wishing at the same time to contribute to the progressieve development of such rules . . . have agreed upon the following provisions . . ."

16. Such an instrument would have the same advantages as a convention or a treaty, and clauses concerning the settlement of disputes could also be inserted ; he considered it important that there should be such clauses.

17. The CHAIRMAN said that the Netherlands proposal, although not formally submitted, should in any case appear in the summary record.

18. Mr. SOLE (Union of South Africa) wished to make clear that in his proposal (A/CONF.13/C.2/L.150) there was no question either of signature of an instrument or of ratification. If it met with approval, the Conference would adopt a simple declaration consisting of all those articles dealt with in the Second Committee which had received a two-thirds vote in a plenary meeting. Such an instrument would have no legally-binding force, but would be available to courts which might be required to adjudicate on disputes or topics covered by those articles. It would be similar to the Declaration on Human Rights. A binding instrument was doubtless desirable ; but his delegation had felt that the major maritime Powers would be unlikely to ratify such an instrument without many reservations.

19. Those States which felt that they could be bound by the articles could sign a separate protocol, such as that proposed by the Netherlands, in which they would accept the articles as legally binding on them, and a provision for compulsory jurisdiction in the settlement of disputes.

20. Mr. KANAKARATNE (Ceylon) said that his delegation could not support the South African proposal. He could not agree that the difficulties facing the major maritime Powers were good grounds for not adopting a binding instrument. The United Nations General Assembly had expressly stated in its resolution No. 1105 (XI) of 21 February 1957 that the Conference should " embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate ". The reference to " such other instruments " was secondary. The instrument should embody the spirit of Article 13, paragraph 1 a of the Charter, which referred specifically to " encouraging the progressive development of international law and its codification ".

21. The proposal referred to a declaration which would be an expression of existing principles of international law ; but views were divided on what those principles were. The Conference had been called together not merely to establish those principles but to create international law. It had done constructive work on new subjects. The new article on the pollution of the high seas by radio-active waste could not possibly be considered an expression of existing international law. The International Law Commission, in paragraph 25 of chapter II of its report (A/3159), referred to the " preparation of draft conventions on subjects which have not yet been regulated by international law ". Again, there had been considerable difference of opinion in the Conference on what were the existing principles governing the breadth of the territorial sea.

22. The Conference had been called for the purpose of recommending an international code of the law of the sea ; if necessary there could be several conventions, but nothing should dissuade delegations from securing a binding agreement. The South African proposal was not consonant with the achievements of the Conference and would not be acceptable to world public opinion.

23. Mr. GLASER (Romania) said that the Conference was both confirming existing international law and creating new international law, and that those two activities should not be confused. For example, Grotius had spoken of the *mare liberum,* and the Committee had adopted an article which stated that the high seas were free. It would thus appear that the Committee had merely confirmed an existing principle. However, if Grotius had been asked for his opinion on whether nuclear tests should be prohibited on the high seas, he would have been unable to answer, since he would have had no idea of what nuclear tests were. Thus, the " freedom of the high seas " in the context of 1958 was in some ways different from that principle as it had been understood by Grotius ; and from the scientific point of view, therefore, the Committee could not state that the articles it had adopted were merely " an expression of existing principles of international law ", as was stated in the South African proposal (A/CONF.13/C.2/L.150). It was clear, moreover, that the discussions in the Conference had been largely devoted to deciding what form international law relating to the sea should take in the future. He thought, therefore, that many delegations, like his own, would be unable to accept the South African proposal.

24. He suggested, as a solution to the problem, that no vote should be taken on the form of instrument to be recommended to the Conference, but that the rapporteur should simply be asked to prepare a report for

submission to the Conference, informing it of all the views which had been expressed in the Second Committee.

25. The CHAIRMAN pointed out that the Conference's decision on the form of instrument to be adopted would have to be taken by a two-thirds majority. It might thus be unwise for representatives to press their views too strongly, since, if they did so, the Conference might not be able to adopt any instrument at all.

26. He pointed out that there were three parts to the South African proposal. It recommended, first, that the draft articles adopted by the Committee should be embodied in a separate instrument. It then recommended that that instrument should take the form of a declaration. Lastly, it suggested what the contents of the declaration should be. The Committee could thus decide whether it wished to recommend the adoption of a separate instrument, and could also express its preference concerning the form of the instrument.

27. Mr. LÜTEM (Turkey) said that it would be unwise for the Committee to take a decision on the form of instrument to be adopted before a vote on that question had taken place at a plenary meeting of the Conference. He suggested, therefore, that the Committee should decide not to make a recommendation regarding the kind of instrument in which it wished its work to be embodied, and should also decide to submit a report to the Conference containing a summary of the discussions which had taken place in the Committee on that question.

28. Mr. CERVENKA (Czechoslovakia) said that his delegation favoured a convention as the form of instrument to embody the Committee's work. Many important conventions had been concluded in recent years, and he could therefore not see why the largest conference ever summoned by the United Nations should adopt a different type of instrument.

29. He thought it necessary that the articles adopted should be submitted to all governments for ratification. If there were no ratification by governments, they would be free to ignore the provisions of the articles at will. Vagueness in the application of the articles would show that the conference had made little progress in its work.

30. He agreed that it would be better not to take a vote on the kind of instrument to be recommended. If there were such a vote, however, his delegation would be obliged to vote against the South African proposal.

31. Mr. CAMPOS ORTIZ (Mexico) said that a decision on the kind of instrument to be adopted was a matter for the plenary Conference. It could only be taken when the results of the work in all the committees were known. Moreover, divisions of opinion would be hardened if votes were taken on that question in the committees and recommendations relating to instruments were adopted by only narrow majorities. He therefore supported the Turkish suggestion that the Committee should decide to make no recommendation and confine itself to submitting a report to the Conference. He thought, however, that that suggestion should be amended so as to make clear that the Committee did not wish to express by vote its opinion on the form of instrument to be adopted.

32. Mr. LÜTEM (Turkey) accepted the Mexican amendment to his suggestion.

33. Mr. JHIRAD (India) said that his delegation understood the point of view of those representatives who thought that the question of the form of instrument to be adopted could be considered only by a plenary meeting of the Conference, but felt that it would be of assistance to the plenary meeting if the Committee expressed its own views.

34. He could not accept the South African proposal that the instrument should take the form of a declaration, or agree that the articles adopted by the Committee expressed " existing principles of international law ". Article 35 as adopted by the Committee, for example, stated a principle contrary to the opinion of the International Court of Justice.

35. He thought that the instrument should take the form of a convention binding States which accepted it. Such a convention could either embody the results of the Second Committee's work alone or combine them with the results of the other committees' work.

36. Mr. SOLE (Union of South Africa) thought that it would be undesirable for the Committee to vote either on the South African proposal or on any other proposal relating to the kind of instrument to be adopted. He was prepared to accept the Turkish suggestion, but thought it should be made clear in the rapporteur's report that the Committee considered that there were three possible forms of instrument : a declaration, with or without a supplementary protocol which would enable States which so desired to accept the declaration as binding ; a convention of the normal kind ; and a declaratory convention of the type which had been proposed by the Netherlands representative.

37. Mr. VITELLI (Italy) felt that the Committee should decide whether it wished the results of its work to be embodied in a separate instrument, and whether that instrument should take the form of a declaration or a convention.

38. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the results of the work of the Conference should be embodied in clear legal provisions. The most common form of instrument was a convention, which had the advantage of being more specific than a declaration and of carrying a legal obligation. The contents of a declaration were likely to be vague, and to have less legal force and effect than a convention.

39. Since a decision on the form of instrument to be adopted had to be taken by a plenary meeting of the Conference, and since it was important that such a decision should be accepted as widely as possible, he supported the Turkish suggestion.

40. Mr. DE CASTRO (Philippines) said that the Committee should recommend that those articles which it had adopted by a two-thirds majority should be embodied in a convention, and that those which had been adopted by a smaller majority should be embodied in a declaration. He pointed out that no instrument would be binding on his country unless ratified by the Philippines Senate.

The Turkish suggestion, as amended by the Mexican representative, was adopted by 50 votes to 1, with 4 abstentions.

The meeting rose at 5.5 p.m.

THIRTY-SIXTH MEETING

Friday, 18 April 1958, at 3.30 p.m.

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

Consideration of the report of the Drafting Committee (A/CONF.13/C.2/L.152)

1. At the request of the CHAIRMAN, Mr. GLASER (Romania : Vice-Chairman) read aloud the report of the Drafting Committee.

2. The CHAIRMAN invited the Committee to comment on the report.

3. Mr. CARDOSO (Portugal) wished his opinion to be placed on record that, in addition to article 35, paragraph 3, other articles were not clearly drafted. The expression " private aircraft " in article 39 should be " civil aircraft "; article 46, paragraph 1, should refer to powers conferred not only by treaty but also by articles 47 and 66 and should make clear that the words " merchant ships " included merchant ships owned or operated by governments. In article 47, the expression " foreign ship " should be " foreign merchant ship ". He wished also to place on record that, in order to speed the Committee's work, he had refrained from pressing those changes, which the Chairman had accepted as drafting changes. The Chairman of the Drafting Committee, however, had ruled that they were changes of substance ; and so his delegation was deprived of a vote on them unless it chose to disrupt the course of the Committee's work. Moved by goodwill and desiring comprise, it would, however, merely ask for the foregoing observations to be recorded. His remarks should not be construed in any way as a criticism of the Chairman of the Drafting Committee.

4. Mr. MINTZ (Israel) wished to know whether the Drafting Committee had discussed the titles of the different articles.

5. Mr. GLASER (Romania) replied that the Drafting Committee had dealt with titles in one case only : where article 31 had been combined with article 30. He felt that the question was one for the Drafting Committee of the Conference.

6. The CHAIRMAN agreed. He would invite the Committee to consider the articles one by one.

Articles 26 to 28

No comment.

Article 29

7. Mr. TRUJILLO (Ecuador) said that he could not fit into the existing Spanish text the new draft of article 29, paragraph 1, last part : " jurisdiction and control in administrative, technical and social matters over ships flying its flag ". Furthermore, he felt that the insertion of the words " en su territorio " (in the Spanish text only) in the first sentence of that paragraph was quite unnecessary : obviously a State could fix the conditions for the grant of its nationality to ships in its own territory only, and not in that of a foreign State. It would be better to reject this suggestion and to replace the words " un registro " by " su registro ".

8. The CHAIRMAN said that such suggestions might be referred to the Languages Division of the Secretariat. If thereafter there were still a problem, it could be taken up with the Drafting Committee of the Conference.

Article 30

No comment.

Article 31

The Drafting Comittee's proposal to combine article 31 with article 30, deleting the title " Ships sailing under two flags ", and to renumber as article 31 additional article 31 A, adopted at the 27th meeting, was adopted.

Article 32

9. Mr. BREUER (Federal Republic of Germany) recalled that, when the Committee had voted on article 32, his delegation had reserved the right to propose in the Drafting Committee of the Conference to transfer the text of article 32, paragraph 2, to article 24. He wished to know whether that proposal should now be submitted to the Drafting Committee, or whether that body could arrange for it to reach the Drafting Committee of the Conference.

10. The CHAIRMAN reminded the representative of the Federal Republic of Germany that the Committee's Drafting Committee had finished its work. If he had any proposal to make, he should make it at once.

11. Mr. COLCLOUGH (United States of America) said that that suggestion had been discussed in the Drafting Committee. It had been decided not to transfer the paragraph because there was no certainty that the results of the Conference would be embodied in one instrument. In any case, the removal of a text from one group of articles to another was a matter for the Conference Drafting Committee.

Articles 33 and 34

No comment.

Article 35

12. The CHAIRMAN drew the Committee's attention to the fact that the majority of the Drafting Committee " had doubts as to the precise meaning of paragraph 3 of article 35 ".

13. Mr. CARDOSO (Portugal) said that, as was mentioned in the report of the Drafting Committee, he felt " that paragraph 2 is a qualification of paragraph 1 ". He certainly considered that there was no point in the reference to " disciplinary matters " in paragraph 2.

14. Mr. COLCLOUGH (United States of America) replied that the Drafting Committee had considered the question, and had decided that the expression " disciplinary matters " in paragraph 2 was used in a different context from " disciplinary procedures " in paragaph 1. The word " matters " had a wider meaning and no confusion should be caused.

15. Mr. JHIRAD (India) thought that article 35, paragraph 3 (former paragraph 2), conveyed no precise meaning. It was, in fact, incomprehensible to persons well versed in shipping affairs. He had never heard of the arrest or detention of a ship on the high seas in peacetime. He had asked the sponsors of the original proposal to insert in the paragraph the reference to " the high seas" (A/CONF.13/C.2/L.44) to explain their intention ; they had replied that the Committee was dealing with the law of the high seas and therefore could not consider what happened in territorial waters. He was not impressed by that argument. Article 35, paragraph 1, in fact, referred to proceedings against the master of a ship, and clearly such proceedings would not be taken on the high seas. He would express his concern that the supporters of that provision should state that in such a case the decision should be left to the courts. That was not the attitude to be taken by a conference that had met in order to establish the law of the sea.

16. Mr. COLCLOUGH (United States of America) said that the proposal to insert the words " on the high seas " in paragraph 3 (A/CONF.13/C.2/L.44) had been submitted by his delegation and adopted by the Committee (27th meeting). He recognized that its implications might be questioned, but he had opposed any change in the Drafting Committee because the matter was one of substance.

17. His delegation had held that the reference in the International Law Commission's commentary to the Brussels Convention of 10 May 1952 might, if adopted, deprive the coastal State of jurisdiction over collisions or other incidents of navigation occurring in its territorial sea. Accordingly, his delegation had proposed to insert in paragraph 3 the words " on the high seas ". It had now been made clear to him, however, that the International Law Commission had not meant to derogate from the jurisdiction of the coastal State over incidents occurring in its territorial sea. On that understanding, he asked permission to withdraw those four words.

It was so agreed.

18. Sir Alec RANDALL (United Kingdom), referring to the phrase " to pronounce the withdrawal of such certificates " in paragraph 2, said that his delegation wished to place on record that it understood those words to mean permanent or temporary withdrawal.

Articles 36 to 38

No comment.

Article 39

19. Mr. SOLE (Union of South Africa) said that the words " private aircraft " had referred, not to privately owned aircraft (which was what the term " private aircraft " meant in English), but to civil aircraft. If the expression " private aircraft " were retained in the article, there should be a commentary stating that it referred to civil aircraft.

20. Mr. GLASER (Romania) said that the whole question of the terms " private aircraft " and " civil aircraft " had been discussed in the Drafting Committee. It had been pointed out that the terminology of the International Civil Aviation Organization, which used the term " civil aircraft ", was different from that of the International Law Commission. Moreover, if the term " private aircraft " were changed to " civil aircraft ", the first paragraph of article 39 would contain the expression " a private ship or a civil aircraft ", which would suggest a difference, not merely of terminology, but also of substance. Such a distinction was indeed one of substance, for a government non-military aircraft was not covered by the article as it stood, but would be covered if the words " private aircraft " were changed to " civil aircraft ". The Drafting Committee had thus considered that it could not change the wording of the article, and that the Second Committee would do so if it wished.

21. Mr. SOLE (South Africa) suggested that the Second Committee's report to the Conference should point out that the term " private aircraft " meant " non-state-owned aircraft ".

It was so agreed.

22. Mr. GALAN (Spain) said that to insert the words " o ayudar intencionalmente " in paragraph 3 was unnecessary, since intentional facilitation amounted to incitement.

23. Mr. CARDONA (Mexico) pointed out that the Spanish-speaking members of the Drafting Committee had wished to keep the Spanish text as close as possible to the original English text. In English, " incitement " and " intentional facilitation " might not always amount to the same thing, and the Spanish translation was merely intended to reflect that difference.

24. Mr. CARDOSO (Portugal) said that in English " inciting " had a moral connotation, " intentional facilitation " a purely physical one.

25. Mr. GALAN (Spain) rejoined that, in that case, the words "a este propósito " should be added after the proposed insertion of " o ayudar intencionalmente ".

26. The CHAIRMAN repeated his observation that such matters should be taken up with the Languages Division of the Secretariat.

Articles 40 to 45

No comment.

Article 46

27. Sir Alec RANDALL (United Kingdom) said that, as article 45 had been amended to permit ships or aircraft on government service — other than warships or militairy aircraft — to seize a ship on account of piracy, it should be made clear that the provisions of article 46 applied to those ships or aircraft as well as to warships. His delegation understood that that point had been discussed in the Drafting Committee, which had concluded that, since the purpose of article 46 was to

restrict the actions of warships, it would, *a fortiori*, restrict the actions of other government ships or aircraft.

28. Mr. KEÏLIN (Union of Soviet Socialist Republics) stated that, in view of the United Kingdom statement, his delegation reserved its right to have its views included in the summary record.

29. Mr. CARDOSO (Portugal) asked that the Second Committee's report to the Conference should state that the expression " foreign merchant ships " mentioned in article 46 covered merchant ships owned and operated by governments.

30. Mr. COLCLOUGH (United States of America) said that since the Committee had rejected (31st meeting) the Bulgarian proposal (A/CONF.13/C.2/L.117) that " the provisions of paragraphs 1 to 3 of the article shall not apply to government ships operated for commercial purposes ", it followed that those paragraphs applied to government ships.

Articles 47 and 48, the draft resolution relating to article 48 and the additional article relating to pollution of the sea by radio-active waste

No comment.

Articles 61 to 65

No comment.

Draft resolution relating to nuclear tests

No comment.

Decision on the relationship of the articles adopted by the Second Committee at its 32nd meeting to existing conventions

No comment.

The meeting rose at 5.10 p.m.

THIRTY-SEVENTH MEETING

Monday, 21 April 1958, at 3.05 p.m.

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

Consideration of the draft report of the Committee (A/CONF.13/C.2/L.153)

1. The CHAIRMAN invited representatives to comment on the Committee's draft report to the Conference (A/CONF.13/C.2/L.153). The rapporteur would incorporate agreed changes in the final version, and typing errors would be corrected.

2. Mr. TRUJILLO (Ecuador) considered that the Committee should take into account in its report the phrases which the Fifth Committee wished to add to articles 27 and 28, as noted in section XI of its report (A/CONF.13/L.11).

3. The CHAIRMAN pointed out that each report should deal only with the proceedings of the Committee to which it related. The reports of the Second and Fifth Committees would go to the plenary Conference, which would deal with the sentences at issue as it saw fit.

4. Mr. KANAKARATNE (Ceylon) observed that the vote on the additional article inserted after article 48 was incorrectly recorded; there had been 58 votes in favour, not 28.

5. Mr. KEÏLIN (Union of Soviet Socialist Republics) thought, first, that since the question of prohibition of nuclear tests had been considered in connexion with article 27, the discussion should be reported and the draft resolution on it inserted immediately after the passage on article 27 and not at the end of the report.

6. Secondly, the Committee had never voted on any recommendation that the Conference adopt the articles, as stated in the last paragraph of the draft report. It would therefore be better merely to transmit the Committee's conclusions to the plenary Conference.

7. Finally, the second and third paragraphs of section V on consideration of the kind of instrument to embody the results of the Committee's work laid insufficient stress on the fact that many representatives had been in favour of adopting the articles in the form of a convention. Either the paragraphs should be shortened or the countries in favour of either procedure should be listed.

8. The CHAIRMAN said that the U.S.S.R. representative was right in thinking that the Committee had never voted on the articles as a whole and had not decided to recommend them to the Conference for adoption. Accordingly, it might be better to delete the last paragraph of the draft report.

9. Mr. COLCLOUGH (United States of America) said that his delegation had voted on the articles on the assumption that their adoption would be recommended to the Conference. Such a recommendation was implicit in the allocation of articles to committees; otherwise delegations would have been voting *in vacuo*. He considered that the U.S.S.R. representative's first point was covered by the reference to the United States motion in the second paragraph of the part headed " Draft resolution relating to nuclear tests " at the end of section IV.

10. Mr. GLASER (Romania) supported the Chairman as regards the last paragraph of the draft report. The recommendation that the Conference should adopt the articles might be interpreted as an attempt to give advice or to exercise moral pressure. Moreover, there was no such recommendation in the reports of other committees.

11. Sir Alec RANDALL (United Kingdom) agreed with the United States representative that the Committee, in adopting the articles, had intended that they should go to the Conference for approval. The difficulty might be solved by altering the beginning of the paragraph concerned to read: " The Committee decided to submit for the approval of the Conference the articles and draft resolutions . . . "

12. The CHAIRMAN considered that that wording would not be quite accurate. He suggested that the

paragraph open with the words: "The Committee submits to the Conference the articles and draft resolutions..."

It was so decided.

The draft report was adopted.

Completion of the Committee's work

13. The usual courtesies having been exchanged, *the CHAIRMAN declared that the Committee had completed its work.*

The meeting rose at 4.15 p.m.