



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

Official records

Volume V:

THIRD COMMITTEE

*(High Seas: Fishing: Conservation
of Living Resources)*

**Summary records of meetings
and Annexes**

GENEVA

24 February — 27 April 1958



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INTRODUCTORY NOTE

The *Official Records* of the United Nations Conference on the Law of the Sea comprise seven volumes, as follows :

- Volume I: Preparatory Documents
- Volume II: Plenary Meetings
- Volume III: First Committee (Territorial Sea and Contiguous Zone)
- Volume IV: Second Committee (High Seas ; General Régime)
- Volume V: Third Committee (High Seas: Fishing: the Conservation of Living Resources)
- Volume VI: Fourth Committee (Continental Shelf)
- Volume VII: Fifth Committee (The Question of Free Access to the Sea of Land-locked Countries)

Volumes III to VII contain the summary records of the meetings and the relevant documents, which appear as annexes. These include the draft articles prepared by the International Law Commission and the final texts adopted by the Committee of the Conference. In addition, volume II contains :

- (a) The list of delegations ;
- (b) The agenda of the Conference and the rules of procedure adopted by the Conference at its first and second plenary meetings ;
- (c) Certain documents of the General Committee of the Conference ;
- (d) The reports of the five committees and the Drafting Committee of the Conference ;
- (e) The Final Act together with the text of conventions, protocol of signature and resolutions adopted by the Conference.

Each volume includes a table of contents which indicates the matters dealt with at each meeting and an index listing the documents relating to that part of the Conference's work

which forms the subject of the volume in question ; the index shows where these documents may be found.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The Conference documents all bear the symbol A/CONF.13/... followed by capital letters and figures which indicate the nature of the document concerned :

<i>Symbol</i>	<i>Nature of document</i>
A/CONF.13/1 to 36	Preparatory Documents
A/CONF.13/L.1 to L.58	} Plenary Meetings
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The summary records contained in this volume were originally distributed in mimeographed form as documents A/CONF.13/C.3/SR.1 to SR.43.

They include the corrections to the provisional summary records that were requested by the delegations and such drafting and editorial modifications as were considered necessary.

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OFFICERS OF THE THIRD COMMITTEE

Chairman :

Mr. Carlos Sucre (Panama)

Vice-Chairman :

Mr. Elias Krispis (Greece)

Rapporteur :

Mr. N. K. Panikkar (India)

SUMMARY RECORDS OF THE THIRD COMMITTEE

FIRST MEETING

Wednesday, 26 February 1958, at 4.50 p.m.

Acting Chairman: Prince WAN WAITHAYAKON
(Thailand)

Election of the Chairman

1. Mr. GARCIA ROBLES (Mexico) nominated Mr. Sucre (Panama).

2. The ACTING CHAIRMAN said that as there was only one candidate the Committee might wish to elect Mr. Sucre by acclamation. Unless he received any proposal to the contrary, he would assume that that procedure was generally acceptable.

Mr. Sucre (Panama) was elected Chairman by acclamation.

The meeting rose at 4.55 p.m.

SECOND MEETING

Friday, 28 February 1958, at 4.25 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Election of the Vice-Chairman

1. Mr. MONACO (Italy) nominated Mr. Krispis (Greece).

2. The CHAIRMAN, after recalling rules 51 and 53 of the rules of procedure, said that as Mr. Krispis was the only candidate, he assumed the Committee would have no objection to electing him by acclamation.

Mr. Krispis (Greece) was elected Vice-Chairman by acclamation.

Election of the Rapporteur

3. Sir Gerald FITZMAURICE (United Kingdom) nominated Mr. Panikkar (India).

4. The CHAIRMAN said that as there was again only one candidate, he assumed the Committee would have no objection to proceeding in the same way as for the election of the Vice-Chairman.

Mr. Panikkar (India) was elected Rapporteur by acclamation.

The meeting rose at 4.30 p.m.

THIRD MEETING

Monday, 3 March 1958, at 3.20 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Organization of the work of the Committee

1. Mr. LIMA (El Salvador) said that there was a close connexion between some of the articles in the International Law Commission's Report (A/3159) which had been assigned to the Third Committee — especially article 60 relating to fisheries conducted by means of equipment embedded in the floor of the sea — and article 68 concerning the natural resources of the continental shelf. According to the subdivision made in the commentary to article 60, sedentary fisheries were to be regulated by article 68, which was to be studied by the Fourth Committee. However, that article also fell within the purview of the Third Committee. Although, as a result of the proposal of the Mexican delegation (A/CONF.13/L.2, para. 9) adopted by the General Committee, it had been agreed that representatives might allude to articles referred to other committees, that was not sufficient in the present instance. The General Committee should authorize the Third Committee to study article 68 in so far as it related to its programme of work.

2. Mr. GARCIA AMADOR (Cuba) agreed with the representative of El Salvador. There was a danger that the Third Committee would be deprived of its right to study a question which concerned it. It was a problem of emphasis and of deciding what were the natural resources of the continental shelf. Although that was primarily an issue for the Fourth Committee, it might be found advisable to hold a joint session of the Third and Fourth Committees for the discussion of article 68. The same method might be used for any other problems of a similar nature that arose during the Conference.

3. The CHAIRMAN recalled that the possibility of joint meetings or inter-committee groups had been foreseen in the General Committee.

4. Mr. MELO LECAROS (Chile) pointed out that, although the Third Committee had been given a particular subject to study, the articles in the International Law Commission's report relating to that subject had not been specifically mentioned. He agreed with what had been said by the representatives of El Salvador and Cuba, but he doubted whether it was within the Third Committee's competence to solve the problem they had raised. He suggested that the matter be referred to the General Committee, or taken up directly with the Fourth Committee.

5. Mr. CASTAÑEDA (Mexico) said that it would be better to make no change for the time-being in the agreed organization of the Conference's work, but to consult with the General Committee on the problem

arising from the overlapping of articles 60 and 68. On the other hand, it was difficult to foresee how the general debate might develop, and therefore the possibility of a joint meeting should be left open. The Committee might be in a better position to come to a decision on procedure during the discussion of article 60.

6. The CHAIRMAN said that the consensus seemed to favour keeping to the agreed organization of the Conference's work. That, however, did not rule out the suggestion by the representative of El Salvador, or the possibility of joint meetings.

7. Mr. RUIZ MORENO (Argentina), speaking to a point of order, urged that the Third Committee should take a decision on the two important points, whether article 68 should be studied by the Third Committee and whether there should be joint meetings.

8. The CHAIRMAN said that he believed that that matter had already been decided. The Third Committee could not alter the rules of procedure or its programme of work. On the other hand, the General Committee had agreed that representatives should be free to allude to articles which had been referred to other Committees. Hence the Third Committee could study an article which had been referred to the Fourth Committee.

With reference to the Argentine representative's point of order, he ruled that the Third Committee could not alter the rules of procedure by assigning to itself articles other than those which had been referred to it.

9. Mr. LIMA (El Salvador) said that he had not wished to suggest any change in the rules of procedure, but to refer the problem to the General Committee. He supported the Mexican representative's suggestion to leave the procedural decision until article 60 was under discussion.

10. The CHAIRMAN said that the remarks of the representative of El Salvador were in accord with the Chair's ruling and the general feeling of the Committee.

The meeting rose at 4 p.m.

FOURTH MEETING

Wednesday, 5 March 1958, at 3.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159)

General debate

STATEMENTS BY U KHIN (BURMA), MR. LIMA (EL SALVADOR) AND MR. OZORES (PANAMA)

1. U KHIN (Burma) said the International Law Commission had rendered the entire world a great service in

drafting the articles concerning the law of the sea (A/3159).

2. The delegation of Burma was in general agreement with the terms of articles 49 to 60 which had been referred to the Committee. It felt, however, that there might be some danger in considering any one aspect of the law of the sea in isolation from the other branches of the subject. In particular, the questions of fishing rights and the conservation of living resources were so intimately bound up with matters being discussed by the Fourth Committee (Continental shelf) that it would be undesirable for the two committees to work without mutual consultation. The representative of Burma on the Fourth Committee would raise the question of fishing rights and conservation of living resources on the continental shelf at the appropriate time. It would be preferable, however, if interconnected questions were discussed at joint meetings of the two committees as envisaged in rule 50 of the rules of procedure of the Conference. Accordingly, his delegation proposed that joint meetings of the Third and Fourth Committees should be arranged at an early date.

3. Mr. LIMA (El Salvador) said the International Law Commission had produced a masterly draft concerning the law of the sea. In the Sixth Committee of the General Assembly at its eleventh session, he had praised those articles for their high scientific value. Nevertheless, as he had said then, some of the draft provisions, although based on existing international practice, did not sufficiently reflect developments in the domestic law of many countries or recent social, political, economic and technical developments, and hence could not be accepted internationally as satisfying modern conditions. Many delegations had emphatically supported the views of his delegation.

4. The provisions of articles 52, 54, 56 and 57 all represented a progressive development of international law, and to that extent the delegation of El Salvador welcomed them. It was not, however, able to agree entirely to the form or scope of those articles. In particular, article 54, paragraph 2, granted the coastal State the right to participate in the regulation of fishing activities in areas of the high seas on an equal footing with other States whose nationals engaged in fishing in those areas. Article 51, on the other hand, provided that "a State whose nationals are engaged in fishing in any area of the high seas . . . shall adopt measures for regulating and controlling fishing activities in that area". In other words, what was regarded as a duty incumbent upon States engaged in fishing was put forward merely as an optional right in the case of the coastal State. Such a distinction was not consistent with the principles of the law. In the event of disagreement, the coastal State would be placed in an inferior position before the arbitral commission. Accordingly, his delegation would be unable to accept the principle of compulsory arbitration (article 57) unless some clause was added stipulating expressly that in cases of disagreement the special interests of the coastal State would take precedence over those of the States engaged in fishing in the areas in question.

5. With regard to the general question of fishing rights, the definition of the meaning of the expression "high seas" would depend on whatever the First Committee

decided concerning the breadth of the territorial sea. It had been said in the First Committee that the question of the territorial sea was governed to some extent by considerations of military security. It seemed desirable that no such considerations should influence the work of the Third Committee. He proposed, therefore, that in the first stage of its deliberations the Third Committee should omit all reference to the territorial sea proper, and instead endeavour to determine the breadth of the zone within which a State might claim exclusive fishing rights on the basis of special economic circumstances. The International Law Commission had given consideration to a proposal for the establishment of such a zone (A/3159, p. 38). The principle of a zone of exclusive fishing rights was a new one and deserved recognition in international law. He added that in his own country legislation had been enacted reserving a twelve-mile zone for fishing by Salvadorian nationals exclusively.

6. His delegation also favoured the principle of abstention referred to in the commentary on the International Law Commission's draft article 53 ; the acceptance of that principle would enable States to enter into regional agreements on conservation and to regulate the exploitation of the living resources of the sea. The International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 had recognized that the principle of abstention should not apply to the coastal State. The delegation of El Salvador was fully prepared to support the principle of abstention on that basis. As the International Law Commission had not put forward any concrete proposals concerning the principle of abstention, he thought the question might be referred to a special working group whose conclusions would then be discussed by the Committee.

7. Mr. OZORES (Panama) said that the important provision recognizing the special interest of the coastal State (article 54, paragraph 1) should be drafted in more precise terms. Moreover, there was a contradiction between the language used in that provision as it stood and article 66. The maritime belt adjacent to the territorial sea was not really an " area of the high seas " but the contiguous zone. If it was proposed to assimilate the contiguous zone to the high seas in so far as fishing was concerned, that intention should be stated clearly.

8. He agreed with the representative of El Salvador that the unilateral regulation of fishing on the high seas, provided for in article 51, was inconsistent with the provisions of article 54, paragraph 2.

9. Lastly, he felt that difficulties would arise in connexion with the compulsory arbitration clause (article 57); the opposition of certain countries to the acceptance of that principle was justified and should not be disregarded.

The meeting rose at 4.15 p.m.

FIFTH MEETING

Monday, 10 March 1958, at 3 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. LUND (NORWAY), MR. PANIKKAR (INDIA), MR. INDRAMBARAYA (THAILAND), MR. CHEN (CHINA) AND MR. LLOSA (PERU)

1. Mr. LUND (Norway) emphasized the importance of Norway's fishing industry, and pointed out that Norwegian fishermen participated not only in the coastal fisheries, but also in the deep-sea fisheries of the North Sea, the North Atlantic Ocean, and the Arctic and Antarctic Oceans.

2. Norway had adopted laws to prevent overfishing and to create a rational utilization of fishery resources. His Government regarded international co-operation in scientific research and conservation as imperative and welcomed all efforts to create efficient international machinery to handle conservation problems in all fishing areas. It had taken an active part in the work of the International Council for the Exploration of the Sea, which had led to the establishment of international machinery for the conservation of the stocks of fish in the North Sea and the north-east Atlantic through the 1946 Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish. Norway had also acceded to the 1949 International Convention for the North-West Atlantic Fisheries and the 1946 International Convention for the Regulation of Whaling. A convention had also been concluded, but had not yet been ratified, between Norway and the USSR on co-operation in scientific research in connexion with the living resources of the sea.

3. Referring to chapter II, paragraph 31 of the report of the International Law Commission covering the work of its eighth session (A/3159), he said that his delegation would like some clarification of the exact relationship between the proposed articles and existing international conventions. He was not sure whether, as was suggested in that paragraph, the problem could be solved by a mere reference to the general rules of international law.

4. There were three kinds of conservation agreements in force at the present time : first, agreements or conventions on specific regulatory measures ; secondly, agreements or conventions on specific measures, combined with an international commission empowered to recommend amendments which became binding in accordance with a prescribed procedure ; thirdly, conventions which did not contain any specific regulatory measures but provided for an international commission having the power to recommend specific regulations. The two last-mentioned types of agreement were the most common and, in his opinion, the most suitable.

5. His delegation wished to know whether under the new draft articles States which had acceded to a con-

vention that established machinery for the handling of conservation problems would be debarred from initiating arbitration proceedings, or whether the proposed articles should be interpreted as permitting such action if there was disagreement between those States with regard to special types of regulations. In the latter case, the system proposed would have an important influence on existing conventions. If, however, the arbitration system suggested was meant to come into effect only when no agreement existed, the legal applicability of that system would be considerably limited. His delegation was of opinion that the proposed articles should be interpreted with such a limitation, and felt that definite rules on that point should be included in any general convention.

6. Referring to articles 52 and 53, he said that his delegation considered that it was reasonable to demand the accession of all States to any regulatory measures introduced, provided they were based upon generally accepted principles such as, for instance, those worked out in the general conclusions of the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955.¹ It would be an abuse of the freedom of the seas if a State neglected to take conservation measures based on such principles. Such a State should, however, have the right to settle by arbitration procedure any dispute that might arise. His delegation fully supported the view expressed by the majority of the International Law Commission that the proposed arbitration procedure must be regarded as an integral and inseparable part of the new system.

7. The Norwegian delegation accepted article 52 in principle, but must reserve its position on article 55 as long as it did not know what would be the breadth of the territorial sea. Moreover, it could not agree to any encroachment on the freedom of the high seas which might result from a State's adopting unilateral measures of conservation, unless other interested States had the right to test by arbitration whether such conservation measures conformed to the prescribed criteria. He noted that the other articles of the draft law did not give any guidance on the complicated problems of enforcement connected with article 55 and agreed, in that connexion, with the comment of the United Kingdom Government reproduced in document A/CONF.13/5 (section 17), to the effect that it was very important to consider problems of enforcement before such articles were adopted.

8. Norway felt that any arbitral commission set up should have clear and exhaustive general rules upon which to base its decisions. According to article 58 the main criteria for such decisions was to be scientific evidence and scientific findings. The wording of that article and of article 55 was rather vague.

9. At the 1955 International Technical Conference on the Conservation of the Living Resources of the Sea, it had been demonstrated that very detailed and extensive investigations would often be necessary in order to determine the need for conservation measures, and that further development of maritime research would be re-

quired to provide sufficiently reliable scientific evidence. The technical and economic conditions of the fishing industries of the countries wishing to take such measures must also be borne in mind. In a system of general compulsory arbitration the arbitrators must bear in mind the relative importance of the fish stocks to be conserved, the fishermen concerned and the consumers.

10. The conditions under which a decision on the findings of an arbitral commission might be revised should also be closely examined in order to ensure that the whole machinery of arbitration was adjustable to changing conditions.

11. In conclusion, the Norwegian delegation regarded international co-operation and a positive attitude towards the creation of a satisfactory international system for the conservation of the resources of the sea as having decisive importance for the future of the fishery nations and the world's food supply.

12. Mr. PANIKKAR (India), after paying a tribute to the International Law Commission, said that his Government felt that the draft articles on the law of the sea should be examined against the background of the conditions prevailing at present in fisheries throughout the world.

13. Fishing as a world industry had been developed by a comparatively small group of nations whose geographical situation, technological achievements and industrial enterprise had combined to make available to the community of nations the products of the sea in a form which contributed largely to the world's food supply. Modern fishing methods had been adopted by certain countries which in the past had relied on frail equipment, and the operations of such countries now extended beyond their territorial sea in a more intensive exploitation of fish stocks outside, but adjacent to, their own waters.

14. India's sea fishing industry was an important one, and was the sole occupation of more than a million people. It contributed in an important measure to the country's economy and was a major source of food. India's potential fish requirements greatly exceeded present supplies, and his Government was therefore greatly interested in the successful outcome of the Conference.

15. The Government of India was in broad agreement with articles 49 to 60, but reserved its right to suggest amendments on points of detail.

16. Referring to his Government's comments on articles 49 to 56 (A/Conf.13/5, section 9), he said that, although his Government had stated that the basis of articles 51, 52, 53 and 56 was not acceptable, it realized that those articles were drafted along the lines of existing international fisheries conventions. Should the measures mentioned in those articles be acceptable to countries predominantly concerned in high-sea fishing, he felt they could be generally accepted.

17. The Indian Government did not think that articles 54 and 55 protected the interests of coastal States, especially those of the under-developed areas with their expanding populations and increasing dependence on the sea for food. A coastal State should be entitled to adopt conservation measures to protect the living resources of the sea within a reasonable belt of the high

¹ Report of the International Technical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2).

seas contiguous to its coast, but not to adopt such measures in seas contiguous to the coast of another country merely because its nationals had engaged in the past in fishing in such areas.

18. His Government realized that geographical conditions might sometimes make it difficult to decide on the correct status of a coastal State in respect of any particular resources of the sea, but suggested that a distinction might be drawn between areas of the high seas which were within a belt of about one hundred miles from the territorial sea of a coastal State and those which did not come within such a belt. It should be possible to recognize what might be called the "coastal high seas".

19. A point which required further clarification in the articles before the Committee related to the conservation of resources which extended from the territorial sea to the high seas. In such a case, the conservation measures adopted by one State alone might turn out to be inadequate or ineffective. The old-established fisheries in coastal waters must be adequately protected and free from restrictions which might seem necessary for the sake of a new fishery developed in the high seas.

20. His Government considered, first, that a coastal State had a pre-emptive right to take conservation measures in specific areas and for specified fisheries within coastal belts extending to one hundred miles; secondly, that when such measures were taken by a coastal State other States could approach that State for the purpose of negotiating the adoption of similar measures; thirdly, that any measure adopted by the coastal State for the preservation of living resources should be applicable equally to the nationals of the coastal State and to the nationals of other States that might be fishing or might wish to fish in that area; and lastly, that if a coastal State had not adopted any measures for the conservation of living resources, any State fishing or interested in fishing in areas adjacent to the coastal State might approach the coastal State with a view to the adoption of suitable measures in those areas.

21. In formulating the foregoing principles, the Indian Government had been guided by the consideration that a coastal State had naturally a more vital interest in the preservation of the living resources of its "coastal high seas" inasmuch as its nationals were more dependent on the resources thereof for food. It also felt that measures adopted by a coastal State could be more appropriately enforced by that State than by any other State, and that the enforcement of conservation measures by any State or States other than the coastal State might lead to political, legal and other disputes between the States concerned.

22. It was in the light of such general principles that the Government of India had in 1956 assumed the right to establish conservation zones in areas of the high seas adjacent to the territorial waters of India, up to a distance of one hundred nautical miles; to take conservation measures in such zones and, subject to any international agreement or convention to which India was or might become a party, to take steps to regulate fishing in the said areas purely for the sake of conservation. His Government felt that such measures should be based on appropriate scientific findings and that there should be no discrimination against foreign fishermen.

23. Articles 57, 58 and 59 were acceptable to the Indian delegation, which also noted with satisfaction that in article 60 the International Law Commission had found it necessary to protect the interest of established fisheries conducted by means of equipment embedded in the floor of the sea. His delegation considered, however, that article 60 should be amended to provide that non-nationals could not participate in such fisheries on an equal footing with nationals of the coastal State.

24. In view of the importance attached by his Government to article 48 on pollution of the high seas and its effects on the conservation of marine resources, he hoped that the Third Committee would have an opportunity to examine that article in the light of the conclusions reached by the Second Committee.

25. Mr. INDRAMBARAYA (Thailand) said fish was a necessity second only to rice for the people of his country. Fish resources being less abundant in tropical waters than in those of the northern hemisphere, Thailand was interested in reserving coastal fishing, in co-operation with its neighbours, for its own nationals. His delegation therefore preferred a twelve-mile limit for purposes of fisheries.

26. Mr. CHEN (China) said the draft articles on fisheries were generally acceptable to his delegation. In particular, his delegation considered that the provisions of article 56 would facilitate the adoption of conservation measures. Without those provisions, it would be exceedingly difficult for such measures to be adopted because a State might have no interest in protecting the fishery resources of another State.

27. With regard to article 57 on the settlement of disputes, his delegation did not agree to the establishment of two different systems for the two cases covered by paragraphs 2 and 3. There was no logical reason for that difference. To enable the arbitral commission to arrive at a decision acceptable to all the States concerned, it was desirable that every State or group of States concerned in the dispute should name one or two members of the Commission; the membership could, of course, be increased if necessary.

28. Mr. LLOSA (Peru) said the Chairman of his delegation had already explained in the general debate in the First Committee at its 5th meeting the position of Peru with regard to the new trends in international law.

29. With regard to the articles on fisheries, it was necessary to dispel the inaccurate impression that persisted with regard to the position of Peru and certain other countries which upheld the inherent right of the coastal State to the conservation and utilization of the living resources of the sea off its coasts.

30. In its draft, the International Law Commission had not given sufficient recognition to the rights of the coastal State. The reluctance of the International Law Commission to do so was particularly surprising inasmuch as it had not hesitated to adopt articles concerning bays and baselines which had the effect of converting into "internal waters" maritime areas which had so far always been regarded as part of the high seas. Similarly, the articles on the continental shelf also constituted an innovation in international law in that they would have the effect of denying to States other than

the coastal State the right to make use of sea areas where that right had so far never been denied to them.

31. The action taken by the countries of the South American Pacific in proclaiming their sovereignty and jurisdiction, for purposes of conservation and utilization of the living resources of the sea, over the maritime zone specified in the Declaration of Santiago of 1952, had been described as unilateral. And yet, the pronouncements by virtue of which the United States and the United Kingdom had first proclaimed their sovereignty over the continental shelf had also constituted unilateral acts; more than that, they had initiated a veritable chain reaction of measures by other States in several matters connected with the law of the sea.

32. The Peruvian delegation had no objection to the recognition of coastal States' rights over the continental shelf, but would draw attention to the fact that recognition constituted evidence of the evolution of international law in the light of new situations and new factors; it was an admission of the validity of certain unilateral acts of States. It had been stated that the sovereignty over the continental shelf was explained by its close geological links with the adjacent coasts. Similar arguments applied to the inherent rights of the coastal State with regard to the conservation and utilization of the living resources of the sea. Marine vegetable and animal life was not spread uniformly over the immense sea areas of the globe, but was restricted to sea areas close to the coasts or to areas where the sea was comparatively shallow; those areas represented only a very small percentage of the total extent of the oceans. The abundance of marine fauna in certain areas was intimately connected with the availability of food in the form of animal or vegetable matter. The discharge of rivers contributed in a great measure to the growth of ocean flora and fauna; thus the land continually fertilized the oceans. It had been estimated by a distinguished United States biologist, Mr. Marr, that in 1947 the Mississippi had discharged 141,000 tons of soluble phosphates daily into the sea; and that writer had concluded that the utilization of the living resources of the sea was the only way of compensating for those losses.

33. In the light of those facts, there was no doubt that the coastal State was the most legitimate claimant to the resources of the seas near its coasts. It was estimated that Peruvian rivers discharged some 500 million tons of silt annually into the Pacific Ocean and so made a substantial contribution to the feeding of ocean plant life. In addition, the guano annually dropped into the sea by the birds living on the islands and headlands of the Peruvian coast — estimated at 30 million — represented some 200 thousand tons of natural fertilizer of high nitrogen content. The birds fed on the anchovies abundant in the area. The rich fish stocks of the seas opposite its coasts compensated Peru for the aridity of its coastal regions. A state of dynamic equilibrium existed with regard to the different species of flora and fauna present in those seas. Any material change in the environment resulted in the death of large numbers of anchovies consequent upon a decrease in the plankton on which they fed. The decrease in the number of anchovies had in its turn an effect on the guano-producing birds, which, deprived of their natural food, died in great numbers or migrated southwards.

34. Over-fishing could have similar catastrophic results. It was an undeniable fact that in certain areas of the world intensive and uncontrolled fishing by powerful fleets using modern technical equipment had exhausted rich fishing banks in a few years. That problem had been noted in respect of the Pacific halibut fisheries and the Norwegian prawn fisheries (*Pandalus borealis*) by the well-known expert Edward Stuart in an article entitled "Some theoretical Considerations on the 'Overfishing' Problem".¹

35. It had been contended that no single State was entitled to appropriate the living resources of the sea which because of their mobility were not respecters of man-made boundaries. That contention had contributed to creating the false impression that marine species were to be found wandering in the immensity of the oceans. In fact, all the scientific evidence showed that the majority of those species remained concentrated in definite areas, usually near the coasts, where there was an abundance of food; those areas constituted well-known fishing banks. Thus, trawler fishing in the North Sea covered the superjacent waters of the continental shelf extending as far as Iceland and the Faroe Islands. Again in the Pacific Ocean, the yellowfin tuna and skipjack were fished in several different areas separated by immense distances. The fish stock in each of those areas differed from that living in the others.

36. The complex ecological system constituted by the various co-existing species of marine flora and fauna extended well beyond the narrow limits of the territorial sea. It was therefore essential to recognize the inherent right of the coastal State to the conservation and utilization of the living resources of the sea near its coasts and of the sea beyond. For many centuries, the inhabitants of the coastal areas of Peru had drawn from the sea the bulk of the fats and proteins lacking in their otherwise poor diet. There existed abundant evidence that those populations had fed almost exclusively on shell-fish, fish and sea birds both in pre-Inca times and after the Spanish conquest. In the face of that exploitation from time immemorial by the populations of Peru, the comparatively recent claims made by other countries could not prevail. Those countries had only entered the region following the depletion of fish stocks in their own areas, impelled by the growing needs of their industry.

37. The right of the coastal State was in no way opposed to the interests of the international community and did not preclude the utilization of the living resources of the sea by the nationals of non-coastal States. Nor was that right in any way inconsistent with international scientific co-operation; still less did it imply the right to adopt arbitrary conservation measures.

38. In any case, an important point to be borne in mind was that the large fishing undertakings which might be affected by the recognition of the coastal States' rights belonged only to a small minority of countries — not more than five or six out of the total number of States represented at the Conference. It had been argued that all States had an equal right to the resources of the sea. In practice, that equality did not

¹ *Journal of the International Council for the Exploration of the Sea*, Höst and Sons, Copenhagen, Volume 1930, pp. 3 et seq.

exist because of the unequal economic resources of States; the large maritime countries could fish in all the waters of the globe and in effect deny to other States the possibility of fishing even in their own waters.

39. The Peruvian delegation was therefore unable to accept the draft articles on fisheries and conservation, because they failed to accord due recognition to the rights of the coastal State.

The meeting rose at 5.15 p.m.

SIXTH MEETING

Wednesday, 12 March 1958, at 3.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. TSURUOKA (JAPAN), MR. RIGAL (HAITI), MR. KRYLOV (UNION OF SOVIET SOCIALIST REPUBLICS), MR. HERRINGTON (UNITED STATES OF AMERICA) AND MR. KASUMA (INDONESIA)

1. Mr. TSURUOKA (Japan) said that the Committee's responsibility was very great, for fish constituted an important source of wholesome and cheap food. Japan had a great interest in the success of the Conference and in the clarification of the law of the sea, for it was the world's leading fishing country, whose catch accounted for nearly 20 per cent of the world total. Almost 90 per cent of the animal protein content of the Japanese population's diet came from fish. Moreover, the fishing industry gave employment to many Japanese, and marine products formed an important item in Japan's list of exports. Naturally, then, Japan had a strong interest in the maintenance and increase of the productivity of the living resources of the sea. For that purpose, the Japanese Government was applying a rational policy of exploitation and was collaborating with other countries.

2. Commenting on the draft articles prepared by the International Law Commission, he said it was a recognized principle of international law that regulatory measures affecting fishing on the high seas were only valid if based, firstly, on conclusive scientific data and, secondly, on the consent of the countries concerned. The practice of States confirmed that principle. He was pleased to observe that the draft articles recognized in most cases that a scientific basis was one of the necessary conditions for the adoption of measures of conservation; he added, however, that the notion of conservation itself might need more thorough scientific study.

3. On the other hand the articles, by recognizing a special position for coastal States, departed from the rule that regulatory measures governing fishing on the high seas were valid only in respect of nations consenting thereto. It was hard to understand the reasons for that departure. The mere geographical position of a coastal State did not by itself constitute evidence of an interest

in the conservation of the living resources, or proof of superior scientific knowledge. Furthermore, it was contrary both to the principle of the freedom of the high seas and to universal international custom relating to rules governing fishing on the high seas to give coastal States the right to regulate such fishing unilaterally, even if only on a provisional basis pending an arbitral award.

4. If a coastal State was interested in the conservation of living resources in neighbouring waters, and if the necessity of conservation measures was based on scientific findings, it would surely have no difficulty in working out an agreement with the country interested in conserving the same resources. It might be objected that such an agreement would not be easy to reach; in fact, however, past international disputes over fisheries had nearly all arisen in cases where a country had claimed to impose its own rules in the absence of a really sound scientific basis. Where such rules had a scientific basis, bilateral and multilateral conventions had been concluded and put into operation.

5. It might be argued that political or other reasons justified the special position of coastal States, and unfortunately some countries had taken it upon themselves to regulate fishing in the high seas unilaterally. They had gone so far as to discriminate against foreign fishermen on the high seas, either by arresting them or by seizing their ships. Such action showed that there was a great danger in giving coastal States the right to regulate fishing on the high seas unilaterally, on political or other grounds, which in themselves had nothing to do with the true conception or the conservation of the living resources of the sea.

6. Mr. RIGAL (Haiti) said that the States participating in the Conference were not classed according to wealth, size of population or stage of development; all were treated as sovereign equals.

7. Commenting on the articles prepared by the International Law Commission, he said that the provisions defining an island (article 10) failed to deal with the case of land areas surrounded by water but not permanently above high water mark. Secondly, the definition of "high seas" (article 26, para. 1) meant little so long as the breadth of the territorial sea had not itself been defined. It would be consistent with sound practice to embody all definitions in a separate defining clause; the codification proper should be concerned exclusively with detailed rules and contain the provisions relating to their observance.

8. Subject to those remarks, Haiti supported the draft as a whole. The breadth of the territorial sea should not be settled arbitrarily by the coastal State; in his delegation's opinion it should be fixed at six miles.

9. Mr. KRYLOV (Union of Soviet Socialist Republics) said that his delegation was wholeheartedly in favour of the principle of the conservation of the living resources of the high seas and considered that the solution of the problem of the international regulation of fishing on the basis of the composition and size of fish stocks in any area of the high seas should be sought through international co-operation. He noted that it was universally recognized that the coastal State had an exclusive right to regulate fishing in its territorial waters.

The natural resources of the high seas, however, could be freely exploited by all States. Unfortunately, the experience of the past ten years had revealed the need for regulating fishing because, owing to modern large-scale fishing techniques and irrational fishing methods, fish stocks in certain areas such as the North Sea had been considerably depleted. Accordingly, a number of international fishing agreements between the States directly concerned had been concluded in respect of several areas of the high seas. In certain cases, however, the existing system of agreements failed to protect certain species from extinction and in others the coastal State was helpless to prevent foreign nationals from exploiting stocks of fish.

10. The articles before the Committee were based on contemporary doctrine — article 49 was a particularly good example — and on the current practice of States. Certain articles had been drafted in the light of modern fishing techniques and trends and the draft as a whole would provide a sound basis for the Committee's work since it was designed to protect the living resources of the high seas and at the same time ensure freedom of fishing on the high seas. The USSR had been one of the first countries to lay a scientific basis for the conservation of the living resources of the sea. It maintained dozens of institutes engaged in marine biology research, fishing techniques, fish-processing and oceanography.

11. He drew attention to the articles which were intended to proclaim the equal right of all States to exploit the living resources of the high seas and recalled that the first of three articles on fishing drafted by the Commission at its third session in 1951 had stated that in no circumstances might any area of the high seas be closed to the nationals of other States wishing to engage in fishing activities ;¹ that, in the USSR's opinion, had been a sound statement of principle. The report before the Committee, however, contained references to the principle of "abstention" according to which a group of States could announce that a certain species was being exhausted and in that way deprive other States of the right to fish that species and to participate in exploiting the resources of the high seas on a footing of equality with other States. Clearly then, the principle of abstention was at variance with the principle of equality of rights and the concept of freedom of fishing on the high seas. In the USSR's opinion no discrimination should be allowed against relative "newcomers" in fishing grounds already being exploited by other States. The world was in a dynamic stage of development, increasing numbers of new independent States were being formed and the principle of abstention should not be used to prevent them from co-operating in the exploitation of the living resources of the high seas.

12. He noted that the problem raised in article 54, paragraph 1, had been given special attention at the Rome Conference of 1955² at which no definite conclusions had been reached. One group of States had felt that the

coastal State should be regarded as having a special interest in the conservation of the living resources of the sea adjacent to its shores and should take steps to control and maintain stocks in that area. Another group, however, had considered that the coastal State should provide for the conservation of the living resources of the seas adjacent to its shores only with the agreement of other countries. The very existence of that difference of opinion indicated the difficulties involved. The USSR delegation felt that a solution of the problem would have to take account of geographical factors as well as of the behaviour of various species of fish.

13. In conclusion, he said that the articles relating to the settlement of disputes between States were out of place in the draft, and for that reason he would support the Mexican proposal (A/CONF.13/C.3/L.1). The deletion of such articles would improve the chances of reaching agreement on the articles embodying the substance of contemporary international law of the sea. In any event, ample provision for arbitral procedure had been made in other international agreements, and the elimination of arbitration provisions from the draft would be consistent with the recommendations of the Rome Conference of 1955.

14. Mr. HERRINGTON (United States of America) described the expansion of the fishing industry and the improvement of fishing techniques in the United States, but said that early in the twentieth century declining yields had nevertheless become apparent. Recognition of the need for conservation measures had led to the conclusion of a number of successful international conservation conventions, providing for co-operation between the States concerned. Those conventions had resulted in the discovery of the causes of the decline in yields and in the formulation of measures to restore the productivity and yield of fisheries. Additional agreements of a similar kind covering other fisheries in the North Pacific and North Atlantic had been concluded as the need arose.

15. In recent years, however, the intensity of fishing and efficiency of modern methods had led to a growing demand for suitable conservation measures of worldwide scope, and it was in response to that demand that the Rome Conference of 1955 had been convened.

16. It was an accepted fact that the optimum or maximum sustainable yield from a stock of fish could not be obtained if the stock were fished too intensively. On the other hand it had been proved in recent years that over-regulation could also reduce the yield and waste the productivity of a particular stock. The desire to achieve a proper balance between those two extremes had led to the modern concept of conservation which was reflected in the definition contained in draft article 50.

17. It was his delegation's understanding that the draft articles as a whole were intended to constitute a system of rules designed to regulate the exercise of the freedom of fishing on the high seas so as to ensure the maximum sustainable supply of food or other useful products from the sea (A/3159, article 50 and commentary). As such, they should strike a balance between under- and over-regulation and should therefore encourage the restoration of resources at present over-fished, prevent over-fishing in the future and encourage full utilization of currently under-utilized resources.

¹ *Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858), p. 19.*

² *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No. : 1955.II.B.2), paras. 44 to 48.*

Articles 51 to 59 were designed to facilitate the formulation and administration of conservation measures and postulated technical co-operation between all the States concerned. Such co-operation was necessary if the full potential yield of the living resources of the sea was to be realized for the benefit of mankind.

18. He reviewed the responsibilities, rights and interests set forth in the articles in question. His Government was of the opinion that, with one exception, each of those provisions was an important element in the system of rules that the Committee was seeking to formulate. The one exception was article 55, which seemed unnecessary in view of the provisions of other articles.

19. At the previous meeting the representative of Peru had argued in support of control by the coastal State over fishery resources in a broad belt of water adjacent to its coast on the grounds that the nutrients supporting marine life in that belt had originated in the land territory of that State. Actually, however, the movements of vast masses of water carried the nutrients contained in the oceans over long distances and hence it could not be contended that most of the marine life along any coast was dependent on the substances drained from the territory of the adjacent coastal State.

20. The same speaker, discussing the effect of fishing on certain stocks of fish, had referred to the effect of fishing on local halibut stocks in the North Pacific before 1910 as an illustration of the danger of exhaustion of resources by fishing. However, that depletion had occurred long before the conservation principles now under consideration had been developed. Since that time, Canada and the United States had carried out a joint conservation programme which had more than restored the yield of the halibut stocks to earlier levels. It had also been suggested that the yield of the tuna stocks in the eastern Pacific Ocean had been reduced by over-fishing. Those tuna stocks were under continuing study by the Inter-American Tropical Tuna Commission, which would ensure that necessary conservation measures would be applied if and when needed. The available evidence indicated that there was no danger of over-fishing; indeed, certain species were being under-fished.

21. The International Law Commission's proposals concerning conservation provided a sound basis for the Committee's work though some of the proposals would have to be elaborated and certain new rules would have to be added to meet specific needs. For example, the proposals regarding the settlement of disputes should be stated in more precise language to ensure the effectiveness and proper use of article 53. A compulsory, speedy and final review of the facts to determine the existence of conditions which would justify action under the article appeared to be the only way of preventing long delays in applying the necessary conservation measures if agreement was not reached. Articles 57, 58 and 59, which were intended to provide that review, were inadequate because they failed to stipulate in sufficiently clear terms the nature and scope of disputes to be dealt with and because they failed to lay down sufficiently clear standards to guide the arbitral commissions in making their awards.

22. One new element which his Government considered essential was a rule regulating the exercise of the

freedom to fish which would encourage States to undertake conservation programmes. The new element, which had been called "abstention", was a procedure which would provide an incentive to States to build up, or restore and maintain the productivity of stocks of fish under certain special conditions. The development of a procedure of that kind had become increasingly important and urgent in view of the increasing range of fishing fleets and developments in fishery science.

23. He referred to the comments of the United States Government on the report on the régime of the high seas prepared by the International Law Commission at its seventh session.³ In those comments his Government had proposed what had since come to be known as the "principle of abstention", which was referred to in the Commission's commentary on article 53. In his Government's opinion, express rules should be formulated to govern the practical operation of the principle. Disagreements concerning the application of the principle could, of course, be dealt with in the manner contemplated in articles 57, 58 and 59.

24. The draft articles should also be supplemented in another very important respect. A rule should be formulated which would clarify the manner in which measures promulgated by a State or States would be enforced when they became applicable to the fishermen of other States, as under article 53, for example.

25. His Government believed that, with the amendments he had described, the Commission's proposals would constitute a new and effective system for the conservation of the living resources of the high seas.

26. In conclusion, he said that there might be other problems involving special economic circumstances which deserved recognition in international law. The Commission had referred to one of those possibilities in the commentary which followed article 59 in connexion with claims to exclusive fishing rights in cases where a nation was primarily dependent on the coastal fisheries for its livelihood. The United States was aware that special economic situations had received little attention at international meetings and would be interested to obtain any facts concerning such situations and to learn the views of other delegations.

27. Mr. KASUMA (Indonesia) said that the principles which the Committee would formulate would have an important bearing on fisheries and on the food supply of the world. As a country whose territory consisted of one vast archipelago — the largest in the world — Indonesia was naturally fully aware of the responsibility which the possession of that immense coastline and sea involved from the point of view of satisfying the population's nutritional and economic needs.

28. Fish were a very important factor in the diet of the Indonesian people, and would become even more important as the Government's plans for raising the standard of living matured. Accordingly, his delegation supported the view that the coastal State had a special, vital interest in the living resources of its maritime domain. At the same time, those resources were needed

³ See *Yearbook of the International Law Commission*, 1956, vol. II (A/CN.4/SER.A./1956/Add.1), pp. 91 *et seq.*, especially comment on p. 93.

as a contribution to the food supply of the world at large.

29. Now, it was a familiar truth that stages of development of fisheries, research techniques and enterprises varied widely from region to region. The object of the Conference should not be to lay down a rigid set of principles embodied in a list of articles, but to make it possible for areas with highly developed techniques to set the pace for areas with less-developed techniques.

30. Inasmuch as over-fishing or over-exploitation were potential sources of disputes, the Committee should, for the purpose of avoiding such disputes, recommend the conclusion of agreements between neighbouring coastal States concerning their respective interests in the living resources of particular maritime areas. Indonesia would be able to conclude such agreements in the near future, since it was at roughly the same stage as its neighbours in the development of methods of technical research and exploitation. He hoped that the principles to be adopted by the Conference would be such as to encourage the conclusion of regional agreements.

31. With regard to the conservation of the living resources of the sea, he said that each coastal State should make regulations governing its own waters, the possibility being left open to neighbouring coastal States to enter into conservation agreements relating to areas of common interest. Such measures should be based on technical and practical, as well as on purely scientific data.

32. His delegation supported the views expressed by the representative of India at the 5th meeting of the Third Committee on the subject of conservation, and those of the representative of Burma, who had stressed, at the 4th meeting of the Fourth Committee, the importance of bottom fishes and sedentary fisheries.

The meeting rose at 4.45 p.m.

SEVENTH MEETING

Thursday, 13 March 1958, at 3 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. WALL (UNITED KINGDOM), MR. DE LA PRADELLE (MONACO), MR. THURMER (NETHERLANDS), MR. HULT (SWEDEN) AND MR. MICHIELSEN (BELGIUM)

1. Mr. WALL (United Kingdom) said that both coastal fishing and deep-sea fishing were important industries in the United Kingdom. In addition, the United Kingdom was responsible for the government of many overseas territories whose fishing economies were as yet undeveloped, or at least not fully developed, and whose interests had to be protected. His Government realized the importance of conservation measures and for that reason all the fishing areas of vital concern to its

population were regulated by international conservation commissions established under conventions to which the United Kingdom was a party. His Government had also taken the lead in promoting a new and more comprehensive international conservation convention, along the lines suggested in the report of the Rome Conference of 1955,¹ covering the Atlantic areas and designed to authorize the use of a wide range of conservation measures applicable to every species of fish.

2. The Committee's debate would be heavily influenced by two factors. First, more food, including fish, had to be found for the world's population which was steadily increasing. Secondly, the resources of the sea were being exploited more efficiently and intensively owing to the improvement of fishing techniques and introduction of scientific devices. There was, however, a limit to the extent to which the living resources of the sea could be exploited; the Committee should look ahead and make timely provision for conservation measures. The freedom of fishing on the high seas should therefore be accompanied by a corresponding duty, accepted by States, to take necessary conservation measures. Although that duty was implicit in the draft articles it should be explicitly recognized and accepted, and article 49 so amended that the right to fish and the duty to conserve were given equal weight.

3. The definition of conservation contained in article 50 was sound and reflected the opinion of the Rome Conference of 1955.

4. The subsequent articles on conservation should specifically require States to conclude agreements on conservation programmes within the framework of properly constituted international conservation conventions covering defined areas of the seas or specific marine resources on condition that the conventions were open to accession by all States concerned with the area or with the resource in question. Several such conventions were already in existence and their effectiveness had been recognized in the report of the Rome Conference. Such conventions provided means of centralizing scientific resources and speeding up conservation work and gave better results than *ad hoc* negotiations between individual States.

5. Two very important questions arose in connexion with the draft articles. The first was whether some States had a special interest in the elaboration and application of conservation measures, whereas others had no such interest. The second was whether any kind of superior appellate body should be set up if agreement could not be reached and, if so, what should be its nature and powers. So far as the first question was concerned, he said that all countries, except land-locked countries, were in fact coastal States and had a special interest in the fish close to their shores; that was merely a recognition of a fact. Yet it did not really follow that every coastal State should have exclusive fishing rights in the areas adjacent to its territorial sea.

6. The reasons for his view were based partly on geography and partly on the habits of fish. He noted that, of the seventy-four coastal States participating in the Conference, about fifty shared common seas. The life

¹ Report of the International Technical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2).

cycle of the herring of the North Sea — a good example of a common sea — took the fish through the coastal waters of eight States which all fished the herring at different stages of its life cycle. Which of those States would have the special interest? If all were regarded as having a special interest and were to apply conservation measures on a unilateral basis, the situation would indeed be chaotic. These observations applied not only to pelagic fish such as the herring, but also to cod, tuna, whales and other species. Exclusive fishery zones marked out on maps would not bring a stock of fish under the effective control of a particular State; the wider zone within which conservation could prove effective required the agreement of all the States concerned.

7. Agreements should therefore be concluded through conservation commissions or, in the absence of such commissions, by direct negotiations between States. Article 55 as drafted, with its emphasis on unilateral action in a specific high seas area, would not meet such situations or serve as a general formula but would rather tend to produce confusion and even anarchy in the fisheries. The article should be replaced by a provision to the effect that any coastal State which was unable to obtain agreement to a satisfactory conservation régime should be entitled to make its proposals, accompanied by supporting evidence, to some outside and impartial expert body which would be empowered to approve those proposals, if necessary modify them, and give them effect as an interim régime if the evidence seemed sufficient on a *prima facie* review to justify their adoption. That interim régime should safeguard and protect the interests of the coastal State and of other States pending an examination of all relevant facts concerning the fishery and the stock with a view to a final decision at some later time by the expert body in question.

8. All disputes relating to conservation measures should be referred to an independent expert body whose decisions would be binding upon all the States concerned, including newcomers. The cause of conservation would certainly be advanced if the parties to any dispute were prepared to accept the impartial verdict of the body of experts. However, if that procedure was not acceptable, the United Kingdom would be equally prepared to accept an arrangement (except where a State was seeking to exercise an initiative against others or where a newcomer to a fishery was required to conform to existing conservation measures) whereby the parties could, as an alternative, undertake to seek the opinion of an outside commission of referees and then decide in the international conservation body whether to accept and implement that opinion. That arrangement would be less desirable than the first because it could result in the non-application of necessary conservation measures.

9. His delegation would, in principle, support draft articles 57, 58 and 59 and felt that the proposed system was essential to the effective application of the fishery articles as a whole. He expressed certain doubts about the title "arbitral commission" and pointed out that the purpose of that body would be to weigh biological and technical factors and make recommendations rather than arbitrate in the customary sense of the term. It might also be well to establish a standing panel of

experts from all parts of the world from among whom commissions of referees might be selected to settle specific disputes.

10. He observed that when the intensity of fishing reached a certain point in a given area, fishing might have to be controlled. He considered that when that point was reached in the case of any particular stock of fish, the scheme of regulation should recognize the special position of the small-boat communities of the coastal State or States which fished very small quantities of the stock. That provision was sometimes made under existing conservation conventions and could help to solve the economic problems of less developed fishing communities. Alternatively, deep-sea fleets might abstain from operating in specific off-shore areas which would thereby be reserved for the small-boat communities of the neighbouring State.

11. In conclusion he said that the coastal State's interest was twofold. First, it must ensure that fishing on the high seas off its shores was wisely conducted in accordance with proper conservation measures so that the maximum benefit could be derived from the resources of the sea. Secondly, it must secure a fair share of the catch if fishing had to be controlled quantitatively.

12. The Indian representative in the First Committee had recently stated that the concept of the seas as the common property of all nations to be appropriated to the use of mankind for the benefit of all should be reconciled with the particular needs of coastal States. That was a sound statement of the issues involved, and the United Kingdom delegation felt that the resources of the high seas could be most rationally used in the interests of all through the establishment of a proper conservation régime and not by dividing the sea into exclusive fishing domains.

13. Mr. DE LA PRADELLE (Monaco) emphasized his country's keen interest in matters relating to the sea. Prince Rainier III, for example, was President of the International Commission for the Scientific Exploration of the Mediterranean, and Prince Albert had founded the Oceanographic Institute of Paris in 1906.

14. It was no longer true to say that the living resources of the seas were inexhaustible, for some species had already become extinct, and he recalled that in view of the steady growth of the world's population, experts of the Food and Agriculture Organization of the United Nations had called for measures to increase the productivity of the living resources of the high seas. Conservation was not enough, however; what was needed was an increase in the productivity of the resources of the sea and for that purpose an international system regulating fishing should be established.

15. He announced that his country intended to set aside the Monegasque continental shelf as a fish reserve where no fishing would be allowed and where certain Mediterranean species of fish threatened with extinction would be reared. In that way, by practising the principle of abstention, Monaco would contribute to the establishment of international fishing regulations.

16. Mr. THURMER (Netherlands) was in general agreement with the substance of articles 49 to 60 of the International Law Commission's draft, which were aimed

at giving effect to the principle of conservation and rational exploitation of stocks of fish. Not only the draft, but also the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955, had underlined the immense importance of that principle.

17. He believed that article 49 implied the right, not only for the nationals of contracting States, but also for the contracting States themselves, to fish on the high seas. He agreed with the International Law Commission's opinion that the term "nationals" in articles 49, 51, 52, 53, 54 and 56 referred to fishing boats having the nationality of the State concerned, irrespective of the nationality of the crews. That interpretation of the word "nationals" should, however, be incorporated in the text of the convention itself.

18. With regard to article 55, he thought that coastal States contemplating the adoption of the measures referred to in the article should be obliged to satisfy a competent international body that the requirements stipulated in paragraph 2, sub-paragraphs (a) and (b), were fulfilled. But that article should not be construed as authorizing coastal States to abrogate unilaterally existing regulations adopted in accordance with articles 51 and 52 (regarding measures of conservation of the living resources of the high seas). Such regulations should be capable of being suspended only by an arbitral commission.

19. His delegation doubted whether article 60 (fisheries conducted by means of equipment embedded in the floor of the sea), were fully justified, and reserved the right to comment on it at a later stage. If the article were adopted, it would be necessary to provide for the settlement of disputes by arbitration, in conformity with the procedure laid down in articles 57 to 59. Moreover, the arbitration clause itself (article 57) should be redrafted in terms which would ensure its regular application.

20. With the principle of the freedom of the high seas in mind, his Government was convinced that it was in the interest of States engaged in fishing that the marginal belt of territorial waters should remain as narrow as possible. His delegation was therefore in favour of the maintenance of the three-mile zone of territorial sea. That breadth would, in his delegation's opinion, be fully reconcilable with the special interest of the coastal State in the fisheries in the zone contiguous to the territorial sea, and would, at the same time, safeguard the interests of all States engaged in fishing.

21. He pointed out that the general principles laid down by the International Law Commission did not exclude the possibility of adequate regulations being arrived at by means of regional conventions.

22. States whose nationals were engaged in fishing, or would be so in the future, had a common interest in seeing the stocks of fish in the sea exploited in the most effective way possible. Their object should therefore be co-operation for the purpose of conserving and developing those stocks. Nevertheless, the necessary regulations to that end should not be of a discriminatory nature.

23. Mr. HULT (Sweden) said that article 27 of the International Law Commission's draft, concerning the freedom of the high seas, was the basis of all the dis-

cussions in the Third Committee. The only exceptions to that principle, in so far as it affected fishing, referred to sedentary fisheries (article 68) and fisheries conducted by means of equipment embedded in the floor of the sea (article 60). The Swedish delegation wholeheartedly supported the principle of the freedom of fishing on the high seas. It followed from that principle that the provisions in the articles on the conservation of the living resources of the sea were of the utmost importance, and the Swedish delegation regarded such measures of conservation as essential. Accordingly, it supported the general principles laid down in articles 49 to 53, subject to certain drafting changes.

24. The common basis for discussions of the problems connected with fishing was the fact that the stock of fish in the sea was a natural resource common to all. Consequently, the maintenance of the productivity of a given stock of fish was of equal interest to all States fishing it, and coastal States did not necessarily have a greater interest in maintaining the stock than did other nations. Conceivably, a coastal State might not utilize the living resources of the sea adjacent to its coast, while a non-coastal State fishing the stock of a particular area had a vital interest in maintaining or increasing the yield from that area.

25. To recognize a special right vested in the coastal State over that part of the high seas which was adjacent to its coast would be to give that State preferential treatment at the expense of other States. There were no grounds for granting coastal States a special position, and for that reason his delegation strongly opposed articles 54 and 55, which, by providing that coastal States might adopt unilateral measures for the regulation of fishing in any area of the high seas adjacent to their territorial sea, granted such States rights which they had not previously possessed under international law.

26. He pointed out that the provisions of articles 51 to 53, regarding conservation measures, applied to areas of the high seas up to the limits of the territorial sea, which meant that such areas would be subject to two sets of rules: those set forth in articles 51 to 53, and those contained in article 55. That would inevitably create difficulties, particularly since there was no provision limiting the area in which coastal States were competent to take measures in pursuance of article 55. He felt that articles 51 to 53 were fully adequate in themselves.

27. He drew attention to the problems that might arise if different coastal States ordered unilateral measures of conservation which were incompatible with each other but which would all be valid at least pending the establishment of an arbitral commission and the giving of its award.

28. Article 56 would, if slightly modified, provide coastal States with a sufficient guarantee that the living resources of an adjacent area would be conserved, and so render article 54 superfluous.

29. In view of these considerations, he was in favour of deleting articles 54 and 55 from the draft.

30. He observed that the term "coastal State" was not without ambiguities. Moreover, paragraph 3 of the commentary on article 54 admitted the possibility of coastal States claiming special interests in areas far removed from their shores. In view of that and other

considerations, his delegation was unwilling to agree to provisions granting coastal States any special rights over the regulating of fishing on the high seas, although it was prepared to consider special claims that might be put forward on behalf of States whose economic conditions were such that fishing was their principal, or even their only, source of income.

31. He stressed, lastly, that his delegation would be unable to accept any system of conservation of the living resources of the high seas unless it were accompanied by rules providing for compulsory arbitration.

32. Mr. MICHELSEN (Belgium) said that his delegation could not agree with the view put forward by some representatives that the trends which had become noticeable in some States with regard to the law of the sea represented progress. On the contrary, such trends were an obstacle to the final goal, which was that the riches at the disposal of humanity should be exploited by all in complete liberty and on a basis of equality. Belgium, which entirely supported the principle of the freedom of the high seas, rejected any provisions conflicting with that principle.

33. Wherever there was a possibility that the living resources of the sea might be endangered by over-exploitation, the nations concerned should take measures of conservation, which should be inspired by a sincere desire to preserve the common patrimony. The interests of the inhabitants of coastal States with seas abundant in living resources should have equal weight with those of States which were without rich areas of adjacent sea but which had always taken part in fishing the high seas.

34. Some representatives had said that the recognition of special rights vested in the coastal State would especially benefit these States whose fishing was underdeveloped. It would, they argued, enable the coastal State to defend itself against competition from technically better-equipped fleets from other countries, which came to fish in the areas adjacent to its territorial sea. In his view, that argument was based exclusively on economic and technical considerations, and could not be admitted either as a basis for international law or as a justification for any attempt to limit the fundamental principle of the freedom of the seas. He tended all the more to that view because he felt it could be hoped that the fishing fleets of those countries would quite soon have been able to catch up and come into line with the most highly organized industries.

35. He regretted to note that the nations represented in the Committee had tended to become divided into two blocks : coastal States bordering on rich fishing-grounds, and the rest. He gave an example of the dangers which might result from such a division. Belgium's coastline was very short. Consequently, Belgian fishermen had gone fishing, in complete liberty and in company with the fishermen of other nations, along the coasts of England, the Netherlands, Scotland, Germany, Denmark and Iceland. If the views of certain countries were to prevail and find acceptance in international law, there was no doubt that Belgian fishermen would soon disappear from the seas and Belgium itself would become almost entirely dependent for its supplies of marine products on countries in a more advantageous geographical position.

36. That contingency was unlikely to materialize, in

view of the historic rights acquired by Belgian fishing in the North-East Atlantic. However, the example quoted gave an indication of the possible dangers to which the new trends might lead.

37. Only through sincere collaboration between States would it be possible to protect the living resources of the sea, and Belgium regarded such collaboration as the wise and moderating factor on which the principle of freedom should be based.

38. Belgium could not support provisions which might lead to encroachment on the high seas, whether by an extension of the breadth of the territorial sea, by the drawing of excessive baselines or by the granting of sovereignty over the living wealth of the continental shelf. In addition, it had important reservations to make with regard to the principle of abstention and to articles 51 and 55. Article 58 should be broadened, and should include the interests of the community among the criteria to be applied by the arbitral commission.

The meeting rose at 4.40 p.m.

EIGHTH MEETING

Friday, 14 March 1958, at 3.10 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. GRAU (SWITZERLAND), MR. CUSMAI (ITALY), MR. RUIVO (PORTUGAL), MR. KRISPIS (GREECE), MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY), MARQUIS DE MIRAFLORES (SPAIN) AND MR. ALLOY (FRANCE)

1. Mr. GRAU (Switzerland) said that although Switzerland had no immediate practical connexion with the subject of the Committee's discussions, it would follow them with great interest in view of the international character of the proceedings. He felt certain that the Committee would be successful in its work.

2. Mr. CUSMAI (Italy) said that as a result of scientific research it had become clear that measures were required for the conservation of the living resources of the sea. Several States had already drawn up precise regulations on fishing, and there were many international agreements whose object was to protect fishing in certain areas and for certain species of fish. Italy had set up a commission of administrative officers, biologists and technicians, which had recently begun the study of new regulations for fishing.

3. Whether or not the committee accepted the articles drawn up by the International Law Commission, all members were agreed on the need for international regulations on fishing in order to avoid a repetition of the disagreements which had arisen as a result of the different criteria adopted by countries with regard to such matters as the delimitation of the territorial sea, contiguous zones, the continental shelf and breeding-

grounds where fishing was prohibited to fishermen from foreign States.

4. While it was true that many of the International Law Commission's draft articles which referred to fishing fell within the purview of other committees, he did not agree with the proposal for joint meetings, for which the time was too short. It would be better that the committee should study all the draft articles relative to fishing and communicate its views on them to the other committees concerned. Article 15, for example, laid down the right of innocent passage through the territorial sea for all ships, and paragraph 1 of the commentary explained that the term "ships" included fishing boats. But article 18 stated that foreign ships exercising the right of passage should comply with the laws and regulations enacted by the coastal State. Under the customs laws of some countries, fish was regarded as contraband if unaccompanied by the necessary documents. But was there any fishing-boat to which such documents could be supplied unless it was known whether it was in fact going to fish, what species of fish it was likely to catch and in what quantity? It would therefore be necessary, in order to avoid misunderstandings and incidents, to lay down clearly that fishing boats had the right of innocent passage, subject, naturally, to guarantees against abuse.

5. If fishing-boats were to be included in the category of commercial government ships, for which immunity was provided in article 33, he felt that the provisions of that article clashed with those of articles 51 to 56, which gave coastal and non-coastal States special powers in the high seas, and with those of several international agreements in force. He felt, in general, that the Committee should, in its study of the articles relating to fishing, attempt to decide on criteria which would bring those articles into line with the provisions of international conventions on fishing already in existence.

6. Articles 51 and 54 were liable to give rise to divergent interpretations. Some clarification was therefore needed, and a paragraph should be added to article 51, or a new article should be inserted, stating that a State which adopted measures to regulate and control fishing in an area of the high seas should inform other countries of such measures before they came into force.

7. The limitation contained in paragraph 1 of the commentary to article 52 on a State's right to enter into negotiations for the conservation of the living resources in a given area of the high seas should be inserted in the text of the article itself and the word "regularly" should be better defined. The expression "a reasonable period of time" used in article 52 and subsequent articles should also be made more explicit. The phrase "the high seas adjacent to its territorial sea" in article 54 was also ambiguous, and might be interpreted variously, according to whether a State had a vast expanse of ocean or a small internal sea lying off its coasts. If attention were not paid to such geographical differences, a situation might be reached in which the seas were divided by a median line, with the countries on one side of it being unable to fish in the other half and vice versa. That would be incompatible with the freedom of fishing in the high seas laid down in article 27.

8. Article 55 needed the greatest consideration, on account of the extensive rights which it gave to coastal States. The first two of the three conditions which coastal States must satisfy if its measures were to be valid as regards other States did not in fact justify such measures, since the idea of a scientifically proved "urgent need" for measures of conservation did not accord with the slow development of natural phenomena which was the scientific reality. Hence, coastal States would normally have time to enter into negotiations with the other countries concerned and to have recourse to arbitration before any "urgent need" arose. His delegation felt that in any case article 55 was not indispensable, since the provisions of articles 51, 52, 53 and 54 were more than sufficient to guarantee the protection of the living resources in the high seas adjacent to the territorial sea of any State.

9. With regard to article 57, he pointed out that the arbitral commission would become a judicial body whose decisions would have universal validity. That went beyond the traditional limits of arbitration. In addition, as had been stressed at the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955, it was often necessary to conduct protracted research before being able to decide whether conservation measures were necessary or not. It would thus be extremely difficult for the arbitral commission to render its decision within the five months laid down in paragraph 5 of article 57. That article would therefore require amendment. His delegation reserved the right to return to articles 58, 59 and 60, as well as to those articles on which he had commented in a general way.

10. Mr. RUIVO (Portugal) said that the law of the sea, like every other branch of law, should develop in the light of the great scientific and technical progress that had occurred, especially with regard to the exploration and exploitation of the living resources of the sea.

11. The growth of populations, the need to raise standards of living and the process of industrial expansion had led governments to intensify the exploration of those resources. An excessive increase in fishing might lead to the exhaustion of fish stocks, while arbitrary or inadequate measures of conservation might mean that fisheries were under-developed. Both possibilities could lead to conflicts between nations.

12. The only effective way of solving such problems was to draw up a body of legal provisions based on scientific and technical data. For that reason the Portuguese Government placed a high value on the draft articles prepared by the International Law Commission. The articles included several innovations—for example, the references to the special interests of coastal States and the rights relating to the resources of the continental shelf—but they nevertheless upheld the fundamental principle of the freedom of the seas. Intransigent and extremist positions, which called for an almost complete revision of the law of the sea and which sought to set up virtual monopolies in fishing areas, would have to be abandoned if progress were to be made.

13. He stressed the importance of fishing for Portugal's national economy and the feeding of its population.

That was why his Government believed that the interests of coastal States should be taken into consideration, although not in such a way as to limit the exploitation of the living resources of the seas by all nations. There was the danger that the granting of priority rights might lead to the under-development of those resources.

14. His delegation had followed with great interest the attempts to define the legal relationship between the continental shelf, with its natural resources, and the coastal State. Scientific arguments, however, led to different conclusions with regard to the living resources of the sea. A fishery could not be artificially separated from the ecological system which surrounded it. A localized fishery in an area of the high seas or on a continental shelf was the last stage in a long chain of events which sometimes originated hundreds of kilometres away. For such reasons, measures of conservation should be based on scientific and technical factors, of which the definition and geographical delimitation of fish stocks was the most important. A purely administrative view might lead to positive results, but it could not often do anything to guarantee "the optimum sustainable yield" (article 50). He would therefore like to see more clearly defined the areas of the high seas which might be held to have a special interest for coastal States.

15. He felt that article 56, which enabled States, even if their nationals were not engaged in fishing in an area of the high seas not adjacent to their coasts, to request other States to take the necessary measures of conservation in that area, might conflict with the principle of the freedom of the seas. It could only be accepted if it referred to fisheries belonging to the same ecological system or to stocks which had the same bio-ecological characteristics, or if such fisheries were engaged in catching the same stock even though they were geographically separated. Although the definition and delimitation of stocks was clearly a difficult task, it would have great advantages for the framing of really valid measures of conservation.

16. In that connexion, the Portuguese Government attached great importance to the regional fisheries conventions and the work of their corresponding permanent commissions. The latter could co-ordinate research programmes, lay down the necessary conservation measures for a fishery and ensure that such measures were being carried out. Any disputes between States bound by a fishing convention should first be brought before the permanent commission concerned. Recourse to the kind of arbitral commission provided for in the International Law Commission's draft should be the last stage, when all other means of settlement had been exhausted.

17. He felt that the composition, rules of procedure and periods for rendering decisions of the arbitral commissions should be more closely defined, if the articles on the conservation of living resources which were of a compulsory nature were to be accepted with any confidence.

18. Mr. KRISPIS (Greece) said that it was of vital concern to the international community to find ways and means of making the optimum use of the living resources of the high seas, particularly as some species

were in grave danger of extinction owing to modern intensive fishing techniques. His country's interest in the establishment of suitable fishing regulations was obvious in view of its geographical situation and the importance of fish in the national diet.

19. Turning to the Commission's draft, he said that the use of the word "right" in article 49 was commendable, for—unlike the word "freedom" in subparagraph (2) of article 27—it implied a power recognized by law. The word "nationals" in article 49 was, however, open to a variety of interpretations and should be clearly explained.

20. Articles 50 to 59, which represented revolutionary progress in international law, had a common heading but dealt with two separate topics—namely, the conservation and the maintenance of the productivity of the living resources of the high seas. Conservation was defined in article 50 and dealt with in articles 51, 52, 53 and 56. Maintenance of productivity, which was dealt with in articles 54 and 55, had not been defined, however, and that could well lead to misunderstandings. Redrafting was therefore indicated so that the concepts of conservation and the maintenance of productivity could be placed on the same footing and regulated by the same provisions.

21. He pointed out that, for purposes of conservation and the maintenance of productivity, four broad categories of cases had been envisaged in the Commission's draft. The first was covered by paragraph 1 of article 56 which was somewhat unrealistic, and he felt that the interest to which it referred could not really be described as special. It was difficult to see, for example, how Greece could have a special interest in the enactment of regulations for the protection of pink salmon in the seas near Alaska simply because the Greek people happened to like pink salmon. Paragraph 2 of article 56, moreover, was badly drafted, since it referred to an agreement but failed to specify the parties to that agreement. His delegation therefore proposed the deletion of article 56.

22. The second category was dealt with in article 51, the provisions of which were in conformity with international law. When the nationals of other States arrived to fish in the same area of the high seas, article 52 became applicable.

23. The third category was covered by article 52, which was acceptable. His delegation also concurred in the idea that conservation measures should be imposed on the States concerned should they fail to reach agreement.

24. With respect to the fourth category, his delegation felt that a State whose nationals were not engaged in fishing in a specific area of the high seas adjacent to its territorial sea could be treated as if it had fishing interests in that area. The fourth category could, therefore, be assimilated to the third.

25. His delegation accordingly accepted, in principle, articles 50, 51, 52 and 53 and paragraph 2 of article 54.

26. The provisions of paragraphs 1 and 3 of article 54, however, were unwarranted and should be deleted. It was enough that the coastal State's geographical situation for purposes of fishing in the waters adjacent to its territorial sea should be more favourable

than that of other States. To recognize that it had a special interest might tend to create a kind of coastal high seas, an unacceptable notion since it might in some circumstances jeopardize the freedom of the high seas. A suggestion along those lines had moreover been rejected by the Rome Conference of 1955.

27. Article 55 should also be deleted. It was difficult to understand why a coastal State should be allowed to adopt unilateral measures in such conditions. Any State anxious to adopt such measures would find it an easy matter to bring about the breakdown of negotiations. It was also unclear why the coastal State should be in such a hurry to adopt unilateral measures instead of resorting as quickly as possible to arbitration. To provide for cases of that kind, the arbitral commission could, in urgent cases, be authorized to render provisional decisions prescribing interim conservation measures. For that reason, the most suitable machinery to discharge the arbitration tasks described in article 57 would be a permanent international body with certain limited legislative powers, enabling it to prescribe fishing seasons, amounts of catches, etc., broader administrative powers, and perhaps some judicial powers.

28. His delegation had originally intended to propose the establishment of a body of that kind but found support for the idea lacking. It still hoped that proposals along those lines would be made and accepted; but if not, it would support the idea of compulsory arbitration as a minimum condition for accepting regulations on the conservation of the living resources of the high seas. He noted with regret that it had been suggested in certain quarters that article 57 should be deleted, and pointed out that to promulgate conservation regulations without providing for arbitration machinery would inevitably restrict the freedom of the high seas in one of its most important aspects—namely, fishing. That situation would undoubtedly lead to disputes and conflicts.

29. He noted that whereas the articles on the continental shelf sought to fill a gap in international law, the fisheries articles were designed merely to adapt existing international law to new needs and situations. The changes proposed did not in principle infringe upon the freedom of the high seas. Indeed, they were designed to protect that freedom from fishing claims which tended to destroy certain aspects of that freedom under the guise of progress.

30. In conclusion, the regulation of fisheries in the high seas should be based on two implicit conditions: first, that no regulation should be so construed as to exclude newcomers from fishing in any area of the high seas, and, secondly, that any regulations agreed must be interpreted and applied on a bona fide basis.

31. Mr. PFEIFFER (Federal Republic of Germany) congratulated the International Law Commission on selecting, as the basis for its draft, the freedom of the high seas which, as was explicitly recognized in article 27, implied freedom of fishing.

32. The task of conserving the living resources of the high seas was of vital consequence to the world's population but his delegation hoped that the conservation measures proposed would not hamper the freedom of fishing more than was absolutely necessary.

33. The State referred to in article 51 was certainly responsible to some extent for the conservation of the living resources of the high seas and should therefore be required to issue appropriate regulations for its nationals in so far as such regulations were warranted. Yet it would be unjustified to impose such regulations, which, being unilateral, might well have been prompted by other than biological considerations, on the nationals of other States who arrived to fish in that area at a later date.

34. The same objection could be raised to the provisions of article 52. If the States concerned had similar economic, social or political interests they might well draw up fishing regulations which were not entirely based on biological considerations. Furthermore, it was not inconceivable that fishing conventions might be based on a synthesis of such interests, including those of the fisherman and the consumer, and therefore it would be unwarranted if not unjust to impose their provisions, even temporarily, on the nationals of other States who subsequently engaged in fishing in the area concerned.

35. His delegation felt that article 54 went too far and to all intents and purposes established a contiguous fishing zone. The right referred to in paragraph 2 of article 54 should be granted to the coastal State only if its nationals were actually engaged in fishing the same stocks in the territorial sea, the adjacent area of the high seas or in both areas.

36. Paragraph 1 of article 55, which authorized the coastal State to adopt unilateral measures of conservation, would restrict the freedom of the high seas.

37. Furthermore, the term "special interest" in the context of article 56 was vague. A special interest of that kind could be recognized only in cases where the nationals of a State fished, in their territorial waters or in the high seas, the same stocks as were fished by the nationals of other States in other areas of the high seas. His delegation would therefore prefer a more specific term in order to avoid possible misunderstandings.

38. His delegation would submit a text to replace articles 51 to 56 in order to bring into harmony the concepts of the need for conserving, in the interests of the international community, the living resources of the high seas, the various interests of States engaged in fishing and the principle of the freedom of the high seas.

39. With regard to the settlement of any disputes that arose, his delegation accepted in principle the idea of an arbitral commission.

40. Marquis DE MIRAFLORES (Spain) stressed that, as an important fishing nation, with a large part of its national income derived from the fishing industry and a large fishing population, Spain had a particular interest in the success of the Third Committee's work.

41. Articles 49 to 60 constituted an attempt to draw up regulations governing the enjoyment of the classical and fundamental principle of the freedom of fishing in the high seas. That principle should not endanger the conservation and exploitation of the living resources of the sea at the expense of millions of human beings. On that point, the States represented in the Committee

seemed to be in agreement and to favour the introduction of a series of regulations which would guarantee the conservation of resources.

42. The International Law Commission's draft was founded on two basic principles—first, the idea of permanent collaboration between the States concerned, and, secondly, that of compulsory arbitration. The idea of permanent co-operation constituted the only ground for the partial renunciation by States of the existing principle of freedom of fishing on the high seas. In order that such collaboration might not be endangered by disputes, it seemed advisable, not only to lay down regulations governing such disputes, but also to provide for an international body to promote co-operation. It was not a question of attempting to revive the idea of an international legislative body, which had already been discarded by the International Law Commission, but to draw attention to the need for filling a gap which might appear in practice if no provision were made for an international body to further co-operation. Such co-operation could not be left to ordinary direct negotiations between States. It was necessary to place it on an institutional basis. If that were not done, any regulations agreed might lose their force, or there would be an excessive recourse to arbitration, which would undoubtedly diminish the spirit of co-operation between States. Thus, without discarding the idea of compulsory arbitration for settling the more important disputes, it was worth considering setting up an international body or commission which would be more easily accessible and in a better position to take decisions than an international tribunal. Some part of the varied international organizations already in existence might be used for that purpose.

43. Regional agreements might help to reduce fishing disputes and to ensure the fulfilment of regulations. Such regional agreements should not be interpreted in a purely geographical sense when it came to the question of fishing, since that might lead to artificial divisions of species.

44. The concept of the adjacent high seas (article 54) should be more clearly defined on the basis of a fixed depth beyond which fishing was not economically viable.

45. The Spanish delegation accepted the principle that coastal States should be empowered to take unilateral measures of conservation, but felt that the exercise of that right should be governed by clearly defined rules, since it was a new right and was not granted by the international community for the coastal State's exclusive benefit, but in the interests of all. It therefore should not be invoked to justify positions of dominion or in such a way as to damage other States' interests.

46. Coastal States interested in adopting conservation measures on the high seas adjacent to their territorial sea should continue to seek bilateral or multilateral agreements. If such agreements proved impossible, that in itself showed that there were vital interests at stake, and those should not form the subject of unilateral measures. In default of agreement, recourse should be had to an international body. That would be more equitable and practical than having recourse to the idea of priority rights.

47. The Spanish delegation agreed with the Interna-

tional Law Commission's opinion that the granting to States of rights on the high seas, which went beyond the limits of international law currently in force, should be balanced by a body of guarantees that would safeguard the legitimate interests of the other States interested in the exploitation of the riches of the sea.

48. His delegation reserved the right to introduce various concrete amendments to the articles submitted to the Committee.

49. Mr. ALLOY (France) emphasized the importance of the fishing industry to his country, which was keenly interested in the rational conservation of the living resources of the high seas and co-operated in a number of international fishery conventions. He congratulated the International Law Commission on its draft, which was based on a desire to ensure freedom of fishing and equality for all States. Some of its articles, however, required amendment. His delegation would be unable to accept article 55, since it authorized the coastal State to take unilateral measures of conservation. If conservation measures seemed necessary in any area, all the States concerned should, on a basis of equality, discuss their advisability and be given a reasonable time to reach agreement. If no agreement was reached, the matter should then be referred to arbitration and the coastal State should not issue any regulations pending the outcome.

50. The Committee's discussions on the freedom of fishing on the high seas would be influenced to a large extent by the decisions reached in other committees on the breadth of the territorial sea and on the exploitation of natural resources of the continental shelf.

The meeting rose at 4.50 p.m.

NINTH MEETING

Monday, 17 March 1958, at 1.10 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. CORREA (ECUADOR), MR. ALVA-REZ (URUGUAY), MR. HAN (REPUBLIC OF KOREA), MR. CIEGLEWICZ (POLAND), MR. POPOVIC (YUGOSLAVIA), MR. OZERE (CANADA) AND MR. DE FONSEKA (CEYLON)

1. Mr. CORREA (Ecuador) said that whereas the International Law Commission was concerned with the codification and progressive development of international law, the Conference, being composed of plenipotentiaries, had much wider powers; indeed, it had virtual legislative functions which it should not hesitate to use. The law was not something static; it should evolve *pari passu* with the evolution of international life in general.

2. Ecuador's economy depended in no small measure on the living resources of the sea adjacent to its coast;

hence his country had a special interest in the matters referred to the Committee. As the delegations of the Latin American countries bordering on the Pacific had said repeatedly, for a number of reasons the fishing problems of those countries constituted a special case. First, owing to the influence of the Humboldt Current along the coasts of Chile, Peru and Ecuador, the adjacent seas abounded in a wide variety of fish; the inter-action of the current and the climate had, moreover, created a geographic-biological unity between the mainland and the sea. Secondly, the erosion of the Andes had contributed to the wealth of the living resources of the adjacent seas. Thirdly, certain stretches of the South Pacific coast had no continental shelf in the strict sense of the word, since the seabed dropped away sharply; the coastal States of the area would therefore benefit to a limited extent only from the recognition of their sovereignty over the resources and waters of the continental shelf. Fourthly, the economic future of the countries in question depended to a great extent on the Pacific fisheries. Fifthly, stocks of fish in the area had been exploited intensively by large, foreign-owned fishing fleets using modern equipment not available to the under-developed coastal States. Lastly, the destruction or depletion of such stocks would have far-reaching economic consequences for the countries of the region.

3. It was with the object of safeguarding the resources of the maritime areas off their coasts that Chile, Ecuador and Peru had, by the Declaration of 1952, laid down a common policy for the conservation, development and rational exploitation of those resources and set up joint machinery for the regulation of fishing in the areas in question. That declaration was not an isolated case; other countries had enacted regulations concerning the use or conservation of the living resources of the high seas.

4. His delegation would therefore seek international recognition of a special, preferential and unconditional right, vested in the coastal State, by reason of its geographical position, to utilize the living resources in an area of sea adjacent to its territorial sea and to issue, unilaterally, regulations governing the conservation, control and exploitation of those resources and applicable to the nationals of any other States who came to fish in that area. The recognition of that right was a legitimate limitation of the freedom of the high seas which had, in any event, ceased to be an absolute freedom. Unlimited freedom under present conditions of economic inequality would render the right of all nations to the wealth of the sea illusory and convert the high seas into the exclusive province of large fishing interests. Besides, the exercise of sovereign rights by the coastal State over the resources of the continental shelf had produced a trend that would make the recognition of the coastal State's rights over the fisheries of the contiguous zone inevitable, because the same considerations appeared to be applicable to both cases.

5. The International Law Commission had been forced to recognize, in the provisions relating to conservation, the special status of the coastal State, but had done so somewhat cautiously. That caution was not, however, evident in its statement of the coastal State's sovereign rights over the continental shelf; and yet, the "geo-

graphical phenomenon" referred to in paragraph 8 of the commentary on article 68 and the other circumstances of the Latin American States on the Pacific coast should provide sufficient grounds for the recognition of their special right over the living resources of the zone adjacent to their territorial sea.

6. Referring to articles 54 and 55, he pointed out that the rights and duties of all States, coastal or otherwise, in respect of the conservation measures referred to in articles 51 and 52, were not qualified by conditions as were the rights of the coastal State. It was illogical, in his opinion, that a right emanating from a special interest should be more limited in scope than a right based on a general interest. Conservation measures should be based on scientific evidence and findings but, as was pointed out in paragraph 56 of the Report of the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955,¹ the problem was to reach agreement on the basis of such findings.

7. Article 55 in its present form would create more difficulties than it solved and would render the coastal State's rights nugatory. The Indian representative had indicated the correct approach (5th meeting). The French delegation's amendment to article 55 (A/CONF.13/C.3/L.3), on the other hand, would, if adopted, make the conservation system completely unacceptable to a large number of States.

8. The system for the settlement of disputes described in article 57 had been widely criticized, and it seemed that States were not prepared to accept compulsory arbitration. Other methods must therefore be sought; and he suggested, for example, the establishment of a widely representative United Nations body under the Economic and Social Council. Alternatively, a special fisheries body might be set up under Article 57 of the United Nations Charter, or else a division concerned with the conservation of the living resources of the high seas might be established in the Food and Agriculture Organization of the United Nations. Yet another mode of settlement of disputes was that referred to in the Mexican proposal (A/CONF.13/C.3/L.1).

9. Mr. ALVAREZ (Uruguay) said that, under its terms of reference, the Conference was empowered to create international law of universal application. For according to article 38 of the Statute of the International Court of Justice treaties constituted the principal source of international law, and General Assembly resolution 1105 (XI) expressly mentioned "one or more international conventions" (operative paragraph 2). That provision should be read in conjunction with paragraph 1 of Article 13 of the Charter, which spoke, in sub-paragraph *a*, of the "progressive development of international law". Some representatives had said that many of the new provisions drafted by the International Law Commission were anything but progressive; his delegation did not share that view, though admittedly the emphasis on certain principles was misplaced.

10. He noted with satisfaction that the rational exploitation of the living resources of the high seas had been recognized; in Uruguay such exploitation was

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

carried on under the supervision of a special scientific body. The principle of the conservation of the living resources of the high seas proclaimed in article 50 also met a long-standing need.

11. His delegation still felt, however, that the necessary balance between the vital interests of the coastal State and the rights of other States had not been achieved in the International Law Commission's draft, which required considerable amendment, as Uruguay had already pointed out in the Sixth Committee of the General Assembly at its Eleventh Session.

12. Any attempt to determine which State was competent to adopt conservation measures should take into account three basic interests that should be reconciled — the international interest, the coastal State's interests and the interests of third States. His delegation considered that the coastal State was competent to adopt conservation measures relating to those areas of the high seas which were adjacent to its territorial sea. Its competence to do so was a special power conferred upon it by international law, regardless of whether it exploited the resources affected or not. It was both a right and also a duty imposed by the international community in the general interest. That competence of the coastal State was complemented by the right of any other State, should it feel that the conservation measures adopted by the coastal State were unsuitable, biased or inadequate, to set in motion as a last resort the compulsory arbitration machinery provided for in article 57.

13. The competence of the coastal State could be limited to the continental shelf, and in the absence of such a shelf its scope should be determined by reference to existing circumstances. His delegation, in short, considered that the competence to adopt conservation measures had been attributed to the coastal State by the international community for the following reasons: first, it was in the best geographical position; secondly, it had the greatest interest in conservation; thirdly, in cases where the coastal State had a continental shelf, there was an undeniable connexion between the living resources of the continental shelf and those of the superjacent water and, hence, the exploitation of the one was directly related to that of the other. The fourth reason was the existence of special economic circumstances.

14. His delegation had stated its views concerning the first two reasons at the meeting of the Inter-American Council of Jurists held at Mexico City in January 1956, when it had said that foreign fishing fleets had not the same interest as the coastal State in the conservation of living resources.¹ The validity of the third reason was clearly demonstrated in document A/CONF./13/13 prepared by the Food and Agriculture Organization of the United Nations. In that connexion he emphasized the importance of certain forms of exploration and exploitation of the continental shelf, such as oil prospecting, and pointed out that such work could directly affect, by contamination, the living resources in the waters of the continental shelf. The importance of such factors was reflected in paragraph 1 of article 48 and in article 71. The coastal State was thus

best qualified to determine what steps should be taken to remedy the situation in respect of all forms of exploitation, bringing them into harmony as required. The validity of the fourth reason had been recognized by the Commission in its commentary on article 59, under the heading of "Claims of exclusive fishing rights, on the basis of special economic circumstances".

15. He proceeded to describe the conditions under which the coastal State should exercise its obligatory competence. First, the conservation measures it adopted should take into account the interests of all the States affected by them, and it should endeavour to have them adopted by means of international agreements. Secondly, they should be supported by adequate scientific proof of their necessity and based on appropriate scientific findings, should not discriminate against foreign fishermen, and should conform to principles of equity in the distribution of the produce of the resources concerned. Thirdly, where they did not already exist, regional fishing commissions should be set up, and their recommendations should be taken into account by the coastal State, which would have to show good cause for any failure to conform to them.

16. That system would not in any way impair the rights of the nationals of other States to fish in the high seas; the exercise of any right was limited to a certain extent by the common interest and by the exercise of similar rights by other parties.

17. With respect to conservation measures in areas of the high seas not adjacent to the coast of the coastal State, his delegation agreed in principle with the provisions of the draft but considered that any such measures should fulfil the requirements laid down with respect to the coastal State in preceding paragraphs.

18. With regard to article 57, his delegation reaffirmed the traditional standpoint of Uruguay, which was in favour of unilateral summons and automatic arbitration. In connexion with the wording of article 57, he said that the personal qualifications required of the members of the arbitral commission under paragraph 3 should be of a general character, and apply in the circumstances envisaged in paragraph 2.

19. Article 58 should be amended so as to require the arbitral commission, in awards concerning adjacent areas of the high seas, to take into account the coastal State's special interest in the conservation of the living resources of those areas. Article 60 should be similarly amended to make more ample provision for the interest of the coastal State.

20. The interest of certain coastal States in the exclusive exploitation of specific stocks or specific areas which was based on special economic circumstances should be placed, for purposes of international law, on the same footing as the "principle of abstention". His delegation would support the establishment of a working group to study the matter.

21. Mr. HAN (Republic of Korea) said that fishing was a vital part of his country's economic life. Korea subscribed to the principle of the freedom of the high seas but considered that no State had a right to the unlimited exercise of that freedom to the detriment of the interests of other States, particularly in the matter of fishing.

¹ See *Yearbook of the International Law Commission*, 1956, Vol. II (A/CN.4/SER.A/1956/Add.1), pp. 237 *et seq.*

22. New regulations governing fishing on the high seas were needed to meet the situation created by modern intensive exploitation methods and to prevent over-fishing and the exhaustion of fish stocks, including bottom fish. The efforts being made by the coastal States in that direction were based on their legitimate claims to the exploitation and conservation of the living resources in coastal waters. Recognition of their claims would obviously be in the interest of the international community, since any State that engaged in unrestricted fishing in total disregard of the coastal fisheries of another State was in fact abusing the freedom of fishing.

23. His delegation considered that articles 54 and 55 did not go far enough in protecting the interests of a coastal State which depended on the conservation of the living resources of the sea for the survival of its people. The coastal State should, on the basis of scientific findings, enjoy an exclusive right to control and regulate fishing activities over a reasonable distance in the high seas adjacent to its territorial waters. For not only was the coastal State best placed to evaluate the need for conservation measures, but also such fisheries should be protected in the interests of its nationals; the sacrifices of the coastal State in applying conservation measures should not be ignored. In any event, it would be quite unreasonable to put coastal and non-coastal States on the same footing from the point of view of the distribution of the world's food supply.

24. Unless the exclusive right of the coastal State was recognized, the living resources in its coastal waters would be threatened with irrational exploitation by large fishing fleets. States wishing to fish in any area of the high seas adjacent to the territorial waters of a coastal State which had already adopted conservation measures should approach that State with a view to reaching a suitable agreement. Moreover, if the conservation measures adopted by a coastal State were made equally applicable to its own nationals and to the nationals of other states fishing in that area, the special interests of the coastal State and the general interests of the international community would be well protected. The right of the coastal State to adopt such unilateral measures was recognized in principle in a number of international fishing conventions in which an obligation to abstain from fishing was imposed on non-coastal States. His delegation supported the principle that the coastal State had a pre-emptive right to control and regulate fishing in the case of specific stocks in designated areas and felt that that principle should be extended to cover all the living resources in those areas.

25. His delegation was in general agreement with the requirements stipulated in paragraph 2 of article 55, but felt that in determining the need for conservation measures the sacrifices and efforts made by the coastal State to apply and enforce such conservation measures should be taken into consideration. The economic conditions which necessitated conservation measures should similarly be taken into account. The draft should therefore include provisions stipulating expressly that in cases of disagreement the special interests of the coastal State would take precedence over the interests of other States wishing to fish in the areas concerned. Such provisions would improve the chances of a satis-

factory settlement of such disputes and it was for that reason that his delegation favoured the principle of optional rather than compulsory arbitration.

26. Mr. CIEGLEWICZ (Poland) said that his country was co-operating actively with others in scientific research into the living resources of the sea, with a view to their conservation, and was a party to a number of international instruments concerning the regulation of fisheries. Poland was not interested only in an immediate increase in its total catch, but hoped rather, by international collaboration, to increase, or at least to maintain, the optimum sustainable yield from the living resources of the high seas.

27. In view of the complexity of the problem of conservation of the living resources of the sea and in the light of experience, his delegation considered that, so far as certain aspects of conservation and regulation were concerned, the Conference should confine itself to adopting general provisions relating to international co-operation; for special biological or economic conditions, which prevailed in certain regions and were not found generally in other seas or geographical regions, would be better covered by regional agreements. His delegation supported the principle indicated in article 52 that two or more States engaged in fishing in any area of the high seas should, when necessary, enter into bilateral or multilateral agreements to prescribe the necessary measures for the conservation of the resources in question. Such an approach to the problem of the regulation of fisheries would, it seemed, facilitate agreement among a greater number of States.

28. His delegation regarded the draft articles concerning fishing in the high seas as a valuable basis for detailed discussion. The draft very properly confirmed the generally accepted freedom of fishing (article 49). Since fishing techniques had been improving rapidly, and fishing had been intensified and was still developing, it was obvious that over-fishing was a real danger, and that more intensive exploitation might lead to the depletion of the living resources of the sea. His delegation therefore approved the provision in article 49 regarding the obligations of States in the matter of the conservation of those resources.

29. The definition of "conservation of the living resources of the high seas" contained in article 50 followed in general the definition adopted by the Rome Conference of 1955 and represented a progressive development of the law of the sea. His delegation was also prepared to endorse, in general, the new principle expressed in article 53, by which newcomers who engaged in fishing in a given area of the high seas had a duty to observe any conservation measures already in force in that area, but believed that the principle could only be applied on the understanding that such measures did not discriminate against foreign fishermen.

30. He entertained some doubts regarding the "principle of abstention" mentioned in the commentary to article 53. The principle had been discussed at the Rome Conference but had not been accepted as generally applicable for it implied unequal treatment of newcomers to a fishing area and was incompatible with the principle of equality of rights of all States as re-

gards fishing in the high seas, a principle which was implicit in draft articles 27 and 49.

31. Article 55 would require most careful discussion by the Committee, since its provision concerning unilateral action on the high seas might in practice give rise to many technical or economic difficulties. Technical difficulties might arise from the biological peculiarities of certain fish-stocks (the distant migrations of species, for instance), and economic difficulties from the unequal repercussions on the fishermen of various countries of the limitation of catches and changes in fishing methods. He thought it unlikely that article 55 would be acceptable, since discussions at the Rome Conference of 1955 and at the Inter-American Specialized Conference on Conservation of Natural Resources held in Ciudad Trujillo in 1956 had indicated that there was no agreement among States on the nature and scope of the special interest of the coastal State.

32. As had already been stressed by representatives of other countries, most careful attention should be given to defining the relation between the new provisions of the law of the sea and the provisions of existing conventions on conservation of the living resources of the sea, and the Conference should try to profit by the successful experience of the many countries which were parties to international agreements regulating fisheries on the high seas.

33. Mr. POPOVIC (Yugoslavia) said that, very properly, the draft articles contained some provisions which represented a progressive development of international law or were on the point of becoming rules of international law. There was, however, one fact which the International Law Commission had not fully taken into account. While the development of modern techniques had enabled certain countries to build large fishing fleets, the same was not, unfortunately, true of the under-developed countries, whose fishermen could not venture too far from their national waters because they did not possess modern fishing equipment. The Commission's draft articles had proclaimed the freedom of fishing on the high seas for ships of all flags, but for the fishermen of technically under-developed countries that freedom was illusory in those areas of the high seas which were not adjacent to their territorial sea, because they had no practical possibility of making use of the freedom. It was true that in article 55 the Commission had recognized the right of the coastal State to adopt unilateral measures of conservation, but that right was so hedged about with conditions that its practical value was very doubtful. Even if the conditions were to be waived or mitigated, the right of the small and under-developed countries to adopt unilateral measures of conservation would remain illusory, if they were not allowed to exclude—at least from an area of reasonable breadth adjacent to their territorial sea—foreign fishing fleets which could exhaust the area in a matter of a few days.

34. He recalled that the regulation of fisheries on an international level had been discussed at the Conference for the Codification of International Law held at The Hague in 1930, and suggested that the failure of that Conference had been due to the rigid attitude adopted by some countries towards a problem of vital interest for the majority of coastal States—namely, the question

of the breadth of the territorial sea and the exclusive right of coastal States to fish in any area of the high seas adjacent to their territorial sea. Experience since The Hague Conference had shown that the trend of international law had been away from the standpoint then adopted by those States, which had been contrary to the actual necessities of contemporary life.

35. Turning to article 54, he suggested that the “special interest” of the coastal State would be best protected by the recognition of that State's exclusive right to engage in fishing and to exploit other marine resources in a belt of the high seas adjacent to its territorial sea and by permitting such a State to adopt unilateral measures for regulating and controlling fishing activities in a further belt of the same area necessary for conserving the living resources of the high seas. Unilateral measures should not discriminate against foreign fishermen. Only in that way would it be possible for small States to fish on the high seas.

36. The zone in which the coastal State should have the exclusive right to fish should not exceed, together with the territorial sea, a breadth of twelve miles. In that way all States would be placed on the same footing so far as fishing rights were concerned, even if it proved impossible to adopt a uniform breadth for the territorial sea. By a law of 1 December 1948, Yugoslavia had established a four-mile zone adjacent to its territorial sea, within which it had reserved the exclusive right of fishing for its nationals. A large number of States had also ensured the exclusive fishing rights of their nationals in an area of the high seas adjacent to their territorial seas by establishing conservation zones for all or some marine resources or by extending their sovereignty or jurisdiction, for the purposes of conservation and utilization of the living resources of the high seas, over a given maritime zone. It was therefore clear that the right of exclusive fishing on the part of a coastal State in any area of the high seas adjacent to its territorial sea, up to a reasonable limit, was an absolute necessity for the coastal State; and that, he submitted, was the only solution likely to lead to a reconciliation of conflicting views regarding the breadth of the territorial sea.

37. His delegation did not subscribe to the view expressed by the United Kingdom representatives in the First and Third Committees that the problem of conservation could not be solved unilaterally because fish such as tuna and herring did not recognize any barriers. On the contrary, the data concerning quantities of fish caught in coastal waters, submitted by the United States representative in the First Committee and the United Kingdom representative in the Third Committee, proved that it was possible to adopt efficient unilateral conservation measures in coastal waters. Those measures were particularly necessary in cases where the intensity of fishing in a given area was greater than the actual reproduction capacity of existing stocks, a circumstance that led to over-fishing. In order to safeguard the livelihood of its small fishing undertakings, a coastal State with technically under-developed equipment would, in that case, be compelled to establish a moderate fishing reserve adjacent to its territorial sea to preserve that area both biologically and economically for its coastal population.

38. Some delegations had suggested that the recog-

dition of such a right on the part of the coastal State would make it impossible for questions of conservation to be regulated by bilateral or multilateral instruments. His delegation, on the other hand, believed that the recognition of the right of the coastal State to adopt unilateral measures would have a salutary influence on the undisciplined fishermen of other States, inducing them to seek a solution of the question by agreement with the respective coastal States.

39. He fully appreciated the motives which had prompted the representatives of El Salvador and the United States to raise the question of the "principle of abstention", but felt that it was unlikely that the problem could be solved by the present conference, owing to insufficient study from the biological, technical and political points of view.

40. His delegation shared the hope expressed by the Indian representative (5th meeting) that the Committee would have an opportunity to examine the dangers threatening the living resources of the high seas as a result of pollution by the discharge of oil, by test explosions of nuclear weapons, by the dumping of radioactive waste and by other harmful agents.

41. His Government was in favour of the peaceful settlement of disputes among States by arbitration, but did not believe that the type of arbitration proposed in article 57 (particularly in view of the functions attributed to the arbitral commission under article 58) was the most appropriate. For example, the arbitration proposed in article 57, paragraph 3, was not arbitration between States, but statutory arbitration by a tribunal, and could not therefore lead to a friendly solution of disputes. Further, the draft articles had failed to establish the criteria on the basis of which the arbitral commission should reach its decisions, and there was a danger that the arbitral commission might itself become a legislator. His country could not accept any arbitration in regard to its actions resulting from its exclusive right of fishing in any area of the high seas adjacent to its territorial sea.

42. Mr. OZERE (Canada) observed that, whatever understanding might be reached on the extent of the territorial sea or the contiguous zones, there would remain many problems affecting the conservation and management of sea fisheries which would not be solved by the simple formula of drawing lines in the seas. That was not to say that the adoption of an exclusive fishing zone would not be of definite benefit to those countries which, like his own, had developed their fisheries mainly along their own coasts.

43. When the time came for detailed consideration of articles 49 to 60, his delegation would put forward suggestions for the clarification of some of the articles. For the moment he would refer only to one very important aspect of fisheries conservation which was not covered in the draft articles, and which he felt should be included—namely, the situation where one or more States had been actively engaged for a number of years in a special fishery involving only their own nationals, and where scientific investigation had demonstrated that the fishery was being fully exploited. Such a case involved heavy expenditure on scientific investigation and sacrifice by the participants in carrying out the necessary conservation measures. His delegation be-

lieved that the State or States involved should have some assurance, as an encouragement to continue effective conservation measures, that the catching of such fish would be limited to those who had contributed to their maintenance. For purposes of illustration, he referred to the salmon fishery off the Pacific coast of North America. Canada alone, or in some instances jointly with the United States, had spent many millions of dollars in research, in supervision of the migrating salmon and of fishing operations, in providing hatcheries and in building expensive fishways. Moreover, in its desire to protect the salmon, Canada had deliberately refrained from tapping the potential source of hydro-electric energy of some of the rivers in which the fish bred.

44. That particular problem had been discussed at the Rome Conference of 1955, where reference had been made to the "principle of abstention", the essence of which was that, where a stock of fish was under such scientific investigation, management and regulation as was required to obtain the maximum sustainable yield, and where an increase in fishing would not be expected to result in any substantial increase in the sustainable yield, then States whose nationals had not in recent years participated in the fishery should abstain from fishing the stock. His delegation urged that the adoption of such a principle was essential, if certain fisheries, such as the salmon and halibut fisheries in the North Pacific, were to be preserved. It should be remembered that principles of conservation in relation to high seas fisheries were of recent origin, and the Committee should not be deterred by the fact that a given principle might at the moment apply in a few instances only.

45. In reply to the statement of the representative of the Soviet Union (6th meeting) that the principle of "abstention" represented a restraint of the freedom of the seas, he would say that the Conference was assembled for the purpose of reaching agreement on certain rules relating to the sea, and such rules necessarily involved restraints voluntarily assumed in the common interest of conservation of the living resources of the high seas.

46. Mr. DE FONSEKA (Ceylon) observed that, as an island, his country was keenly interested in fishing and in any proposals for framing international laws regulating fisheries in the sea, whether it be the contiguous zone, the high seas or the continental shelf. For many centuries the coastal population of Ceylon had depended for its livelihood on what it obtained from the sea, and fisheries were still an important item in his country's economy.

47. His delegation was in general agreement with the provisions of draft articles 49 to 60, but there were some matters on which it must reserve the right to express disagreement at a later stage and, if necessary, submit amendments.

48. In particular, he believed that the right to fish on the high seas given to all States by article 49 carried with it an obligation to adopt the necessary conservation measures and that any neglect to adopt such measures would be an abuse of the right. His delegation would therefore welcome the modification of article 49 suggested by the United Kingdom repre-

sentative (7th meeting) to the effect that the duty to conserve would be closely bound to the right to fish.

49. He wished to make a reservation concerning articles 54 and 55 and the suggestions made by certain delegations that the rights of a coastal State should be extended further.

50. Turning to the question of exclusive fishing rights by reason of special economic circumstances, he agreed that it was necessary to grant some protection to coastal States, particularly under-developed ones, until they were able to reach the levels of efficiency and modernization already attained by the advanced fisheries of the more highly developed countries, but that protection should only be afforded to the small boat fisheries of those States and not to the more highly organized and capitalized concerns.

51. His delegation was also in agreement with the principle of abstention and with the explanation given in sub-paragraph (d) of paragraph 4 of the commentary on article 53.

The meeting rose at 5.40 p.m.

TENTH MEETING

Tuesday, 18 March 1958, at 3.10 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. BOCOBO (PHILIPPINES), MR. GOLEMANOV (BULGARIA), MR. SHAVIT (ISRAEL), MR. MALLIN (IRELAND) AND MR. MELO LECAROS (CHILE)

1. Mr. BOCOBO (Philippines), referring to the first paragraph of article 54, took exception to the argument that recognition of the special position of the coastal State departed from the rule that high seas fishing regulations were valid only *vis-à-vis* nations consenting thereto and that to grant coastal States a right to regulate fishing unilaterally was contrary to the principle of the freedom of the high seas. He agreed that the freedom of the high seas included freedom of fishing, but pointed out that indiscriminate fishing which was carried out in the name of that freedom and which deprived the populations of coastal States of their preferential rights to the living resources with which nature had endowed them was an abuse of that freedom. His delegation therefore supported the widely accepted principle, rightly incorporated in the draft, that the coastal State had a special interest in the conservation of the living resources in any area of the high seas adjacent to its territorial sea. The final convention should, however, be more specific and state categorically that the population of a coastal State had a preferential right in that respect. In the event of a dispute the inalienable rights of that population should have precedence over the claims of fishing fleets from distant States. In short, the right of other States to fish in areas adjacent to the

territorial sea of a coastal State should be exercised only on condition that the livelihood of the population of the coastal State was fully safeguarded.

2. Article 49 should be amended so as to prevent any abuse of the freedom of fishing on the high seas. Thus, a coastal State whose interests had been reasonably guaranteed should never adopt conservation measures which unjustly restricted the rights of other States. Nor should the nationals of distant States abuse the freedom of fishing in such areas by catching excessive quantities of fish. Articles 50 to 59 by themselves were not enough to safeguard against abuse of the freedom of fishing, for even though a specific stock might be conserved, the problem of what constituted a fair catch remained. The nationals of a distant State should not be allowed to catch unlimited amounts of fish to the detriment of the population of a coastal State simply because they used modern intensive fishing methods.

3. Mr. GOLEMANOV (Bulgaria) said that, true to its traditional policy, his Government would co-operate wholeheartedly in attempts to solve outstanding problems relating to fishing and the conservation of the living resources of the high seas.

4. The use of modern fishing techniques threatened certain species of fish with extinction, and previous speakers had already drawn attention to the unscrupulous exploitation methods of private fishing fleets. The need for conservation measures to prevent the exhaustion of the living resources of the high seas was therefore fully justified and the fact that freedom of fishing was proclaimed in article 49 in no way precluded the adoption of such measures, which were in the interest of the whole international community.

5. His delegation felt that the Committee could and should study the important question of atomic weapon tests on the high seas and that the Conference should proclaim as a general principle that no State had the right to test nuclear weapons on the high seas in view of the danger involved for the living resources of the seas and human life. The Indian representative in the First Committee had adopted a similar position in referring to the danger of atomic weapon tests to navigation.

6. When the Committee came to examine the individual articles assigned to it, it should keep in mind the legitimate interests and rights of all countries and use as its point of departure the principle of the freedom of the high seas. That principle placed an obligation on States to refrain from any acts likely to restrict the use of the high seas by other States or their nationals.

7. One of the aspects of the freedom of the high seas was the right of nationals of all countries to engage in fishing therein. For certain countries, fishing was vital to the equilibrium of their national economy or to the livelihood of their population. Consequently, when the Committee embarked upon the codification of the fisheries articles, it would have to harmonize the principle of the freedom of the high seas—namely, the interests of the international community—with the economic and other interests of individual countries.

8. Although his delegation had no objection to articles 49, 50 and 51, it was unable to support the principle of compulsory arbitration set forth in paragraph 2 of

article 52 and in paragraph 2 of article 53. Nor could it agree that the "principle of abstention" mentioned in the commentary on article 53 should be firmly established in international practice, for it regarded it rather as a formula representing an attempt to create privileges for certain Powers. The Commission had rightly refused to incorporate it in its draft since that would only have led to confusion and difficulty. Article 53 as a whole was not sufficiently clear, and seemed to create a form of discrimination against newcomers, for which, in his view, there was no justification.

9. The provisions of paragraph 1 of article 54 were perfectly logical since they arose out of the interests of the coastal State. But the interests of the international community also had to be taken into account. In that connexion, his delegation fully shared the opinion expressed by the USSR that geographical factors as well as the behaviour of various stocks of fish should be taken into consideration.

10. His delegation could, under certain conditions, approve the principle of unilateral action embodied in article 55, but felt that the phrase "reasonable period of time" should be explained. The requirements listed in paragraph 2 of article 55 were somewhat vague and could lead to difficulties and disputes, since they lent themselves to various interpretations. The article therefore needed some clarification.

11. The procedure proposed for the settlement of disputes in articles 53 to 57 rested on the principle of compulsory arbitration and in certain cases the decision of the arbitrators would assume a legislative character. For that reason, his delegation, among many others, was unable to accept it, and would therefore support the Mexican proposal (A/CONF.13/C.3/L.1).

12. Mr. SHAVIT (Israel) said that the acid test of the Committee's work would be whether it strengthened or weakened the principle of the freedom of fishing as one of the fundamental freedoms of the sea. Freedom to fish on the high seas must include freedom to seek new fishing grounds and to carry out scientific surveys for that purpose.

13. Conservation had both legal and biological aspects, and these must be co-ordinated. Conservation measures were commendable when based on scientific research, but there was a tendency to adopt them simply as a precaution and then the urge to prevent over-fishing might easily lead to under-fishing. Large fish, if not caught in sufficient numbers, would deprive younger fish of their food and in those circumstances over-regulation would reduce the fish population and consequently the available supply of proteins for human consumption. Proper conservation measures that represented a mean between under- and over-fishing could be adopted only after a thorough scientific investigation.

14. Physically and biologically the basic problem before the Committee was essentially a regional problem, and certain measures that might be appropriately applied to wide stretches of ocean could prove disastrous if applied in a relatively small sea like the Mediterranean. The Conference should therefore determine which problems were unsuitable for general settlement and refer them to the appropriate regional expert bodies.

15. He noted that a number of draft articles with a defi-

nite bearing on fisheries problems had been referred to other committees, and expressed the hope that joint meetings of committees would be arranged whenever necessary. For example, no régime could be drawn up for the continental shelf without combining the biologist's knowledge of sea fauna with the geologist's knowledge of the seabed. Other examples were to be found in the provisions of articles 68 and 47.

16. The text of and reactions to article 53 had been a source of satisfaction to his Government, which shared the interpretation of the Soviet Union, Netherlands and Greek representatives — namely, that its purpose was to safeguard rights and a fair share of the world's wealth for newcomers.

17. He observed that article 55 was permissive in form and wondered what would happen if the unilateral measures mentioned there were unjustified. It might be wise in that case to stipulate that the good offices of the Food and Agriculture Organization of the United Nations should be invoked. That might render unnecessary the Italian suggestions concerning the living resources of the high seas reproduced in the Comments by Governments (A/CONF.13/5, section 10).

18. Mr. MALLIN (Ireland) observed that, at an early stage in the discussions of the International Law Commission, and at the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955, it had been recognized that existing law on the conservation of the living resources of the high seas was deficient, firstly because it provided no adequate protection of marine fauna against extermination and secondly because the coastal States or other States directly interested were not sufficiently protected against wasteful and predatory exploitation of fisheries by foreign nationals. Accordingly, in draft articles 54, 55 and 56, the special interest of the coastal State was explicitly recognized and an attempt had been made to render that recognition effective by conferring on that State the right of unilateral action for conservation purposes, subject to certain qualifications.

19. It was generally agreed that where particular methods or unrestricted intensity of fishing, or the use of nets with meshes below certain sizes, or a continuance of fishing during certain periods were pursued without restraint in any sea area, there could be a serious reduction in the fishing population in that area. Where such activity was conducted by large foreign fleets in sea areas adjacent to a coastal State the reduction could render fishing there by vessels of the coastal State uneconomic. The ultimate result would be felt well within the State's exclusive fishery limits, and the narrower those limits the more pronounced the effect.

20. Serious repercussions of that kind might arise long before there was any great danger of extermination of fish stocks, or even before the stocks were diminished to such an extent that they would require a very long period for recovery, but the nationals of a coastal state might suffer seriously during the depression, however brief. The problem was in large measure economic as well as biological, since it arose in the first instance from the conflict between the large readily transferable fleets of long-range vessels and the craft with a more circumscribed radius belonging to the coastal State. Long-range fishing fleets could move into distant fish-

eries and pursue a fishing activity so intensive and so destructive that, failing effective and urgent measures of control, a coastal State might be driven into wholly uneconomic development in an effort to preserve its fishing industry. At that stage the intruders, having reduced the productivity of the area to a level below that necessary for their own profitable operation, could move to fresh areas, leaving the coastal State with a thoroughly depleted unremunerative fishery. Nor was it any answer to say that the economics were the same for all States, coastal or otherwise, for the logical conclusion of that line of reasoning would be that the nationals of every State should fish off any coast other than their own.

21. Serious consideration should therefore be given to the proposal that a coastal State should have the right unilaterally to adopt and enforce against fishing vessels of all States in a belt of the high seas of a specified breadth adjacent to its exclusive fishery zone whatever measures were necessary to put a stop to over-exploitation. Such measures need not injure the real interests of other States, for safeguards could be formulated to protect non-coastal States. Article 55, indeed, specifically provided that no conservation measures might discriminate against foreign fishermen.

22. On the other hand, articles 54, 55 and 56 in their existing form failed to give adequate protection to a coastal State, or even to non-coastal State, since they were based purely on biological considerations and were not backed by any sanctions. It was true the basis on which many of the existing conventions on the regulation of fisheries were founded was biological. But adequate biological evidence generally took a long time to collect and, even when it had been accumulated, its interpretation was or might be difficult. Even when conventions had been accepted, some of the parties to them might have difficulty in enforcing their provisions. He suggested, therefore, that a coastal State should have authority, backed by the necessary sanctions, to enforce within a belt of sea of moderate width adjacent to its own waters regulations which had been accepted in conventions to which that State was a party. Such a decision would provide only partial amelioration of the present unsatisfactory position and might give rise to certain difficulties, but it had the advantage of being immediately applicable, of ensuring that conservation measures already agreed were fully enforced, and of being non-discriminatory.

23. Articles 51, 52 and 53 were likewise deficient in that they were based purely on biological factors and that there was no means of enforcing them.

24. With regard to articles 57 and 59, his delegation had no objection in principle to the adoption of arbitration measures, but felt that some modification of the procedure proposed in those articles might be desirable.

25. Mr. MELO LECAROS (Chile) reminded the Committee that the purpose of the Conference, as defined by the General Assembly, was not simply to codify already existing and accepted rules, but to participate in the progressive development of international law and to legislate on matters which lay outside the strictly juridical sphere, in such a way as to safeguard existing legitimate interests in the sea.

26. His delegation believed that on the discussions in the Third Committee and on the decisions reached by it might depend the success or failure of the greatest effort ever made to reach general agreement on the régime of the sea. The truth of that statement could be demonstrated by a brief review of the work of the other committees.

27. The First Committee was required to study the draft articles relating to the territorial sea. But, before agreement could be reached on them, it was essential to solve many specific problems connected with an extension of the territorial sea. The necessity of proceeding in that manner had been appreciated by the First Committee, which, like the Conference for the Codification of International Law held at The Hague in 1930, had asked for a postponement of a decision on that point.

28. The First Committee would also be examining the draft article on the contiguous zone, which might, as the United Kingdom and United States representatives had suggested in the First Committee, be the key to the solution of the entire problem. But it should be remembered that The Hague Conference had failed precisely because it had refused to adopt the idea of the contiguous zone. The position in which the present conference found itself was much the same, with one difference only, that it was required not only to codify existing principles, but to establish new principles to deal with new problems.

29. The Second Committee's task was to examine the articles relating to the high seas, in which the freedom of the high seas had been defined in much more absolute terms than could be applied to the freedom of fishing. The strict definition proposed would be unacceptable unless provision was at the same time made to restrict the freedom of fishing within its true limits. The origin of the freedom of fishing was quite different from that of the right of navigation; and, if the latter was not absolute but was subject to exceptions, there was all the more reason why exceptions should be applied in the case of the former, particularly when it was remembered that the success of the Conference might depend on them.

30. In the Fourth Committee, which dealt with the articles relating to the continental shelf, the generally accepted view was that the waters superjacent to the shelf should be subject to the high seas régime. On the other hand, some countries with an adjacent continental shelf had claimed a special régime for the waters superjacent to it, so that they could regulate fishing and adopt measures for the conservation of the living resources of the sea. It was clear, therefore, that the agreements reached by the Third Committee would have a decisive influence on any resolutions which the Fourth Committee might adopt.

31. Turning to articles 49 to 60, he said that his country's general attitude to their provisions was well known. In 1947, Chile had claimed sovereignty over a 200-mile zone with the object of conserving the natural resources of the sea. That claim had been based on a similar declaration made by the President of the United States, Mr. Truman, in 1945. In 1952, Chile had signed a joint declaration with Ecuador and Peru, having the same end in view, and Costa Rica had subscribed to it later.

Those documents set forth the main aspirations of his country, which could be summed up as consisting of the special right of a State to exploit natural resources, regulate fishing and adopt methods for conserving the living resources of the sea in a zone adjacent to its territorial sea. In support of that claim he would ask whether other countries would be prepared to look on with indifference while foreign fleets, sometimes of no well-defined nationality, exploited a form of natural wealth which constituted an essential source of food for people valiantly struggling to secure even a modest existence.

32. The importance of fisheries to Chile was evident having regard to its geographical position. Some two-thirds of its total area was either mountainous or desert and only one-third was cultivable. Great efforts would be made to increase agricultural production, but it was unlikely that the increase would keep pace with the growth in the population. According to statistics published by the Food and Agriculture Organization of the United Nations, 3.2 metric tons of fish per thousand inhabitants were being landed in the country, which was the eighth in the world in regard to the quantity of fish caught per inhabitant.

33. The choice of the 200-mile limit in 1947 had not been at all fortuitous. It had been based on a serious study on the effects of the Humbolt current, the outer fringe of which lay about 200 miles from the Chilean coast. The scientific arguments in support of his country's case had been brilliantly expounded by the representative of Peru, who had demonstrated the need for protecting the biological complex, which experts described as the "bioma". Some delegations had argued that protection should be confined to one or more individual species. On the other hand, there was no essential contradiction between the view that all species should be protected or that some should be protected, and the protection of the "bioma" did not exclude the simultaneous conservation of a migratory species. The essential point was that the resources of the sea should be protected. Arguments in favour of the freedom of fishing had been based on the inexhaustibility of those resources, but they were no longer valid.

34. His country had been particularly interested in one of the resolutions adopted by the third meeting of the Inter-American Council of Jurists, held in Mexico in 1956, which attributed to a coastal State the right to adopt measures of conservation to protect the living resources of the sea adjacent to its coast. Efforts had been made to under-estimate the value of that resolution, but he would ask how delegations which quoted Gidel and other legal authorities could overlook the considered opinion of distinguished representatives of the American legal world.

35. At the Inter-American Specialized Conference on Conservation of Natural Resources held in the same year it had been recognized that a coastal State had a special interest in conservation, but later it had been stated that there was no agreement on the nature or the scope of that special interest. It was obvious that, on a resolution designed for unanimous adoption, there could be no agreement if any State dissented, but there was no doubt that Latin-American legal experts had developed a principle which was now being applied throughout the world. If that had been understood in good time,

there would in all probability have been no need to summon the present conference, and agreement would have been reached on the law of the sea in more favourable circumstances during the eleventh session of the General Assembly.

36. Finally, he pointed out that the International Law Commission had virtually put the coastal State on the same footing as a State protecting the interests of its fishing companies, since the former was only permitted to adopt measures of conservation if no agreement had been reached with any other interested State. That meant that the right to take conservation measures would rest in the first place with the latter State, while the State that would suffer most directly from predatory action was only allowed to play a passive and subsidiary role. In his delegation's view, that provision was unjust and resembled the open-door policy whereby the supervision of lunatics was entrusted to the lunatics themselves. Only a coastal State was in a position to adopt a prudent conservation policy untainted by the motive of profit.

The meeting rose at 4.30 p.m.

ELEVENTH MEETING

Wednesday, 19 March 1958, at 3.20 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. QURESHI (PAKISTAN), MR. OLAFSSON (ICELAND), MR. GOHAR (UNITED ARAB REPUBLIC), MR. TREJOS FLORES (COSTA RICA) AND MR. GONÇALVES (BRAZIL)

1. Mr. QURESHI (Pakistan) said that, notwithstanding his country's vital interest as a coastal State in marine fisheries, his Government firmly believed in the freedom of the high seas, and did not see how the best interests of mankind could be served by drawing imaginary lines in the ocean. Proclamations of artificial controls over the sea might satisfy man's desire for appropriation, but could not appease the appetite of the ever-increasing millions of mouths which had an equal right to participate in the wealth of the ocean. Fish was by nature both perishable and renewable, and humanity would be deprived of valuable protein if restrictions were imposed before there was a genuine need for them.

2. The normal aim of commercial fishing was to derive the maximum sustainable yield, but that was not synonymous with keeping stocks at their highest level. While it was true that fishing depleted stocks below their natural maximum, it was equally true that it simultaneously diminished competition for food and permitted a vast rate of growth for the remaining stock. A well-fished stock, as distinct from an over-fished one, had a lower proportion of old and slow-growing fish which were a

drain on available food, and the total annual increment in a well-fished stock was far higher than in an unexploited, old and dense fishery stock, preserved merely to perish by the laws of nature. The aim of rational fishing should be to make the optimum use of resources and to obtain the optimum yield from fishing. Before considering conservation measures, it was necessary to make a reasonably accurate estimate of the potential commercial productivity of the areas of the sea concerned, to establish the ratios of production and basic organic formation under given conditions of sunshine and temperature and of nutrients and oxygen supply, and to determine whether the rate of catch per unit of effort in specified fishing grounds was such as to make them a commercial proposition.

3. Marketing conditions also played a prominent part in commercial fishing, and could not be ignored in planning deep-sea fishing operations. The report prepared in November 1951 by a group of European experts in co-operation with the Fisheries Division of the Food & Agriculture Organization of the United Nations (FAO) for the Sub-Committee on Fisheries of the Organization for European Economic Co-operation (OEEC) had stated that there was a grave danger of a fish surplus in Europe for both white fish and herring, the term "surplus" being taken to mean the quantity which could not be sold at prices acceptable to the producer. A further report published under the auspices of OEEC in 1957 had shown that most fishing administrators were seriously concerned with the problem of marketing at remunerative prices. That was another argument against the premature and unrestricted application of conservation measures.

4. His delegation recognized, nevertheless, that, in view of the improvement in fishing techniques and fishing gear, conservation measures of some kind were essential, and it agreed with the definition of conservation set out in article 50. It attached great importance to agreements between States for effective conservation measures, and was opposed to unilateral action. He believed that the articles dealing with the living resources of the sea should explicitly require all States concerned with a given area or resource to negotiate a convention or, failing that, a bilateral or multilateral agreement. The virtues of multilateral agreement on conservation measures were clearly indicated by the extensive mutual benefits which had accrued to the participants in the International Commission for the North-west Atlantic Fisheries, the Permanent Commission under the 1946 Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish and the Baltic Convention of 17 December 1929 and by the success of international co-operation in the conservation of fur seals and Pacific halibut.

5. In the case of the seas adjacent to the Indo-Pakistan sub-continent no man-made laws were required to meet the needs of conservation. The majority of the fishing craft were small, light boats without motor power, which did not venture far afield, but generally remained within the ten-mile belt. Owing to the monsoon, sea fishing came practically to a standstill during the months of June, July and August, when overhead expenses had to be met without any income. The maximum period for fishing was about 150 days per year, and even in the

peak periods fishing was circumscribed by a number of economic limitations. If, however, any conservation measures in that area were desired, his Government would always be prepared to negotiate for agreement on them, but it could not tolerate the adoption by a coastal State of unilateral measures which would deprive the fishermen of other States of the traditional use of the high seas.

6. In that connexion he feared that the provisions of article 51 might be abused to proclaim fishing rights unilaterally and to promulgate conservation measures which, even if described as non-discriminatory, could in fact be directed against the nationals of other States. His delegation therefore believed that it would be necessary to introduce some additional safeguards into the text of the article.

7. Mr. OLAFSSON (Iceland) regarded the draft articles proposed by the International Law Commission as generally acceptable, though his delegation felt that the articles could only be applied outside the area of coastal jurisdiction, that was to say on the high seas themselves.

8. The economic importance of fisheries to his country was immense, greater even than had been indicated in the report prepared by the secretariat of FAO (A/CONF.13/16). In the Summary Extract from Table 1, section 1, giving the product of sea fisheries as a percentage of aggregate domestic product in selected countries, the figure for Iceland was shown simply as over 3 per cent, whereas the exact figure was 14 per cent or, including the value added in processing, 24 per cent. In the Summary Extract from Table 2, sections 2 and 3, indicating sea fishery landings per hundred inhabitants for selected countries, the figure mentioned for Iceland was "100 tons or more", whereas the true figure was over 300 tons. In the Summary Extract from Table 2, section 4, it was stated that external trade in fishery products represented over 20 per cent of the total merchandise trade of Iceland, whereas the exact figure was 97 per cent. Further, fish constituted the basic food, and the fishing industry was the main source of employment for the greater part of his country's population. Most of the other industries in Iceland were either ancillary to the fisheries or dependent on imports of raw materials and machinery which in turn would be paid for out of the fishing industry's export earnings. The economy of the coastal communities in Iceland in particular was so entirely dependent on the fisheries that a failure of the catch for one or more seasons would deprive them almost entirely of their livelihood, since there was no other industry to which they could turn. There could thus be no doubt that Iceland had a vital interest in maintaining and conserving fish stocks.

9. For a long time, however, it had been evident that over-fishing had been taking place in Icelandic waters, particularly in the case of halibut, haddock and plaice. Even before the First World War the effects of over-fishing had been so serious that the Icelandic fisheries had been faced with an unpredictable disaster, unless some drastic measures were adopted. To avoid such an outcome, Iceland had taken part in every international effort aimed at the conservation of the fisheries in Icelandic fishing grounds or other areas where Icelandic vessels took part in fishing. His Government had par-

participated in the unsuccessful efforts to secure protection of the valuable nursery grounds in the Faxabay area on the south-west coast of Iceland; and it had subscribed to the Conventions of 1937 and 1946 concluded under the auspices of the International Commission for the North-West Atlantic Fisheries. It was also displaying a great interest in the preparation of the new convention for the conservation of fisheries in the North-east Atlantic, and sincerely hoped that the present conference would result in the establishment of a new system which would lead to positive results of great benefit to all.

10. On the other hand, such co-operation alone could not solve all problems. His delegation would certainly agree to the establishment of a really effective system for the conservation of the fisheries in the high seas, but within the coastal fishery areas of Iceland it was indispensable for his Government to exercise its own powers of conservation and utilization in order to ensure its people's means of subsistence. The two systems could be complementary to one another.

11. Such a policy had in fact been adopted by his Government when in 1950 and 1952 it had stipulated that Iceland was entitled to regulate the fisheries on the continental shelf. That step had originally met with considerable objections from foreign fishermen operating in Icelandic waters, but experience showed that it had had a very beneficial effect, not only on the catches of certain important species inside the extended fishery limits but also outside, thus benefiting all fishermen operating in those waters.

12. His delegation welcomed the provisions proposed in article 54, paragraph 1, and felt that an incontrovertible case in their favour had been made out in the commentary to the article. His country firmly supported the principle of the freedom of the seas, which was indeed indispensable for a nation living in a sea-locked land far away from other countries, but the principle of the freedom of the seas could also lead to extremes, as actually occurred in the case of the fisheries around Iceland. For 50 years Iceland had been bound by an agreement to allow foreign fishing vessels to operate up to a three-mile limit including all bays more than ten miles wide. The steps taken to bring that situation to an end had been taken in self-defence, to secure freedom from want for the Icelandic people.

13. He must, however, utter a warning that the establishment and enforcement of a system such as that proposed by the Commission would not provide a final solution to Iceland's fishery problems. His Government and people were devoted to the principles of fishery conservation, both on the national and the international levels. However, even when all necessary conservation measures had been taken and when the maximum sustainable yield had thus been secured, a situation might arise — and as far as Iceland was concerned it had indeed arisen — in which the total yield was not sufficient to satisfy the demands of all who wanted to fish in the area. In such a situation, his delegation maintained, the Icelandic people should have priority in satisfying their requirements.

14. The draft articles on conservation would be a welcome supplement to coastal fisheries jurisdiction, but, as far as his country was concerned, they were not accep-

table as a substitute for such jurisdiction, and in the detailed discussion of the articles his delegation would cooperate in evaluating the amendments which undoubtedly would be submitted.

15. Mr. GOHAR (United Arab Republic) said that a solution of any oceanographic problem required careful study of the wide variety of geological, hydro-biological and biological factors involved. Conscious of the need for more information on the subject, his country had established hydro-biological, oceanographic and biological institutes and stations along its Mediterranean and Red Sea coastlines. It firmly believed in international co-operation as a means of contributing to an understanding of fishing problems, warmly welcomed visits by marine scientists from many parts of the world, and was always prepared to participate in joint programmes for the rational exploitation of its resources.

16. The growing population of his country depended largely on the resources of the sea for their protein requirements; and the poverty of the Mediterranean and Red Seas in living resources was offset to some extent by the abundance of marine life in, and the fertility of, the Nile delta. Moreover, the five great lakes connected to the Mediterranean were among the most productive in the world; however, their stocks of fish left them to spawn in the Nile delta, and even the sardine fishery depended almost exclusively on the flow of Nile silt into the Mediterranean. His country, which obviously had a vital interest in the conservation of the living resources along its coasts, had imposed strict regulations on fishing with bottom gear in the Nile delta and carefully regulated and supervised its Mediterranean sponge fisheries. Red Sea prawns and edible crabs were also caught in large quantities in the Nile delta and the Mediterranean lakes. In short, the importance of the Nile to his country's fisheries could not be over-emphasized.

17. Clearly, therefore, strict fishing regulations were necessary and no country other than the coastal State was really in a position to decide what measures were necessary.

18. He pointed out that foreign nationals were encouraged to co-operate with Egyptians in the exploitation of his country's living resources, even in the territorial seas, and negotiations were under way between his Government and Japanese, Portuguese and Spanish companies with a view to drawing up exploitation projects. His country was keenly interested in ensuring a maximum sustainable yield from its waters; for that reason it had always observed a twelve-mile breadth of the territorial sea for fishing purposes and maintained that a coastal State had an exclusive right to the exploitation and conservation of the living resources of its continental shelf and to the adoption of any necessary conservation measures in the superjacent waters.

19. In conclusion, his delegation was in broad agreement with the Commission's draft.

20. Mr. TREJOS FLORES (Costa Rica) said that under the impact of scientific progress and the introduction of new fishing techniques, revolutionary changes had taken place in the law of the sea during the past few decades. Classical principles were no longer adequate to meet the needs of modern conditions and new concepts such as those relating to the continental shelf

and the special interest of the coastal State had been devised. The Commission had taken those new trends and concepts into account in its draft, which provided the Conference with a sound basis for its work.

21. He pointed out, however, that the Commission's recognition in article 54 of the coastal State's special interest was so hedged about with conditions as to be illusory. The preferential interest of the coastal State should be proclaimed in clear terms; it should be referred to not as an interest, but as a right. That would avoid misinterpretations and give explicit recognition to the coastal State's competence to regulate the exploitation of the living resources of the high seas in areas adjacent to its territorial sea. As it stood, the article placed coastal States and non-coastal States on an equal footing as regards conservation measures. That was obvious from a comparison of articles 54 and 56, the only difference between them being that in article 56 the non-coastal State had to prove its special interest whereas that of the coastal State was recognized *ipso facto*. That was a further reason why the two articles should be worded differently, and why in article 54 the words "special interest in the maintenance of" should be amended to read "special right to maintain".

22. He had already pointed out in the Sixth Committee of the General Assembly¹ that there was a contradiction between articles 52 and 54, in that paragraph 2 of article 54 "entitled" the coastal State to do certain things, whereas article 52 failed to mention such a right. To be consistent, article 52 should state that conservation measures could be requested not only by States whose nationals engaged in fishing, but also by the coastal State even though its nationals did not carry on fishing in the area concerned. Furthermore, the coastal State should participate in negotiations embarked upon by those States.

23. His delegation fully accepted the need for the supervision of conservation measures of all kinds and for the introduction of a system for the settlement of disputes arising out of conservation programmes, but the establishment of the arbitral commission proposed in article 57 did not appear to be the most suitable method. That was particularly true in view of the fate at the Tenth Session of the General Assembly of the draft convention on arbitral procedure drawn up by the International Law Commission at its fifth session,² and he felt that States would show even greater opposition to the rigid procedure contemplated in article 57. He therefore agreed with the representative of Ecuador that it would be better to establish a United Nations body under the Economic and Social Council for that purpose. The Mexican proposal (A/CONF.13/C.3/L.1) that any disputes arising out of conservation measures should be settled in accordance with Article 33 of the United Nations Charter was rather vague, however, and did not have sufficient support.

24. Mr. GONÇALVES (Brazil) said that his country's efforts to develop its fishing industry by encouraging private fishing organizations had been successful, and

that the annual per capita fish consumption was increasing. The Brazilian Navy and the Fisheries Division of the Department of Agriculture were engaged in research which would in time provide much valuable information on various marine biological and geographical questions. Brazil had not been alone in its efforts and had received valuable assistance from the FAO, which in 1955 and 1956 had sent fisheries experts to the country, and also from the Japanese Government, which had sent a research ship equipped with scientific instruments and a laboratory. Brazilians and Japanese working together had obtained valuable technical, biological and other data which would be very important in deciding upon conservation measures applicable to the high seas.

25. On the basis of that co-operation, it had been decided that protective or conservation measures should be put into effect without delay to safeguard Brazil's living resources which obtained their food supply in the waters of the continental shelf or coastal ocean currents.

26. He agreed with the United Kingdom representative that article 57 should stipulate that the arbitral commission should consist mainly of experts on the issue under consideration.

The meeting rose at 5.10 p.m.

TWELFTH MEETING

Thursday, 20 March 1958, at 3 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 49 to 60) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. FINN (FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS) AND MR. CASTAÑEDA (MEXICO)

1. Speaking at the invitation of the Chairman, Mr. FINN (Food and Agriculture Organization of the United Nations) said that the Food and Agriculture Organization (FAO) welcomed the opportunity of explaining its role in regard to the conservation of the living resources of the sea, which it was enjoined by its constitution to promote through national and international action as well as by research into improved methods of fishing. The two elements were closely connected, for conservation in its narrow sense of preserving stocks for the use of future generations was often most effectively ensured not simply by limiting the catch, but by the use of selective gear and by fishing at the most appropriate times and places so as to increase current yield. In its wider sense, conservation meant the husbanding of resources so that they would produce the optimum yield.

2. Conservation and management depended upon technical knowledge, choice of method and agreement to abide by the desirable measures; accordingly, conser-

¹ Official Records of the General Assembly, Eleventh Session, Sixth Committee, 498th meeting, para. 5.

² Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456), para. 57.

vation also involved factors other than purely technical and scientific considerations.

3. In regard to the latter, FAO had an important part to play in stimulating scientific research into the biological aspect of fisheries resources and into the effects of different methods of exploitation which had long been the subject of international collaboration. It had sponsored regional fisheries councils and had co-operated closely with similar but independent bodies as well as with national research organizations. On the request of governments it gave direct help in elaborating research programmes, training staff, interpreting results, ensuring their systematic collation and dissemination as well as in the development of uniform terminology to facilitate the exchange of information. FAO had organized or taken part in many international meetings concerned with problems of conservation. In the exercise of all those functions it helped to determine in what cases conservation was necessary and where opportunities existed for intensifying exploitation and raising potential yield: those problems, though complicated, could be solved scientifically.

4. Less progress had been made on the economic side since the first serious attempt to apply well-established methods of economic analysis to the problems of the fishing industry and of rational exploitation had been undertaken barely ten years previously. The organization in 1956 under FAO's auspices of a meeting to study the economics of fisheries had done much to clarify the nature of the problems but little had been done towards assembling the factual information that would enable theoretical findings to be applied in practice. Generally speaking that was the responsibility of governments and industrial organizations, but FAO was endeavouring to help by organizing technical meetings. In addition, it regularly issued a *Yearbook of Fisheries Statistics* and assisted member States in improving their methods of compiling such data.

5. Though non-technical considerations played a greater part in determining what conservation measures were necessary, the efficacy of the latter depended largely on the proper application of biological, technical and economic knowledge. In that respect, FAO could be of considerable assistance, particularly to governments which did not yet possess fully developed research organizations, and, as an impartial international body, it could clarify the biological, technical and economic factors involved in the course of the negotiations between States and in the procedure for the settlement of disputes envisaged by the International Law Commission draft.

6. Though constitutionally it was FAO's duty to bring to the attention of the governments of member States pertinent facts proving the need for agreement on applying the desirable measures, its contribution in that sphere was necessarily restricted to helping in the choice of measures most likely to command general support.

7. The whole concept of the conservation and management of fishery resources was still in a state of evolution, but it was important for the Committee to differentiate between its different aspects. For example, there was already general agreement on the need to prevent the extermination of resources and a wide measure of

agreement on the need to prevent waste through excessive fishing, but some time would elapse before agreement would be reached about the attainment of an optimum economic yield. Clearly, there was little dispute about the elementary consideration that resources should be preserved for future generations. It was significant that in Japan already over 80 per cent of the animal protein consumed came from fish products.

8. Though with present methods it was unlikely that predatory action by man would lead to the total extermination of the majority of species, it was a contingency that was not altogether inconceivable. There was general agreement also that it was necessary to guard against the wasteful use of labour and equipment in the fishing industry and that if unrestrained fishing of a certain stock provided a total yield less than could be achieved by more restricted exploitation, the necessary restraints should be applied. The difficulty was one of measurement for there seemed to be no general consensus of opinion as to which of the criteria or combination of criteria should prevail, but in practice it appeared that at the outset the physical yield in weight would be the most useful, rather than the maximum yield of protein or the highest market value.

9. While the general agreement at the present stage must be mainly concerned with the physical aspects of conservation, which belonged largely to the realm of biology, science and technology, other aspects were already receiving more attention and perhaps would soon be the subject of agreement at least in certain areas. Much would depend on achieving a better understanding of the economic factors, and of course FAO would do everything possible to facilitate the international exchange of information and to encourage research.

10. Similar considerations should apply too to measures for protecting resources from other harmful influences, such as pollution. It was also not inconceivable that something might be done in the future against natural influences that were not beneficial.

11. The measures intended to restore the yield of stocks which might have suffered through the failure to take timely restrictive or protective action and the measures adopted to increase yields beyond their natural level by restocking or fertilizing water must also be clearly based on adequate knowledge of biological, technical and economic possibilities.

12. As the whole concept was in process of development, the Conference would doubtless wish to ensure that the rules it adopted which were likely to dominate the whole treatment of the problem for a long time to come were so framed as to be capable of adjustment as knowledge increased. FAO was obviously anxious that the best use should be made of information concerning means of increasing the world's food supply, and much yet remained to be learned about gathering in the riches of the sea. According to statistics published by FAO in a document concerning the economic importance of the sea fisheries in different countries (A/CONF.13/16), the world catch had risen by about one-third in sixteen years—from 19 million tons in 1940 to 30 million tons in 1956—and during the past five years the yield had increased by about 5 per cent annually. The wise exploitation of those vast resources

presented many problems which by their nature were only amenable to international solution.

13. Mr. CASTAÑEDA (Mexico) said that the question of fisheries and the conservation of living resources was admittedly closely linked with the other matters pertaining to the law of the sea, but its interdependence with the question of the breadth of territorial limits had been seriously exaggerated. The small minority of States which adhered to the three-mile rule and tried to force it on the majority naturally did not desire any final solution of the question of the territorial sea, because they knew that their views could not prevail. They therefore stressed the close relationship between the two questions and suggested that the decision on the breadth of the territorial sea should be postponed until the rules relating to conservation had been established. They argued that the provisions on conservation would enable States to exercise effective protection over the resources near their coast and would thus render a wide territorial sea unnecessary. As the representative of Norway had shown, however, that argument could easily be inverted.

14. Many of the less-developed States, which were mostly also those suffering from a strong demographic pressure, needed the resources of the sea for their survival. Consequently, they could not stand idly by while the wealth of the seas off their coasts was exterminated through the reckless fishing methods of foreign fleets from distant countries. In seeking to remedy that situation, the coastal States could choose between two courses: they could either widen the zone reserved to their nationals or adopt conservation measures on the high seas which would not discriminate against foreign fishermen. Their final choice would depend solely on the vision or short-sightedness displayed at the Conference by the large fishing Powers. If the problems raised by claims to wide areas of exclusive jurisdiction were to be avoided, the coastal States would have to be granted sufficient rights, not merely in theory, but also in practice, to ensure the conservation of the resources they required.

15. To that extent, the two questions were indeed closely related. But no conservation régime, however effective, could ever be a substitute for a territorial sea in the classical sense, even if the latter was twelve miles broad. The reason was simple. The purpose of a territorial sea was not the conservation of marine resources, but the defence of security and other interests. Moreover, the resources in that zone were in any case reserved to the nationals of the territorial State exclusively. The smaller Powers therefore demanded an effective conservation régime over and above, and not in substitution for, recognition of the right of the coastal State to fix its territorial limits at any distance between three and twelve miles from the shore.

16. In that connexion, he stressed that, in saying that many States aspired to a territorial sea of twelve miles, he in no way wished to imply that three miles was the existing rule which some States merely wished to change. The truth of the matter was that the three-mile rule was no longer legally valid and was not accepted by the majority of the members of the international community. Practice had created a new rule of customary law, according to which each State could

adopt any limit between three and twelve miles, without any need to justify its action, and that limit would be binding *erga omnes*.

17. Turning to the question of conservation measures, he said that in the first place such measures could not be effective unless they were based on the ecology of the species to be protected. Consequently, they should take into account the morphological and functional structure of the various biological communities which were fished, or exploited industrially. Secondly, they would only be adequate if they applied to the entire maritime area occupied by the biological community or communities in question, or better still, to the whole "territory" in the ecological sense. Since the limits of such territories did not coincide with artificial limits traced by man, the adoption of different conservation measures on either side of the outer limit of the territorial sea would result in chaos. The whole intricate biological equilibrium which any given biological entity required for its survival and well-being would immediately be upset.

18. Thirdly, the natural resources of the ocean bed included not only the minerals in the subsoil and the living resources reposing upon the bed or mechanically attached thereto, but also the topsoil. The last-named was probably even the most important of those resources, for within it took place important chemical, physio-chemical and, above all, microbiological processes on which the fertility of the waters, and consequently the abundance of fish, directly depended. Hence — and since trawling practices wrought a material and serious change in the physical and biological conditions of the seabed, with inevitable damaging consequences — it was necessary not only to protect living resources, but also to ensure the integrity of the ocean bed or at least to create a system allowing the recuperative forces of nature to play their part.

19. It was well known that the fishing industry was in a very primitive stage of development. The product was removed, but little was done to increase or replenish stocks through proper technical methods. Only very recently had scientists begun to make progress in determining the true location of various species. By contrast, the fishing methods themselves were daily becoming more efficient and powerful. That situation had brought about a serious disequilibrium and a scarcity of resources, and measures to protect the seabed where the fertilizing processes originated would have extremely beneficial effects.

20. The legal problems relating to fisheries were attributable to the concurrence of several factors. As far as fishing was concerned, countries could, with certain exceptions, be divided into two categories. In the first place, there were the countries from the higher latitudes, especially in the north, which generally possessed substantial technical and financial resources and a developed industry. Their cold seas were very rich in fish, because, owing to the abundance of nutritive salts and the frequency of up-welling, the stocks were replenished surprisingly fast. The second category consisted of countries situated between the tropics. They were, for the most part, relatively under-developed. The waters off their coasts were tepid or warm and poor in fishing resources, and the recuperative process

in those seas was infinitely slower. The States in the second group were therefore justifiably disturbed by the gradual, though constantly more noticeable, southward movement of northern fishermen. As soon as any of the more accessible fishing grounds were exhausted or destroyed, or exploitation therein ceased to be profitable, the ships of the great fishing Powers moved to new regions. Fishermen from the northern States were already operating in the Caribbean, along the Pacific coast of the Americas as far as the Galapagos islands, off the western shores of Africa up to the Gulf of Guinea, and in other areas. The resulting damage to the stocks of fish in the tropical seas was obviously enormous.

21. For fishermen from remote countries, the exhaustion of fishing resources near the coasts of other States was of little consequence. They could always alter their routes and move to new zones in which to continue their depredation. But for an insufficiently developed State lacking the resources needed to fish far from its shores, a diminution in the fish population could have disastrous effects. Once the fish population fell to a "critical" level, it could soon become totally extinct. Moreover, the principal victims of over-exploitation were the coastal fishermen who could not range over great distances in search of more productive areas.

22. The crucial problem of the law of the sea thus stemmed from the reaction of the less developed countries situated in the inter-tropical belt against the growth of fishing imperialism. That reaction was inevitable because of the demographic growth and the awakening political conscience of the peoples concerned. Furthermore, as the need for urgent measures of conservation had only recently been understood, those countries could not now accept the argument that the only "legal" solution was for them to abstain from any defensive measure which might violate the sacred principle of the freedom of the seas. A solution could therefore only be found if all the interests involved were duly balanced. That balance could only be attained through a recognition of the rights of the less developed countries. If the great fishing Powers adopted a negative attitude, the problem would only be aggravated. Rigid adherence to the traditional rules of international law could prove disastrous to all concerned, for the traditional rules on the régime of the sea had been created by the great Powers for their own purposes before many major problems had arisen and before the birth of the new States which now formed the majority. The duty of the Conference, therefore, was to arrive at a negotiated settlement. Failure to do so would leave many States with a feeling of frustration and ultimately lead to an avalanche of extreme unilateral claims.

23. His Government believed that, in principle, problems connected with conservation should be resolved through international agreement. The international character of the waters in which measures had to be taken usually made an international solution greatly preferable. At times, however, such a solution was either impossible or difficult. It was therefore necessary to authorize the coastal State to take unilateral action on the high seas in certain cases. The need for such a course was evident. In the first place, there was the

fact of the coastal State's proximity to the resources. Geographical proximity in itself obviously did not entitle it to sovereignty, but the fact that it had some juridical relevance could not be disputed. If geographical continuity was a reason for recognizing the sovereign rights of the coastal State over the continental shelf, *a fortiori* the coastal State's special interest in adjacent fishing areas should be recognized.

24. Secondly, not all cases lent themselves equally to a solution based on the concerted action of many States. In cases such as whaling—because whales were extremely migratory and many countries participated in an exclusively pelagic industry—no other settlement was possible, but the same was not true in cases where a large fishing fleet from a powerful country fished in fixed areas off the coast of a less developed State. States which fished far from their own shores did not have the same interests in conservation as those situated in the immediate vicinity of the fishing ground. That was why the powerful fishing States desired not so much conservation as the passive consent of the coastal State to unrestricted fishing off its coast.

25. Lastly, as the Indian representative had pointed out (5th meeting), conservation measures adopted by the coastal State could be more easily enforced by that State than by others. Enforcement measures taken by outsiders off the shores of the coastal State could give rise to serious political and legal disputes.

26. Turning to the draft articles proposed by the International Law Commission, he said that the pivotal point was the recognition of the special situation and interests of the coastal State. That principle had been confirmed, after much indecision, in article 54. As was to be expected, however, the great fishing Powers had already voiced their opposition to that provision. Even as recently as 1955, at its seventh session, the Commission had proposed that the coastal State should be permitted to take unilateral conservation measures on the high seas only if it could furnish proof of its special interest.¹

27. Notwithstanding the inexplicable statement in paragraph 14 of the commentary to article 49 that the special interests of the coastal State did not take precedence *per se* over the interests of other States, it was now conceded that the coastal State enjoyed a unique and privileged position and that, having a special interest, it could adopt unilateral conservation measures on the high seas adjacent to its territorial sea. That was the most revolutionary of all the principles proposed by the Commission. He could not, however, accept the Commission's subsequent suggestion that the coastal State and other States fishing off its coast were on an equal footing and enjoyed the same juridical status.

28. Article 54, paragraph 2, seemed to permit the coastal State to participate in the negotiation of conservation measures off its coasts purely as an act of grace. Thus, under the pretext of granting the coastal State an illusory right, the Commission had tried to authorize every State to impose measures of conservation in areas adjacent to other countries. In practice,

¹ *Official Records of the General Assembly, Tenth Session, Supplement No. 9 (A/2934), article 29.*

therefore, every State would be free to establish reserved zones on the high seas opposite another country's coast. The provision was thus completely unacceptable to the smaller Powers which wished to defend the resources they required. Article 56, paragraph 1, was open to the same criticism.

29. The fundamental article of the entire draft was article 55, which authorized the coastal State to adopt unilateral measures of conservation. Such a provision was the logical consequence of the recognition of the special interest of the coastal State. It was regrettable, therefore, that the exercise of that right had been made subject to conditions which rendered it virtually nugatory. As it stood, the provision would offer no protection to insufficiently developed coastal States against States with large fishing fleets. In saying that, he was not criticizing the conditions regarding scientific evidence and non-discrimination against foreign fishermen. The inadmissible clauses were those stipulating that the coastal State could only take unilateral action if the negotiations which it had previously entered into with other interested States had led to no agreement "within a reasonable time" and that the legal validity of its action would depend on the result of a complex compulsory arbitration. In order to realize the true scope of those conditions, it had to be realized that fisheries disputes did not arise *in vacuo*. The disputes which the regulations were designed to resolve were normally not between equals but between less developed States, with scanty technical and financial resources, and powerful adversaries. The conditions laid down by the International Law Commission might have some sense in a regional convention, but in a universal instrument they would only mean that the States which really needed effective legal protection of their interests would in practice have to renounce all right to take unilateral action.

30. The "reasonable time" proviso was open to further criticism. It was recognized that the coastal State should not take unilateral measures except in cases of urgency. But where the need was urgent there would be not time to enter into negotiations. In practice, by the expiry of a reasonable period of negotiation between a small country and a great Power there would be very few fish left to protect.

31. With regard to compulsory arbitration, he felt that the Commission's proposal might prove very dangerous. No compulsory procedure could be more effective than means of peaceful settlement voluntarily agreed upon by the parties. A solution voluntarily arrived at as a result of negotiations had the qualities of permanence and cordiality which any arbitral decision lacked. In his opinion, the system proposed by the Commission in articles 57, 58 and 59 was excessively rigid, over-complicated and unlikely to prove workable.

32. He did not of course dispute that the unilateral actions of the coastal State in areas of the high seas over which it did not exercise sovereign rights should be subject to limitations. Arbitrary, uncontrolled or discriminatory action should certainly never be tolerated. He felt, however, that the conditions set forth in article 55, paragraph 2, were in themselves adequate.

33. Another important point was that articles 57 to 59 represented rules of adjective law. A work of codi-

fication which would apply to States and regions of very diverse conditions should confine itself to substantive law. Many existing instruments consisted solely of substantive rules which stated the obligations and rights of States. The absence of detailed procedural rules had never caused anyone to contend that those obligations or rights did not exist or that States lacked the legal means to fulfil the former or exercise the latter. With that in mind, the Mexican delegation had formally proposed that articles 57, 58 and 59 should be replaced by a much simpler and briefer text (A/CONF.13/C.3/L.1), which merely required the parties to a dispute to resort to one of the means of settlement envisaged in Article 33 of the United Nations Charter. If that provision had proved sufficient in questions affecting the maintenance of peace, it should also suffice for the solution of fishery disputes.

34. The CHAIRMAN declared the general debate closed.

35. The CHAIRMAN asked for comments on the organization of the second stage of the Committee's work.

36. Mr. CORREA (Ecuador) proposed that the Committee should deal with the articles referred to in the following groups: (1) definition of conservation (article 50); (2) rights and obligations of the coastal State (articles 51, 52 and 53); (3) special position of the coastal State (articles 54, 55 and 56); (4) arbitration (articles 57, 58 and 59); (5) fisheries conducted by means of equipment embedded in the floor of the sea (article 60); and finally (6) article 49 (the decision on which would depend on the action taken regarding article 66).

37. The CHAIRMAN observed that as modes of settlement of disputes other than arbitration were mentioned in the draft, group 4 should be entitled "Settlement of disputes".

38. Mr. CORREA (Ecuador) agreed.

39. The CHAIRMAN announced that in the absence of further proposals a paper based on that made by the representative of Ecuador would be circulated for discussion at the next meeting.

The meeting rose at 5 p.m.

THIRTEENTH MEETING

Friday, 21 March 1958, at 3.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Organization of the Committee's work (continued)

1. The CHAIRMAN proposed that for the study of the individual articles referred to it the Committee should divide them into three main groups: first, the right to fish (article 49); secondly, problems connected with the conservation of the living resources of the seas (articles 50 to 56 and article 60), which should be subdivided into (a) the definition of the right to fish (ar-

ticle 50), (b) competence of coastal States (articles 54, 55 and 60), (c) competence of States in general (articles 51, 52, 53 and 56); thirdly, the peaceful settlement of disputes (articles 57, 58 and 59).

2. It would be better to postpone taking decisions on the second paragraph of articles 52 and 53 or the third paragraph of articles 54 and 55 until decisions had been reached on articles 57, 58 and 59.

3. He proposed the following final dates for the submission of proposals and amendments: 25 March, for proposals and amendments relating to articles 49 and 50; 28 March, for those relating to articles 51 to 56 and 60; and 8 April, for those relating to articles 57 to 59.

4. He suggested that after discussion of each article, it should be voted provisionally. The results of votes would be sent to a drafting committee composed of the officers of the Committee assisted by the secretariat. The articles would subsequently be submitted for a second and definitive vote.

5. The Committee should endeavour to finish its work one week before the end of the Conference so as to leave time for the preparation of a report for discussion at a plenary meeting. It might accordingly be necessary to hold evening and Saturday meetings.

6. Mr. GARCIA AMADOR (Cuba) had no objection to the Chairman's plan, but asked at what stage proposals claiming exclusive fishing rights on the basis of special economic circumstances were to be discussed.

7. The CHAIRMAN said that claims of exclusive fishing rights came within the first group which he had proposed, the right to fish.

8. Mr. CORREA (Ecuador) thought it would be more logical to study the rights and obligations of States in general before those of coastal States in particular. He therefore proposed that the order of (b) and (c) in the Chairman's second group should be reversed. Discussion of articles 49 should be postponed until the end of the discussions on other articles, for two reasons: first, the contents of that article were closely linked with the First Committee's decisions with regard to proposals concerning the contiguous zone; secondly, the article referred to provisions concerning conservation of the living resources of the high seas, and it would therefore be more logical to reach decisions on those provisions first.

9. The proposed final dates for the submission of proposals and amendments to articles might prove to be too rigid. It would be better not to fix such dates until discussion of the group of articles to which they related had begun.

10. Mr. OZERE (Canada) asked whether there was to be a general final date for submitting amendments to articles, bearing in mind the fact that additional articles might later be approved.

11. The CHAIRMAN said he had discarded the idea of having a general final date for amendments to all the articles, and had proposed instead that there should be separate final dates for each group of amendments.

12. Mr. LUND (Norway), supported by Mr. DINE-

SEN (Denmark) en Mr. MESECK (Federal Republic of Germany), asked whether it would be possible to have the Chairman's proposals on paper before they were discussed further.

13. Mr. WALL (United Kingdom) asked that the proposals of the representative of Ecuador might also be circulated in writing.

14. In reply to a question from Mr. HERRINGTON (United States of America), the CHAIRMAN said that a provisional vote would be taken when the discussion of each group of articles had been concluded and when the final date for the submission of amendments had been reached.

15. Mr. HERRINGTON (United States of America) supported the Ecuadorian representative's proposal to defer consideration of article 49, the decision on which would depend largely on the outcome of the debate on other fisheries articles.

16. He supported the Chairman's proposal concerning final dates for the submission of amendments.

17. Mr. GARCIA AMADOR (Cuba) agreed that consideration of article 49 should be deferred in so far as it related to the claims of coastal States. Such claims should not be examined until the First Committee had reached a decision on the Canadian proposal (A/CONF.13/C.1/L.77) which had a direct bearing on them. To act otherwise would lead to confusion as separate decisions would be taken almost concurrently on two related matters.

18. The CHAIRMAN said that the Ecuadorian representative's and his own proposals would be circulated as documents at the next meeting.

The meeting rose at 3.55 p.m.

FOURTEENTH MEETING

Monday, 24 March 1958, at 3.10 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Organization of the Committee's work (A/CONF.13/C.3/L.17) (continued)

1. Mr. GARCIA AMADOR (Cuba) said that the order of sub-divisions (b) and (c) in group I of the Note by the Bureau of the Committee (A/CONF.13/C.3/L.17) should be reversed, for articles 51 to 53 and article 56 were less controversial than articles 54, 55 and 60. Besides, the decisions on the proposals concerning the contiguous zone which were being discussed in the First Committee would have a bearing on the Third Committee's work on the articles relating to the competence of the coastal State.

2. Mr. CORREA (Ecuador) said that the most important of the proposals which he had made at the previous meeting had been that article 49 should be discussed after the other articles before the Committee, and that proposal had been embodied in the Note by the Bureau. He now felt it was more logical to discuss the

competence of coastal States before the competence of non-coastal States — although at the previous meeting he had proposed the opposite — since it would enable representatives to obtain a clear idea of the Third Committee's views on the competence of coastal States before the First Committee came to discuss the Contiguous Zone.

3. Mrs. JAMIOLKOWSKA (Poland) said that her delegation agreed with the Bureau's suggestion that claims of exclusive or preferential fishing rights on the basis of special economic circumstances should be considered after the other articles had been discussed, but she did not think that article 49 should also be postponed until the end. Only two amendments had been proposed to that article, and it was therefore likely to prove acceptable in substance, subject only to drafting changes. She therefore proposed that article 49 should be discussed at the beginning of the list of articles before the Committee.

4. Mr. QURESHI (Pakistan) said that some clarification of the Bureau's proposed sub-division (c) of group I was needed, since article 56 related exclusively to non-coastal States, while articles 51 to 53 seemed to be of general application.

5. Mr. POPOVIC (Yugoslavia) said that article 49 should be discussed first, since, if the Committee failed to agree on that article, it would find it difficult to reach agreement on the other articles. He proposed that articles 49 to 60 should be divided into the following groups: (1) article 49; (2) articles 50 to 53, and perhaps 56; (3) proposals concerning claims of exclusive or preferential fishing rights of coastal States, together with articles 54, 55 and perhaps 60; (4) the last sentences of article 53, paragraph 2, and article 55, paragraph 3, together with article 58. He also proposed that 1 April should be fixed as the final date for the submission of proposals or amendments to article 49 and for the submission of proposals concerning claims to exclusive or preferential fishing rights.

6. Mr. KRYLOV (Union of Soviet Socialist Republics) said that article 49 should be discussed first. A decision on paragraph 2 of articles 52 and 53 and paragraphs 3 of articles 54 and 55, which the Bureau proposed should be postponed until a decision had been reached on articles 57 to 59, could be left until the end of the discussions since they related to formal and not to substantive questions. He agreed that proposals concerning claims to exclusive or preferential fishing rights on the basis of special economic circumstances should be discussed last.

7. Mr. OLAFSSON (Iceland) said that the question of exclusive fishing rights was of especial concern to Iceland. In discussing proposals relating to claims to such rights, the Committee would inevitably refer to article 49, and he therefore supported the Bureau's suggested treatment of that article.

8. Mr. LUND (Norway) said, with regard to sub-divisions (b) and (c) of group 1 of the Note by the Bureau, that the Committee should follow the order of the articles as set out in the International Law Commission's draft. Articles 51 to 53 concerned all States

and were of a general character. Articles 54 and 55, on the other hand, concerned the special position of coastal States, and it was therefore more logical to consider those articles after articles 51 to 63.

9. Article 60 dealt with a special problem, and should be discussed after the articles dealing with the conservation of the living resources of the high seas. His delegation could not accept the Bureau's suggestion that a decision on paragraphs 2 of articles 52 and 53 and paragraphs 3 of articles 54 and 55 should not be taken before a decision had been reached on articles 57 to 59. It implied that decisions could be taken on the other paragraphs of articles 52 to 55, whereas the question of compulsory arbitration was inseparable from any article in which it was mentioned. On the other hand, the articles which dealt with the machinery of arbitration could be considered as a separate group.

10. Mr. WALL (United Kingdom) said that, although he thought that the Committee should not depart from the order of the International Law Commission's draft articles, it would be difficult to come to a final decision on article 49 before the end of the discussions. With regard to the Bureau's sub-divisions (b) and (c) of group I, he felt that the International Law Commission's order to articles should be followed, since, as the representative of Cuba had said, articles 51 to 53 were less controversial than articles 54 and 55. It would thus be possible to dispose of articles 50 to 53 rapidly.

11. Mr. RUIVO (Portugal) supported the United Kingdom representative's views. He thought that the order of the International Law Commission's draft articles was the best one. The articles dealing with arbitration, being of a more general nature, might be discussed before those relating to the competence of non-coastal States.

12. Mr. GOLEMANOV (Bulgaria) considered that the International Law Commission's draft was based on a logical plan, which was reflected in the order of the articles. He therefore believed that the discussions should begin with article 49, and he supported the Soviet representative's views relating to the organization of the discussions on the other articles before the Third Committee.

13. Mr. OZERE (Canada) thought that it would be difficult to discuss article 49 first, since it was a general article on a general topic, and a discussion on such a topic might merely lead to a repetition of the general debate. Moreover, article 49 gave States the right to fish "subject to... the provisions contained in the following articles", and it would therefore be difficult to reach an agreement on article 49 until the "following articles" had been agreed on.

14. With regard to the suggestion in paragraph 2 of the Note by the Bureau, he proposed that the vote on the first reading should not take place for two days after the tentative final date fixed for the submission of amendments.

15. Mr. HERRINGTON (United States of America) said that it would be more logical to discuss article 49 last. The acceptability of articles 53 to 55 would de-

pend on the nature of the arbitral procedure agreed on, and thus it would not be possible to come to a decision on those articles until agreement had been reached on the arbitral procedure itself.

16. He supported the Canadian representative's proposal relating to the vote on the first reading. He thought that the purpose of the votes should be clarified, in such a way as to make it clear that the first reading was to be concerned with the substance of the articles, and was subject to drafting changes. The second reading would then be for the approval of the final draft.

A proposal by Cuba that the competence of non-coastal States be discussed before the competence of coastal States was adopted by 41 votes to 5, with 13 abstentions.

A proposal by Poland that article 49 be discussed first was rejected by 34 votes to 14, with 9 abstentions.

A proposal by Yugoslavia that proposals concerning claims to exclusive or preferential fishing rights on the basis of special economic circumstances should be discussed in conjunction with articles 54, 55 and 60 after the discussion of articles 49, 50 to 53 and 56 was rejected by 32 votes to none, with 22 abstentions.

A proposal by Yugoslavia that the Committee should discuss article 58 together with the last sentence of article 53, paragraph 2, and the last sentence of article 55, paragraph 3, was rejected by 15 votes to none, with 23 abstentions.

A proposal by Yugoslavia that 1 April should be the final date for the submission of amendments to article 49 and the submission of proposals relating to claims to exclusive or preferential fishing rights on the basis of special economic circumstances was rejected by 30 votes to 6, with 12 abstentions.

A proposal by Norway that the Committee should discuss article 60 as a separate group IV was adopted by 40 votes to 1, with 14 abstentions.

17. Mr. TREJOS (Costa Rica) proposed that, in view of the decision to constitute article 60 as a new group IV, the final date for the submission of proposals and amendments relating to that article should be 8 April.

The proposal was adopted by 30 votes to 8, with 12 abstentions.

The Canadian proposal that the first vote should be taken two days after the tentative final date for the submission of proposals was adopted by 39 votes to none, with 16 abstentions.

18. Mr. ALVAREZ (Uruguay) suggested that a comparative chart of amendments to each article should be drawn up for the assistance of delegates.

19. The CHAIRMAN said that the Secretary would keep that suggestion in mind.

The note concerning organization of work (A/CONF.13/C.3/L.17), as amended, was adopted.

The meeting rose at 4.55 p.m.

FIFTEENTH MEETING

Tuesday, 25 March 1958, at 10.45 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

Organization of the Committee's work (A/CONF.13/C.3/L.18) (continued)

1. Mr. OZERE (Canada) pointed out that in accordance with the decision which the Committee had reached at its previous meeting, article 50 and any proposals and amendments thereto, in respect of which the closing date mentioned in paragraph 3 of document A/CONF.13/C.3/L.18 had now been reached, would be voted upon on first reading on 27 March.

2. Mr. LLOSA (Peru) agreed that that procedure should be followed. He suggested, however, that any proposals or amendments relating to article 50 submitted after the meeting but before 6 p.m. should be discussed at a subsequent meeting.

It was so agreed.

3. Mr. WALL (United Kingdom) felt that the Committee's decision to divide articles 51 to 56 into two groups for purposes of discussion (document A/CONF.13/C.3/L.18, paragraph 1, I (b) and (c)) had not been taken sufficiently into account in fixing the final dates for the submission of proposals and amendments to those articles. The Committee's work would be retarded if the same final date were maintained for both groups and he therefore proposed that the final date for the submission of proposals and amendments to articles 51 to 53 and article 56 should be advanced to 26 March.

4. Mr. ALVAREZ (Uruguay) supported the United Kingdom proposal.

5. Mr. MELO LECAROS (Chile) expressed the hope that the new final date proposed by the United Kingdom representative would be sufficiently flexible and that allowances would be made for the difficulties it might raise for the smaller delegations.

6. The CHAIRMAN assured the Chilean representative that any such difficulties would be taken into account.

The United Kingdom proposal that 26 March be the final date for the submission of proposals and amendments to articles 51 to 53 and article 56 was adopted.

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

ARTICLE 50 (DEFINITION OF CONSERVATION OF THE
LIVING RESOURCES OF THE SEA (A/CONF.13/C.3/L.8))

7. Mr. HULT (Sweden), explaining his delegation's proposal (A/CONF.13/C.3/L.8), said that the purpose of conservation measures was to protect fish stock not for its own sake, but in a form most beneficial to mankind. The valuable proteins of fish meat, with their essential amino-acids, were indispensable in a world of protein shortage. Should any conflict arise between the

conservation of fisheries for human consumption and their conservation for other purposes, it was vital that priority should be given to fisheries maintained for human consumption.

Mr. LLOSA (Peru) recalled that the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 had decided, as a result of a compromise proposal submitted by his own country in co-operation with Mexico and Cuba, to include in paragraph 18 of its report,¹ under the heading "Objectives of Fishery Conservation", a statement that "when formulating conservation programmes, account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast". The present wording of article 50 followed closely the text of the first sentence of paragraph 18, but contained no reference to the special interests of the coastal State. His delegation took the view that it was for the present conference to make good that omission, and he would be glad to submit a written amendment to bring the provisions of article 50 into line with the recommendations of the Rome Conference, if other members of the Committee so desired.

9. Mr. SATO (Japan) observed that there were two paragraphs in the Rome Conference's report devoted to a definition of the objectives of fishery conservation: first, paragraph 17, which stated that the immediate aim of conservation of living marine resources was to conduct fishing activities so as to increase, or at least to maintain, the average sustainable yield of products in a desirable form and that at the same time, wherever possible, scientifically sound positive measures should be taken to improve the resources; and, secondly, paragraph 18, which stated that the principal objective of conservation of the living resources of the seas was to obtain the optimum sustainable yield so as to secure a maximum supply of food and other marine products and that, when formulating conservation programmes, account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast.

10. The provisions of article 50, as drafted by the International Law Commission, were closely similar to those proposed in the first part of paragraph 18, but there was no reference at all to the recommendations contained in paragraph 17. In his delegation's view, those two paragraphs of the Rome Conference's report were complementary, and neither could stand without the other. It was therefore essential to take into account the terms of paragraph 17 of the report of the Rome Conference of 1955 in determining the meaning of article 50.

11. With that reservation, his delegation was prepared to approve the text of article 50.

12. Mr. SERBETIS (Greece) supported the Swedish proposal which amplified, but did not essentially change the purport of, article 50.

13. Mr. CASTAÑEDA (Mexico) said that his delegation approved in substance the present wording of article 50. In any definition of the objectives of fishery

conservation, however, account should be taken not only of economic and utilitarian considerations, but also factors affecting the social welfare of the population of a coastal State. If, for instance, the fishing methods employed by the population of a coastal State were very old-fashioned, they would certainly not contribute to the achievement of the optimum sustainable yield: but they were justifiable on social grounds, because they represented the only source of livelihood for the local population. In his view, the social aspect of fishery conservation was recognized, at least by implication, in paragraph 1 of article 54. But, as it would be preferable to include some explicit reference to the matter in article 50, his delegation supported the Swedish proposal, which would establish a social, as well as an economic, criterion in the application of fishery conservation measures.

14. The CHAIRMAN declared that further consideration of article 50 was deferred to a later meeting.

ARTICLES 51 TO 53 AND ARTICLE 56 (COMPETENCE OF NON-COASTAL STATES) (A/CONF.13/C.3/L.3, L.4, L.7, L.9 to L.11)

15. U KHIN (Burma), introducing his delegation's proposal concerning article 51 (A/CONF.13/C.3/L.7), recalled that, since articles 51 and 68 were closely related, he had suggested that the Third and Fourth Committees should hold joint meetings to consider them simultaneously. If that could not be arranged, however, steps must be taken to ensure that the rights specified in article 68 were not affected in any way by the provisions of article 51; that was precisely the purpose of his delegation's proposal.

16. Mr. POPOVIC (Yugoslavia) said that the first paragraphs of each of his delegation's two proposals relating to articles 51 and 52 (A/CONF.13/C.3/L.9 and A/CONF.13/C.3/L.10) were based on the same consideration — namely, that in view of the principle of the freedom of the high seas proclaimed in the Commission's draft articles, a State should be entitled to adopt measures necessary to regulate and control fishing in any area of the high seas only with respect to its own nationals. That view was confirmed in paragraph 1 of the Commission's commentary on article 51.

17. The new paragraph which his delegation was proposing to add to articles 51 and 52 was necessary because, just as in the case of the measures by the coastal State referred to in article 55, paragraph 2, sub-paragraph (b), any measures adopted by other States should be based on appropriate scientific findings.

18. Mr. KRYLOV (Union of Soviet Socialist Republics) said that his delegation intended to submit an amendment to article 53.

19. Mr. RAVEL (France) explained that the purpose of the amendments to articles 52 and 53 contained in his delegation's proposal (A/CONF.13/C.3/L.3) was simply to specify the time within which the agreements referred to should be reached.

20. The CHAIRMAN declared the debate on articles 51 to 53 and article 56 closed.

The meeting rose at 12.5 p.m.

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

SIXTEENTH MEETING*Wednesday, 26 March 1958, at 3.15 p.m.**Chairman: Mr. Carlos SUCRE (Panama)***Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)**

ARTICLE 50 (DEFINITION OF CONSERVATION OF THE LIVING RESOURCES OF THE SEA) (A/CONF.13/C.3/L.21) (continued)

1. Mr. LLOSA (Peru), introducing the joint proposal (A/CONF.13/C.3/L.21), said its purpose was to supplement the definition of conservation given in article 50 by an express reference to the special interest of the coastal State. Both the definition in article 50 and the joint proposal had their origin in paragraph 18 of the Report of the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955.¹ Thus, the joint proposal was nothing new, being no more than a clarification of the definition contained in article 50.

2. Mr. MELO LECAROS (Chile) said that Chile should be added as one of the sponsors of the joint proposal.

3. Mr. HERRINGTON (United States of America) said that his delegation supported the principle of the special interest of the coastal State in the conservation of the resources but considered that, in a scientific definition of conservation of the living resources of the sea, qualifications of the definition of that principle with respect to use of the yield from the resources had no place. It was unnecessary, being already covered by article 54, paragraph 1, and would cause confusion.

4. Mr. CASTAÑEDA (Mexico) said that the Committee was concerned with two distinct but connected questions: first, the special interest of the coastal State, which was laid down as an independent principle in article 54; second, the conservation of living resources, which was the subject of article 50. However, the definition in article 50, though scientifically correct, was inadequate, in that it did not take into account factors affecting coastal States, and should be supplemented by the text of the joint proposal.

5. Mr. GARCIA AMADOR (Cuba) stated that his delegation objected to the joint proposal on grounds of form, not of substance. Although the whole of paragraph 18 of the report of the Rome Conference was completely acceptable, it should not be forgotten that three years' study had taken place since the Rome Conference, which the present conference superseded. The International Law Commission had taken part of paragraph 18 of the Rome Conference's report as a basis for the scientific definition of conservation contained in article 50, and it had used the other part as the basis of article 54. That was a more efficient method than that recommended in the joint proposal, which would make article 54 redundant.

6. Mr. LLOSA (Peru), replying, said that the International Law Commission, in its commentary to article 50, stated that it accepted the definition of the conservation of living resources contained in paragraph 18 of the Rome Conference. That paragraph 18, however, contained the qualifying sentence: "When formulating conservation programmes, account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast." In accepting the definition, the Commission should also have accepted the qualification, a defect which the joint proposal was intended to remedy.

The meeting rose at 3.45 p.m.

SEVENTEENTH MEETING*Thursday, 27 March 1958, at 10.45 a.m.**Chairman: Mr. Carlos SUCRE (Panama)***Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)**

ARTICLE 50 (DEFINITION OF CONSERVATION OF THE LIVING RESOURCES OF THE SEA) (A/CONF.13/C.3/L.8, A/CONF.13/C.3/L.21) (continued)

1. Mr. BOCOBO (Philippines) said that at first sight it might appear that the proposal submitted by Chile, Costa Rica, Mexico, Peru and the United Arab Republic (A/CONF.13/C.3/L.21) was superfluous, since the principle expressed in it was already embodied in paragraph 1 of article 54. But the latter text merely stated the principle that the coastal State had a special interest in conservation, whereas the amendment made it obligatory for due regard to be had to the special interest of the coastal State in the formulation of conservation programmes and would therefore reinforce the provisions of article 54. In its present form, article 50 was an unsatisfactory definition of conservation measures, since it contained no reference to the special interest of the coastal State. His delegation would therefore vote for the joint proposal.

2. Mr. GLASER (Romania) suggested that discussion of the joint proposal be postponed until the Committee came to consider article 54, since the substance of the proposal was closely connected with the provisions of the latter article, which said all that needed to be said on the special interest of the coastal State. It would be unsound to express the same principle in different forms in different parts of the proposed convention.

3. Mr. AYTEKIN (Turkey) likewise observed that the principle contained in the joint proposal was embodied, at least partially, in article 54, paragraph 1. Article 50 was intended simply as a definition of conservation measures, and if the joint amendment were adopted the essential purpose of that article would be lost. He was therefore opposed to discussion of the joint proposal at the present juncture.

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

4. Mr. OZERE (Canada) said that, while his delegation agreed in principle with the substance of the joint proposal, it was nevertheless opposed, on purely procedural grounds, to its being discussed in connexion with article 50. The latter article should be confined to non-tendentious matters, and should assert the interests of all States — not only coastal States — in conservation measures.

5. There was no justification for the argument that the present conference should reach the same conclusions as the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955. In that year coastal States were still awaiting recognition of their special interests. Those special interests had now been given full recognition in the International Law Commission's draft articles 54 and 55.

6. Mr. OZORES (Panama) said that his delegation would vote in favour of the joint proposal. In his view, the purpose of article 50 was not to define conservation measures, but the objectives of those measures, and in that connexion some reference was necessary to the interest of the coastal State. In its existing form, article 50 was simply a scientific definition, which should be supplemented by a reference to the human and social factors involved.

7. His delegation could not accept the contention that the joint proposal was unnecessary because the special interest of the coastal State was recognized in article 54, paragraph 1. In their present form, articles 51 to 53 and article 56 would empower coastal States to exercise a virtually undisputed control over conservation measures. It was vital therefore that reference to the special interests of the coastal State be included as early as possible in the text under discussion — namely, in article 50.

8. Mr. OLAFSSON (Iceland) regarded the joint proposal as pertinent to article 50 and would vote in favour of it. He did not think that adoption of the amendment would introduce confusion into article 50.

9. Mr. KASUMA (Indonesia) said that it was impossible to separate the two principles expressed in paragraphs 17 and 18 of the report of the Rome Conference of 1955.¹ The International Law Commission had only introduced one of those principles into its draft of article 50 and, in the hope that the Committee would make good the omission of the second principle, his delegation would vote in favour of the joint proposal.

10. Mr. WALL (United Kingdom) believed that it would be more appropriate to consider the joint proposal in connexion with articles 54 and 55 than at the present stage. Regardless of the inherent merits of the proposal, he would vote against it if a vote were taken during the discussion of article 50.

11. Mr. CIEGLEWICZ (Poland) observed that the proposal submitted by Sweden (A/CONF.13/C.3/L.8) was expressed in more general terms than those of the joint proposal (A/CONF.13/C.3/L.21). His delegation

would, however, favour approval of article 50 as drafted by the International Law Commission. If the joint proposal were adopted, with the result that article 50 would contain a reference to the special interests of the coastal State, he thought a further amendment would be needed to assert the interests of non-coastal States, which were certainly not subordinate to those of the coastal State.

12. Mr. RUIVO (Portugal) was opposed to discussion of the joint proposal in connexion with article 50. That article should be completely objective in character. It should be the basis of all other articles on the conservation of the living resources of the high seas and should be drafted in such a way that it could be used as a principle for settling disputes between States. It would be unwise to introduce into it a reference to the special interests of the coastal State, since non-coastal States had equally legitimate interests in conservation measures. They were deeply concerned, for instance, at the destructive fishing methods which some coastal States employed in their territorial sea and which had serious repercussions in high seas fishing areas.

13. Mr. LUND (Norway) took the view that it was undesirable to draw a distinction between the interests of coastal and non-coastal States. His country was undoubtedly a coastal State, but it was as a coastal State that Norway had developed its high seas fisheries and its whaling and sealing industries. He would therefore vote against the joint proposal.

14. Mr. CASTAÑEDA (Mexico) agreed with the Philippine representative that article 54, paragraph 1, simply stated the principle that a coastal State had a special interest in the maintenance of the productivity of the living resources of the sea, without insisting that due regard be paid to that interest in formulating conservation measures. Like the Panamanian representative, he believed that a purely scientific definition of conservation measures should be supplemented by a reference to human and social factors before it could be accepted as a rule of law. If article 50 were adopted in the form proposed by the International Law Commission, it would appear that the only purpose of conservation measures was to obtain the optimum sustainable yield. That was one purpose of conservation measures, but by no means the only one. It would be absurd to maintain that the purpose of conservation measures was the same for a country such as Iceland, whose economy was based almost exclusively on the fisheries industry, as for other countries who were interested in fisheries simply as a source of obtaining fertilizers. There were many other social factors which would have to be taken into account in supplementing the scientific definition of conservation measures.

15. Appealing to those delegations which had expressed agreement with the joint proposal in principle but were opposed to its being discussed in connexion with article 50, he maintained that agreement in principle was more important than hesitation on procedural grounds, and he would therefore urge all who approved the principle of the proposal to vote in favour of it.

16. Finally, he requested that a vote by roll-call be taken on the joint proposal.

¹ *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No. : 1955.II.B.2).

17. Mr. LLOSA (Peru) drew attention to the proceedings of the Rome Conference of 1955, where it had been agreed that it was undesirable to define the objectives of fishery conservation in purely scientific terms without taking into account the social factors involved. That conference had thereupon supplemented a purely scientific definition with the statement that the special interests of the coastal State should be taken into account when formulating conservation programmes.¹ The International Law Commission had adopted the scientific part of the definition but, perhaps by an oversight, had omitted the reference to the special interests of the coastal State; and for the Committee to adopt article 50 as drafted by the Commission would involve overlooking a resolution adopted by a majority at the Rome Conference. It was of no avail for those who opposed the joint proposal but agreed in principle that the interests of less-developed countries should be taken into account when formulating conservation measures to maintain that the interests of those countries were adequately protected by article 54, paragraph 1, since the Mexican representative had demonstrated conclusively that that was not the case.

18. He urged that the Committee adopt the recommendations of the Rome Conference in full, and hoped that other delegations would agree with him on a matter which was fundamental to the whole problem of conservation measures.

19. Mr. GOHAR (United Arab Republic) observed that one point had not been made quite clear by the co-sponsors of the joint proposal. Measures taken to conserve the living resources of the high seas adjacent to a State's territorial sea might conflict with measures taken to conserve the resources of the same State's territorial seas, internal waters or even lakes. Article 54 recognized the special interests of the coastal State in the productivity of the living resources of the high seas adjacent to its territorial sea, but said nothing of the relation between conservation measures taken in an area of the high seas and measures taken in the territorial sea and the internal waters. In such a situation, the interests of the coastal State should have priority over the general interests of other States in high seas fisheries. The introduction of a provision to that effect into article 50 would not give rise to any duplication between the contents of articles 50 and 54.

20. Mr. GARCIA AMADOR (Cuba) noted that, while a number of delegations were opposed to discussion of the joint proposal in connexion with article 50, very few were opposed in principle to the recognition of the special interests of the coastal State. The present discussion was not, therefore, one of substance, but of procedure. In an effort to solve that problem, he would make a formal proposal that the vote on the joint proposal be postponed until article 54 was under consideration.

21. Mr. CASTAÑEDA (Mexico) said that if the Committee decided to postpone the vote on the joint proposal, which was merely intended to define

conservation more clearly, it should also refrain from taking a decision on article 50 itself. He would therefore oppose the Cuban representative's proposal.

22. Mr. LLOSA (Peru) agreed. In his opinion, the Committee must first vote on article 50 and on any proposals and amendments thereto before it could consider subsequent articles which were based on the definition of conservation contained in article 50. Moreover, as the representative of the United Arab Republic had rightly pointed out, no definition of conservation would be complete which failed to take into account the scientific and biological relationship between the resources of the high seas and those of inland waters.

23. The CHAIRMAN put to the vote the proposal to postpone the vote on article 50 and on any proposals and amendments thereto.

The proposal was rejected by 41 votes to 12, with 10 abstentions.

24. The CHAIRMAN put the joint proposal of Chile, Costa Rica, Mexico, Peru and the United Arab Republic (A/CONF.13/C.2/L.21) to the vote.

At the request of Mr. Castañeda (Mexico) the vote was taken by roll-call.

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

In favour: Iceland, India, Indonesia, Iran, Jordan, Republic of Korea, Libya, Mexico, Nicaragua, Panama, Peru, Philippines, Saudi Arabia, Spain, Tunisia, United Arab Republic, Uruguay, Yugoslavia, Argentina, Burma, Ceylon, Chile, Colombia, Costa Rica, Ecuador, Guatemala.

Against: Italy, Japan, Liberia, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Australia, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, China, Cuba, Czechoslovakia, Dominican Republic, France, Federal Republic of Germany, Greece, Haiti.

Abstaining: Ireland, Israel, New Zealand, Pakistan, Switzerland, Venezuela, Denmark, Finland.

The joint proposal (A/CONF.13/C.3/L.21) was rejected by 32 votes to 26, with 8 abstentions.

25. Mr. GARCIA AMADOR (Cuba) said that he had voted against the proposal not because he opposed its substance, but simply because he felt it was an error to introduce into article 50 matters that properly belonged elsewhere.

26. Mr. LOOMES (Australia) explained that he had voted against the proposal for similar reasons to those given by the Cuban representative. His negative vote did not imply that his delegation opposed the special rights of coastal States, the principle of which it would support in the context of article 54.

27. Mr. NOLSØE (Denmark) explained that his delegation had abstained from voting because it felt

¹ Report of the International Technical Conference on the Conservation of the Living Resources of the Sea, para. 18.

that the text of the proposal, with which it agreed in principle, would have been out of place in article 50.

28. Mr. DE FARIA (Brazil) said that he had voted against the proposal for similar reasons to those given by the Cuban representative.

29. Mr. MALLIN (Ireland) said that his delegation had abstained from voting because, although the substance of the proposal was unexceptionable, it was unsuitable for inclusion in article 50.

30. The CHAIRMAN put the Swedish proposal (A/CONF.13/C.3/L.8) to the vote.

The Swedish proposal was adopted by 32 votes to 7, with 26 abstentions.

31. Mr. LUND (Norway) pointed out that it was extremely difficult to determine how the living resources of the high seas could best be used for the benefit of mankind. That being so, the general definition contained in article 50 seemed to be the most appropriate solution, and he had been obliged to vote against the Swedish proposal which indicated that the living resources of the high seas should be used for a specific purpose.

Article 50, as amended, was approved on first reading by 50 votes to none, with 9 abstentions.

ARTICLE 51 TO 53 AND ARTICLE 56 (COMPETENCE OF NON-COASTAL STATES) (A/CONF.13/C.3/L.3, L.4, L.7, L.9 to L.11, L.19, L.22 to L.25, L.28 to L.36, L.38, L.39) (continued)¹

32. Mr. TSURUOKA (Japan) said that the first Japanese proposal (A/CONF.13/C.3/L.32) introduced the concept of stocks of fish into article 51, which would otherwise be open to misinterpretation. It might, for instance, be felt that all States had a right to control stocks of fish even if their nationals were not engaged in fishing such stocks. The stocks of fish concept was, moreover, referred to in articles 52 and 53, and mention of it in article 51 was merely a matter of consistency.

33. Paragraph 2 of the text proposed by his delegation for article 51 was based on the idea that it was both juridically and technically desirable to ensure that the conservation measures referred to were given due publicity, particularly since under article 53 they would be applicable to newcomers. In that connexion, his delegation supported the French and Yugoslav proposals on article 51 and was prepared to incorporate them in its text.

34. The amendments which the Japanese delegation proposed should be made to articles 52 and 53 were very simple. They were aimed at specifying more clearly the time-limit laid down for the settlement of disputes. Their purpose was, on the one hand, to shorten the period of uncertainty pending the arbitral decision, and, on the other, to make the wording more objective by discarding the expression "reasonable period of time" which appeared in the International Law Commission's draft.

35. His delegation proposed that the period should be one year, whereas the French delegation had proposed a period of two years. The Japanese proposal appeared preferable in view of the length of time required to settle disputes in cases where it was necessary to have recourse to the provisions of article 57. Under the procedure laid down in article 57, it would be necessary first to wait three months for the appointment of an arbitral commission, and then five months for its decision, which meant eight months for the arbitration alone. Added to that, the year now proposed by Japan as the period for negotiations would bring the total up to one year and eight months, which itself represented a considerable lapse of time. If the period were to be fixed at two years, as proposed by France, that would mean waiting altogether two years and eight months.

36. Moreover, in one year of negotiations the States concerned would be well able to tell whether they could reach agreement or would have to resort to the procedure laid down in article 57. In other words, a period of one year did not appear too short for the countries concerned to make an attempt to reach agreement through negotiation.

37. The purpose of his delegation's second proposal (A/CONF.13/C.3/L.33), which concerned articles 54, 55 and 56, was to ensure better application of the conservation concept defined in article 50, and at the same time to safeguard the legitimate interests of coastal and non-coastal States alike. As the concept of conservation was scientific, and not political or economic in nature, the coastal State should not be in a privileged position and enjoy the right to regulate fishing in the high seas unilaterally simply by virtue of its geographical position. The effect on the living resources of the high seas was the same regardless of whether they were fished by coastal or non-coastal States, and therefore there was no justification for making a distinction between those two types of State.

38. The argument that the coastal State's special position was based on economic and social reasons was also untenable. In the first place, that idea could be abused to the detriment of foreign fishermen and might result in under-fishing. Secondly, the usual reason why a non-coastal State engaged in fishing far afield, often incurring great hardship in the process, was that the available resources nearer home were inadequate to feed its large population. To cut such countries off from those distant resources would be to deprive large segments of the population of their livelihood.

39. His delegation's proposal accordingly placed coastal and non-coastal States on an equal footing and stipulated only one condition—namely, that the State concerned must have a special interest in the conservation of the living resources in the area of the high seas concerned.

40. The CHAIRMAN suggested that, in view of the large number of proposals submitted on the articles under consideration, an attempt should be made to draft compromise texts.

41. Mr. OZORES (Panama) suggested that a working group consisting of the sponsors of proposals could be set up for that purpose.

¹ Resumed from the 15th meeting.

42. After a brief discussion in which Mr. HERRINGTON (United States of America), Mr. RIGAL (Haiti), Mr. WALL (United Kingdom), Mr. LUND (Norway), Mr. TREJOS FLORES (Costa Rica) and Mr. ALVA-REZ (Uruguay) took part, the CHAIRMAN urged sponsors of proposals to meet informally and endeavour to prepare one or two joint texts.

EIGHTEENTH MEETING

Friday, 28 March 1958, at 10.30 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 51 TO 53 AND ARTICLE 56 (COMPETENCE OF NON-COASTAL STATES) (A/CONF.13/C.3/L.3, L.4, L.7, L.9 to L.12, L.19, L.22 to L.25, L.28 to L.40) (continued)

1. Mr. PANIKKAR (India), Rapporteur, said that the present stage of the Committee's work could be speeded up considerably if delegations addressed their proposals and amendments to the substance rather than to the form of the articles under consideration. Drafting changes should be eschewed as far as possible because they raised certain language difficulties irrelevant to the substance of the articles; such changes would, in any event, be made at a later date by the appropriate body. In conclusion, he pointed out that the Committee, which had to proceed article by article, would find its task complicated if proposals were made to replace two or more articles by a single text.

2. Mr. LEE (Republic of Korea), introducing his delegation's proposal concerning article 52 (A/CONF.13/C.3/L.34), said that the words "any area of the high seas" seemed to cover two separate concepts. The first was the area of the high seas adjacent to the territorial sea of the coastal State, and the second was the area of the high seas not adjacent to its territorial sea. With respect to the second of those areas, his delegation agreed that the question of competence referred to in article 52 could be settled by international agreement. In the case of the first area, however, the article completely disregarded the special interests of the coastal State whose nationals, alongside the nationals of other States, were engaged in fishing certain stocks. From that point of view, article 52 in its present form was quite inconsistent with article 55, which recognized the coastal State's right to adopt unilateral measures of conservation. His delegation's proposed amendment would therefore enable the coastal State to participate in any system of regulation and conservation of the living resources in the area concerned and, if necessary, to adopt unilateral conservation measures.

3. Mr. LIENESCH (Netherlands), explaining the Netherlands proposals on articles 51 and 52 (A/CONF.13/C.3/L.39), said that if a coastal State

failed to adopt measures for regulating and controlling fishing activities in the circumstances set forth in article 51, any other interested State should be able to request it to do so. That would be necessary, for example, in the case of the intensive activities of factory ships fishing in remote areas which might escape attention.

4. Mr. RUIVO (Portugal) supported the United Kingdom proposals on articles 51 and 52 (document A/CONF.13/C.3/L.28) because, as his delegation had pointed out in the general debate (8th meeting), effective conservation measures must be based on the concept of stocks of fish and not on geographical considerations.

5. His delegation's proposals concerning articles 52 and 53 (document A/CONF.13/C.3/L.38) were prompted by the conviction that the preparation of sound conservation measures required extensive research. Accordingly, when two or more States were engaged in fishing the same stock it would be advisable to set up a permanent regional fisheries board to conduct the necessary research, prepare conservation measures on a scientific basis, supervise their application and adapt them as and when necessary.

6. The Portuguese proposal concerning article 53 would automatically enable newcomers to join in the work of regional fisheries boards, and to discuss conservation measures and any other matters bearing on the area in question. The regional fisheries boards, with their comprehensive files, would play an important part in preventing disputes and settling any disputes that might arise.

7. Mr. PAROLETTI (Italy) wished to explain two of the proposals submitted by his delegation (A/CONF.13/C.3/L.24 and A/CONF.13/C.3/L.25).

8. With regard to the first proposal — namely, that the word "nationals" be replaced by the words "national ships" in articles 49 and 51, article 52 (paragraph 1), article 53 (paragraph 1), article 54 (paragraph 2), and article 56 (paragraph 1) — he noted that in paragraph 2 of the commentary to article 49 the International Law Commission indicated that the term "nationals" denoted fishing boats having the nationality of the flag they flew, irrespective of the nationalities of their crews. In order, however, to avoid any possible doubt in the application of the future convention, a reference to national ship should be included in the actual text of the pertinent articles and not merely in the commentary. It was quite possible that nationals of one State might fish in ships belonging to another State. The legal status of those engaged in fishing should, for the purposes of the convention, be decided by the flag of the ship in which they were fishing.

9. In connexion with the second proposal (A/CONF.13/C.3/L.25), he pointed out that paragraph 1 of the commentary to article 52 stated that "to be able to invoke this article, it will not be sufficient for the nationals of a State to engage occasionally in fishing in an area where the nationals of other States also fish; the article only covers the case where two or more States are regularly engaged in fishing in the same area of the high seas". His delegation proposed that that reservation be transferred from the commentary to the

text of article 52, and that the Committee should go a stage further than the Commission by establishing an objective and unequivocal criterion for determining whether ships of a certain State had been regularly engaged in fishing a stock. That was the purpose of the phrase “for not less than three years”.

10. Mr. POPOVIC (Yugoslavia) said that the Italian proposal concerning article 52 (A/CONF.13/C.3/L.25) was unacceptable to his delegation, since the stipulation that the national ships of a State must have been engaged for not less than three years in fishing the same stock or stocks of fish before it could enter into negotiations with a view to prescribing conservation measures was not in accord either with articles 53 and 56 or with the rules relating to the freedom of the high seas. If the Italian amendment were adopted, its practical effect would be to prevent the ships of one State from entering an area where the ships of other States were already engaged in fishing.

11. Mr. HERRINGTON (United States of America), in explanation of his delegation's proposal concerning article 53 (A/CONF.13/C.3/L.40), said that the first amendment was intended to extend the provisions of article 53 to cover a stock of fish or other marine resources which might inhabit more than one area of the high seas at different seasons of the year or stages of its life cycle, and might therefore be fished by the nationals of different States at different times. Conservation measures relating to a fish stock in one area might well affect the stock as it moved into another area.

12. The second amendment was designed to establish a regular procedure whereby nationals of States other than that originally adopting conservation measures could receive information on any such measures in force in areas which they might enter. Article 53 required that conservation measures adopted by one State in a given area should be observed by the nationals of other States entering that area and, in order that the latter might know what measures were in force, it was essential to establish appropriate channels for disseminating the necessary information. The procedure proposed by his delegation would reduce the possibility of misunderstanding and confusion in applying the provisions of article 53.

13. Mr. BOCOBO (Philippines) and Mr. LLOSA (Peru) said that their delegations would vote in favour of the Venezuelan proposal concerning article 52 (A/CONF.13/C.3/L.23).

14. Mr. CASTAÑEDA (Mexico) observed that the amendments to article 52 could be grouped into three main categories. In the first place, the French, Uruguayan, Japanese, Swedish and Spanish delegations had all proposed that the words “within a reasonable period of time” in paragraph 2 be replaced by a phrase indicating a definite period of time (A/CONF.13/C.3/L.3, L.31, L.32, L.36 and L.37). Secondly, two of those delegations had proposed the insertion of the word “regularly” or “normally” before “engaged” in paragraph 1 (A/CONF.13/C.3/L.36 and A/CONF.13/C.3/L.37). The purport of the third group of amendments — those submitted by the Venezuelan, Korean and

Mexican delegations — was that negotiations on conservation measures should be without prejudice to the rights and interests of the coastal State (A/CONF.13/C.3/L.23, L.34 and L.35). He proposed that, in order to expedite the consideration of article 52, informal discussions be held between the sponsors of all amendments to the article, with the object of reducing the total number of amendments to three, or at the most four.

15. After a brief discussion, in which Mr. AGUERREVERE (Venezuela), Mr. MELO LECAROS (Chile) and Mr. LLOSA (Peru) took part, the CHAIRMAN proposed that the Committee follow the Mexican representative's proposal.

It was so agreed.

The meeting rose at 11.40 a.m.

NINETEENTH MEETING

Monday, 31 March 1958, at 10.40 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 51 AND 53 AND ARTICLE 56
(COMPETENCE OF NON-COASTAL STATES) (continued)

Vote on article 51
(A/CONF.13/C.3/L.47, A/CONF.13/C.3/L.49)

1. The CHAIRMAN pointed out that the delegations of France, the Federal Republic of Germany, Italy, Japan, the Netherlands, the United Kingdom and Yugoslavia had withdrawn their respective proposals (A/CONF.13/C.3/L.3, L.4, L.24, L.32, L.39, L.28 and L.9), and had replaced them by a joint proposal (A/CONF.13/C.3/L.47). The Burmese, Korean, Mexican, and Venezuelan delegations also had submitted a joint proposal (A/CONF.13/C.3/L.49) to insert before articles 49, 51 and 52 the words “subject to the interests and rights of the coastal State as provided for in this convention . . .”

2. Mr. KRYLOV (Union of Soviet Socialist Republics) observed that, although the number of amendments had been substantially reduced, many drafting changes were still before the Committee. It would be wiser to leave such details to the conference Drafting Committee, and to limit the discussion to questions of substance.

3. Mr. GARCIA AMADOR (Cuba) said that, although his delegation did not object to the four-power proposal (A/CONF.13/C.3/L.49), the question was whether it was not rather a matter for the Drafting Committee. Some delegations might find it difficult to vote for a clause relating to interests and rights which had not yet been defined or adopted.

4. Mr. CASTAÑEDA (Mexico) agreed that it might be wiser to consider the four-power proposal after the articles on fishing had been adopted.

5. Mr. PANIKKAR (India) said his delegation approved the International Law Commission's text of article 51, which struck a correct balance between the rights of coastal States and those of fishing States. The new proposals before the Committee also stressed those two aspects of the question, since the seven-power amendment (A/CONF.13/C.3/L.47) emphasized that the rights of the coastal State were valid only in respect of its own nationals, whereas the four-power amendment (A/CONF.13/C.3/L.49) specified the interests of the coastal State.

6. Commenting on the seven-power proposal, he pointed out that no reference was made in the original article to stocks of fish, and that paragraph 1 of the proposal would replace the reference to areas fished. The amendment was extremely useful, since it introduced the biological concept that conservation related to fish stocks, and not to the area concerned. Both pelagic and demersal species might exist in the same areas and their conservation could not be secured by the original text. His delegation did not consider paragraph 2 of the proposal strictly necessary, since article 51 did not refer to nationals of other States. If other delegations thought it clarified the matter, however, he would support it. With regard to paragraph 3, it was presumably supposed that the notion of regulating and controlling fishing activities was already included in the word "measures"; his delegation, however, considered the phrase should be retained for the sake of clarity. In conclusion, he would support the drafting change made in paragraph 4 of the proposal, and would prefer the paragraphs to be put to the vote separately.

7. Mr. WALL (United Kingdom), introducing the seven-power proposal (A/CONF.13/C.3/L.47), explained that the reason for the first amendment was that conservation measures could most effectively be carried out by regulating stocks, and not areas. Paragraph 2 had been included merely for purposes of clarification. The reason for the deletion proposed in paragraph 3 was that the phrase in question might be interpreted to mean measures other than conservation measures. With regard to paragraph 4, which merely entailed a drafting change, the sponsors of the amendment would normally have left such a small clarification to the drafting committee, but had included it with the other amendments for convenience.

8. Turning to the four-power proposal (A/CONF.13/C.3/L.49), he observed that the most logical place for such an addition would be at the beginning of article 49. The Committee might consider that proposal when it came to consider that article, but the phrase should not be inserted before articles 51 and 52. Moreover, it seemed inappropriate to add a phrase relating only to coastal States to an article which dealt with measures designed for the benefit of all States.

9. Mr. MELO LECAROS (Chile) suggested that the views of the Cuban and United Kingdom representatives might be met if the Committee were to vote on the

principle of the additional phrase proposed in the four-power amendment and leave it to the Drafting Committee to insert it in the most appropriate place. He agreed in principle with the seven-power proposal, but with a few slight reservations. In referring to stocks of marine resources, it should be borne in mind that measures should be provided not only for a given species, but for groups living in the same habitat. With regard to paragraph 3, he agreed with the Indian representative that the phrase "for regulating and controlling fishing activities" was useful, and should be retained.

10. Mr. MALLIN (Ireland) said that paragraph 2 of the seven-power proposal was acceptable to his delegation, on the understanding that the substance of article 53 was subsequently adopted. He agreed with the Indian representative's views on the remainder of the proposal.

11. The four-power proposal was unexceptionable in itself, but he shared the doubts of other representatives on the advisability of including the phrase in the three articles (49, 51 and 52). The procedure suggested by the United Kingdom representative seemed preferable.

12. Mr. CASTAÑEDA (Mexico) observed that, under the International Law Commission's text of article 51, States were empowered to take conservation measures on the high seas and that that might even lead to the assumption that they could take such measures near the coasts of other States. Since difficulties might arise in such circumstances, he welcomed paragraph 2 of the seven-power proposal, which limited the scope of the article to the nationals of the State concerned.

13. The CHAIRMAN asked whether the sponsors of the four-power proposal agreed to the suggestion that their proposal might be adopted in principle and referred to the Drafting Committee for insertion in the most appropriate place.

14. Mr. CASTAÑEDA (Mexico) replied in the affirmative.

15. Mr. AGUERREVERE (Venezuela) agreed with the suggestion, but pointed out that, although the four-power proposal anticipated the adoption of other articles, it could still be held to be pertinent to whatever wording might eventually be adopted for them.

16. Mr. U KHIN (Burma) associated himself with the Mexican and Venezuelan representatives' remarks. He could not agree with the representatives who suggested that the proposal was redundant, since all the articles in the proposed convention would be interdependent. Burma fully supported the principle of the freedom of the high seas, but considered that the rights of coastal States should have priority over that general principle.

17. Mr. LEE (Republic of Korea) endorsed the views expressed by the other sponsors.

18. Mr. TSURUOKA (Japan) was unable to support the proposed procedure. Those in favour of the principle of the proposal had pointed out that it had been

adopted at the International Technical Conference on the Living Resources of the Sea held in Rome in 1955; it should, however, be borne in mind that it had been adopted by only 18 votes to 17.¹ It would therefore be unwise to take a decision on the principle without knowing the content of the articles on the rights of coastal States.

19. Mr. RUIVO (Portugal) thought it would be undesirable to follow the procedure on which the sponsors had agreed, since it might unduly influence the votes on other articles. It would be better to take up the point in connexion with articles 54 and 55. The adoption of the principle without any other limitations might jeopardize conservation measures. If the proposed procedure were followed, he would be obliged to vote against the principle.

20. Mr. QURESHI (Pakistan) fully supported the seven-power proposal, and could not agree with representatives who had spoken against the deletion proposed in paragraph 3. The phrase "for regulating and controlling fishing activities" might make allowance for measures exceeding the scope of conservation.

21. Mr. OZERE (Canada) would be able to vote in favour of the seven-power proposal. In his opinion, paragraph 1 was the only substantive amendment, the others being merely drafting changes. His delegation's vote would be conditional on the satisfactory drafting of subsequent articles, especially article 53.

22. With regard to the four-power proposal, he pointed out that the adoption of one article obviously had an influence on other texts. Instead of inserting the phrase as a preface to three articles, it would be better to reach an understanding on the principle. If the phrase were added to article 51, a new obligation would be laid on States, and it was therefore essential to know the exact nature of the rights in questions. The voting on the proposal might therefore be postponed until the Committee came to deal with article 49.

23. Mr. LIMA (El Salvador) said that he approved the seven-power proposal in principle, but that the Chilean representative's statement had aroused some doubts in his mind. It was not clear whether conservation measures were compulsory only when they were necessary for a particular species and whether other species which were not covered by the measures would be adversely affected. The scope of State's obligations under the proposal must be clarified.

24. Mr. LADOR (Israel) thought that the purport of the four-power proposal might be considerably altered by the adoption of the seven-power proposal. There seemed to be a slight tendency to under-estimate the operation of the general rules of interpretation; every provision must be interpreted consistently with the others. He supported the Canadian representative's suggestion.

25. Mr. LLOSA (Peru) said that the most important effect of the adoption of the seven-power proposal would be that article 51 would provide for conservation

measures relating to particular species instead of for the conservation of all the living resources in the areas concerned. The fishing regulations on which Chile, Ecuador and his own country had agreed for the area off their coasts were aimed at the conservation of all the living resources in that area. It should be remembered that fishing for one species in many cases affected stocks of other species; the destruction of large quantities of the small fish known in his country as the anchoveta, for example, would bring about a disastrous decrease in the numbers of other species. No conservation measure was complete unless the ecology of the species affected by that measure was taken into account. He feared that if such incomplete conservation measures were taken it might subsequently be too late to correct the mistake. He could not vote in favour of the proposal unless it were modified so as to state specifically that those adopting conservation measures of the kind in question should take into account the ecology of the species to which they applied.

26. Mr. LIENESCH (Netherlands) expressed agreement with the Canadian representative's statement.

27. Mr. CASTAÑEDA (Mexico) said that it was of course true that each article under consideration should be interpreted in the light of all the other articles in the text. It might, indeed, be argued from the strictly legal point of view that the addition proposed jointly by the four delegations was not absolutely necessary, but those who agreed with that could surely have no objection to the substance of the proposal. It was for them merely a question of emphasis. In reply to those who were opposed to the substance of the proposal, he would recall that the point was often made that it was not the appropriate time to deal with such and such a question, and later, after it had been agreed to defer consideration of the question, it was argued that it was too late to deal with it.

28. Mr. HERRINGTON (United States of America) said that he would vote in favour of the seven-power proposal for the reasons explained by its sponsors. The words "for regulating and controlling fishing activities" being redundant inasmuch as they were preceded by the phrase "conservation measures" which included in its meaning "regulating and controlling fishing activities", he would prefer them to be deleted, but was not strongly opposed to their retention.

29. In regard to the four-power proposal, he thought that the statement made by the Canadian representative was the most logical, but that for practical reasons it would be best to vote on the principle of the proposal and thus dispose of the matter quickly. If it were agreed that every article should be interpreted in the light of all the other articles, there was no danger in voting for that principle.

30. Mr. LUND (Norway) said he would vote for the seven-power proposal. He would prefer the Committee to vote on the four-power proposal when it came to take up the articles laying down the rights of coastal States.

31. Mr. HULT (Sweden) said that to vote on the principle of the four-power proposal when dealing with

¹ *Report of the Rome Conference of 1955* (United Nations publication, Sales No.: 1955.II.B.2), para. 45.

article 51 would be contrary to the decision taken by the Committee at its fourteenth meeting regarding the organization of its work (A/CONF.13/C.3/L.18).

32. Mr. KRYLOV (Union of Soviet Socialist Republics) said that it was too early to vote on the principle of the four-power proposal, since the rights of coastal States, which would form the subject of articles 54 and 55, had not yet been fixed.

33. Mr. HERRINGTON (United States of America) did not think the adoption of the principle of that proposal would prejudice the Committee's discussions on articles 54 and 55.

The Committee decided by 29 votes to 11, with 15 abstentions, to adopt the principle of the proposal submitted jointly by the representatives of Burma, the Republic of Korea, Mexico and Venezuela (A/CONF.13/C.3/L.49) and agreed that it should be left to the Drafting Committee to decide how best to give effect to that decision.

34. Mr. TRASPADERNE (Spain) said he would vote for the seven-power proposal.

35. He explained that his delegation had made the proposal (A/CONF.13/C.3/L.37) for the insertion of the word "normally" between the words "are" and "engaged" in article 51 because it considered that conservation measures should be taken by a State in an area of the high seas only if vessels of that State were normally engaged in fishing in the area. That proposal was still before the Committee.

36. Mr. WALL (United Kingdom) suggested that the representatives of El Salvador and Peru might be satisfied if the words "the living resources affected" were used instead of the words "those living resources" in paragraph 4 of the seven-power proposal.

37. Mr. LIMA (El Salvador) and Mr. LLOSA (Peru) said that with that change the amendment would be entirely acceptable to their delegations.

38. Mr. LACU (Argentina) supported the seven-power proposal as amended and also the Spanish proposal. He asked whether the Japanese delegation had withdrawn paragraph 2, as well as paragraph 1, of the text it had proposed for article 51 (A/CONF.13/C.3/L.32).

39. Mr. TSURUOKA (Japan) said that his delegation had withdrawn both paragraph 2 and paragraph 1, not because it had decided that there was no need for publicity of any conservation measures that were taken, but because it thought it would be sufficient if publicity was made obligatory only for conservation measures which might give rise to international problems. For that reason it thought that the clause regarding the publicity of conservation measures should be inserted in a later article.

40. Its sponsors having indicated that they were in favour of the charge suggested by the United Kingdom representative, the CHAIRMAN put to the vote the proposal made jointly by the delegations of France, the Federal Republic of Germany, Italy, Japan, the Netherlands, the United Kingdom and Yugoslavia (A/CONF.13/C.3/L.47) with the substitution of words "the living resources affected" for "those living resources".

The proposal as amended was adopted by 56 votes to none, with 6 abstentions.

41. Mr. HERRINGTON (United States of America) said that if the word "normally" were added, as proposed by the Spanish delegation, parties to the convention would be under no obligation whatsoever to take conservation measures in areas of the high seas in which vessels belonging to their countries fished only occasionally.

42. Mr. LIENESCH (Netherlands) said that he was opposed to the proposed insertion, on the grounds that its meaning would give rise to doubt and that if it were included the article would have no effect as regards fishing vessels which did not operate regularly in the same areas and went from one area to another without following any definite system. It would give the owners of such vessels an unfair advantage, since they would be free to fish as they liked during the peak fishing seasons which occurred in many areas, whereas other vessels, which operated regularly in those areas throughout the year, would be bound by conservation regulations.

43. Mr. WALL (United Kingdom) failed to see the purpose of the Spanish proposal. The article applied only to areas in which the vessels of only one country were operating, and, if vessels operated in such an area there would scarcely be any need for conservation measures in that area. The text as it read at present would make it obligatory for States to take such measures in every instance "when necessary", and he inquired whether in the Spanish delegation's opinion some States should not be required in certain instances to take such measures when they were necessary. There would, moreover, be much doubt as to the exact meaning of the word "normally".

44. Mr. CASTAÑEDA (Mexico) would vote against the Spanish proposal for the reasons explained by the representatives of the Netherlands and the United Kingdom.

The Spanish proposal (A/CONF.13/C.3/L.37) was rejected by 43 votes to 4, with 17 abstentions.

Article 51 as amended was approved on first reading by 58 votes to 2, with 4 abstentions.

45. Mr. CASTAÑEDA (Mexico), U KHIN (Burma) and Mr. LEE (Republic of Korea) said they had voted for the article as amended on the understanding that the vote was subject to the decision taken by the Committee on the proposal which they and the representative of Venezuela had submitted jointly.

46. Mr. ALLOY (France) said he had voted against the article as amended solely because of the decision taken by the Committee in regard to the four-power proposal (A/CONF.13/C.3/L.49).

47. Mr. TSURUOKA (Japan) said that, although he was of the opinion that a reference to the rights of coastal States would be completely out of place in article 51, he had voted for the article as amended because he was confident that the Drafting Committee would come to a satisfactory agreement on the question

of how best to give effect to the Committee's decision regarding the four-power proposal.

*Vote on paragraph 1 of article 52
(A/CONF.13/C.3/L.25, L.37, L.38, L.48)*

48. The CHAIRMAN recalled that the Committee had agreed (14th meeting) to defer further discussion on paragraph 2 of article 52 (A/CONF.13/C.3/L.18, para 1, group II). The only proposals regarding paragraph 1 still before the Committee were the Spanish proposal (A/CONF.13/C.3/L.37) and the proposal submitted jointly by the delegations of France, Federal Republic of Germany, Italy, Japan, Netherlands, Portugal, Sweden, United Kingdom and Yugoslavia (A/CONF.13/C.3/L.48).

49. Mr. TRASPADERNE (Spain) withdrew his delegation's proposal.

50. Mr. RUIVO (Portugal) said that his delegation had withdrawn its proposal concerning article 52 (A/CONF.13/C.3/L.38) because it had come to the conclusion that article 52 was not the most appropriate place for the addition. His delegation was still firmly of opinion that regional fisheries boards should play a fundamental role in implementing the conservation measures under discussion. Such boards frequently arranged for the research work on which such measures were based, and were therefore the best qualified bodies for controlling the application of those measures. His delegation intended to propose at an appropriate time that the Conference adopt a resolution stressing the importance of regional fisheries boards and recommending that such boards be set up where they did not exist and that they be expanded in areas where they did.

51. Mr. PAROLETTI (Italy) said his delegation had withdrawn its proposal (A/CONF.13/C.3/L.25) because it had come to the conclusion that the purpose of that proposal would be achieved if article 52 were adopted with the new amendment co-sponsored by his delegation.

The amendment to paragraph 1 of article 52 proposed by the delegations of France, Federal Republic of Germany, Italy, Japan, Netherlands, Portugal, Sweden, United Kingdom and Yugoslavia (A/CONF.13/C.3/L.48) was adopted by 48 votes to none, with 5 abstentions.

Paragraph 1 of article 52 as amended was approved on first reading by 53 votes to none, with 5 abstentions.

Mr. CASTAÑEDA (Mexico) and Mr. AGUERREVERE (Venezuela) said they had voted for the paragraph as amended on the understanding that the vote was subject to the decision taken by the Committee on the proposal relating to articles 49, 51 and 52 submitted by the Mexican representative at the beginning of the meeting on behalf of their delegations and those of Burma and the Republic of Korea (A/CONF.13/C.3/L.49).

The meeting rose at 1 p.m.

TWENTIETH MEETING

Tuesday, 1 April 1958, at 10.30 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 53 AND 56
(COMPETENCE OF NON-COASTAL STATES) (continued)¹

*Vote on paragraph 1 of article 53
(A/CONF.13/C.3/L.4, L.11, L.24, L.27, L.29, L.55)*

1. The CHAIRMAN suggested that the Committee should deal first with the proposal of the Federal Republic of Germany (A/CONF.13/C.3/L.4, article D), since it was the furthest removed from the Commission's text for paragraph 1 of article 53.

2. Mr. PIRKMAYR (Federal Republic of Germany) said that the decisions which the Committee had taken on articles 51 and 52 had made it necessary to change the words "articles A, B and C" to "articles 51 and 52" in, and to delete the words "in accordance with the principles set forth in article B" from, draft article D of his delegation's text.

3. His delegation had put forward its proposal because it was of the opinion that the Commission's text of article 53 conflicted to some extent with the system of domestic legislation followed in his country and, he believed, with the systems of several other countries. His country's legislation did not permit its fishermen to be subject to the laws of other States. It was not easy to foresee the precise effect of adopting article 53 as it stood; but the probable outcome would be to place States under an obligation to comply with conservation measures taken by other States. The parliaments concerned would no doubt discuss those measures for a long time before they took action on them, and until they did so the administrative authorities would be unable to compel the fishermen of their country to respect the measures. His delegation had therefore proposed that when conservation measures were adopted by certain States under articles 51 and 52 and nationals of other States came to fish as newcomers in the conservation area, any conflict between the two parties should be the subject of negotiation.

4. Mr. HERRINGTON (United States of America) said that his observations on paragraph 1 should be regarded as provisional, since that paragraph was dependent on paragraph 2, which was concerned with the settlement of disputes, a matter to be discussed later.

5. He thought that the purpose of the Commission's draft of article 53 was to provide for negotiations in cases where fishermen from other countries started fishing in areas off the coasts of States which had taken conservation measures in those areas—since the regulations in question might be unfair to the newcomers—and to provide also for the period between the newcomers' arrival and the conclusion of the

¹ Resumed from the 18th meeting.

negotiations by laying down that the conservation measures adopted should be applicable to the newcomers in the meantime. He thought that the authors of the six-power proposal (A/CONF.13/C.3/L.55) had devised a satisfactory solution for the problem to which the representative of the Federal Republic of Germany had just drawn attention, by laying down a specific time-limit for the application of the measures to newcomers.

6. Mr. PANIKKAR (India) said that, although his delegation shared much of the concern expressed by the delegation of the Federal Republic of Germany regarding article 53, it thought that it would be wrong to adopt that delegation's proposal, because it believed that, following the decisions taken on articles 51 and 52, the Committee should not depart from the structure adopted by the Commission for the articles referred to the Committee.

7. Mr. LUND (Norway) said that, since paragraphs 1 and 2 of article 53 were interdependent, he would be unable to take a definite stand either on paragraph 1 or on the proposal of the Federal Republic of Germany until the Committee had disposed of paragraph 2.

9. The CHAIRMAN pointed out that all the decisions taken during the present stage of the Committee's work were provisional. Members would have an opportunity of expressing a final opinion on paragraph 1 after the Committee had discussed paragraph 2 and the settlement of disputes.

9. Mr. LIENESCH (Netherlands) said that his country was faced with difficulties of domestic legislation similar to those described by the representative of the Federal Republic of Germany. However, believing that the problem should be viewed in the light of the need to conserve stocks of fish, he was in favour of prescribing a time-limit before the expiration of which States whose vessels started fishing in areas in respect of which other States had taken conservation measures should apply those measures to their own nationals. He feared that unless that were done irreparable damage to stocks of fish would ensue.

10. Mr. GARCIA AMADOR (Cuba) said that, although he shared the concern expressed by the representatives of the Netherlands and the Federal Republic of Germany regarding the relationship of domestic legislation to international law, he would vote against the latter's proposal because domestic legislative practices were rightly subject to exceptions which were acceptable when justified. Conservation measures taken by States might be rendered nugatory if fishermen from other States disregarded them. The Commission's text would oblige the fishermen of other States to comply with such measures for only a limited period, for it provided for negotiations in the event of disagreement about the application of such measures. The text would apply only to fishermen from other States who caught an excessive amount of fish.

Article D of the proposal of the Federal Republic of Germany (A/CONF.13/C.3/L.4) was rejected by 28 votes to 1, with 28 abstentions.

11. The CHAIRMAN invited the Committee to discuss the proposal submitted jointly by the delegations of the Union of Soviet Socialist Republics and Poland (A/CONF.13/C.3/L.29).

12. Mr. KRYLOV (Union of Soviet Socialist Republics) said that the main difference between the text of the joint amendment and the Commission's text of paragraph 1 was that the latter provided in effect for States to have the power to limit in areas of the high seas the fishing rights of other States which had not started to fish there, whereas the joint proposal gave newcomers the right to fish in such areas "on an equal footing". He thought that the Commission's text would be unfair to States which, being less advanced than others, started exploiting the resources of the sea later. For the same reasons, the two delegations had jointly submitted a proposal regarding article 56 (A/CONF.13/C.3/L.30), which was a very important provision.

13. Mr. CIEGLEWICZ (Poland) was in favour of all States enjoying equal fishing rights on the high seas, a principle which he believed to be more clearly expressed in the joint amendment (A/CONF.13/C.3/L.29) than in the Commission's text. The purpose of the joint amendment was to ensure that conservation measures adopted by States for specific areas of the high seas would be applied "without discrimination" to fishermen of other States who started fishing in those areas. He thought the six-power proposal (A/CONF.13/C.3/L.55) was entirely consistent with the joint amendment; and he particularly urged that the word "living" be inserted before the words "marine resources", as advocated in the proposal.

14. Mr. PANIKKAR (India) agreed with the principle of the joint amendment (A/CONF.13/C.3/L.29), but doubted whether there was any need to embody it in the article, since there was nothing in the Commission's text which in any way indicated that its members considered that newcomers should not fish on an equal footing in areas in respect of which States had taken conservation measures, or which would make discrimination against newcomers possible. Did the authors of the joint amendment think that there was any such indication?

15. Mr. LUND (Norway) also agreed with the principle laid down in the joint amendment. He thought there was no difference of substance between that and the Commission's text.

16. Mr. GARCIA AMADOR (Cuba) said that the substance of paragraph 1 of the joint amendment was practically identical with that of the Commission's text which, in effect, provided for equal treatment for newcomers. Paragraph 2, however, was far removed from the Commission's provision, because the clause reading "unless these raise the question of varying or clarifying such measures" implied that the conservation measures would not apply to newcomers who were nationals of States which questioned them. He therefore could not vote for that paragraph.

17. Mr. KRYLOV (Union of Soviet Socialist Republics) said that the purpose of the proposal was to ensure that newcomers enjoyed equality of treatment; and he

thought that a specific reference to that effect was necessary. He confirmed that if the joint amendment were adopted, the measures would apply only to nationals of States which did not suggest varying or clarifying them.

18. Mr. GARCIA AMADOR (Cuba) asked for a separate vote on each paragraph of the joint amendment; and further suggested that, to simplify matters, the two delegations might agree to the words "on an equal footing" being put to the vote instead of the whole of paragraph 1.

19. Mr. HERRINGTON (United States of America) suggested that the authors of the joint amendment might agree that the principle of paragraph 1 should be put to the vote rather than the actual wording, the adoption of which, he feared, would create drafting difficulties in respect of other amendments to the article. The adoption of the principle would not affect the substance of the six-power proposal.

20. Mr. GARCIA AMADOR (Cuba) pointed out that, if the words "on an equal footing" were adopted, the Drafting Committee would be free to reword the principle they expressed.

21. Mr. LOOMES (Australia) considered that the Commission's text itself implied that newcomers should be treated on an equal footing. If the principle alone of paragraph 1 of the joint amendment were put to the vote, the Committee would have no clear idea of what it was voting on.

22. Mr. KRYLOV (Union of Soviet Socialist Republics) and Mr. CIEGLEWICZ (Poland) were unable to agree to the suggestion made by the Cuban representative or to that of the United States representative.

23. Mr. ALVAREZ (Uruguay) pointed out that the Cuban representative's implication, that the Committee would be taking the joint amendment into consideration if it were to add the words "on an equal footing" to paragraph 1 of the International Law Commission's draft article 53, was incorrect. Paragraph 1 of draft articles 53 with that addition would mean that in the application of the conservation measures adopted all would be on an equal footing, automatically. Whereas the meaning of the joint amendment would be that in the application of the measures adopted all would be on an equal footing automatically, unless the newly-arrived States asked that the measures be varied or clarified and proposed entering into negotiations. The joint amendment could have the effect of immediately suspending the measures, whereas that was not the case with the change suggested by the Cuban representative. To give the joint amendment its true significance, its two paragraphs should be voted on as a whole.

Paragraph 1 of the joint proposal submitted by the delegations of Poland and the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.29) was rejected by 18 votes to 14, with 27 abstentions.

Paragraph 2 of the joint proposal submitted by the delegations of Poland and the Union of Soviet Socialist Republics (A/CONF.13/C.3/L.29) was rejected by 36 votes to 8, with 13 abstentions.

24. The CHAIRMAN opened the discussion on the proposal submitted by Yugoslavia concerning paragraph 1 of article 53 (A/CONF.13/C.3/L.11).

25. Mr. ZUPANOVIC (Yugoslavia) said that his delegation had moved its amendment in order to stress the need to eliminate any discrimination against newcomers, particularly with reference to specific forms of fishing and the use of various types of gear.

26. Mr. GARCIA AMADOR (Cuba), supported by Mr. HERRINGTON (United States of America), considered that the Yugoslav amendment should be referred to the Drafting Committee. He therefore proposed that the Committee should take a vote on the principle of the proposal and leave it to the Drafting Committee to produce a final text.

27. Mr. ZUPANOVIC (Yugoslavia) agreed to that procedure.

The principle contained in the Yugoslav amendment to paragraph 1 of article 53 (A/CONF.13/C.3/L.11) was adopted by 54 votes to none, with 4 abstentions.

28. The CHAIRMAN opened the discussion on the proposal submitted by the delegations of France, the Netherlands, Portugal, Sweden, the United Kingdom and the United States of America (A/CONF.13/C.3/L.55).

29. Mr. HERRINGTON (United States of America), introducing the joint proposal, said that the sponsors were aware of the considerable hardship that might be caused if newcomers were required to comply with conservation measures. They had tried to meet those difficulties by providing for notification in advance, and for a period during which any problems could be discussed before the measures became enforceable. The length of the period was a controversial point; it was recognized that, if it was to be effective it should be as short as possible, but that some time must be allowed to ensure that fishermen were informed well in advance. The original proposal had provided for a limit of six months, but a further month had eventually been added, in view of the well-known difficulties of intergovernmental communication.

30. Another point of contention had been that of the agency to which notification should properly be addressed. The sponsors had thought it logical that notifications should be sent to the Director-General of the Food and Agriculture Organization (FAO).

31. Mr. AGUERREVERE (Venezuela) said that although his delegation was in favour of notification of conservation measures, it saw practical difficulties about two points. In the first place, to apply measures of conservation according to the nationality of fishermen seemed to be wrong, since under other articles such measures applied to the nationals of the States adopting the measures. Secondly, the delay of seven months before measures could be applied to newcomers was too long, since serious damage could be done to stocks in the meantime. He therefore preferred the International Law Commission's text.

32. Mr. RUIVO (Portugal) observed that it would take some time to submit notifications through diplomatic

channels, to transmit the necessary documents to the government departments concerned and, finally, to convey them to fishing fleets. The time-limit of seven months could not, therefore, be considered excessive.

33. Mr. LUND (Norway), Mr. ANDERSEN (Iceland), Mr. TRASPADERNE (Spain), Mr. CHRISTENSEN (Denmark), Mr. OZERE (Canada) and Mr. MALLIN (Ireland) supported the six-power proposal (A/CONF.13/C.3/L.55).

34. Mr. PAROLETTI (Italy) withdrew his delegation's proposal (A/CONF.13/C.3/L.27) in favour of the six-power proposal.

35. Mr. PANIKKAR (India) supported the six-power proposal. The organization of a central registry for conservation measures was particularly desirable. Acceptance of the seven-month time-limit, however, should be regarded as provisional, as the duration might have to be revised in the light of experience.

36. Mr. BOCOBO (Philippines) said that his delegation's support of the six-power proposal was prompted not so much by the provision of a time-limit as by the introduction of a centralized system for the notification of conservation measures, which would greatly benefit the world fishing industry.

37. Mr. HETHERINGTON (United Kingdom) shared the views of representatives who had stressed the interdependence of the two paragraphs of article 53, which had a direct bearing on the six-power proposal. It was important that measures of conservation should apply to newcomer States; but it was equally important that those States should have an opportunity of raising any questions concerning those measures which might occur to them. The amendment under consideration not only provided that opportunity, but also stipulated a reasonable interval in which conservation measures introduced by other States might be ascertained, brought to the notice of fishermen, and implemented in domestic legislation.

38. Mr. HERRINGTON (United States of America) did not share the Venezuelan representative's fear that damage might be done to stocks during the seven-month period. The regulations would be in effect before newcomers reached the areas affected by them, and the latter were unlikely to fish the areas during the prescribed period.

39. Mr. LLOSA (Peru) objected to the six-power proposal on principle. It was wrong to give the newcomer State time to express its views on existing conservation measures. Provided that those measures were not discriminatory, it would be more logical for newcomers to abide by them rather than take advantage of the *carte blanche* with which the proposal would endow them to exhaust the resources of the area concerned in the seven months of grace. To illustrate his point, he stated that over 5,000 whales had been caught in less than seven months in the south Pacific. The Committee should approach the situation positively. There was no reason why newcomer States should not respect measures for the conservation of resources in which they were themselves interested and which the States applying the measures were best placed to

preserve. The Peruvian delegation would therefore vote against the six-power proposal and for the Commission's original text.

40. Mr. QURESHI (Pakistan) said that, although his delegation supported the principle of the proposal, it had detected an anomaly between the statement that "the other States shall apply the measures..." and the International Law Commission's text for paragraph 2. If such other States did not accept the measures "so adopted", would they still be obliged to apply the measures to their nationals no later than seven months after notification?

41. Mr. MELO LECAROS (Chile) and Mr. CORREA (Ecuador) said that their delegations found it very difficult to accept the seven-month time-limit, since their countries had had bitter experience of the devastation of their natural marine resources. The International Law Commission's text, which provided for immediate application of conservation measures, was preferable. Moreover, with all due respect to FAO, it would be difficult to centralize all data on conservation measures. They therefore requested that a separate vote be taken on the words "no later than seven months" and on the procedure for notifying measures to the Director-General of FAO.

42. Mr. LOOMES (Australia) said that his delegation had no objection in principle to the six-power proposal, although it shared some of the doubts expressed about the seven-month time limit, particularly about the possibility of delay in the application of necessary conservation measures when that procedure was invoked.

43. He asked whether the authors considered that existing international conventions relating to conservation measures would also have to be notified to the Director-General of FAO, or that those instruments were sufficiently well known to make notification unnecessary.

44. Mr. LACU (Argentina) supported the six-power proposal in principle, but expressed concern about the dangers which adoption of the seven-month limit might entail. It might be wiser to adopt a more flexible system and to allow the State introducing the conservation measures to fix the time-limit.

45. Mr. HERRINGTON (United States of America), referring to the Pakistani representative's query, pointed out that the answer to the question whether conservation measures would remain in effect while a dispute was under settlement would depend on further developments in the Third Committee.

46. In reply to the Australian representative's question, he said that conservation regulations governed by existing international instruments should be notified to FAO on the same basis as new measures.

47. There seemed to be some misunderstanding about the application of conservation measures during the proposed seven-month period. Regulations were to be notified through the proper channels and would become enforceable in respect of the newcomer State immediately the time-limit expired. When regulations

were enacted, they would have to be notified to the proper authorities forthwith.

48. Mr. CHEN (China) and Mr. SERBETIS (Greece) said that the United States representative had dispelled their delegations' doubts about the proposal, which they could now support.

49. Mr. KASUMA (Indonesia) supported paragraph 1 of the six-power proposal, but agreed with those representatives who had opposed the provision of a seven-month time limit.

50. Mr. TREJOS FLORES (Costa Rica) fully supported the views expressed by the Peruvian and Ecuadorian representatives. Ignorance of the law was no excuse. Newcomer States should make all necessary investigations before fishing any area, and take the necessary steps to adapt their domestic legislation to the requirements of any conservation measures which thus came to their notice; if they were unable to do so, they should not be given the privilege of fishing for seven months without complying with the restrictions.

51. Mr. Lund (Norway) thought it was only reasonable, when introducing conservation measures, to give other States time to adapt their national legislation and to inform their fishermen. It might be assumed that all States had accepted the general principle of conservation; there was therefore no danger of abuse of conservation measures during the proposed seven-month period.

52. Mr. GARCIA AMADOR (Cuba) said he would be obliged to abstain from voting on the seven-month time-limit, because paragraph 1 of article 53 was closely connected with paragraph 2, in which reference was made to "a reasonable period of time", and in which it was stated that, subject to paragraph 2 of article 58, the measures adopted would remain obligatory pending the arbitral decision. It would be difficult to vote for or against a specific time-limit until a decision had been taken on paragraph 2.

53. The CHAIRMAN put to the vote the phrase "no later than 7 months" in paragraph 2 of the six-power proposal (A/CONF.13/C.3/L.55).

The phrase was adopted by 25 votes to 12, with 19 abstentions.

54. The CHAIRMAN put the remainder of paragraph 2 to the vote.

Paragraph 2 of the six-power proposal (A/CONF.13/C.3/L.55) was adopted by 47 votes to none, with 10 abstentions.

Paragraph 1 of the six-power proposal (A/CONF.13/C.3/L.55) was adopted by 52 votes to none, with 1 abstention.

55. Mr. PIRKMAYR (Federal Republic of Germany), explaining his delegation's vote, said that, although the proposal seemed to meet many of the difficulties which had arisen in connexion with article 53, he reserved his right to vote in a different sense at a later stage, in view of the close interdependence of the two paragraphs.

56. The CHAIRMAN opened the discussion on the Italian proposal (A/CONF.13/C.3/L.24).

57. Mr. PANIKKAR (India) did not consider that the proposal should be examined by the Third Committee, since it related closely to article 29.

58. Mr. PIRKMAYR (Federal Republic of Germany) observed that article 29 dealt with the granting of nationality to ships, whereas in the context of article 53 conservation measures were to be applicable to ships having a nationality. He could therefore support the Italian proposal, but thought it would be wiser to leave it to the Drafting Committee to decide precisely where the amendment should be inserted.

59. Mr. HERRINGTON (United States of America) recalled the Committee's decision, in connexion with another article, to refer to the secretariat the question of appropriate changes in all the articles on fishing. That procedure should be followed in the case of the Italian proposal too.

60. Mr. QURESHI (Pakistan) shared the Indian representative's doubts. There might be some controversy over the question of whether small fishing boats were covered by the term "national ships"; the International Law Commission's text was therefore more appropriate.

61. Mr. PAROLETTI (Italy) said that the purpose of his delegation's amendment was to avoid the strict interpretation of the word "nationals", since the citizens of the newcomer countries might use fishing vessels of other nationalities. It would be advisable to apply the legal status conferred by a flag in respect of conservation measures. However, he agreed with the United States representative that the matter might best be settled by the Drafting Committee.

62. The CHAIRMAN put the principle contained in the Italian proposal to the vote.

The principle contained in the Italian proposal (A/CONF.13/C.2/L.24) was adopted by 37 votes to 6, with 11 abstentions.

63. The CHAIRMAN put paragraph 1 of article 53, as a whole and as amended, to the vote.

Paragraph 1 of article 53, as amended, was adopted by 32 votes to 7, with 13 abstentions.

The meeting rose at 1.30 p.m.

TWENTY-FIRST MEETING

Wednesday, 2 April 1958, at 10.10 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLE 56 (COMPETENCE OF NON-COASTAL STATES)
(A/CONF.13/C.3/L.3, L.24, L.30, L.33, L.36, L.39)

1. Mr. LIENESCH (Netherlands) reminded the Committee that his delegation had withdrawn the suggestion

that article 56 be deleted contained in the first alternative of its proposal (A/CONF.13/C.3/L.39).

2. Mr. RUIVO (Portugal) said that the Netherlands delegation's action had affected the attitude of his own delegation. The latter considered that article 56 was quite unnecessary having regard to the form in which article 52 had been adopted. Interference by a State in decisions on conservation measures in any zone should be correlated with the action of that State, through its fishermen, in respect of stocks fished in such a zone. It was dangerous to admit any other criteria in that regard. Now that the Netherlands proposal had been withdrawn, the Portuguese delegation would be obliged to vote against all other proposals.

3. Mr. HULT (Sweden), introducing his delegation's proposal to delete the words "not adjacent to its coast" from paragraph 1 (A/CONF.13/C.3/L.36), observed that, under the International Law Commission's text all States should be able to fish on an equal footing on the high seas. That principle should also be applicable to conservation measures. The proposed deletion would give all States interested in the conservation of marine resources the same rights.

4. Mr. MELO LECAROS (Chile) said he would vote against the Swedish proposal. A new and more realistic division of the high seas into areas adjacent and non-adjacent to the coast had now been added to the older concepts of the territorial sea, the high seas and the contiguous zone. It would be unwise to delete the phrase which defined the scope of the whole article. Moreover, the International Law Commission's text should not be changed before a decision had been taken on the provisions of articles 54 and 55.

5. Mr. WALL (United Kingdom) thought that two possible situations were covered by article 56. In the first place, if two States were fishing the same stocks in widely different parts of the ocean and one of them failed to take the necessary conservation measures, the fishing of the other State would be affected. That situation was provided for in the amended text of article 52, and article 56 was therefore superfluous in that connexion. There was also the possibility, however, that the article was meant to relate to consuming and non-fishing States. If so, the Swedish amendment would be appropriate.

6. Mr. OZERE (Canada) agreed that the original aim of the International Law Commission, as expressed in paragraph 1 of the commentary, was now largely fulfilled by article 52. It was, however, somewhat exaggerated to extend its provisions to consumer interests, since nearly all States were consumers of marine resources. Furthermore, if the Swedish amendment were adopted, the resulting text would be very similar to article 54, paragraph 2, of the International Law Commission's draft.

7. Mr. CHEN (China) observed that there was yet a third situation to which article 56 might apply. One country might be fishing adult living resources in one area and another might be catching young fish of the same species in another area. The first State could not adopt conservation measures without consulting the second.

8. Mr. LIMA (El Salvador) agreed with the Chilean representative that the adoption of the Swedish amendment would alter the whole spirit of the International Law Commission's text. The Commission had been concerned with the interests of fishing States, of coastal States, even if they did not fish, and of non-coastal and non-fishing States. Article 56 related to the latter category. If the proposal were adopted, the coastal States, whose rights were dealt with in articles 54 and 55, would also be included and the text would be confused.

9. Mr. HULT (Sweden) pointed out that his proposal would also cover the situation of a country which fished in its internal waters resources fished by other States on the high seas.

10. Mr. OZERE (Canada) recalled that the articles applied only to fishing on the high seas, and not to territorial or internal waters.

11. Mr. PANIKKAR (India) considered that the inclusion of article 56 was essential, since it took into account situations not covered by other provisions. He could not vote for the Swedish amendment, but preferred the International Law Commission's text. However, he agreed with the Swedish representative that situations might arise in which migratory fish stocks might be harvested both in territorial waters and on the high seas by different methods and that both the States concerned would be equally interested in conservation measures.

12. Mr. LLOSA (Peru) thought the debate had shown the confusion which existed concerning the real meaning and correct interpretation of article 56. He considered that the Swedish proposal was unnecessary, since its adoption would convert article 56 into a provision parallel to article 54, paragraph 2.

13. Mr. HERRINGTON (United States of America) agreed with the United Kingdom representative that the wording adopted for article 52 covered the situation of two States fishing the same stock in different areas. He also agreed with the representative of El Salvador that the effect of the Swedish amendment would be to extend the provisions of article 56 to both adjacent and non-adjacent areas, but considered that the interests of coastal and non-coastal States would be covered whether the amendment were adopted or not.

14. Mr. KASUMA (Indonesia) said that the Swedish proposal changed the purpose of the International Law Commission's text — namely, to protect the special interests of non-fishing and non-coastal States — by making it cover a general situation; it would therefore create confusion. His delegation preferred the original draft.

15. The CHAIRMAN put the Swedish proposal regarding paragraph 1 of article 56 (A/CONF.13/C.3/L.36) to the vote.

The proposal was rejected by 32 votes to 9, with 18 abstentions.

16. The CHAIRMAN invited the Committee to consider the Japanese proposal (A/CONF.13/C.3/L.33).

17. Mr. LIMA (El Salvador) suggested that consideration of the Japanese proposal should be postponed, because it was intended to replace articles 54 and 55 as well as article 56, and should be discussed in connexion with all three.

18. Mr. TSURUOKA (Japan) agreed to that procedure.

19. Mr. KRYLOV (Union of Soviet Socialist Republics), introducing the joint proposal submitted by Poland and the USSR (A/CONF.13/C.3/L.30), said that its main purpose was to stress the principle of equality, as set forth in article 54, paragraph 2. He agreed with the United States representative that the provision related to coastal and non-coastal States alike. The important point was not so much the area fished, as the uniform application of conservation measures in the interest of world fishing as a whole.

20. Mr. OZERE (Canada) observed that the effect of the joint proposal would be much the same as that of the Swedish amendment. He would therefore vote against it.

21. Mr. LIMA (El Salvador) agreed. Moreover, the joint proposal extended a new right to non-fishing and non-coastal States by allowing them to take part in research organizations and conservation systems on an equal footing. Although that might be justified on the general basis of the equality of States, there seemed to be no reason for extending that right, which properly belonged to coastal States. His delegation preferred the original text.

22. Mr. GARCIA AMADOR (Cuba) suggested that the words "not adjacent to its coast" should be included in the joint proposal after the words "high seas", in order that it might be similar in scope to the International Law Commission's text. He agreed with the representative of El Salvador that a new right had been extended to non-coastal and non-fishing States and did not consider that such States could participate directly in any system of regulation. He therefore suggested that the reference to such systems should be deleted.

23. Mr. KRYLOV (Union of Soviet Socialist Republics) accepted the Cuban amendments to his proposal.

24. Mr. WALL (United Kingdom) observed that it was difficult to take a decision on the joint proposal without having a perfectly clear idea of the Committee's understanding of the situations which article 56 was meant to cover. Moreover, the proposal added nothing to articles 53 and 54. If it was regarded from the point of view of consumer States, their powers and authority were extended. He did not think, however, that such States should take part in organizations dealing directly with fish stocks. In any case, he would be obliged to abstain from voting owing to the prevailing uncertainty.

25. Mr. RUIVO (Portugal) said he would vote against the joint proposal, since non-fishing and non-coastal States could hardly make any useful contribution to research organizations in the areas concerned. His country's experience of regional fishing bodies had shown that research directly affected legislative and

conservation measures and administration, which could not very well be entrusted to the States referred to in article 56. Moreover, the matter was amply covered by articles 52 and 54.

26. Mr. LLOSA (Peru) said he would vote against the joint proposal, as it only served to give consumer States excessive rights and would create confusion and disputes. He would vote for the International Law Commission's text of article 56.

27. The CHAIRMAN put the proposal submitted by Poland and the USSR (A/CONF.13/C.3/L.30) to the vote.

The proposal was rejected by 34 votes to 11, with 17 abstentions.

28. Mr. ALLOY (France) thought that if a State whose nationals did not fish in an area of the high seas not adjacent to its coast requested a State whose nationals did fish there to take conservation measures in that area, the request should have a scientific basis. That was why his delegation had proposed the addition in paragraph 1 of the words "at the same time mentioning the scientific findings which in its opinion makes such measures necessary" after the words "the necessary measures of conservation" (A/CONF.13/C.3/L.3).

29. Mr. PAROLETTI (Italy) supported the proposal.

30. Mr. QURESHI (Pakistan) also supported it, and proposed the addition of the words "and also indicating its special interest" at the end of the French delegation's text.

31. Mr. LLOSA (Peru) said he would vote against the French proposal because its adoption would virtually nullify the Commission's text. A State whose nationals did not fish in a given area of the high seas and which wished to request another State whose nationals did fish there to take conservation measures there, would hardly be able to ascertain what were the scientific findings, if any, which made such measures necessary. He was opposed to laying down the new requirement proposed by the French delegation; it had not been recommended by the Commission.

32. Mr. LIMA (El Salvador) said he would vote for the French amendment and for the addition proposed by the representative of Pakistan. If a State whose nationals did not fish in an area of the high seas was of the opinion that it should request a State whose nationals did fish in that area to take conservation measures there, there must be a difference of opinion between the two States, as the latter State obviously held that conservation measures were not needed in that area. It was only right that a State which made such a request should give scientific reasons for it. He asked whether the French representative would agree to use the term "scientific reasons" instead of "scientific findings".

33. Mr. LIENESCH (Netherlands) thought that the French delegation's valuable proposal made the article much more explicit. It was only right that a State making a request of the kind under discussion should give its reasons for doing so; the basis of such a request should be largely scientific. If the State did not give its

reasons, it would scarcely be possible to discuss the merits of the request. He would not vote against the addition proposed by the representative of Pakistan, but thought it unnecessary, since the very fact of a State's making a request would show that it had a special interest.

34. Mr. ALLOY (France) accepted the change advocated by the representative of El Salvador. His delegation agreed that the addition proposed by the representative of Pakistan was unnecessary, because the use of the words "a special interest" in the first part of the Commission's text indicated that the State making the request would have to explain its special interest.

35. Mr. RIGAL (Haiti) said he would vote for the French amendment with the addition proposed by the representative of Pakistan, since it tended to make the text more explicit and would help to promote the freedom of the high seas, and in particular, the freedom of fishing on the high seas. No State, whether a coastal State or not, should have greater fishing rights on the high seas than any other State.

36. Mr. OBIOLS-GOMEZ (Guatemala) considered the French amendment unnecessary, and would vote against it. No State would make use of the right described in article 56, unless it had scientific reasons for doing so. Nor would it do so if it did not have a special interest in the area concerned.

37. Mr. GANDJI (Iran) said he would vote in favour of the French proposal, and, although he agreed with the Netherlands representative about the proposal by the Pakistani representative, he would vote for that proposal too.

38. The CHAIRMAN put to the vote the French proposal concerning article 56 (A/CONF.13/C.3/L.3), as amended at the suggestion of the representative of El Salvador with the addition proposed by the representative of Pakistan.

The proposal as amended was adopted by 35 votes to 6, with 15 abstentions.

39. Mr. GARCIA AMADOR (Cuba) said he had abstained from voting on the text which the Chairman had put to the vote. He would, however, have voted for the text without the Pakistani addition, which he did not think the French representative had agreed to incorporate in his delegation's proposal.

40. Mr. PAROLETTI (Italy) had little to add to what he had said during the discussions on articles 51 and 52 regarding his delegation's proposal in respect of article 56 (A/CONF.13/C.3/L.24). He asked the Chairman to put the proposal to the vote in the form of a recommendation to the Drafting Committee.

In that form the Italian proposal was adopted by 30 votes to 4, with 20 abstentions.

41. Mr. LIENESCH (Netherlands) said that the amendments to article 56 in the second alternative (the only one which still stood) of his delegation's proposal (A/CONF.13/C.3/L.39), involved little more than a drafting change. Their adoption would make the text more complete and its meaning clearer.

The second alternative in the proposal submitted by the Netherlands (A/CONF.13/C.3/L.39) was adopted by 21 votes to 3, with 34 abstentions.

Paragraph 1 of article 56 as amended was approved on first reading by 45 votes to 2, with 14 abstentions.

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.26, L.33, L.36, L.37, L.41 to L.46)

42. Mr. ALLOY (France), observing that articles 54 and 55 were interdependent and that their subject (rights of coastal States) was very important, proposed that the Committee should start with a general debate on them taken together.

It was so agreed.

43. Mr. RIGAL (Haiti) said that the International Law Commission's text for the two articles consisted largely of a statement of principles rather than a series of precise draft rules such as the Conference had been called to draw up. He suggested, for example, that the text would be improved if the first sentence of article 54 were amended to read "Every coastal State shall contribute to the maintenance of the productivity of..." and the second sentence to read "Every coastal State shall participate on an equal footing in..."

44. Mr. HULT (Sweden), after referring briefly to his statement at the Committee's 7th meeting during the general debate on the articles referred to the Committee, said that his delegation's proposal for the deletion of articles 54 and 55 (A/CONF.13/C.3/L.36) was based on the principle of the freedom of fishing on the high seas coupled with the principle that the fish in the sea were a resource common to all who used it. If his delegation's proposals were adopted, all States would be on an equal footing so far as rights in respect of fishing on the high seas were concerned. It was therefore proposing the deletion of all reference to the rights which the Commission had proposed should be mentioned in the two articles as belonging to coastal States. It considered that those two articles were ambiguous. Every coastal State might have a special interest in one or more areas of the high seas, but it might have such an interest in an area of the high seas far distant from its coast; Norway, for instance, had a special interest in the stock of cod off the coasts of Greenland. Did the articles cover that special interest? It was not clear to him whether articles 54 and 55 applied only to the area of the high seas directly opposite a coastal State or whether they applied both to that area and to areas which lay at an angle to the general line of its coast.

45. Mr. ALLOY (France), referring briefly to what he had said on the subject of articles 54 and 55 at the Committee's 8th meeting during the general debate, said that a change in favour of coastal States had been taking place during the past few years; his delegation was prepared to agree to the text under discussion being worded so that those who subscribed to it would in effect be accepting that change, provided the principle of freedom of fishing on the high seas was affirmed first. The only change proposed by his delegation to article 54 was the substitution of the words "within

two years” for the words “within a reasonable period of time” (A/CONF.13/C.3/L.3). But it could not subscribe to the Commission’s text for article 55, because, as he had said at the Committee’s 8th meeting, it would give the coastal State the right to take unilaterally conservation measures in respect of stocks of fish in the high seas and his delegation was of the opinion that if conservation measures seemed necessary in any area, all the States concerned should discuss their advisability on a basis of equality.

46. The CHAIRMAN announced that there were no more names on his list for the general debate.

47. Mr. CORREA (Ecuador) thought it would be a mistake for the Committee to start immediately to deal seriatim with the numerous proposals relating to articles 54 and 55. Those proposals overlapped in several instances. He suggested, therefore, that further consideration of the articles be deferred until the following day; that, in the meantime, the sponsors of the proposals should meet to consider reducing their number by combining some of them; and that representatives should be given an opportunity to continue the general debate at the next meeting.

It was so agreed.

The meeting rose at 12.40 p.m.

TWENTY-SECOND MEETING

Thursday, 3 April 1958, at 3.5 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.26, L.33, L.36, L.37, L.41 to L.46) (continued)

1. Mr. MELO LECAROS (Chile), introducing the joint proposal submitted by Chile, Costa Rica, Ecuador and Peru (A/CONF.13/C.3/L.41), said that its purpose was to establish the coastal State’s right, deriving from geographical considerations, to regulate and control the conservation of the living resources of the sea in a zone contiguous to the territorial sea. If conservation measures were to be effective, it was necessary not only to lay down certain standards, but also to empower the coastal State to enforce them. It was not reasonable to suggest that the fishing States should themselves prescribe the standards with which their nationals would have to comply, in distant areas of the high seas, where their fishing fleets carried out unrestricted fishing from motives of profit. Although inspectors sometimes accompanied fishing fleets, it was not true that the latter normally took with them an authority capable of ensuring compliance with the regulations in force. There was even some doubt about the national allegiance of certain large fishing fleets which had arrived off the Chilean coast. Any fishing country could pass fishing laws that would apply

anywhere on the high seas, but conservation measures could be effectively implemented and supervised only by a State geographically placed to do so, in other words, by a coastal State.

2. Moreover, coastal States had a right to adopt conservation measures to protect their maritime resources—measures that would be to the benefit of all mankind as well as to that of the coastal States themselves. In many cases, the fisheries off its shores were vital to the people of the coastal State; that was certainly true of Chile, which had a comparatively small area of productive land but stood eighth on the list of fishing countries by catch per head of population. It would be useless to ask such a country to take conservation measures if better-equipped fishing fleets from other countries were still entitled to come and rob the sea of wealth that was not theirs. In those circumstances, there was a natural law which took precedence over any formal law, and that natural law should be reflected in articles 54 and 55. The Conference had been asked to consider not only the legal, but also the economic aspects of the problems referred to it. In seeking a solution for conservation problems, that must be the first consideration.

3. Paragraph 2 of the four-power proposal (A/CONF.13/C.3/L.41) made it plain that there was no intention of claiming exclusive fishing rights over a broad area of the high seas, since it included a clause providing for non-discrimination against foreign fishermen. The effect would be to conserve the living resources of the sea for all who were willing to co-operate in the work of conservation. An additional guarantee was provided in paragraph 3, which stipulated that the regulations concerned should be based on objective scientific findings; hence they could never be arbitrary.

4. Having briefly described the contents of paragraphs 4, 5 and 6, he concluded by emphasizing that the proposal as a whole was intended to fulfil the aims of the joint declaration which his country had signed with Ecuador and Peru in Santiago in 1952 and to which Costa Rica had subsequently adhered. That declaration referred to the principle of sovereignty as the legal concept which justified the introduction of conservation measures. He was not sure that the Conference could find any other principle on which such measures could properly be based. The substance of the four-power proposal must be approved, either as it stood or in some other appropriate form, if the Conference was to lay down just, realistic and lasting provisions on the conservation of the living resources of the sea.

5. Mr. POPOVIC (Yugoslavia), introducing his delegation’s proposal that articles 54 and 55 should be replaced by a single new article (A/CONF.13/C.3/L.13), said that many delegations had drawn attention to the economic importance for coastal States of conserving the living resources of the sea. The International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 had said, in the second sentence of paragraph 18 of its report,¹ that when formulating conservation programmes

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

account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast. The International Law Commission had also recognized the interest of the coastal State, in paragraph 1 of article 54, and that interest had likewise been recognized by the domestic legislation of many States. Some of the amendments put forward in the Committee, however, aimed at abolishing the rights of the coastal State; that showed the need for coastal States which had not done so to take the necessary measures to protect their interests within the limits of current international law.

6. The text of paragraph 1 of article 53 as adopted by the Committee (20th meeting) made the conservation measures in question applicable to the coastal State even in the high seas adjacent to its territorial sea provided it did not adopt unilateral measures. Paragraph 2 of his delegation's proposal recognized the coastal State's right to take unilateral measures in that area, but did not preclude the adoption of conservation measures in collaboration with other interested States. Since the second part of paragraph 2 provided that the coastal State could not discriminate against foreign fishermen, the coastal State would clearly have to take measures that would be acceptable to fishing States. The first part of paragraph 2 specified that the width of the maritime belt for regulating and controlling fishing activities should not exceed 100 miles, but his delegation would accept any breadth which proved acceptable to a majority of the Committee.

7. Mr. LEE (Republic of Korea) introduced his delegation's amendments to articles 54 and 55 (A/CONF.13/C.3/L.45). He did not consider that the International Law Commission's draft of the two articles went far enough in protecting the legitimate interests of the coastal State in the exploitation and conservation of fishery resources in coastal waters. It was essential that the coastal State be given the exclusive right of controlling and regulating fishing activities in adjacent waters where the fishery resources were vital to its people's livelihood. The coastal State should have a prior claim to the use of those resources where, with the object of conserving them, it had made sacrifices by restraining its own fishermen. That principle had been recognized in such international fishery conventions as the International Convention for the High Seas Fisheries of the North Pacific Ocean, which related to certain species of fish in the high seas adjacent to the coasts of Canada and the United States of America, and under which unilateral conservation measures were to be taken only by the coastal States, an obligation to abstain from fishing being simultaneously imposed upon non-coastal States. The Korean delegation was in general agreement with the conditions listed in article 55 with the object of preventing the arbitrary exercise of such powers. The deletion of sub-paragraph (a) was proposed because his delegation considered that the conditions there set forth were covered by the proposed new paragraph 2 of article 54. The insertion of the word "unduly" had been proposed in order to make the criterion of whether or not there was discrimination against foreign fishermen more flexible.

8. Only minor amendments were proposed to paragraph 3 of article 55, since it was closely related to the

problem of the settlement of disputes, which was to be discussed later, and he would confine himself to saying that if the parties to the dispute allowed themselves to be guided by the principles laid down in the proposal there would be a better chance of solving such disputes satisfactorily. He emphasized that recognition of the right of coastal States to regulate and control fishing in the waters off their shores would be in the interest not only of those States, but of the whole international community, since it was the only way in which the efficacy of conservation measures could be assured.

9. Mr. ALLOY (France) said that his delegation, having discussed the matter with other delegations, was now prepared to substitute the words "within twelve months" for the words "within two years" in its proposal concerning paragraph 3 of article 54 (A/CONF.13/C.3/L.3).

10. Mr. HUTCHISON (United Kingdom) and Mr. SCHERMERS (Netherlands), speaking for the sponsors of the four-power proposal (A/CONF.13/C.3/L.43), signified their readiness to replace paragraph 3 of that proposal by the following text: "3. In the present paragraph 3, which would then become paragraph 4, replace the words 'agreement within a reasonable period of time' by the words 'agreement on conservation measures within twelve months'."

The meeting rose at 3.45 p.m.

TWENTY-THIRD MEETING

Tuesday, 8 April 1958, at 3.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.33, L.36, L.37, L.41, L.42 and Rev.1, L.43 to L.46, L.60) (continued)

1. Mr. CORREA (Ecuador) recalled that in the general debate at the 9th meeting he had congratulated the International Law Commission on having made it possible for the question of the rights of coastal States to be discussed. But he had also said that those rights were not fully covered by articles 54 and 55 of the Commission's draft.

2. The Commission's text of paragraph 1 of article 54 laid down that the coastal State "has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea". The text went on, in paragraph 2 of article 54 and paragraph 1 of article 55, to indicate two rights which flowed from that "special interest": the right to take part on an equal footing in research and regulation in any area adjacent to its territorial sea, and the right to take unilateral measures of conservation, "provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time".

3. He felt that the right to take part in research and regulation, as proclaimed in paragraph 2 of article 54, was not sufficiently explicit. To make the right to adopt unilateral measures dependent upon a failure of negotiations was also unsatisfactory. It was not reasonable that coastal States should be prevented from taking such measures while negotiations were in progress, since there might be cases in which, despite the good intentions of all concerned, the negotiations were long drawn out, with consequent impairment of the coastal States' interests. It should be possible for coastal States to adopt measures while negotiations were in course, and those measures should be valid until an agreement was reached. He therefore felt that the proviso that a coastal State could adopt unilateral measures only after negotiations had failed should be deleted.

4. In general, the provisions of articles 54 and 55 were incomplete, and afforded no guarantee that underdeveloped coastal States would be able to protect their interests. For that reason, Ecuador had joined with Chile, Costa Rica and Peru in submitting an appropriate amendment (A/CONF.13/C.3/L.41) to articles 54 and 55.

5. He appealed to all representatives to seek the best possible compromise between conflicting interests. Nearly all the States represented at the Conference were coastal States, and hence it could not be argued that the authors of the four-power amendment were defending minority interests.

6. Mr. LLOSA (Peru) said that he had already stated in the general debate (5th meeting) the reasons why Peru could not accept the International Law Commission's draft articles relating to fishing and the conservation of living resources—namely, that those articles did not adequately recognize the rights of coastal states or give them sufficient protection against predatory operations by large fishing fleets.

7. In mentioning the "special interest" of coastal States in article 54, the International Law Commission had given expression to the views of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955, and to those of many individual States. But in article 55 the Commission had laid down conditions which virtually nullified the right to take unilateral conservation measures granted to coastal States by that same article. As it stood, article 55 safeguarded not the interests of coastal States, but those of States exploiting resources which did not belong to them. Such States would always be able to find pretexts for not heeding the rights of the coastal States, the majority of which were small underdeveloped countries which would not even be protected by the arbitral procedure referred to in paragraph 3 of article 55, the effectiveness of which was doubtful.

8. If, for example, a coastal State were to complain that its stocks of fish were being depleted, it might well be told that that was due to biological factors and not to over-fishing. It would be asked to give precise details of the decline in the stocks, which were in most cases impossible to establish. Even if they were eventually obtained, the damage to the resources would already have been done. In effect, therefore, the large fishing

Powers would be able to ignore the claims of coastal States.

9. His delegation had described on an earlier occasion the scientific, historical, social and economic grounds on which the relevant rights of coastal States rested. He found the arguments which had been advanced against the granting of those rights extremely unconvincing.

10. It had been asserted, first, that freedom to fish was an essential part of the freedom of the seas. But freedom of fishing had never been accepted either *de facto* or as a principle of international law.

11. Grotius' arguments had also been invoked in support of the notion of freedom of fishing. He would remind the Committee that Grotius had not been writing a work on international law but a treatise to vindicate the claims of the Dutch East India Company, by whom he had been retained, to freedom of navigation and trade. Grotius had also argued from the false premiss that the living resources of the sea could never be exhausted. Even Grotius, however, had admitted the possibility that fishing might be prohibited if it could be shown to be leading to the exhaustion of supplies of fish. The coastal States were now, two hundred years later, upholding that thesis.

12. It had also been argued that the great fishing Powers, whose fleets ranged far beyond the bounds of their own seas, were contributing to the welfare of humanity by ensuring that there was always a sufficient supply of fish for world consumption. The same humanitarian aim could be achieved simply by allowing coastal States to exploit their resources themselves. If it were further argued that the fishing industries of some coastal States were not sufficiently developed to enable them to do that, the answer was surely to help the industries concerned to expand, or at least to give the coastal State a share of the profits derived from the fish harvested from its own sea.

13. Finally, it had been said that the right of all coastal States to equality of access to the riches of the sea must be respected. But no such equality in fact existed, for differences in economic strength allowed some States to exploit the seas on a vast scale while preventing others from doing so even in their own waters.

14. For all those reasons, Chile, Costa Rica, Ecuador and Peru had moved the four-power amendment to articles 54 and 55 just introduced by the representative of Ecuador (A/CONF.13/C.3/L.41). The amendment provided the minimum degree of regulation necessary to protect coastal States from the predatory activities of large fishing fleets. The area of sea adjacent to their territorial seas in which coastal States had a right to adopt measures of conservation and regulation had not been specified in paragraph 1, since presumably it would not be the same for every State. Paragraph 3 provided a safeguard that measures of conservation and regulation would not be adopted arbitrarily, but solely on the basis of scientific investigations.

15. Paragraph 4 guaranteed the coastal State a fair share of the total catch of fish from its waters. That was a principle which had been embodied in many conventions relating to conservation, and was justly derived from the principle of abstention upheld by some delegations.

16. He called on the large fishing Powers to abandon their traditional positions, which were not in harmony with the present-day spirit of international co-operation, and urged the small States to ponder carefully before coming to a decision on a question which could affect their entire economic future.

17. Mr. KRYLOV (Union of Soviet Socialist Republics) said that two trends had become apparent in the Committee with regard to articles 54 and 55. One group of States had advanced arguments in favour of the rights of coastal States, based purely on their geographical proximity to the living resources of the sea. Another group had denied that coastal States had a "special interest" in the resources. He felt that neither attitude was likely to promote a solution to the twofold problem of the rational use of the resources and international regulation.

18. Migration of fish as a result of exploitation occurred both in the high seas and in territorial seas. For that reason a coastal State should be entitled to take part in conservation operations even when not fishing the area of sea concerned. It should also have the right to take unilateral measures, even though subject to certain conditions. For example, if a coastal State was fishing a certain stock, and had made both efforts and sacrifices to increase the size of the stock, while other States were simply fishing it without making any attempt at conservation, then the former undoubtedly had the right to adopt unilateral measures.

19. The only feasible solution was to find a compromise which would guarantee the right of the coastal State to take unilateral measures for the conservation of stocks of fish when it was the sole State intending to apply such measures.

20. His delegation was therefore prepared to reconsider its proposal (A/CONF.13/C.3/L.42) concerning articles 54 and 55. Paragraphs 1 and 2 of article 54 of the International Law Commission's draft would then stand. He was also prepared to accept the Commission's draft for article 55, subject to the addition to paragraph 2 of sub-paragraph (d) as drafted by the Soviet Union delegation in document A/CONF.13/C.3/L.42/Rev.1.

21. Mr. WALL (United Kingdom) said that some of the proposed amendments related to articles 54 and 55 combined. He felt that the Committee's work would be simplified if the two articles were considered separately.

22. Both referred to the rights of the coastal State. He recalled that in the general debate (7th meeting) he had said that the coastal State had a special interest in fish close to its shore, since its fishermen did not normally go far afield. The United Kingdom was prepared to recognize the coastal State's "special interest" in that sense, and would consider any proposals for special rights emanating from that special interest.

23. The exercise of rights by the coastal State should be subject to the establishment of satisfactory machinery for the settlement of disputes.

24. He was unable to support any proposals entailing the deletion of articles 54 and 55 or demanding unduly extensive rights for coastal States.

25. He supported the International Law Commission's draft for article 54 with the addition proposed in the

amendment submitted by the Netherlands, Portugal, the United Kingdom and the United States (A/CONF.13/C.3/L.43). The United Kingdom amendment to article 55 (A/CONF.13/C.3/L.44) had been put forward in a spirit of compromise.

26. Mr. HERRINGTON (United States of America) pointed out that, when it was maintained that the coastal State alone had the right to regulate fishing in areas of the high seas adjacent to its territorial sea, that meant in effect that an obligation was laid on that State to promulgate the regulations in question. But many States took little part in fishing on the high seas, and did not carry out research on stocks of fish or take measures of conservation in their coastal waters. Was it desirable to require them to undertake such responsibilities? For if they did not, and the principal fishing States were precluded from doing so, the result would be that there would be no conservation measures at all.

27. Such measures were, however, essential; it was also necessary that the coastal State should have the opportunity of taking part in them where they related to the waters off its coasts. Both those needs were provided for in articles 54 and 55.

28. He supported the principle of the special interest of the coastal State laid down in article 54, and would vote against any proposal seeking to delete it.

29. With regard to article 55, his delegation's attitude would depend on what the discussion revealed about the kind of situation that was envisaged. He would vote against any amendments to article 55 which sought to eliminate either recourse to the arbitral procedure contemplated in article 57 or the other conditions laid down by the International Law Commission.

30. Mr. LUND (Norway) was obliged to refute the suggestion that the major fishing Powers carried on their activities regardless of the need for conserving resources. Norwegian fishermen had developed deep-sea fishing as a necessary supplement to their coastal activities. Similarly, any State with a sea-coast would eventually become interested in deep-sea fishing. In his opinion, the best solution would be to establish appropriate bodies, in which the coastal States could be represented, to deal with conservation problems in each region of the world. He doubted whether articles 54 and 55 were really necessary, since arbitration was already provided for under other articles. He recognized that coastal States had special rights and interests and that in some regions it might be necessary to introduce unilateral measures; but such measures should be limited in scope, and should not be arbitrary.

31. Mr. NARAYANAN (India) said that articles 51 to 53 and article 56, which guaranteed the interests of the principal fishing countries, had already been adopted by the Committee, which had thus recognized the conditions required for fishing the high seas. Articles 54 and 55 were of the greatest importance and should be retained—if possible with greater emphasis on the interests of the coastal State.

32. In addition to fishing fleets operating on a world-wide scale, there was a multitude of small indigenous fishermen producing substantial supplies of food from coastal waters. That was what made the retention of articles 54 and 55 so important; if they were deleted

the balance of the articles dealing with fishing would be destroyed, and he would accordingly also oppose any attempt to delete the reference to the special interest of coastal States. Those States were clearly interested in maintaining the resources to be found at their threshold. The major fishing countries, with their technical advantages, could fish elsewhere, but many coastal States were entirely dependent for their supplies of fish on the high seas adjacent to their territorial sea.

33. He did not think that the opposition to article 54 was strong. With regard to article 55, he was glad that an attempt was being made to find a formula which would provide for the introduction of unilateral measures only in cases of real need. Articles 54 and 55 should be adopted, together with provision for a reliable arbitral procedure. He would support all amendments which sought to establish the special interest of coastal States.

34. The CHAIRMAN proposed that the general debate be declared closed.

It was so agreed.

Vote on article 54

35. Mr. TSURUOKA (Japan), referring to the Japanese proposal relating to articles 54, 55 and 56 (A/CONF.13/C.3/L.33), explained that its object had been to replace articles 54, 55 and 56 by a single text designed to ensure the best implementation of the notion of conservation of the living resources of the sea. It took into account both scientific data and the interests of coastal as well as non-coastal States. However, as article 56 had now been adopted, he would withdraw the proposal and associate his delegation, as a co-sponsor, with the Swedish proposal (A/CONF.13/C.3/L.36), in so far as the latter related to articles 54 and 55.

36. Mr. PIRKMAYR (Federal Republic of Germany) said that he too was prepared to withdraw the relevant part of his proposal (A/CONF.13/C.3/L.4), and he requested that the Federal Republic of Germany be associated as a co-sponsor of their joint proposal with Sweden and Japan.

The joint amendment proposed by Sweden, Japan and the Federal Republic of Germany (A/CONF.13/C.3/L.36) was rejected by 43 votes to 6, with 9 abstentions.

37. Mr. KRYLOV (Union of Soviet Socialist Republics) said that, as he had stated at the morning meeting, he had no amendment to propose to article 54 at that stage.

38. Mr. CORREA (Ecuador) announced that the authors of the four-power proposal (A/CONF.13/C.3/L.41) were engaged in discussions with other delegations holding similar views for the purpose of consolidating the latter's amendments with the joint proposal, and that it was hoped that a new joint proposal could be submitted at the following meeting.

The meeting rose at 5.5 p.m.

TWENTY-FOURTH MEETING

Wednesday, 9 April 1958, at 2.45 p.m.

Chairman : Mr. Carlos SUCRE (Panama)

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

ARTICLES 54 AND 55 (COMPETENCE OF COASTAL STATES) A/CONF.13/C.3/L.3 to L.5, L.13, L.24, L.33, L.36, L.37, L.41, L.42 and Rev.1, L.43 to L.46, L.60, L.65, L.66 and L.71) (continued)

Vote on article 54 (concluded)

1. Mr. OLAFSSON (Iceland) said that it was most important that an effective system of conservation of the living resources of the sea should be established. That was a matter not only of common sense but, as far as his country was concerned, also of self-preservation.

2. The articles of the International Law Commission's draft relating to the conservation of living resources were intended to apply to the area of the seas beyond the limits of territorial jurisdiction. As yet, however, the Conference had not reached agreement on the extent of such jurisdiction.

3. Iceland was in a position such that the area of coastal jurisdiction had to be sufficiently large if the "optimum sustainable yield" (cf. article 50) of fish were to be secured. If the area of jurisdiction were limited to three miles, his country would be unable to accept the International Law Commission's draft articles relating to conservation. The fixing of a larger area would, however, make those articles on the whole acceptable.

4. It had been said that limitations on fishing in certain areas should apply both to the coastal population, which was dependent on such fishing, and to other States also engaged in fishing in those areas. In the case of the areas off Iceland's coast, the total yield was not sufficient to allow of unlimited fishing. Conservation measures would have to be applied there, and Iceland would also need preferential rights over fishing in those areas.

5. He hoped that the principles embodied in the amendment which Iceland had submitted in the First Committee to article 66 (A/CONF.13/C.1/L.131) would prove acceptable.

6. He accepted the first two paragraphs of the International Law Commission's draft article 54, which had been drawn up after careful consideration of the report of the Rome Conference of 1955.¹ He also accepted the eleven-power amendment to article 54 (A/CONF.13/C.3/L.65).

7. The International Law Commission's draft article 55 did not draw the conclusions which followed from paragraph 1 of its draft article 54. He therefore supported the eleven-power amendment to article 55

¹ Report of the International Technical Conference of the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2).

(A/CONF.13/C.3/L.66), especially the new paragraphs which that amendment proposed.

8. Mr. GARCIA AMADOR (Cuba) said that his country had been among the first to give support at an international level to the idea of the special interest of the coastal State. At the same time, he opposed unjustified claims by coastal States which ignored the legitimate interests of other States. The purpose of international law was to protect the rights and interests of all States.

9. The Mexican representative had spoken of fishing imperialists, and had said that the rules which had long been in effect for their benefit had become obsolete. Would it not, however, be equally unjustifiable if international law were to go to the other extreme and serve exclusively the rights of the coastal State? Before 1945, only a few States had concerned themselves with measures of conservation. It was only since 1945 that a spate of extravagant claims relating to conservation had been made.

10. There were some cases in which the coastal State concerned either did not fish at all in the waters in question or fished on such a small scale that it could not possibly claim a "special interest". Other States, however, had been fishing in the area uninterruptedly over a long period of time, and in such a case it was those States which could legitimately claim the "special interest". The special interest of the coastal State was thus a relative — and not an absolute — concept. Other situations, which had been cited in support of the claims of coastal States, would be seen on closer analysis to have no bearing on the problem of conservation. It had been said, for example, that indiscriminate and large-scale fishing of anchovetas by foreign States in the south Pacific was exhausting the stock. Figures showed, however, that fleets of foreign ships caught a yearly average of 3,000 tons of anchovetas, while the Peruvian commercial fishing boats caught 100,000 tons and the guano bird consumed 2,500,000 tons of the species.

11. He supported the International Law Commission's draft of articles 54 and 55, which the Commission had drawn up after coming to the conclusion that the traditional system of treaties governing conservation measures was not in fact sufficient to guarantee conservation.

12. The Commission's draft articles recognized the special interests and rights of coastal States, but also laid down conditions to prevent abuse, since the Commission had been guided by the realization that the areas under discussion were areas of the high seas.

13. Mr. LLOSA (Peru) said he had never stated in the Third Committee that the stocks of anchovetas off the coasts of Peru were at present endangered by the action of foreign fishing fleets. There was, however, a danger that they might be threatened by over-fishing in the future.

14. Mr. REGALA (Philippines) said that the joint proposal submitted by the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60) was intended to clarify article 54. That article recognized the coastal State's special interest in conservation, and article 55

gave them the right to adopt unilateral measures of conservation in certain circumstances.

15. It was clear, therefore, that they should have a preferential right to fish in any area mentioned in article 54, paragraph 1, but the burden was on the coastal State to prove first that the fishing in such an area was carried on mainly by its inhabitants.

16. Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam) said that many coastal States derived their livelihood from fishing, which was in many cases coastal fishing because many of the States in question did not possess the necessary equipment for deep-sea fishing. The purpose of the joint proposal (A/CONF.13/C.3/L.60) was to ensure equality; the proposed preferential right to fish would merely compensate for a *de facto* inequality.

17. Mr. WALL (United Kingdom) said that, far from clarifying the text of article 54, the joint proposal introduced a new principle. It referred to economics rather than to conservation. Economic questions were to be dealt with in later provisions, under the heading of exclusive fishing rights; the proposal did not mention exclusive fishing rights, but it stipulated preferential rights. If such preferential rights were claimed by the United Kingdom, for example, with its fifty million inhabitants, other nations would be excluded from fishing on its coasts. He was opposed to both the form and the substance of the amendment.

18. Mr. LIMA (El Salvador) agreed with the United Kingdom representative. If the joint proposal were discussed in the context of article 54 it might not be accepted, purely as a result of misunderstanding.

19. Mr. REGALA (Philippines) and Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam) agreed that discussion of their joint proposal should be postponed.

20. Mr. LEE (Republic of Korea) withdrew that part of his proposal (A/CONF.13/C.3/L.45) which referred to article 55.

21. However, he maintained the part relating to article 54; he considered that discussion of that part should be deferred until the joint proposal by the United States of America and Canada (A/CONF.13/C.3/L.69) could be discussed.

22. Mr. CORREA (Ecuador) said that the right granted to the coastal State under article 54, paragraph 2, was far from complete. The International Law Commission merely gave the coastal State the right to take part on an equal footing in any system of research and regulation. The eleven-power proposal (A/CONF.13/C.3/L.65) laid on the fishing nations an obligation to enter into negotiations with the coastal State with a view to joint conservation measures, and made it impossible for them to put any measures into force without its agreement. The proposal was in effect a guarantee of the special right of the coastal State.

23. Mr. AGUERREVERE (Venezuela) expressed support for the eleven-power proposal.

24. Mr. LEE (Republic of Korea) said that the purpose of his delegation's proposal (A/CONF.13/C.3/L.45) was to affirm the competence of the coastal State to regulate fishing in the area in question, especially in

cases in which that State was dependent on its fisheries. Since, under article 55, paragraph 2, the measures adopted by the coastal State were to be based on scientific findings, there would be some guarantee against their being of an arbitrary nature.

25. Mr. GARCIA AMADOR (Cuba) said that, under article 51, a State engaged in fishing in any area of the high seas where the nationals of other States were not so engaged had the duty to adopt regulatory measures. If the eleven-power proposal were adopted, that duty might cease to be effective for it would be qualified by conditions. If negotiations as provided for in article 55 gave no result, the non-coastal State could, under article 51, take measures which would be applicable to its own nationals only. Besides, one important purpose of article 51 was that conservation measures should be adopted as soon as the need existed. If nationals of other States were to fish free of controls, the first to be harmed would be the coastal State. He had no objection to the proposal, but thought it should be reconciled with article 51 and with the spirit of the whole text.

26. Mr. ANDERSON (Australia) said the sponsors of the eleven-power proposal (A/CONF.13/C.3/L.65) had not conveyed their intentions clearly. Presumably, they wished to say that the coastal State had the right to establish conservation measures. He would suggest that they might consider inserting in the third line after the word "area" a phrase such as "other than those adopted by the coastal State(s)".

27. Mr. HERRINGTON (United States of America) asked for clarification. Did the sponsors of the eleven-power proposal mean that States whose nationals were engaged in fishing in any area of the high seas should not enforce conservation measures against their own fishermen, or against nationals of other States?

28. Mr. OZERE (Canada) also asked for particulars concerning the purpose of the proposal. Article 51 already benefited the coastal State if its nationals engaged in fishing in the area in question; even if they did not, conservation measures were to its advantage. Furthermore, article 52 provided for negotiations; and article 54, paragraph 2, gave the coastal State the right to take part in any system of regulation. The sponsors should reconsider their proposal.

29. Mr. LIMA (El Salvador) said that the eleven-power proposal filled a gap in the International Law Commission's draft. If measures taken by a fishing State were harmful to the coastal State, the latter's only redress was that contemplated in article 53. The proposal offered a safeguard against possible harmful measures in that it required the concurrence of the coastal State.

30. Mr. QURESHI (Pakistan), while sympathizing with the purpose of the proposal, said it conflicted with several articles. The proposal would prevent fishing nations from applying measures promptly to their own nationals, and the delay might be harmful to the coastal State.

31. If the fishing State had taken measures applicable to its nationals under article 51 and the coastal state had taken measures under article 55, there was some doubt as to which measures would have priority. He

felt that the sponsors should revise the text of the proposal.

32. Mr. CORREA (Ecuador) said that, in deference to the comments expressed, the sponsors would accept the suggestion made by the Australian representative.

33. Mr. WALL (United Kingdom) said that the modification would not solve the difficulty; the text would still not provide for the cases where the coastal State had taken no conservation measures.

34. Mr. CORREA (Ecuador) said that the eleven-power proposal made it mandatory for the fishing States to obtain the approval of the coastal State.

35. Mr. LACU (Argentina) thought that the purpose of the proposal was to take into account the interests of the so-called non-coastal States, and to compel the coastal State to enter into negotiations with a view to conservations measures.

36. Mr. HERRINGTON (United States of America) said that one implication of the proposal as it stood was that, if a fishing State entered an area adjacent to the coastal State where there were no conservation measures in force, the fishing State would be unable to adopt conservation measures regulating its own fishermen.

37. Mr. CASTAÑEDA (Mexico) considered that the situation envisaged by the proposal was that which would occur when a State applied certain conservation measures to its nationals under article 51, while at the same time the coastal State enforced measures applicable to its own nationals; there would thus be two régimes in the same zone. He considered that the regulations of the coastal State should prevail, and that no other State should be free to adopt the other measures without the coastal State's consent.

38. Mr. CORREA (Ecuador) suggested that the text of the proposal should be amended by substituting the words "which are opposed to those adopted by" for the words "without the concurrence of".

39. Mr. HERRINGTON (United States of America) said that article 53 covered the very situation referred to by the Mexican representative.

40. Mr. LIMA (El Salvador) pointed out that article 53 dealt with measures taken under articles 51 and 52, and not with those taken by the coastal State.

41. Mr. GARCIA AMADOR (Cuba) said that in its revised version the proposal was acceptable. Its purpose was to avoid a conflict between two sets of measures of conservation. But it still did not deal with the problem of the obligation of fishing States under article 51; would the measures taken by such States under that article be subject to the consent of a coastal State which had itself taken no measures? The proposal should be supplemented by a clause dealing with that hypothesis.

42. Mr. WALL (United Kingdom) pointed out that articles 51, 52 and 53 did not debar the coastal State from taking action in the same way as the so-called non-coastal State. Conceivably, the fishing State might

have adopted stronger measures than the coastal State and it would be unfortunate if the latter were to oblige the former to adopt the less stringent measures. He thought the proposal was potentially harmful in that it might retard the conservation of living resources.

43. Mr. HERRINGTON (United States of America) said that article 51 of the International Law Commission's draft covered the case of a single State fishing an area of the high seas, whether it was a coastal State or not, and article 52 covered the case of two or more fishing States. The two articles did not deal with the case of coastal States which did not engage in fishing, and it was clear that article 54 was meant to cover their case.

44. The beginning of article 53 should therefore be altered to read: "If, subsequent to the adoption of the measures referred to in articles 51, 52, and 54, nationals of other States..." That amendment would solve the problem of the non-fishing coastal State in a simple manner.

45. Mr. OLAFSSON (Iceland), associating himself with the suggestion which had been made earlier by the Canadian representative, moved that the vote on the eleven-power proposal should be postponed until the next meeting.

The motion was rejected by 32 votes to 6, with 25 abstentions.

The eleven-power proposal (A/CONF.13/C.3/L.65) was adopted by 30 votes to 28, with 7 abstentions.

46. Mr. LACLETA (Spain) said that his delegation's amendment to article 54 (A/CONF.13/C.3/L.37) imposed a limitation on the excessively vague phrase "any area of the high seas adjacent to its territorial sea"; secondly, his delegation proposed a specific period in lieu of the "reasonable period of time" mentioned in the International Law Commission's draft.

47. He withdrew his delegation's amendment to article 55 of the International Law Commission's draft (A/CONF.13/C.3/L.37) and associated himself with the nine-power amendment to that article (A/CONF.13/C.3/L.71).

The Spanish proposal concerning article 54 (A/CONF.13/C.3/L.37) was rejected by 33 votes to 4, with 23 abstentions.

48. Mr. WALL (United Kingdom) said that, although his delegation accepted paragraphs 1 and 2 of the International Law Commission's draft article 54, it considered them incomplete. The new paragraph 3, as proposed in the four-power amendment to article 54 (A/CONF.13/C.3/L.43), was intended to supplement the first two paragraphs of that article.

49. Paragraph 3 of the International Law Commission's draft article 54 was not relevant to the first two paragraphs; the articles new paragraph 3 in the four-power amendment was designed to remedy that defect.

50. Mr. AGUERREVERE (Venezuela) said that the amendment proposed in the second paragraph of the four-power proposal concerning article 54 (A/CONF.13/C.3/L.43) seemed to be in contradiction with the eleven-power proposal (A/CONF.13/C.3/L.65), which

had just been approved; he moved that that particular amendment should not be voted on.

51. Mr. ALVAREZ (Uruguay) said that he could not agree. The eleven-power amendment referred to measures adopted by the coastal State, while the four-power amendment referred to a situation where no such measures existed and where the coastal State desired the State fishing in the area to adopt conservation measures.

The Venezuelan motion was rejected by 29 votes to 21, with 9 abstentions.

The four-power proposal (A/CONF.13/C.3/L.43) was adopted by 35 votes to 4, with 27 abstentions.

52. The CHAIRMAN suggested that no vote was needed on the Italian proposal concerning article 54 (A/CONF.13/C.3/L.24) in view of the Committee's decision at its 20th meeting.

53. Mr. CUSMAI (Italy) agreed.

54. Mr. LLOSA (Peru) said that his delegation had collaborated with the sponsors of the eleven-power amendments to articles 54 and 55 (A/CONF.13/C.3/L.65 and A/CONF.13/C.3/L.66) in a constructive spirit, in order that a formula might be reached which took account both of the rights of coastal States and of the interests of other States and which would prove acceptable to a large majority of States that recognized the rights of coastal States for different reasons.

55. His delegation, in the same spirit of co-operation and compromise, was in fundamental agreement with the formula which had been arrived at. That formula, replacing the original amendment by Chile, Costa Rica, Ecuador and Peru to article 54 (A/CONF.13/C.3/L.41), was embodied in the eleven-power amendment (A/CONF.13/C.3/L.65) which had just been adopted. He wished, however, to express reservations regarding paragraph 1 of the International Law Commission's draft article 54, which had not been modified by the new eleven-power amendment, and in which the reference to the "special interest" of the coastal State should, he thought, be replaced by a reference to its "special right".

56. His delegation wished to add that, if the formula embodied in the new eleven-power amendments to articles 54 and 55 were not approved, it would firmly uphold its traditional position as expressed in the original proposal of Chile, Costa Rica, Ecuador and Peru (A/CONF.13/C.3/L.41).

Article 54 of the International Law Commission's draft, as amended, was adopted by 54 votes to 2, with 10 abstentions.

Vote on article 55

Mr. Krispis (Greece), Vice-Chairman, took the chair.

57. Mr. CORREA (Ecuador) said that although article 55 gave the coastal State the right to adopt unilateral measures of conservation, it laid down the condition that that State could only do so if negotiations had not led to an agreement within a reasonable period of time. The period might be indefinitely prolonged. The purpose of the eleven-power proposal (A/CONF.

13/C.3/L.66) was to ensure that during such a period the measures adopted by the coastal State would remain in force.

58. Mr. O'HALLORAN (New Zealand) said the proposal reflected a sense of conflict between coastal States with limited resources and States that had distant-water fishing fleets. But there was not necessarily such a conflict. He recognized the special position of coastal States; but other needs had to be considered, too. The movements of fish stocks and the many influences which affected their productivity made it desirable that all nations concerned should take conservation measures by agreement. Even article 55 did not go quite far enough in placing the emphasis on the initial steps of consultation, negotiation and, if possible, agreement. He would support amendments stressing the priority of those steps. He accepted the suggestion that coastal States should, in the absence of agreement, prescribe conservation measures for particular stocks of fish, on the condition, however, that those measures had been endorsed finally or provisionally by an impartial expert body. The final responsibility for regulating the interests of the nationals of other States should not be left to the coastal State. He would like to see an article adopted which would recognize the interests of the coastal State while maintaining a just balance between the interests of that State and of the world committee as a whole.

59. Mr. KRYLOV (Union of Soviet Socialist Republics) said his delegation could not agree with the proposal that the conditions concerning prior negotiation should be omitted from article 55.

60. Mr. LUND (Norway) said that conservation measures should be built on agreement, failing which recourse should be had to arbitration.

61. Mr. ALVAREZ (Uruguay) expressed his delegation's support of the eleven-power proposal (A/CONF.13/C.3/L.66), and wished to make a few comments on the views put forward by various delegations during the discussion. With regard to the problem of the attribution to the coastal State of the competence to adopt unilateral measures of conservation, it was necessary to take an equitable view both of the interests of the State which engaged solely in fishing in areas of the high sea adjacent to its territorial sea and of those of the State which also did so in areas of the high seas adjacent to the territorial sea of other States. In both cases, it might be a question of vital interests of actual livelihood, which was something quite distinct from the notion of profit. Those interests should be respected. But it must be acknowledged, if one wished to be fair, that States which engaged in fishing only in areas of the high seas adjacent to their coasts generally possessed inadequate economic and technical means, and were therefore obliged to restrict their activities to those areas, and that it was necessary to give their needs a certain priority over the needs of those other States, which possessed the means to go to other areas. Unless such a priority were accorded, they would be condemned to economic stagnation. He therefore really could not believe that, as some delegations had asserted, equality of treatment would be a just solution; each State was in a different situation, so that really equal treatment

would consist of treating in the same way those that were in the same situation, and in a different way those which were in a different situation. Those considerations should be borne in mind, as well as factors of a technical or scientific character. The best solution would not be one in which the problem was considered solely from the strictly scientific and technical point of view, but one which, while not forgetting those factors, took into account the fact that a large number of coastal countries had a very special interest in the areas of the high seas adjacent to their territorial sea — an interest which, even if there were no fishing, existed as a potential interest, because in those areas lay their security not only in the present, but in the future, owing to the fact that they did not possess any other wealth, or only to a limited extent.

The meeting rose at 6 p.m.

TWENTY-FIFTH MEETING

Thursday, 10 April 1958, at 3.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLE 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.4, L.13, L.19, L.33, L.36, L.42, L.45, L.66, L.71) (continued)

1. Mr. QURESHI (Pakistan) recalled that the Committee had made the provisions of article 51 subject to the rights and interests of coastal States, and had endorsed the principle of consultation and negotiation between States interested in conservation. It had further specified time-limits within which agreement had to be reached, and decided that if no agreement was possible, recourse could be had to the procedure specified in article 57. It had, in short, accepted and approved the principles of justice, mutual agreement and international co-operation set forth in articles 51, 52 and 53.

2. The eleven-power proposal (A/CONF.13/C.3/L.66), on the other hand, sought to eliminate completely the principle of negotiation between States and, if adopted, would empower all coastal States to adopt and enforce conservation methods without consulting the other States concerned. The adoption of the proposal would, moreover, create complete chaos in high-seas fisheries if the fifty or so coastal States which shared common seas such as the Mediterranean were to adopt conservation methods without reference to other States concerned with the conservation of the same stocks. Similar confusion would be created even with respect to countries which faced the open sea. He noted in that connexion that the Committee had already approved the principle that, to be effective, conservation measures should apply to stocks of fish and not to geographical areas alone; in any event, co-operation between States sharing common seas was essential if conservation measures were to be based on scientific and not on other considerations.

3. The legitimate interests of the coastal States were already protected in paragraph 1 of article 55, and the coastal State itself would in the first instance be the judge of what constituted a "reasonable period of time", and would decide each case on its merits. Even a very under-developed coastal State that considered its interests threatened by ships of a developed State fishing intensively the waters adjacent to its territorial sea could, in a matter of hours, call upon the flag State of those ships to negotiate conservation measures within a specified but reasonable period of time. If no agreement was reached, the coastal State could enforce suitable conservation measures based on scientific and impartial findings.

4. A distinction should also be made between fishing rights and the right to enforce conservation measures, since the appropriate place to mention any fishing rights claimed by coastal States was article 49 and not article 55.

5. As the representative of a coastal State, he was keenly interested in the protection of his country's rights and interests, which he felt were better safeguarded by article 55 in its present form than by the eleven-power proposal.

6. Mr. CIEGLEWICZ (Poland) said that the eleven-power proposal as a whole, and in particular that part which related to paragraph 1 of article 55, reflected a trend that was completely at variance with the principle of the equality of all States in the matter of fishing on the high seas. His delegation would therefore vote against it.

7. Mr. HERRINGTON (United States of America) said that the changes which the eleven-power proposal sought to introduce into paragraph 1 of article 55 would completely reverse the policy and practice which had been advocated by the International Law Commission and so far endorsed by the Committee. If the prior negotiation requirement were omitted, the fishing State could not be notified of conservation measures in force, and would be unable to comply with them. Such a proposal would therefore create more difficulties than it would solve.

8. Furthermore, if the reference to urgent need were deleted in paragraph 2 of article 55, the adoption of unilateral conservation measures by the coastal State — instead of being an exception — would become the general rule; that would be quite inconsistent with the Committee's decisions on articles 51, 52 and 53.

9. The first part of section 3 of the eleven-power proposal raised the question of the preferential interests of the coastal State which, in his opinion, should be examined when the Committee considered the joint proposal submitted by the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60) on the same question.

10. The second part of section 3 of the eleven-power proposal was acceptable.

11. Generally speaking, the effect of the proposal as a whole would be to change the entire approach to the problem of the conservation of the living resources of the high seas, and his delegation would therefore be unable to vote for article 55 if the eleven-power proposal were adopted.

12. Mr. CASTAÑEDA (Mexico) said that his delegation attached the greatest importance to the principle embodied in paragraph 1 of article 54, which the Committee had already approved. By itself, however, that principle meant nothing, for it simply provided a basis for the elaboration of a body of law. The special interest of the coastal State referred to in that article seemed to lend itself to two different interpretations: the first by the coastal States, and the second by the fishing Powers — namely, countries whose nationals fished far afield. Apparently, the view of the fishing Powers was that the principle should be recognized, but should at the same time be hedged about by so many conditions as to render it illusory.

13. While he agreed with the Cuban representative that a balance must be struck between the opposing views of the two groups, he would lay the greatest stress on the need for consistency. The Committee could not recognize the special interest of coastal States and then deny them the legal means of protecting that interest. Article 55 in its present form would merely frustrate the efforts of States trying to exercise their rights under article 54, for those rights would remain a dead letter if the requirement of prior negotiations, which could drag on indefinitely, were maintained.

14. The Committee would certainly be contradicting itself if it stated, in one and the same article, that the coastal State could adopt conservation measures for which there was an urgent need, but only if negotiations had not led to an agreement. If the need was really urgent, the stock of fish in question might well have been exhausted when the coastal State was eventually permitted to adopt conservation measures. In certain cases, moreover, it would be very difficult to prove "urgent need", and the coastal State would be in the best position to detect any danger signals that indicated the need for the adoption of such measures. The first part of section 3 the eleven-power proposal (A/CONF.13/C.3/L.66) did not refer to the preferential rights of coastal States, but merely covered the case of small coastal communities which depended on fishing for their livelihood. In any event, that question would arise very seldom in practice.

15. Mr. RUIVO (Portugal) said that the special rights of the coastal State should not be such as to hamper the rational exploitation of the living resources of the high seas. He understood the fears of some coastal States which felt that their vital interests were involved, but he pointed out that other interests, just as legitimate, had to be taken into account. Some countries, for example, were compelled to fish far from home in order to support large populations, but it should be borne in mind that they had contributed considerably over the years to the development of rational fishing techniques and conservation methods.

16. It was true that unilateral conservation measures were generally justified and satisfied an urgent need, but in a few cases they were arbitrary and were adopted for political reasons or to eliminate competition. If coastal States were allowed to adopt unilateral conservation measures without having first to enter into negotiations, the position of certain countries with legitimate interests in the stocks concerned would be adversely affected, international co-operation would be

undermined, and the efforts of regional fishing boards rendered nugatory.

17. It had been argued that protracted negotiations could result in over-fishing, but surely that danger would be eliminated by the specific time-limit specified in the nine-power proposal (A/CONF.13/C.3/L.71). Freedom of fishing would be seriously jeopardized if coastal States were given a free hand to adopt conservation measures without allowing other States concerned to have recourse to arbitration or regional fishing boards. His delegation would therefore vote against the eleven-power proposal (A/CONF.13/C.3/L.66).

18. Mr. LUND (Norway) noted that the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 and the International Law Commission alike had emphasized that problems relating to conservation should be solved primarily on a basis of international co-operation. He therefore suggested that States which feared over-fishing in the waters adjacent to their territorial sea should set up conservation systems as soon as possible in consultation with all other States concerned and with the advice of the Fisheries Division of the Food and Agriculture Organization (FAO). The regulation of fishing for conservation purposes required long research and careful study, and it was therefore of great importance to establish appropriate machinery which would ensure that urgent situations did not arise.

19. Mr. GARCIA AMADOR (Cuba) pointed out that, contrary to what had been implied by other speakers, paragraph 1 of article 55 would enable the coastal State to exercise its rights as soon as "a reasonable period of time" had elapsed. It was therefore impossible to assert that negotiations would be protracted and even go on indefinitely.

20. In the past, international law had admittedly been partial to the fishing States, but that was no reason why the situation should now be reversed completely in favour of the coastal States, as was apparently the purpose of the addition which, in the eleven-power proposal, it was sought to make to paragraph 1 of article 55. The crux of the matter in that respect was the procedure for the settlement of disputes which the sponsors proposed to establish. They had, however, failed to give any indication of their views on that point. The Mexican delegation had, it was true, submitted a proposal on the subject (A/CONF.13/C.3/L.1), but the exhaustion of the remedies possible under Article 33 of the United Nations Charter and the conclusion of bilateral and multilateral negotiations would cause interminable delay; meanwhile, in accordance with the eleven-power proposal, the conservation measures adopted by the coastal State would remain in effect.

21. Paragraph 2 of the eleven-power proposal omitted any reference to the requirement of urgency. That requirement was fundamental; and the system proposed by the Commission was based on the concept of the urgent need for conservation measures. The Commission had decided that only when agreement with other States was impossible and when international machinery for negotiations had broken down could the coastal State, as an exceptional measure, adopt unilateral conservation measures *erga omnes* in areas of the high

seas containing stocks of fish to which it could not claim an exclusive right. The Rome Conference of 1955 had decided, on the basis of scientific evidence, that the paramount consideration should be the need for conservation. In general, however, there was no real need to adopt measures for the conservation of the vast majority of stocks of fish, and therefore the Rome Conference had concluded that such measures were justified only by the existence of a real and not a potential danger of the exhaustion of such stocks. Scientists at times found it difficult to determine whether any particular stock was in danger, and it was therefore hard to understand how the sponsors of the eleven-power proposal could foresee the need for conservation measures or say that the existence of certain danger signals would require their adoption.

22. He recalled that at the Rome Conference the Mexican and Cuban delegations had co-sponsored a proposal, supported by most of the Latin American delegations, including those which had now sponsored the eleven-power proposal, to the effect that if agreement could not be reached, the coastal State could adopt conservation measures based on technical or scientific evidence — provided that there was an imperative need to conserve the stock concerned. The word "imperative" had been replaced by the word "urgent" in the Commission's text, and it was surprising that the sponsors of the eleven-power proposal now sought to delete what they had supported at Rome.

23. The new paragraph 3 proposed by the sponsors of the eleven-power proposal appeared to contradict subparagraph (c) of paragraph 2 of article 55. In any event, it was impossible for any State to claim exclusive or preferential rights in respect of conservation measures in areas of the high seas. The representative of Mexico had attempted to explain the contradiction by stating that the new paragraph 3 related only to coastal communities; yet it was hard to see how, when restrictions were imposed on the intensity of fishing, the interests of those communities could be given special consideration in any other way than by discrimination against foreign fishermen on the basis of regulations different from those applicable to the coastal State. The Committee should not allow the concept of exclusive or preferential rights to be insinuated into article 55 in the guise of conservation measures.

24. The Mexican representative had also stated that although the special interest of the coastal States had been recognized it had been interpreted in such a way as to deprive it of all meaning. Yet the Commission's draft stated explicitly that the coastal State could exercise its rights to adopt any conservation measures that were really justified and non-discriminatory. In other words, the Commission's text would not attenuate — but safeguard — the rights of the coastal State, which could refer any dispute to arbitration and, if its case was sound, would receive a favourable decision. What the Mexican representative had in substance requested was that the coastal State should be allowed a free hand to adopt any conservation measures it chose.

25. The new paragraph 4 of article 55 in the eleven-power proposal (A/CONF.13/C.3/L.66) was acceptable.

26. Mr. POPOVIC (Yugoslavia), speaking in support of the eleven-power proposal, observed that, while nearly all delegations agreed that the coastal State had a special interest in fishery conservation in areas of the high seas adjacent to its territorial sea, there was some difference of opinion on the steps which the coastal State might take to protect its special interest. In attempting to resolve that difference, the Committee should bear two considerations in mind: In the first place, different States were at different levels of technical and economic development. The small and under-developed countries could, for technical reasons, exploit only a very small area of the high seas adjacent to their territorial sea, and it was essential that they should be given wide powers to protect their special interests in that area. In such cases, equality of rights as between the coastal State and any other States concerned was inadmissible.

27. Secondly, the amendment which the Committee had already accepted (20th meeting) to paragraph 1 of article 53 had considerably extended the application of the terms of that article, with the result that conservation measures adopted in accordance with it would apply to any area of the high seas in which a protected stock of fish might appear. His delegation had voted in favour of the new text of paragraph 1 of article 53 in the hope that the rights of the coastal State would be adequately protected in articles 54 and 55. If that were not to be so, he would ask the Committee to reconsider its draft of article 53.

28. Mr. WALL (United Kingdom) said that his delegation opposed sections 1 and 2 of the eleven-power proposal for the same reasons as those given by the New Zealand and Cuban representatives.

29. With regard to section 3 of the proposal, he recalled that during the general debate (7th meeting) his delegation had stated that, when the intensity of fishing was such that some measure of control was required, it would not be unreasonable to recognize the special interest of the small-boat communities. A provision to that effect was in fact included in many of the existing conservation conventions. He believed, however, that the words "special consideration" used in the eleven-power proposal were synonymous with "preference" or even "exclusive fishing rights" and, while his delegation would be prepared to consider the matter of preference in another context, he took the view that it was not relevant to article 55.

30. Passing to the new paragraph 4 proposed in section 3, he said that in the International Law Commission's text of article 55, emphasis had been placed on the stock of fish to be conserved rather than on geographical considerations. The proposal to adopt the principles of geographical demarcation as defined in articles 12 and 14, when the coasts of different States were involved, placed the emphasis rather on the geographical aspect of fishery conservation. Having observed that in the North Sea, for instance, it would be extremely difficult to draw demarcation lines as envisaged in articles 12 and 14, he said that his delegation preferred the International Law Commission's text.

31. Mr. LLOSA (Peru) claimed that the new text of

article 55 proposed by the eleven Powers represented the logical outcome of article 54. In the latter article, the Committee had recognized the special interest of the coastal State in the maintenance of the productivity of the living resources in areas of the high seas adjacent to its territorial sea and, unless article 55 empowered the coastal State to take effective steps to protect that interest, article 54 would remain a dead letter.

32. He took exception to the Cuban representative's statement that, while the International Law Commission's text was biased in favour of the large fishing States, the eleven-power proposal was designed to shift the balance in favour of the coastal States. On the contrary, the purpose of that proposal was to find a golden mean between the two extremes.

33. He recalled that the issue which at present divided the Committee had already arisen during the Rome Conference of 1955,¹ and that on that occasion neither the group which held that the coastal State alone should be entrusted with conservation measures in areas near its coast nor the group which believed that the coastal State should refrain from adopting any conservation measures for high seas fisheries without the agreement of other States concerned had been able to obtain a majority. Thus, ever since the Rome Conference, world opinion on the extent of the interest and responsibility of the coastal State had been equally divided, and it was one of the chief aims of the present conference to seek a formula which would enable the coastal State to prevent the depredation of fisheries in areas adjacent to its territorial sea by the large fishing States. At the present rate of technical development, such depredation could in the very near future attain unforeseeable limits, with the result that an entire fishing stock might be exhausted in a few years, or even a few months. In that event, the coastal State could not possibly wait until agreement on conservation measures had been reached with the large fishing States concerned.

34. He emphasized his delegation's belief that, while the coastal State should as far as possible avoid taking unilateral conservation measures, it should be empowered to do so without delay in cases of emergency. That was the substance of the eleven-power proposal, and his delegation would vote for it.

35. Mr. LIMA (El Salvador) agreed with the theoretical and legal arguments advanced by the Mexican representative in support of the eleven-power proposal.

36. For his part, he would confine himself, first, to examining the practical effects of the International Law Commission's draft of article 55 and those of the eleven-power text. In his view, the insistence laid on prior negotiations in the Commission's text was pointless. If the conservation measures were reasonable, then prior negotiation was unnecessary. If, on the other hand, the other States concerned claimed that the conservation measures were unreasonable, then there could be no agreement, and in that case likewise there was no purpose in negotiation.

37. The Commission's text stated that unilateral measures adopted by the coastal State would only be

¹ *Report of the International Technical Conference of the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No.: 1955.II.B.2) paras. 44 and 45.

valid as to other States if scientific evidence showed that there was an urgent need for them. He asked who would decide whether the need was urgent. If a coastal State adopted conservation measures, then clearly it regarded them as urgent, and it was unnecessary, therefore, to refer to "an urgent need" in the text of article 55. The eleven-power proposal was logical, and was designed to state expressly the right of a coastal State to exercise unilateral conservation measures without delay when the need arose.

38. Secondly, dealing with the time for the introduction of conservation measures not accepted by the other States concerned, he noted that under the nine-power proposal (A/CONF.13/C.3/L.71) the introduction of the measures would be left in abeyance pending the arbitral decision. His delegation, on the other hand, took the view that the conservation measures should remain in force pending an arbitral decision, and that view was reinforced by an examination of the texts of articles 51 to 53 which the Committee had already adopted. Paragraph 2 of article 53 stated that conservation measures adopted by a fishing State should remain obligatory pending the arbitral decision. If that were the case, he would ask why conservation measures adopted by the coastal State should remain in abeyance pending the arbitral decision. It was proper, surely, that conservation measures taken by all States should be subject to the same procedure.

39. In sum, his delegation believed that the eleven-power proposal (A/CONF.13/C.3/L.66) was preferable in all respects to the nine-power proposal (A/CONF.13/C.3/L.71), and would vote for the former.

40. Mr. LOOMES (Australia) was unable to support the eleven-power proposal, feeling as he did that a reasonable balance should be maintained between the interests of the coastal State and international fishing interests as a whole. The maintenance of such a balance demanded first, prior negotiations between the coastal State and other States concerned; secondly, the exchange of scientific information; and thirdly, a reasonable time for the negotiations to take place.

41. To allay the fear apparently entertained by the Mexican representative that negotiations might be protracted indefinitely, he would be quite prepared to support an amendment setting a definite time-limit for negotiations. In general, on the other hand, his delegation believed that the International Law Commission's text was preferable to that contained in either the nine-power proposal or the eleven-power proposal.

42. Mr. PANIKKAR (India) recalled that in the general debate (5th meeting) his delegation had expressed its approval in principle of the International Law Commission's text of articles 54 and 55. In detail, however, he felt that article 55 might be improved so as to accord a greater degree of respect to the special interests of the coastal State. With regard to the need for prior negotiations, his delegation was wholeheartedly in favour of co-operation and negotiation on the application of conservation measures, and felt that the real cause of much of the recent argument in the Committee was the inclusion of the phrase "within a reasonable period of time" in the Commission's text of paragraph 1. If those words were replaced by others

indicating a fixed period of time, it might, he believed, be possible to reconcile the two points of view expressed in the eleven-power and nine-power amendments, so that the final text of article 55 could be adopted by a large majority. If it were not possible to reconcile the two points of view, his delegation would vote in favour of the eleven-power proposal (A/CONF.13/C.3/L.66), paragraphs 1 and 2 as proposed therein being preferable to the corresponding paragraphs in the International Law Commission's text.

43. According to the Commission's text of paragraph 2, unilateral measures adopted by the coastal State would be valid as to other States only if three requirements were fulfilled. The second and third requirements were preserved in the text of the eleven-power proposal, while the first — "that scientific evidence shows that there is an urgent need for measures of conservation" — had been omitted. His delegation believed that the omission was wholly justifiable, since there were some areas where serious difficulties would arise in providing scientific evidence to show that there was an urgent need for conservation measures.

44. Mr. OZORES (Panama) believed that a possible solution might be to combine the most satisfactory elements of the International Law Commission's text and of that proposed by the eleven Powers. On the one hand, he regarded paragraph 1 of the International Law Commission's text as unsatisfactory, and preferred the text of the eleven-power proposal, which did not insist on negotiations prior to the adoption of unilateral conservation measures by the coastal State. On the other hand, he was disappointed to find no reference in the eleven-power proposal to recourse to the procedure contemplated by article 57 and, in that respect, he regarded the International Law Commission's text as preferable.

45. He would therefore propose that a coastal State should be empowered to take unilateral conservation measures without prior negotiations with the other States concerned, and that the measures adopted should remain obligatory pending an arbitral decision as envisaged by article 57.

The meeting rose at 1 p.m.

TWENTY-SIXTH MEETING

Thursday, 10 April 1958, at 8.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLE 55 (COMPETENCE OF COASTAL STATES)
(A/CONF.13/C.3/L.66, A/CONF.13/C.3/L.71)
(continued)

1. Mr. CORREA (Ecuador) said that, acting on a suggestion by the Rapporteur, the sponsors of the eleven-power proposal (A/CONF.13/C.3/L.66) had been holding consultations in order to produce a text likely to gain a majority in the Committee and a two-

thirds majority at a plenary meeting. Progress was being made, and it was hoped that a generally acceptable text could be introduced at the next meeting. He proposed, therefore, that consideration of the eleven-power proposal should be adjourned until the next meeting.

2. Mr. HERRINGTON (United States of America) supported that proposal.

3. Mr. WALL (United Kingdom) thought that it would certainly facilitate the consultations to which the representative of Ecuador had referred if the Committee were informed of the intentions of the sponsors of the nine-power proposal (A/CONF.13/C.3/L.71). As a co-sponsor, he intended to introduce that proposal.

4. Mr. CORREA (Ecuador) agreed that his motion to adjourn should not be put to the vote until the Committee had heard the representative of the United Kingdom.

5. Mr. WALL (United Kingdom) pointed out first of all that paragraph 1 of the nine-power proposal repeated the greater part of paragraph 1 of draft article 55 adopted by the International Law Commission, but amended the conditions at the end of that paragraph. Thus, sub-paragraph (a) of paragraph 1 in the joint proposal did not speak of "a reasonable period of time", but sub-paragraph (b) of paragraph 1 provided that the intended measures should be notified twelve months before they were to be given effect. That period was necessary to allow the States concerned to take any necessary measures to meet the new situation. The same period of twelve months was established in paragraph 3 of the joint proposal. The notification procedure was the same as that laid down in article 53.

6. Since the scope of article 54 was general, it would, on reflection, perhaps be advisable to delete from the first line of paragraph 1 of the joint proposal the words "of paragraph 1".

7. In sub-paragraph (a) of paragraph 2 in the joint proposal, the words of article 55 "an urgent need for measures" had been replaced by the words "a need for measures", since urgent measures were the subject of paragraph 4 of the joint proposal. Moreover, that change met the observations made at the previous meeting by the Mexican representative.

8. In sub-paragraph (c) of paragraph 2, the words "in form or in fact" had been inserted because there could be measures which were in fact discriminatory, such as prohibition of a particular type of gear not used by the fishermen of the coastal State.

9. Sub-paragraph (d) of paragraph 2 was new. The sponsors of the proposal willingly recognized the merits of the arguments in favour of methods of conservation intended to preserve the food resources of coastal populations; but those arguments would not apply to uninhabited coastal territories, like those of the Antarctic continent.

10. Paragraph 3 of the nine-power proposal differed in two respects from the text adopted by the International Law Commission: First, it provided for a period of twelve months, for the reasons already mentioned. Secondly, it specified that the introduction of the measures should be left in abeyance pending the

arbitral decision, which was also referred to in the draft articles 57 and 58 adopted by the International Law Commission. It was, indeed, essential that an external, independent and technical body should approve unilateral measures before they took effect. That was a point to which the sponsors of the joint proposal attached considerable importance.

11. At the previous meeting, the representative of El Salvador had maintained that the joint proposal conflicted with the provisions of articles 51 and 53. To that he would reply that those articles dealt with measures of conservation already taken by the coastal States, if necessary in co-operation with other States, and it was quite proper that newcomers in the fishing zones should conform to those measures. Article 55, on the other hand, concerned measures of conservation taken unilaterally by a coastal State in a fishing zone used by fishermen of several States; it was thus reasonable that the interests of those States should be protected.

12. Paragraph 4 was intended to benefit States not scientifically able to conform to the requirements of paragraph 2.

13. In conclusion, he emphasized that the sponsors of the nine-power proposal had wished to establish a balance between the interests of coastal States and those of other States.

14. The CHAIRMAN put to the vote the motion of Ecuador to adjourn consideration of the nine-power proposal (A/CONF.13/C.3/L.66). He pointed out, however, that adoption of the motion would mean postponing consideration of the other proposals relating to article 55.

The Ecuadorian motion was adopted by 39 votes to one, with 24 abstentions.

15. After a procedural discussion on whether consideration of article 57 should be started at the current meeting, Mr. CASTAÑEDA (Mexico), supported by Mr. GARCIA AMADOR (Cuba), moved that the meeting should rise.

The motion was adopted by 31 votes to one, with 34 abstentions.

The meeting rose at 9.20 p.m.

TWENTY-SEVENTH MEETING

Friday, 11 April 1958, at 10.40 a.m.

Chairman : Mr. Carlos SUCRE (Panama)

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

ARTICLE 55 (COMPETENCE OF COASTAL STATES) (A/CONF.13/C.3/L.33, L.36, L.42 and Rev.1, L.45, L.46, L.66/Rev.1 and L.71) (continued)

1. Mr. CORREA (Ecuador) wished to explain the revised proposal (A/CONF.13/C.3/L.66/Rev.1) which the authors of the original eleven-power proposal (A/CONF.13/C.3/L.66) were submitting in a spirit of compromise and in the hope of providing a text

for article 55 which the Committee could adopt unanimously.

2. In the first place, he recalled that the eleven Powers had originally suggested the deletion from paragraph 1 of the International Law Commission's text of article 55 of the condition that a coastal State could only adopt unilateral conservation measures after prior negotiation with the other States concerned. There was no objection to the conduct of negotiations simultaneously with the application of conservation measures, but it had been believed that the insistence on prior negotiation with the other States concerned placed an undue restriction on the rights of the coastal State. However, as many delegations had expressed the view that prior negotiation was indispensable, and as the eleven Powers could not accept the possibility of negotiations being protracted indefinitely, the revised proposal recognized the condition of prior negotiation, subject to a time-limit of six months. If agreement had not been reached at the end of six months, then the coastal State would be at liberty to adopt unilateral conservation measures.

3. Secondly, the eleven Powers had originally proposed the deletion, from the Commission's text of paragraph 2, of the first of the three conditions determining whether unilateral conservation measures adopted by the coastal State were valid as to other States. It had been held that that condition was far too strict, since underdeveloped countries would, for technical reasons, be unable to bring forward scientific evidence as to the urgent need for conservation measures. On the other hand, as a number of delegations had attached great importance to the first of the three conditions, the eleven Powers were now proposing a new text for sub-paragraph (a) of paragraph 2, in which the need for conservation measures was no longer to be demonstrated by "scientific evidence", but by "existing knowledge of the fishery".

4. Thirdly, the original text of the eleven-power proposal had given rise to some doubt whether it was intended that unilateral conservation measures adopted by a coastal State should remain in force until disputes with other States concerned had been settled. To eliminate all possible doubt, it was now proposed that the conservation measures should remain in force pending a settlement. Nothing had been said of the method of settlement, for it was as yet unknown what decision the Committee would take in regard to article 57.

5. Lastly, the paragraph 3 proposed in the original eleven-power proposal, which provided for special consideration of the fishing interests of the coastal State if restrictions were imposed on the intensity of fishing, had been deleted from the revised proposal. That did not imply that the eleven Powers intended to withdraw the paragraph in question. On the contrary, they would resubmit it during consideration of article 49.

6. Mr. GARCIA AMADOR (Cuba) wished to be the first to congratulate the eleven Powers on their efforts to produce a text of article 55 acceptable to all delegations.

7. He supported the new amendment to paragraph 1, in that it introduced precision where the International Law Commission had failed to do so; the proposed text of sub-paragraph (a) of paragraph 2, because it

was wholly in keeping with the general tenor of article 55; and the proposed text of paragraph 3, subject to the decisions which the Committee might reach on paragraph 2 of article 58 and on article 59.

8. With regard to the paragraph 3 proposed in the original eleven-power proposal (A/CONF.13/C.3/L.66) and which had been deleted from the revised proposal, he said that his delegation would, as at previous conferences, display the greatest possible sympathy for the fishing interests of the coastal State, when the Committee came to consider article 49.

9. Mr. MELO LECAROS (Chile) commended the revised eleven-power proposal to the Committee, though he felt obliged to state that, being a compromise, it did not fully satisfy his country's aspirations.

10. He attached the highest importance to the provisions of the paragraph 3 proposed in the original eleven-power proposal, and would state his arguments in favour of them during the discussion of article 49.

11. Mr. WALL (United Kingdom) regarded the revised eleven-power proposal as unacceptable.

12. The crux of the proposal, in his view, was contained in sections 2 and 3. He took exception to the proposed new text of sub-paragraph (a) of paragraph 2 on the grounds firstly, that it was inconsistent with the provisions of sub-paragraph (b) of paragraph 2 of the International Law Commission's text, and secondly, that the combination of those two conditions would give rise to inequality between States in the application of unilateral conservation measures.

13. Many States whose fisheries had not yet been scientifically investigated could not show that conservation measures were based on appropriate scientific findings, and could not therefore take any unilateral conservation measures at all. Further, the inequality would be intensified by the proposed new text of paragraph 3. Since the Committee had not yet discussed article 57, it was not yet known whether any time-limit would be imposed for the settlement of disputes. On the other hand, if conservation measures were to remain in force pending the settlement of disputes, and if no time-limit were set for the settlement of disputes, some States would be able to keep conservation measures in force indefinitely, whereas others, for the reasons already stated, would not be able to adopt them at all.

14. In that respect, he regarded the nine-power proposal (A/CONF.13/C.3/L.71) as distinctly preferable. According to the latter proposal, there were to be two separate sets of conditions for determining the validity of unilateral conservation measures. In the first place, any coastal State which considered that conservation measures were urgently required might request a provisional decision which would be based on the existing state of knowledge of the fishery, without any requirement of strictly scientific findings. The criterion of scientific findings would only be applied in the second stage — i.e., in the final decision. These two separate sets of conditions opened the way for any State, however limited its technical resources, to initiate conservation measures.

15. Mr. THURMER (Netherlands) said that, though he appreciated the efforts made by the eleven Powers to produce a generally acceptable text, his delegation

could not support sections 2 and 3 of the revised proposal. Further, since the text of the revised proposal was closer to the International Law Commission's text, he proposed that in accordance with the rules of procedure the nine-power proposal (A/CONF.13/C.3/L.71) be voted upon first.

16. Mr. LUND (Norway) said that his delegation would vote against the revised eleven-power proposal. As he had stated repeatedly, although his country recognized the interests of the coastal State under special conditions and in special circumstances, it could not agree that conservation measures taken by a coastal State should be binding on other States without a decision by an impartial arbitral body. The revised proposal was unsatisfactory; first, because it did not state whether arbitral decisions must necessarily be accepted; and secondly, because it required that unilateral conservation measures should remain in force pending the settlement of disputes. His experience showed that it was rarely necessary to adopt conservation measures hastily, and that in most cases no serious depletion of fish stocks could occur during the period needed for negotiation.

17. Mr. HERRINGTON (United States of America) asked first if paragraph 3 in the revised eleven-power proposal was intended to replace the corresponding paragraph in the International Law Commission's text.

18. Mr. CASTAÑEDA (Mexico) explained that adoption of paragraph 3 in the revised proposal would not imply either rejection or acceptance of the corresponding paragraph in the International Law Commission's text, since the Committee had not as yet completed its consideration of the articles relating to arbitration.

19. Mr. HERRINGTON (United States of America) observed that his delegation's attitude to article 55 depended on the acceptance by the Conference of a system for settling disputes within a reasonable period of time. With that reservation, he could state that the revised eleven-power proposal was generally acceptable to his delegation. The proposal to substitute the words "six months" for the words "a reasonable period of time" established the element of urgency, which was the only justification for the existence of article 55. With regard to the proposed new text of sub-paragraph (a) of paragraph 2, which modified the requirement of scientific evidence, he regarded it as undesirable in principle, but recognized that some States would have difficulty in producing scientific evidence. Likewise, his delegation believed that, in general, agreement would be reached on necessary conservation measures during the six months provided for negotiations, and it was likely, therefore, that recourse would be had to article 55 only on rare occasions. He was, therefore, prepared to accept paragraph 3 in the revised proposal.

20. He had noted the objections of the United Kingdom representative to the proposal, but he was nevertheless prepared to support it, subject to a few minor modifications, since it appeared to offer the best compromise that could be reached.

21. Mr. GANDJI (Iran) expressed approval of the revised eleven-power proposal, though, like the United Kingdom representative, he doubted the wisdom of

combining in a single paragraph the two conditions expressed respectively in sub-paragraph (a) of paragraph 2 of the revised proposal and in sub-paragraph (b) of paragraph 2 of the International Law Commission's text. It was better for the under-developed countries to be allowed to initiate conservation measures even if they were based only on the existing state of knowledge of the fisheries, than not to be able to initiate any conservation measures at all.

22. Mr. RUIVO (Portugal) could not support the revised eleven-power proposal in its present form. His main objection was that it did not insist on arbitration prior to the adoption of unilateral conservation measures, and this gave too much latitude to the coastal State. His delegation believed that the adoption of unilateral measures without reference to existing regional boards would lead ultimately to the complete breakdown of existing international fishery organizations.

23. The revised proposal, in his view, was not a compromise at all, but represented a very radical evolution of existing practice. If the authors of the revised proposal were intent on achieving some development of international law, the nine-power proposal (A/CONF.13/C.3/L.71) represented the final concession which his government was prepared to make in recognizing the special interest of the coastal State.

24. Mr. ASANTE (Ghana) was in general agreement with the terms of the revised eleven-power proposal, though he was disappointed to find that the International Law Commission's text of sub-paragraph (b) of paragraph 2 remained side-by-side with the new proposed text of sub-paragraph (a). As he understood paragraph 2, all the three conditions mentioned therein would have to be fulfilled before unilateral conservation measures adopted by the coastal State could be regarded as valid as to other States. He would ask how an under-developed country like his own could provide the necessary scientific evidence to demonstrate the need for conservation measures.

25. Mr. OLAFSSON (Iceland) was unable to regard the revised eleven-power proposal as entirely satisfactory. It was, however, a commendable attempt to produce a generally acceptable text and, for the reasons given by the representatives of Ecuador and the United States, his delegation would vote in favour of it.

26. Mr. ALLOY (France) recalled that in the general debate (8th meeting) his delegation had emphasized its attachment to the principle of freedom and equality of all States in the high seas. In a spirit of conciliation, he had given careful consideration to the revised eleven-power proposal, but had come to the conclusion that it would accord undue latitude to the coastal State, if the conservation measures adopted by the latter in areas of the high seas were made obligatory for other States, prior to an arbitral decision.

27. Like the Portuguese representative, he said that the proposals contained in the nine-power proposal (A/CONF.13/C.3/L.71) represented the final concession which his government was prepared to make.

28. Mr. LACLETA (Spain) regarded the revised eleven-power proposal as unacceptable. He shared the French representative's anxiety lest, if unilateral conservation

measures adopted by a coastal State were to come into force before arbitration, the interests of States fishing away from their own shores would be seriously limited.

29. Like the United Kingdom representative, he believed that the two conditions expressed respectively in sub-paragraph (a) of paragraph 2 of the revised eleven-power proposal, and sub-paragraph (b) of paragraph 2 of the International Law Commission's text, should be clearly separated, and the text of the nine-power proposal was in that respect infinitely preferable.

30. Mr. CASTAÑEDA (Mexico) wondered if delegations had sufficiently appreciated the new elements introduced into the revised eleven-power proposal. For instance, the suggestion to replace the words "a reasonable period of time" by the words "six months" in paragraph 1 represented a considerable departure from the original proposal to delete the reference to prior negotiation altogether.

31. Secondly, he would agree to a certain extent with the United Kingdom representative's statement that there was a discrepancy between the proposed new text of sub-paragraph (a) of paragraph 2 and the International Law Commission's text of sub-paragraph (b), and that the retention of the requirement of scientific findings placed the under-developed States at a disadvantage in comparison with States whose technical resources were larger. That was regrettable, but inevitable. On the other hand, he could not accept the United Kingdom representative's contention that the provisions in the nine-power proposal would afford any better protection to the interests of the under-developed countries. Under paragraph 4 of the nine-power proposal, a coastal State considering that conservation measures were urgently needed was not empowered to take such measures immediately, but only to request a provisional decision under the procedure of article 57. Was it, he asked, likely that an arbitral commission would give a decision in favour of the coastal State, if the application to adopt conservation measures were not supported by scientific findings?

32. His delegation's objection to the Commission's text was that by the time the need for conservation measures was urgent, the depletion of the living resources would have already reached critical proportions. Before that point was reached, however, certain danger signals usually appeared and measures should then be taken to prevent the creation of an urgent situation. Furthermore, if the use of a certain type of fishing equipment or explosives had sharply depleted a certain stock in another area of the high seas, conservation measures would obviously be necessary, even in the absence of urgent need, to prohibit the introduction of such practices in the area of the high seas adjacent to the territorial sea of the coastal State concerned. The co-sponsors had drafted paragraph 2 of their proposal accordingly. The new paragraph 3 was, of course, basic.

33. He explained that the co-sponsors of the revised eleven-power proposal had taken suggestions made at previous meetings and the text of the nine-power proposal into account in their draft, and in his view the revised text represented the absolute minimum that could be accepted.

34. He felt that the Soviet proposal (A/CONF.13/C.3/L.42/Rev.1), by adding yet another requirement

to be complied with by coastal States, would add unduly to their already heavy burdens. He would therefore vote against it.

35. Mr. NARAYANAN (India) paid a tribute to the co-sponsors of the revised eleven-power proposal for taking into account the objections raised against their original text. The revised version followed the Commission's draft more closely and yet protected the legitimate interests of coastal States. The amendment to paragraph 1 was a great improvement. The new sub-paragraph (a) of paragraph 2 was also acceptable, particularly as the knowledge of a given fishery in some countries might be confined to the size of catch landings.

36. He agreed with the United Kingdom representative that there was some inconsistency between the new sub-paragraph (a) of paragraph 2 and sub-paragraph (b), but felt that that would be to the advantage of the conservation régime. If both sub-paragraphs were retained, one would be complementary to the other.

37. The new paragraph 3 would serve to allay the fears of certain delegations concerning the enforcement of unilateral conservation measures.

38. His delegation would therefore vote for the revised eleven-power proposal as a whole, providing that suitable arbitration provisions were embodied in the convention.

39. Mr. CIEGLEWICZ (Poland) said that he would be unable to vote for the revised eleven-power proposal, since the new paragraph 3 would undermine international co-operation in fisheries research and the entire system of regional conventions endorsed by the International Technical Conference on the conservation of the Living Resources of the Sea held in Rome in 1955. A large measure of success had been achieved under those conventions in enforcing conservation measures and regulating fisheries in the northern hemisphere.

40. Mr. GOHAR (United Arab Republic) said that he would vote for the revised eleven-power proposal, which was a substantial improvement on the original version. He felt that the anomaly to which the United Kingdom representative had referred could be overcome by replacing the words "scientific findings" in sub-paragraph (b) of article 2 by the words "scientific principles". Findings would have to be based on a study of a specific stock, whereas "principles" would make it possible to reach decisions by comparing stocks in different areas of the high seas.

41. Mr. WALL (United Kingdom) said that the difficulties to which he had referred were best overcome in the nine-power proposal. He was confirmed in that belief by the Mexican representative's admission that the eleven-power proposal would give rise to a certain amount of inequality. Under the procedure suggested in the eleven-power proposal, the inhabitants of small coastal communities in an under-developed country who suddenly found that the local stocks on which they depended for their livelihood had been exhausted would be unable to take any measures because, without facilities to collect scientific evidence, they would be unable to prove why those stocks had disappeared. He pointed out in passing that the difficulty could be only

partly overcome by the suggestion made by the representative of the United Arab Republic. Under the nine-power proposal, however, a coastal State faced with a similar situation could, for example, close the area concerned for certain seasons of the year.

42. Mr. LACU (Argentina) said that his delegation would vote for the revised eleven-power proposal, particularly as the stipulation of a six-month period had removed the element of uncertainty in the original version. He felt that the discrepancy between the new sub-paragraph (a) of paragraph 2 and sub-paragraph (b) should not create difficulty in practice, and agreed that the two ideas could complement one another, especially if the word "or" were added to the end of the new sub-paragraph (a).

43. Mr. OZERE (Canada) appreciated the spirit of compromise evident in the revised eleven-power proposal, which struck a balance between the interests of the coastal States and non-coastal States. His delegation accepted the proposal in principle, on the understanding that it would not affect the Commission's arbitration articles, which would be discussed later.

44. His delegation fully understood the doubts of certain non-coastal States concerning the proposal which of necessity favoured the coastal States, but it should be borne in mind that the rights of non-coastal States would be amply protected in the arbitration articles. He expressed the hope that the same consideration would be shown by the coastal States during the discussion of those articles as was being shown at the present time by the non-coastal States.

45. Mr. MALLIN (Ireland) said that his delegation would vote for the revised eleven-power proposal, on the understanding that the arbitration procedure contained in articles 57 and 58 would be adopted.

46. The contradiction to which the United Kingdom representative had referred was more apparent than real, as the new sub-paragraph (a) of paragraph 2 merely provided for the adoption of urgent measures which would eventually be referred to arbitration, and at that time scientific evidence would have to be produced in support of them.

47. Mr. LLOSA (Peru) said that at the 24th meeting his delegation had stated that in a spirit of compromise it would support the original eleven-power proposal (A/CONF.13/C.3/L.66) subject to the reservation it then had indicated. He had further stated that if that proposal was rejected or substantially altered, his delegation would maintain its traditional position of principle in defence of the legitimate interests of coastal States. That had now happened, and his delegation would therefore be obliged to vote against the revised eleven-power proposal.

48. Mr. MICHIENSEN (Belgium), referring to his delegation's statement on the freedom of the high seas during the general debate (7th meeting), said that exclusive fishing and hunting rights were a mediaeval concept which had long been rejected. Although some representatives had said that the principle of the freedom of the high seas had been invented by the great maritime Powers for the protection of their interests, it was precisely that principle that offered the only

means of protecting the interests of small maritime States such as Belgium. Furthermore, it was unrealistic to say that States were in general divided into two groups, each with different interests, for the fishermen of all countries had for many years fished the North Sea side by side.

49. The claims of small States should be satisfied as far as possible, but it should be made perfectly clear that any right thus granted was in the nature of an exception to the general rule and must be carefully defined in order to safeguard the freedom of the high seas. A simple, clear and unequivocal definition was all the more necessary in view of the statement that had been made to the effect that the new principle was only the beginning of a new trend. The appropriate definition was to be found in the nine-power proposal, and he would therefore vote against the eleven-power proposal.

50. Mr. RIGAL (Haiti) said that to allow coastal States to adopt conservation measures on the pretext of urgency before they were notified to other States concerned would undermine the freedom of the high seas and the principle of the equality of States. Under paragraph 3 of the eleven-power proposal, the coastal State would be the sole judge of the urgency of any situation, and its adoption of unilateral conservation measures would in effect confront the arbitral commission with a *fait accompli*. The nine-power proposal, on the other hand, recognized that the coastal State had not merely a right but an obligation to adopt conservation measures, and also described the procedure in accordance with which its rights should be exercised. That proposal would ensure that the freedom of the high seas was respected, and would grant the coastal State certain rights without limiting the freedom of action of any arbitral commission. His delegation would therefore vote for it.

51. Mr. THURMER (Netherlands) proposed, in accordance with the second sentence of rule 40 of the rules of procedure, that the nine-power proposal (A/CONF.13/C.3/L.71) should be put to the vote first.

52. Mr. CORREA (Ecuador) opposed the proposal on the basis of the last sentence of rule 40.

53. The CHAIRMAN put the proposal of the Netherlands representative to the vote.

The proposal was rejected by 32 votes to 24, with 16 abstentions.

54. Mr. SOLE (Union of South Africa) proposed that the revised eleven-power proposal should be voted upon paragraph by paragraph.

55. Mr. CORREA (Ecuador) opposed the proposal on the basis of rule 39 of the rules of procedure, and pointed out that the provisions of the eleven-power proposal were all closely interrelated.

56. The CHAIRMAN put the proposal of the representative of the Union of South Africa to the vote.

The proposal was rejected by 38 votes to 13, with 14 abstentions.

57. The CHAIRMAN put to the vote the revised eleven-power proposal.

The revised eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) was adopted by 39 votes to 22, with 4 abstentions.

58. Mr. TSURUOKA (Japan) announced that his delegation had agreed to associate itself with the Swedish delegation as co-sponsor of the proposal contained in document (A/CONF.13/C.3/L.36) concerning article 55.

59. Mr. CASTAÑEDA (Mexico) moved that, in accordance with the third sentence of rule 40 of the rules of procedure, the joint Swedish-Japanese proposal should not be put to the vote.

60. The CHAIRMAN put to the vote the motion of the Mexican representative.

The motion was adopted by 41 votes to 4, with 23 abstentions.

61. Mr. CORREA (Ecuador), supported by Mr. LACU (Argentina), moved that the Committee should also refrain from voting on the nine-power proposal (A/CONF.13/C.3/L.71) for the same reason. In any event, most of its substance was covered by the eleven-power proposal which the Committee had just adopted.

62. Mr. WALL (United Kingdom) opposed the motion and pointed out that certain parts of the nine-power proposal were not covered by the eleven-power proposal. He therefore suggested that the Committee could vote on the nine-power proposal paragraph by paragraph, and said that the co-sponsors would agree to the addition of the words "within six months" after the words "have not led . . ." in sub-paragraph (a) of paragraph 1.

63. The CHAIRMAN put to the vote the motion of the Ecuadorian representative.

The motion was adopted by 25 votes to 20, with 19 abstentions.

64. Mr. KRYLOV (Union of Soviet Socialist Republics) explained that the USSR proposal (A/CONF.13/C.3/L.42/Rev.1) was concerned not only with the conservation, but also with the reproduction of the living resources of the sea. It would not be applicable in all cases.

The Soviet proposal was rejected by 21 votes to 16, with 20 abstentions.

65. Mr. LUND (Norway) requested the Committee to vote on sub-paragraph (c) of his delegation's proposal (A/CONF.13/C.3/L.46) which had not been incorporated into the nine-power proposal. However, in view of the Committee's decisions at the current meeting, it would be better to reword the text to read: "That the measures do not apply to the seas adjacent to the coasts of uninhabited territories." He explained that the desire to enable coastal States to protect the interests of their coastal populations engaged in fishing local stocks did not extend to seas adjacent to uninhabited areas. It would not in practice be difficult to determine which areas were uninhabited, and Antarctica was a case in point. It was not his delegation's intention that the proposal should apply to stretches of coast between even sparsely populated points. Any dispute that arose in that connexion could be decided by the arbitral commission.

66. Mr. CHRISTENSEN (Denmark) said that his delegation's fears that the Norwegian proposal would apply to Greenland, which was sparsely populated, had been allayed by the Norwegian representative's explanation. He would therefore vote in favour of the proposal.

67. Mr. KASUMA (Indonesia) said that it would be extremely difficult to apply the Norwegian proposal in certain parts of the world, particularly Indonesia, which contained a large number of uninhabited islands. His delegation would therefore be unable to support the proposal.

68. The CHAIRMAN put to the vote the revised text of sub-paragraph (c) of the Norwegian proposal (A/CONF.13/C.3/L.46).

The revised text of sub-paragraph (c) of the Norwegian proposal was adopted by 17 votes to 14, with 24 abstentions.

69. The CHAIRMAN put to the vote article 55 as amended.

Article 55, as amended, was approved by 27 votes to 22, with 8 abstentions.

The meeting rose at 1.30 p.m.

TWENTY-EIGHTH MEETING

Friday, 11 April 1958, at 8.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 57 TO 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.1, L.3, L.5, L.14, L.19, L.36, L.59, L.61, L.64, L.67)

In the absence of the Chairman, Mr. Krispis (Greece), Vice-Chairman, took the chair.

1. Mr. ALVAREZ (Uruguay) said that his delegation approved of the formula for the peaceful settlement of disputes which was defined in the Commission's draft article 57, for it regarded it as being the essential guarantee of the effective working of the system elaborated by the Commission. Further, that formula took due account of two categories of essential interests: the interests of the State party to a dispute, to which it gave the right to choose the mode of settlement it considered most appropriate; and the interest of both the State party to a dispute and the community in not leaving indefinitely without a solution — because of the harm which would ensue — an international dispute which could not be settled because the agreement of one State was lacking.

2. The delegation of Uruguay considered that the formula proposed by the Commission would be still more satisfactory if it were amended as indicated in the joint proposal submitted by Greece and the United States of America (A/CONF.13/C.3/L.67), which

would simplify the system envisaged, and increase the participation of States in the arbitration.

3. However, in order the better to stress the fact that States party to a dispute have the right to choose the method of peaceful settlement which seemed to them most appropriate, Uruguay proposed that paragraph 1 of article 57 be worded as follows: "Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall be resolved by the method of peaceful settlement on which the parties to the dispute agree, and failing agreement, the dispute may at any time, at the request of a State party to the disagreement, be submitted for settlement to a special commission of five members."

4. In conclusion, he recalled that Uruguay had always considered recourse to compulsory arbitration, at the suit of one of the parties, as being one of the fundamental bases of peaceful co-existence between States, as witnessed by the various arbitration conventions signed between Uruguay and other countries.

5. Mr. GOLEMANOV (Bulgaria) declared that on grounds of principle his delegation could not subscribe to the rule of compulsory arbitration. The undertakings involved in article 57 would be very sweeping, and might have unforeseeable implications. Furthermore, positive international law offered a variety of means for the pacific settlement of disputes between States, and it was hard to see why the International Law Commission gave preference to arbitration rather than negotiation, inquiry, mediation or other peaceful means. Political and economic factors being involved in any dispute, it was preferable to leave it to States to choose the means of settlement best suited to the prevailing political circumstances and most likely to prove successful.

6. The Conference was primarily called upon to codify the existing rules of international maritime law and to enunciate a number of new rules of substantive law. In view, however, of the opinions expressed by many delegations, the Bulgarian delegation was prepared to agree to the convention's containing provisions on the procedure for settling disputes, provided that they were in no wise based on the principle of compulsory arbitration. His delegation accordingly gave unreserved support to the Soviet Union proposal (A/CONF.13/C.3/L.61) and would subscribe to any amendment on similar lines.

Mr. SUCRE (Panama) resumed the Chair.

7. The CHAIRMAN observed that there were ten proposals in connexion with article 57 and that they fell into the following three groups: three proposals that disputes be settled by the means of pacific settlement listed in Article 33 of the Charter; two proposals that disputes be referred to the International Court of Justice; and five proposals accepting, with major or minor amendments, the draft article 57 adopted by the International Law Commission. He hoped that the sponsors of proposals of similar tenor would try to merge them in order to facilitate the Committee's task.

8. Mr. HULT (Sweden) said that the purpose of his delegation's proposal concerning article 37 (A/CONF.

13/C.3/L.36) was to give the Secretary-General of the United Nations an extra month in which to consult the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization. His delegation was, however, prepared to withdraw the amendment, on the understanding that it would be brought to the attention of the drafting committee. It also withdrew the part of its proposal (A/CONF.13/C.3/L.36) which concerned article 58.

9. Mr. INDRAMBARYA (Thailand) also withdrew his delegation's amendments to articles 57, 58 and 59 (A/CONF.13/C.3/L.19).

10. The CHAIRMAN thanked the representatives of Sweden and Thailand, and hoped that their example would be followed by others.

11. Mr. LEE (Republic of Korea) said that his delegation's proposal (A/CONF.13/C.3/L.64) came in the first group of proposals described by the Chairman in that it left States free, within the limits of the general rules governing the pacific settlement of disputes, to choose the means of settlement they deemed most appropriate. His delegation was prepared to seek common ground with the sponsors of similar proposals.

12. Mr. LUND (Norway) said that his delegation fully shared the view of the majority of the International Law Commission, as set out in its commentary on the conservation of the living resources of the high seas in its report on the work of its eighth session (A/3159, pp. 33 and 34, paras. 17 and 18).

13. Mr. CASTAÑEDA (Mexico) observed that the right of a coastal State to take conservation measures on the high seas was subject to the conditions laid down in article 55. Though there was no means of enforcing it, respect for those conditions was none the less a legal and moral obligation deriving from the very nature of international law. Disputes of an infinitely graver nature than those connected with fisheries were solved by means of peaceful settlement freely chosen according to the circumstances. There was absolutely no need to impose a particular means of settlement which, by its very inflexibility, was likely to give rise to more serious problems than the minor ones it sought to solve.

14. The Mexican amendment (A/CONF.13/C.3/L.1) in no way ruled out compulsory arbitration, where appropriate, and more especially in cases where the parties were bound by an arbitration treaty, as were those States which, like Mexico, had ratified the Pact of Bogotá of 1928. At the same time, the amendment permitted recourse to the International Court of Justice, whose Statute had been accepted by a large number of States.

15. In its laudable anxiety to achieve perfection, the International Law Commission had gone a little too far. To realize that, one need only reflect upon the scant response which the International Law Commission's draft on arbitral procedure, despite the high technical standard of the text, had elicited in the General Assembly,¹ or, again, upon the fact that the

¹ Cf. *Official Records of the General Assembly, Tenth Session, Sixth Committee, 472nd meeting.*

Geneva Convention of 1929 on the Pacific Settlement of International Disputes, as revised by the United Nations, had been ratified by only a dozen countries.

16. While agreeing on the need to see that conservation measures were based on valid scientific criteria, he did not think that such a consideration justified going as far as to adopt such rigid provisions as those proposed by the International Law Commission.

17. Mr. BOLINTINEANU (Romania) said his delegation could not accept the International Law Commission's text, nor, indeed, any of the amendments advocating the adoption of a compulsory arbitration system for that would accord neither with the principles of contemporary international law nor with the practice of States in the peaceful settlement of disputes. Whereas international judicial tribunals like every court of justice were bound to apply the existing rules of law, the functions of the proposed arbitral commission would go beyond those of mere jurisdiction, and would give it a legislative authority to lay down rules of law in a field where they were still in the embryonic stage.

18. Moreover, the proposed system did not belong to the realm of general law. In practice, in conformity with the principles of international law, States were showing a marked tendency to reject any attempt to create an international jurisdiction whose competence they would be obliged to recognize; thus, the number of those which accepted the compulsory jurisdiction of the International Court of Justice was limited and was decreasing every year. In that connexion, he would refer to the study by Professor Waldeck in the *British Year Book of International Law*, 1955/56.

19. It was therefore clear that in a field so new and so specialized as that of rules for the conservation of natural resources, no specific means of settling disputes—in the case in point, compulsory arbitration—could be imposed on States *a priori*. It would even be better not to devote a special article to the settlement of disputes in the matter under discussion.

20. For all those reasons, the Romanian delegation gave full support to the Soviet Union proposal (A/CONF.13/C.3/L.61) which, in pursuance of recognized principles of international law, left the States concerned entirely free to choose the most suitable mode of settlement for each dispute.

21. Mr. QUARSHIE (Ghana) said he thought that the best means of safeguarding international peace was to choose the simplest way of settling disputes. Since the object was to give the parties a means of settling their disputes easily and hence rapidly, it would not be proper to impose upon them such a long and complicated procedure as that envisaged by the International Law Commission. To ensure the swift settlement of disputes, a simpler procedure such as that provided for under article 73 would therefore seem preferable.

22. Mr. SHELDON (Byelorussian Soviet Socialist Republic) pointed out that the question of the conservation of the living resources of the high seas involved considerable economic interests. If, then, like the International Law Commission, the Committee considered it indispensable to set up a procedure for the settlement of disputes, that procedure must be

equitable. Yet, in point of fact, the procedure advocated by the International Law Commission failed to take sufficient account of the interest of States and infringed their sovereignty.

23. Like the representative of Mexico, he too would recall that at the Tenth and Eleventh Sessions of the General Assembly several delegations—including that of the Byelorussian Soviet Socialist Republic—had pointed out that in the field of arbitration the International Law Commission had deviated to a considerable extent from the general principles of international law. The advisability of inserting in the law of the sea provisions deriving from principles to which most delegations had not subscribed was therefore open to serious doubt.

24. It must not be forgotten that the basis of arbitration was the free consent of the parties. Thus, while it was true that The Hague Conventions of 1899 and 1907 on the pacific settlement of international disputes did contain clauses on arbitration, the latter was still contingent upon the agreement of the parties. Yet, in several respects article 57 as formulated by the International Law Commission departed from the traditional concept. Thus, under paragraph 1, it was enough for any one of the parties to a dispute to request the application of the arbitral procedure and the other parties were obliged to submit to it. Moreover, paragraph 3 provided that if the parties to a dispute fell into more than two opposing groups they should not be consulted on the choice of the members of the arbitral commission; it even seemed that they would have no right to representation on that commission, which would be in effect only a variant of the International Court of Justice with special competence in the matter of fisheries.

25. That was why the Byelorussian delegation could not accept the draft of article 57 as adopted by the International Law Commission. For the same reasons, it could only support those amendments which advocated a procedure in harmony with the present rules of international law. The amendments submitted by Mexico (A/CONF.13/C.3/L.1) and the Soviet Union (A/CONF.13/C.3/L.61) between which there was little difference, prescribed a procedure in conformity with the United Nations Charter, the Statute of the International Court of Justice and the international agreements in force, and one which safeguarded the interests of all States. Those amendments therefore merited general support.

26. Mr. HERRINGTON (United States of America) said he thought that after adopting provisions concerning the obligations of States on the high seas, particularly with regard to respect for measures of conservation taken by other States, the Conference must lay down a procedure assuring States of a rapid settlement of their disputes. Of course, there must be ample room for negotiation but, for cases where circumstances so required, provision must be made for a system of inquiry, criteria must be laid down and time-limits set. Realizing the importance of those considerations, the International Law Commission had proposed a procedure to guarantee the objective settlement of disputes. The United States delegation favoured that procedure, but thought it could be improved in certain respects.

That was the purpose of the amendments which it had submitted jointly with other delegations (A/CONF.13/C.3/L.67 and A/CONF.13/C.3/L.68).

27. In paragraph 1 of the joint amendment submitted by Greece and the United States (A/CONF.13/C.3/L.67), the change in the style of the commission was designed to accent its primary role, which was to ascertain the facts; whereas, to streamline the machinery, its membership was reduced to five.

28. With the same aim of simplification, paragraphs 2 and 3 of the International Law Commission's text had been merged into a single paragraph (paragraph 2) covering both bilateral and multilateral disputes.

29. Paragraph 3 of the joint amendment was new material. Since in most cases there were more than two parties to disputes, any State party to a proceeding was empowered to name one of its nationals as a member of the special commission, with the right to participate in the proceedings but without the right to vote, in contradistinction to paragraph 2 of the International Law Commission's text, whereby only one national could be nominated as a member by each side.

30. Paragraph 4 of the joint amendment was similar to paragraph 4 of the International Law Commission's text, and paragraph 5 was self-explanatory; paragraph 6 contained directives to the special commission, and paragraph 7 defined the way in which decisions would be taken.

31. Mr. REGALA (Philippines) pointed out that in its draft the International Law Commission had provided methods for the peaceful settlement of disputes in two places, viz., in article 57, for cases arising under articles 52, 53, 54, 55 and 56, and in article 73. With all due respect to those who had drafted the report of the International Law Commission, it would nevertheless seem therefore to have left a vacuum regarding the settlement of disputes that might arise out of a conflict or difference of interpretation in connexion with the early articles of the draft: the régime of the high seas, the régime of the territorial sea, collisions of vessels on the high seas, the right of innocent passage, etc. There should be a procedure similar to that for the settlement of disputes under article 57, or article 73 (continental shelf), for the settlement of such disputes. It was worthy of note, in that connexion, that careful study of the International Law Commission's commentary on each of the said articles failed to reveal any statement regarding the reason for the omission. The Philippine delegation would be prepared to support any proposal to the effect that the procedure provided in article 73 should become applicable to all disputes. If that were not possible, his delegation would also be prepared to support the application of article 57, limited to disputes involving fishery rights between coastal States and non-coastal States.

32. Mr. KRISPIS (Greece) said, with reference to the points raised by the representative of the Philippines, that the procedure of arbitration provided for in article 57 did not exclude the possibility of recourse to the International Court of Justice, in accordance with the Statute of the Court, or to any arbitral commission of the choice of the parties. The functions of the special commission of article 57 would, in fact, be different

from those of the International Court of Justice. The International Law Commission had wished to give the special commission not only a judicial, but also a quasi-legislative character.

33. Mr. REGALA (Philippines) expressed surprise that, if that had been its intention, the International Law Commission should have seen fit to suggest the procedure laid down in article 73.

34. Mr. QUARSHIE (Ghana) agreed with the observations made by the representative of the Philippines. He could not see the point of laying down for fishing matters a procedure which lacked simplicity and was not such as to lead to a quick solution.

35. Mr. HERRINGTON (United States of America) pointed out that the questions which arose in matters of fishing were of a highly technical and scientific kind. If a dispute were brought before the International Court of Justice, it too would have to call in specialists. The solution proposed by the International Law Commission was a sensible one.

36. Mr. OZERE (Canada) considered that the International Law Commission had sought, by the procedure it had established in article 57, to make the settlement of disputes which might arise in matters of fishing simple and easy. Referring to Article 33 of the Charter, he said that intervention by the Security Council, as provided for in paragraph 2 of that article, did not necessarily lead to a quick solution. The same was true of recourse to the International Court of Justice: As proof of that, it was enough to recall how long and difficult had been the settlement of certain cases submitted to the Court—for example, the dispute between the United Kingdom and Norway in 1951. The simplicity of the procedure established in article 73 was only apparent. It was on the question whether recourse to arbitration should be compulsory or not that delegations differed in their opinions.

37. Mr. QUARSHIE (Ghana) still thought that the procedure provided for in article 57 was not simple. Moreover, it did not provide, to the same degree as did recourse to an impartial and independent tribunal, an assurance that the decision taken would be equitable.

38. Mr. KRISPIS (Greece) pointed out that the text of paragraph 1 of article 57, like that of paragraph 1 of the amendment proposed by Greece and the United States of America (A/CONF.13/C.3/L.67), clearly allowed for solving the disputes by agreement between the parties, who were also completely free to lay the matter before the Security Council or the International Court of Justice, in accordance with the Charter and the Statute. It was when agreement had not been reached that one of the parties could submit the matter to an arbitral commission for settlement.

39. Mr. POPOVIC (Yugoslavia) said that if the parties to a dispute could not agree to a settlement, it should be submitted to an arbitral commission, whose members should have the confidence of the parties and should be chosen in such a way that the commission would be an expression of their will. That was why the provisions concerning arbitration should be formulated so as to facilitate agreement between the parties on the choice

of arbitrators. The provisions of paragraph 2 of article 57 of the International Law Commission draft would not have such a result.

40. An arbitral commission set up under the provisions of paragraph 3 of that article would be more of a tribunal. It would be preferable, in the cases provided for in that paragraph, for each of the parties to a dispute to appoint two members, and to choose, by mutual agreement, a fifth member to act as chairman.

41. It was because there did not exist any supra-national political authority, nor any international court able to exercise jurisdiction over States without their consent, and because in consequence no State could summon another to appear before a tribunal for the settlement of a dispute between them, that the Yugoslav delegation considered it preferable that in matters of arbitration rules should be established which would leave the parties completely free to choose the arbitrators, determine their powers and establish the procedure to be followed. It was with that idea in mind that it had proposed its amendment to article 57 (A/CONF.13/C.3/L.14), for the wording of which it had taken as a model the clauses relating to arbitration in the peace treaties concluded after the Second World War.

42. Mr. KRYLOV (Union of Soviet Socialist Republics) agreed in essentials with the remarks made by the representatives of the Byelorussian Soviet Socialist Republic and Mexico. He had listened with great interest to the representative of Ghana, who had complained of the complicated nature of the procedure envisaged in article 57 of the International Law Commission's draft. In his opinion also, that procedure was too rigid; and it was regrettable that the International Law Commission should have emphasized the compulsory nature of arbitration.

43. In the matter of arbitration, three points arose: the constitution of the organ entrusted with making an arbitral award; the competence of the members of the organ; and—the most delicate point—the law to be applied by the arbitrators. That law could be based upon treaties, upon practice, or upon the principles observed by civilized nations. He could not see what law the arbitral commission mentioned in article 57 could apply. The law which the Conference was endeavouring to establish was so new that a system of arbitration as complicated as the one proposed could hardly function satisfactorily. By contrast, the procedure suggested by Mexico in its amendment (A/CONF.13/C.3/L.1), was extremely simple, and the Soviet delegation would support it.

44. He would point out that the Charter of the United Nations contained no clause making recourse to arbitration or to the International Court of Justice compulsory. He failed to see why, in the matter of fishing, it was necessary to confer on such recourse a compulsory character which the authors of the Charter had not seen fit to accord. His delegation could not support the text of article 57 in the International Law Commission's draft, nor that proposed by Greece and the United States of America (A/CONF.13/C.3/L.67). At the present moment, when maritime law was in the process of formation, it was essential to exercise extreme caution and to avoid any over-complicated systems.

There was danger in not leaving the parties to a dispute complete freedom of choice with regard to the arbitrators asked to give a ruling.

45. Mr. QUARSHIE (Ghana) observed that the method of settlement consisting in setting up an arbitral commission was itself a method of peaceful settlement. He could not see why parties, once having failed to find a solution by one method of peaceful settlement, would then have recourse to an arbitral commission, which was merely another method of peaceful settlement.

46. Mr. KRISPIS (Greece) maintained that the Mexican proposal was superfluous, since the provisions of Article 33 of the Charter were compulsory for parties to any dispute. Replying to the representative of Ghana, he pointed out that there was a difference between "another method of peaceful settlement" mentioned at the end of paragraph 1 of article 57 and the arbitral commission, recourse to the latter being compulsory.

47. Mr. QURESHI (Pakistan) said that the disputes to be settled were concerned with the conservation of fisheries. That presented problems of two kinds: problems concerning fishing gear and problems connected with the fishing seasons, which were extremely technical matters. For that reason, the Pakistani delegation had always advocated, particularly during the discussions on articles 51 to 55, that methods of conservation should be based upon scientific knowledge. That could not be otherwise, and it was therefore necessary to devise special methods for dealing with them. Whatever one might say, arbitration was a less lengthy and less costly method than recourse to courts of law. Arbitration was also the method provided for in all economic transactions.

48. Once one accepted the fact that the application of certain provisions was compulsory, one had to admit that arbitration was also compulsory. All agreements involving contractual obligations included an arbitration clause. Moreover, it was clear that, given the extremely technical nature of the problems involved, arbitration was necessary, and that recourse to the Security Council—which was in no way equipped to deal with such matters—was inadvisable.

49. It was hardly likely that a dispute on a matter of fishing would be "likely to endanger the maintenance of international peace and security", which was the prerequisite for the application of the provisions of Article 33 of the Charter. As a matter of fact, the same Article 33 included recourse to arbitration among the possible means of settling disputes.

50. Once one accepted the rules, one must in all logic accept the obligations they involved. Compulsory recourse to an arbitral commission did not constitute an obligation in the true sense of the word, since such recourse was not imposed by a third party.

51. Mr. WALL (United Kingdom) stated that his delegation supported the text of the International Law Commission's draft and the amendment submitted by Greece and the United States of America (A/CONF.13/C.3/L.67). The procedure which they provided for was in fact speedy and effective, which was what was needed when dealing with matters of such vital interest as the conservation of fish.

52. Mr. RIGAL (Haiti) pointed out that the Fourth Committee had already adopted the text of the International Law Commission's draft article 73, which compelled parties to a dispute to have recourse to the International Court of Justice. Since the committees set up by the Conference were nothing more than parts of a whole, it was inappropriate that, article 73 having been adopted by one committee, another committee should lay down in another article—article 57—a procedure providing for recourse to some other body. He therefore suggested the deletion of article 57, which not only failed to serve any useful purpose, but might even be a source of difficulties, while the procedure it envisaged was both long and costly.

The meeting rose at 10.50 p.m.

TWENTY-NINTH MEETING

Saturday, 12 April 1958, at 10.20 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 57 to 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.1, L.3, L.5, L.14, L.19, L.36, L.59, L.61, L.64, L.67) (continued)

1. Mr. ALVAREZ AYBAR (Dominican Republic) said that at the previous meeting of the Committee, the representative of Haiti had said that, since the Fourth Committee had adopted article 73 of the International Law Commission's draft, it was no longer necessary for the Third Committee to adopt article 57. Article 73, however, only referred to disputes concerning the continental shelf, and, if the suggestion of the Haiti representative were accepted, it would be necessary for the Fourth Committee to reopen its discussion of article 73 in order to insert a reference to fishing disputes in that article.

2. The Committee seemed to be divided into three main groups over the question of the settlement of disputes. There were those who believed that disputes should be settled by the methods of pacific settlement provided for in Article 33 of the United Nations Charter. Others favoured using the machinery provided by the International Court of Justice. Others, again, accepted article 57 of the International Law Commission's draft, with or without the joint amendment to that article proposed by Greece and the United States of America (A/CONF.13/C.3/L.67).

3. All groups of opinion seemed to agree that the settlement procedure might fall into two stages. At the outset of a dispute, States might agree to seek a solution by a method of peaceful settlement of their own choosing—and the International Law Commission's draft article 57 did not exclude that possibility. The second stage occurred if and when the first method of settlement had failed, and consisted in referring the dispute to a final court. It had been suggested that, if disputes were to be settled according to the provisions

of Article 33 of the United Nations Charter, the Security Council might act as the final court. The other alternative which had been mentioned was the International Court of Justice. It was clear, however, that neither the Council nor the Court would be qualified to give decisions on highly technical disputes, and would thus have to refer them to a specialized body of experts.

4. He felt, therefore, that the International Law Commission's draft article 57, which provided for the setting up of a special arbitral commission, was the simplest and best method for settling disputes relating to the conservation of living resources, and he would support it as amended by the joint proposal of Greece and the United States of America.

5. Mr. LIMA (El Salvador) said that his government had maintained as a general principle of its foreign policy the idea of compulsory arbitration for the settlement of disputes other than those which the political constitution of El Salvador forbade submitting to such arbitration. The disputes envisaged in article 57 were not, in the opinion of his delegation, those which the constitution forbade submitting, and he would therefore support the International Law Commission's draft article 57.

6. He had observed two trends of opinion in the Committee over the question of settlement of disputes—that which accepted the International Law Commission's draft article 57 and that which preferred the provisions of Article 33 of the United Nations Charter.

7. He was prepared to accept the joint proposal of Greece and the United States of America (A/CONF.13/C.3/L.67), but since the special interest of the coastal State in the living resources of an area adjacent to its territorial sea had been accepted by the Committee, he felt that a reference to that interest should be included in the provisions referring to arbitration. He hoped, therefore, that the Greek and United States delegations would agree to the insertion of the words “and take into consideration the special interest of the coastal State” at the end of the first sentence of paragraph 6 of their proposal. His proposed addition did no more than clarify the terms of paragraph 6, the first sentence of which included a reference to “these articles”, which he took to include article 54.

8. He felt that his proposed addition to the joint proposal was necessary, since, in the event of a dispute between a fishing State and a coastal State, the latter's special interest should be taken into account by the arbitral commission.

9. Mr. GARCIA AMADOR (Cuba) said that the question of the settlement of disputes was a matter of substance, and not merely of form, and was essential to the whole body of articles before the Committee.

10. The right of a coastal State to take unilateral measures of conservation was inseparable from its obligation to have recourse to arbitration procedure of the kind provided for in the International Law Commission's draft article 57.

11. Some representatives had disagreed with that idea on the grounds that it was incompatible with modern international law. Their arguments, however, did not take account of developments in the past twenty-five

years, in the course of which a large number of treaties had been concluded containing provisions for compulsory arbitration similar to that proposed by the International Law Commission in its draft article 57.

12. Nor could Article 33 of the United Nations Charter be used as an argument in support of the view that modern international law recognized voluntary arbitration only. That article gave States the right to choose the method of arbitration, but the article formed part of a whole and should be read in the context of the whole of chapter VI of the Charter. There was no doubt that, although given a choice of methods, States were under the obligation to settle their disputes by one of the methods mentioned in the Charter article.

13. Reference had also been made to the unfavourable reception which the General Assembly had given, at its Tenth Session, to the proposals on arbitral procedure submitted by the International Law Commission.¹ In fact, that opposition, although general at the beginning of the Assembly's discussions, had later given way to a compromise view which accepted the proposals in principle, although considering them too rigid for certain kinds of disputes. His own delegation, which had at first supported the proposals, later came to associate itself with the compromise view, since it believed that the system proposed by the International Law Commission, although not perfect, was the best available.

14. Disputes over conservation measures concerned areas of the high seas which were not under the exclusive jurisdiction of any State. The "special interests" of the coastal State did not give it any exclusive right, since other States might also have an interest in the area of special interest to the coastal State. Accordingly, coastal States should not have exclusive competence to determine the procedure applicable to the settlement of disputes concerning conservation.

15. If it were decided that disputes should be settled by the methods of pacific settlement provided for in Article 33 of the United Nations Charter, certain difficulties might arise. The parties to the dispute would first have to agree on their method of settlement—for example, arbitration; having done that, they would have to agree on the arbitrators, and several other procedural matters would have to be dealt with. By the time all the preliminaries had been settled a long period would have elapsed, in the course of which the unilateral measures taken by the coastal State would have been continuing in force. The measures which the coastal State had adopted, in perfect good faith, might prove to be inadequate, mistaken, or opposed to the conditions laid down in article 55. Was the Committee prepared to grant the coastal State the power to take such measures without a collateral guarantee that that power could not be abused?

16. The representative of the Dominican Republic had referred to the adoption of article 73 by the Fourth Committee. That committee, in adopting article 73, had rejected the idea of leaving disputes to be settled in conformity with the provisions of Article 33 of the United Nations Charter, and had adopted the Inter-

national Law Commission's draft text. He felt that the Third Committee would do well to follow that example in relation to article 57.

17. Mr. O'HALLORAN (New Zealand) said that the International Court of Justice had been mentioned as a possible alternative to the proposed arbitral commission for the settlement of disputes. In general, multilateral treaties should make provision for the reference of disputes to the International Court of Justice, but the Court would not be the best place for the settlement of detailed technical disputes concerning conservation measures. For one thing the preparation of the documents for submission to the Court would involve a considerable amount of additional work by the parties.

18. New Zealand had always found arbitration to be a satisfactory solution for practical, as distinct from legal, disputes. There was a considerable advantage in having technical disputes adjudicated by a body of experts. His delegation, therefore, preferred the procedure for setting up the arbitral commission proposed in the International Law Commission's draft article 57. This provision seemed elaborate, but would ensure that all parties could have full confidence in the arbitral body.

19. With regard to the suggestion that the parties should be free to refer the case to the arbitral body by agreement, he pointed out that there could be no certainty that the parties would in fact agree. A further dispute would then arise. He considered that proper provision should be made in the document which the Conference was preparing for the reference of disputes to an impartial body, unless the parties agreed on another method of settlement.

20. Some of the articles relating to conservation created new rights and obligations in relation to fishing on the high seas. States engaged in fishing there would have no inducement to become parties to a convention embodying these articles unless they were assured that disputes could be referred to an impartial body.

21. He would therefore accept the International Law Commission's draft article 57 and any of the proposed amendments which tended to simplify the procedure laid down in that article.

22. Mr. GANDJI (Iran) said there should be provision for an arbitration procedure in the articles before the Committee. He agreed with the representative of Pakistan that the articles relating to conservation were technical in nature, and were of more interest to fishermen than to governments.

23. He therefore accepted the International Law Commission's draft of article 57 in principle, together with the joint proposal submitted by Greece and the United States of America (A/CONF.13/C.3/L.67). The Commission's draft did not contradict Article 33 of the United Nations Charter, for article 57, paragraph 1, contained an important proviso allowing the parties to choose another mode of settlement.

24. He hoped that the delegations of Greece and the United States would consider the addition of a new paragraph 8 at the end of their proposed amendment, in the following terms: "8. A. State can appeal from

¹ *Official Records of the General Assembly, Tenth Session, Sixth Committee, 472nd meeting.*

the final decision of the special commission to the International Court of Justice. Pending the decision of the International Court of Justice, the decision of the special commission will be complied with."

25. Mr. LUND (Norway) said that he agreed with the principles embodied in the International Law Commission's draft article 57 and with the joint proposal submitted by Greece and the United States (A/CONF.13/C.3/L.67), which improved the Commission's text. He felt, however, that paragraph 6 of the joint proposal was more closely related to article 58 than to article 57, and that it would thus be better to delete that paragraph from the amendment.

26. The representative of El Salvador had proposed that a reference to the "special interest" of the coastal State should be inserted in paragraph 6 of the joint proposal. The arbitral commission, however, would in any case have to be guided by the articles which had been adopted by the Committee, and those articles already included a reference to the special interest of the coastal State.

27. Mr. OLAFSSON (Iceland) said that the conservation system adopted by the Committee would be neither effective nor serve its intended purpose unless provision were made for adequate and simple procedures for the peaceful settlement of disputes. The reference of such disputes to the International Court of Justice, which would have to call on the services of fisheries experts, was obviously not the answer. Article 57, on the other hand, was a step in the right direction and it had been improved by the joint proposal (A/CONF.13/C.3/L.67), and particularly by paragraph 3 thereof. His delegation would therefore vote for that proposal.

28. Mr. LOOMES (Australia) said that the conservation system approved by the Committee made it essential to establish a system of compulsory arbitration especially designed to meet the requirements of the fisheries articles. The arbitral body must consist of experts capable of dealing with technical questions; that requirement automatically excluded the International Court of Justice, whose compulsory jurisdiction was not, in any event, accepted by all countries. Nor could disputes be settled solely by reference to Article 33 of the Charter of the United Nations, as in the last resort they would be examined by the Security Council, which was not qualified to deal with fisheries questions. His delegation would therefore oppose the Mexican proposal (A/CONF.13/C.3/L.1) and the Soviet proposal (A/CONF.13/C.3/L.61). It would however, support article 57 as amended by the joint proposal.

29. Mr. MALLIN (Ireland) said that his delegation supported article 57 as amended by the joint proposal. The time-limit specified in that proposal was particularly welcome as it would ensure rapid decisions, and the special commission referred to was admirably constituted to deal with scientific and technical matters.

30. The view that a provision along the lines of article 73—as adopted by the Fourth Committee—could be used in place of article 57 was unrealistic, as fisheries disputes related to essentially temporary matters, whereas decisions obtained under article 73

would be of a permanent nature. What was required was a relatively inexpensive, simple, *ad hoc* procedure under which, for example, disputes arising out of the adoption of new conservation measures based on new knowledge about a particular stock could be settled expeditiously.

31. Mr. LACU (Argentina) reaffirmed the views he had expressed in the Fourth Committee during the debate on article 73, which, he pointed out, had been adopted by a very small majority. The Committee should think twice before adopting provisions on compulsory arbitration, a principle which had been accepted by only a small minority of States attending the Conference. In his view, the ideal of compulsory arbitration must be sacrificed to a realistic solution acceptable to all States.

32. Mr. SCHERMERS (Netherlands) said that it was perfectly clear, particularly from the Pakistani representative's remarks, that the settlement of fisheries disputes in accordance with Article 33 of the Charter would lead to considerable delay. The main objections to that procedure were first, that the Security Council was not qualified to deal with fisheries questions; secondly, that one of the parties to a dispute might not be a member of the Council; and thirdly, that the great Powers had the right of veto. His delegation would therefore vote against the Mexican proposal (A/CONF.13/C.3/L.1).

33. An arbitration system similar to that proposed in article 57 was clearly necessary; but, he pointed out that, owing to some confusion in paragraphs 2 and 5 with respect to the three-month period, his delegation had proposed an amendment (A/CONF.13/C.3/L.59). A better and simpler procedure had since been suggested in the joint proposal (A/CONF.13/C.3/L.67), and his delegation would withdraw its amendment in favour of that proposal on condition that, if it were adopted, the drafting changes to which he had referred would be made.

34. Mr. CHRISTENSEN (Denmark) agreed that an arbitration procedure was an essential part of the conservation system. His delegation had been prepared to support the Commission's draft, but would vote for the joint proposal, which was an improvement.

35. Mr. PIRKMAYR (Federal Republic of Germany) recalled that his delegation had expressed its willingness to support articles 51 to 53 on condition that provision was made for an arbitration system for the peaceful settlement of disputes along the lines of article 57, as an essential element of the over-all conservation system. The joint proposal improved the text of article 57, and his delegation would vote for it.

36. Mr. CASTAÑEDA (Mexico) said that the purpose of his delegation's proposal (A/CONF.13/C.3/L.1) was merely to simplify the complicated procedure proposed in article 57. It would not, as the Pakistani representative had assumed, require the application of Article 33 of the Charter and the subsequent reference of disputes to the Security Council.

37. Referring to the Cuban representative's observations, he agreed that the obligations of coastal States

under article 55 were legally binding and that any States which failed to comply with them would be responsible before the international community. But the obligations imposed by article 57 could not be enforced, owing to the absence of international enforcement machinery. Furthermore, he pointed out that even under the Charter, only the decisions of the Security Council pursuant to Articles 41 and 42 of the Charter could be enforced, and were therefore binding.

38. His views on compulsory arbitration had, moreover, been confirmed by the Cuban representative who had said that very few States had been in favour of the International Law Commission's draft on arbitral procedure. Even among the twenty-one Latin-American countries, bound together by friendship and a common heritage, only eight had accepted the compulsory arbitration clause of the Pact of Bogotá. Compulsory arbitration procedure accepted by a small number of States on a regional basis was admittedly successful but was obviously too rigid to be capable of world-wide application. The Mexican proposal simply recognized the fact that the overwhelming majority of countries opposed compulsory arbitration, and in his opinion very few States would find it possible to ratify a convention that contained provisions similar to those in article 57.

39. Mr. AYCINENA SALAZAR (Guatemala) said that his delegation was unable to accept the compulsory arbitration system outlined in article 57 for the reasons he had explained in the Fourth Committee during the debate on article 73. His delegation did not oppose compulsory arbitration as such, but at the present stage of international law it was an ideal rather than a practical proposition. He would support the Mexican proposal (A/CONF.13/C.3/L.1) in the hope that it would enable as many States as possible to ratify the convention.

40. Mr. ALVAREZ (Uruguay) said that his delegation would have nothing against accepting the compulsory jurisdiction of the International Court of Justice. His delegation was prepared to support any proposal to establish—on the basis of automatic compulsory arbitration, without restriction, and at the suit of one of the parties—a common system of arbitration for all questions relating to the application of the convention or conventions produced by the Conference.

41. The discussion had shown clearly that the problems dealt with in articles 49 to 60 called for a special method of peaceful settlement—essentially one which was speedy and effective, and which would make it possible to reach definite solutions. Those considerations in themselves justified the proposal submitted by Uruguay (A/CONF.13/C.3/L.31).

42. Those delegations which preferred the methods of pacific settlement provided in Article 33 of the Charter of the United Nations had indicated that the International Law Commission's draft article 57 offered no guarantee of impartiality in respect of the appointment of members of the arbitral commission, nor as regards its decision; that it was too rigid and too heavy, and might result in friction more serious than the problems it was supposed to solve; and that it prevented exploration of all available means of settlement.

43. However, while some of the criticisms directed against draft article 57 might be justified, it must not be forgotten that the application of any of the methods of pacific settlement of disputes mentioned in Article 33 would also involve risks, and, above all, required one fundamental prerequisite: the agreement of the parties concerned. It was quite possible that such agreement might not be forthcoming during an indefinite period, with resultant damage, direct and immediate, to the living resources it was desired to protect. Moreover, in the case of a dispute between States of unequal power, it was to be feared that might would prevail over right.

44. Therefore in spite of criticisms which might be levelled against the system outlined in article 57, the delegation of Uruguay supported the system of peaceful settlement of disputes provided for in the International Law Commission's draft article 57 with the amendments proposed by the delegations of Greece and the United States of America (A/CONF.13/C.3/L.67).

45. Mr. WALL (United Kingdom) stated that his delegation's support in principle of articles 57, 58 and 59 was based on the view that the arbitration system they outlined was a vital part of the fisheries articles. Whatever system was eventually adopted must meet the requirements of expertness, impartiality and expedition in operation. For that reason he was prepared to accept article 57 and the joint proposal (A/CONF.13/C.3/L.67), which was to some extent an improvement, since it referred to special rather than arbitral commissions and replaced the dual system by a simpler single system. He inquired, however, why in the joint proposal the number of the independent members of the special commission had been increased to five; qualified experts were scarce.

46. Under the terms of paragraph 5 of the joint proposal the time-limit could be extended indefinitely, and he therefore suggested that the following sentence should be added to the end of the paragraph: "The special commission shall in any event reach a decision within eight months in all."

47. He also suggested the establishment of a permanent panel of experts from among whom the members of special commissions could be selected.

48. Mr. ALLOY (France) agreed with the Cuban representative that the procedure under Article 33 of the Charter could cause endless delay; that would do irreparable damage to stocks of fish and undermine the effectiveness of conservation measures. The need for a simple and expeditious procedure was satisfied by article 57 which his delegation supported. The joint proposal improved the wording of the Commission's text and was more flexible, but he agreed that the period of five months referred to in paragraph 5 might be too long in view of the harm that could be caused to stocks in that time, and he suggested that it could be reduced to three or four months.

49. Mr. OZORES (Panama) said that his delegation had never shared the concern expressed by others concerning compulsory arbitration for the peaceful settlement of disputes. In the case under consideration article 57 provided means for the settlement of disputes relating to areas of the high seas over which no State could claim to exercise sovereign rights. He was there-

fore prepared to support article 57 as well as the joint proposal which simplified the Commission's text. The Philippine proposal (A/CONF.13/C.3/L.5) should also be taken into consideration.

50. Mr. HULT (Sweden) said that his delegation had accepted the principle contained in article 57 in the belief that some system of compulsory arbitration was vital. He would also support the joint proposal.

51. Mr. KRISPIS (Greece), referring to the Mexican proposal, said that only in the case of matters falling under chapter VII of the Charter could the Security Council give decisions; under chapter VI, the Council had recommending powers only. Clearly, therefore, as fishing disputes were unlikely to constitute threats to or breaches of the peace or acts of aggression, the Security Council would be powerless to do anything but make recommendations. The General Assembly could, it was true, deal with fisheries disputes under Article 14 of the Charter, but it, too, could do no more than make recommendations. The need for a rapid and compulsory arbitration system could be met only by article 57 as amended by the joint proposal.

52. Mr. RUIVO (Portugal) agreed that the provisions relating to conservation were closely linked to those dealing with arbitration. His delegation would accordingly support article 57 as well as the joint proposal, together with the oral amendment submitted by the United Kingdom representative. He also welcomed the suggestion of establishing a permanent panel of experts; that would certainly avoid delay in the recruitment of qualified personnel.

53. Mr. PANIKKAR (India) reaffirmed his delegation's support of the principle of compulsory arbitration as an essential part of the fisheries articles. An arbitration system was necessary as legitimate differences of opinion would certainly arise in connexion with the articles which the Committee had approved. A reference of such disputes to the Security Council or to the International Court of Justice was impractical since those bodies were qualified to deal only with political and juridical questions. A glance at the report of the Rome Conference of 1955,¹ or at the terms of article 55, paragraph 2, however, was enough to show that scientific and technical experts were required to deal with certain fisheries disputes. His delegation would therefore support article 57 as in the International Law Commission's draft.

54. Mr. TREJOS FLORES (Costa Rica) said that the objections of States to compulsory arbitration with respect to matters falling within their domestic jurisdiction could not apply to the articles under consideration. Surely, international law did not confer upon States the right to adopt conservation measures in the high seas that would be binding on all other States. That right was completely new and had been set down for the first time in history. He therefore failed to understand why States should be reluctant to accept compulsory arbitration for the settlement of

disputes arising out of the exercise of that right. In his opinion, the acceptance of compulsory arbitration was an indispensable condition for the recognition of that extraordinary right by other States.

55. An additional argument in favour of compulsory arbitration was that the effect on stocks of the adoption of unsound conservation measures would be just as bad as the failure to adopt any measures at all. Accordingly, it was essential to establish an effective and expeditious system that would make it possible to determine the soundness of and need for conservation measures.

56. For that reason his delegation accepted the principle contained in article 57 and would vote for the joint proposal. He suggested that the fears and objections of some States concerning compulsory arbitration could be overcome by adding the words "in accordance with Article 33 of the United Nations Charter" to the end of paragraph 1 of the joint proposal. That would make it abundantly clear that arbitration was an extraordinary procedure which should be used only as a last resort, and would leave the parties free to choose the best method for the settlement of their dispute.

The meeting rose at 1 p.m.

THIRTIETH MEETING

Saturday, 12 April 1958, at 3.40 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 57 to 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.1, L.3, L.5, L.14, L.59, L.61, L.64, L.67)

Vote on article 57

1. The CHAIRMAN suggested that the amendments to article 57 should be voted on in the following order: the Soviet proposal (A/CONF.13/C.3/L.61), the Mexican and Korean proposals taken together (A/CONF.13/C.3/L.1, and A/CONF.13/C.3/L.64), the Yugoslav proposal (A/CONF.13/C.3/L.14), the Greek and United States delegations' joint proposal (A/CONF.13/C.3/L.67), the Netherlands proposal (A/CONF.13/C.3/L.59), the Philippine proposal (A/CONF.13/C.3/L.5) and the French proposal (A/CONF.13/C.3/L.3).

2. Mr. LEE (Republic of Korea) and Mr. CASTAÑEDA (Mexico) agreed that their proposals should be put to the vote jointly.

3. Mr. HERRINGTON (United States of America), reporting on the informal consultations that had been held on the sub-amendments, put forward at the previous meeting, to the joint proposal by the Greek and United States delegations, said that the co-sponsors could not regard the suggestion of the representative of El Salvador to include a phrase in paragraph 6 concerning the special interests of the coastal State as

¹ Report of the International Technical Conference on the Conservation of the Living Resources of the Sea (United Nations publication, Sales No.: 1955.II.B.2).

involving a significant change in substance. They felt, however, that it would raise many objections on the ground that it might change the over-all balance of the article, and it was agreed that the phrase was already implicitly included in this paragraph as it stood. It was therefore hoped that the amendment would not be pressed. They also considered that the Iranian suggestion for allowing an appeal to the International Court of Justice from a decision of the special commission was difficult for many delegations to accept without considerable discussion and delay, and they hoped that it too would not be pressed. With regard to the United Kingdom suggestion for the establishment of a panel of experts, they had felt that the Secretary-General's action might be limited by such a clause. They also could not accept the Philippine amendment (A/CONF.13/C.3/L.5), since they believed that the wording of their proposal already covered that point.

4. The co-sponsors had, however, felt able to accept the Costa Rican suggestion (to add the words "in accordance with the provisions of Article 33 of the Charter of the United Nations" at the end of paragraph 1), the United Kingdom, French and Portuguese suggestion (to add the words "by a period not to exceed three months" at the end of paragraph 5), and the Norwegian suggestion (to delete the last sentence of paragraph 6).

5. Mr. KRYLOV (Union of Soviet Socialist Republics) reiterated his delegation's view that the Conference should follow established rules with regard to arbitration, such as those laid down in the United Nations Charter and the Statute of the International Court of Justice, and should not attempt to set forth a new procedure. He shared the Mexican representative's view that those who favoured the Greek and United States delegations' proposal displayed lack of faith in the principle of compulsory jurisdiction.

6. The CHAIRMAN put the proposal of the Soviet Union (A/CONF.13/C.3/L.61) to the vote.

The proposal was rejected by 38 votes to 14, with 9 abstentions.

7. Mr. AGUERREVERE (Venezuela) said he would support the proposals of Mexico and the Republic of Korea because their purpose was to ensure that difficulties would be settled immediately on a basis of full confidence in the international community. The object of referring to Article 33 of the Charter was to bring the disputing parties together; he would, however, suggest that a paragraph be added to the effect that, if the interested States could not reach agreement, it should be compulsory to set up a special commission with powers to investigate and make recommendations only. The text would then follow the International Law Commission's draft, but would eliminate immediate and compulsory recourse to the International Court of Justice.

8. Mr. CORREA (Ecuador) would vote for the proposals of the Republic of Korea and Mexico because their flexibility had the great merit of enabling States to settle disputes by the most appropriate means at hand. It must be borne in mind, however, that the proposals left some gaps and could not meet all

exigencies. On the other hand, the compulsory arbitration proposed by the International Law Commission entailed certain dangers, and some countries would find it difficult to ratify a convention in those circumstances. The convention which would result from the Committee's work would include a principle that was in the vanguard of modern thought, and it was most important not to include any provisions—such as compulsory arbitration—which would make States reluctant to ratify it. Moreover, the principle of compulsory arbitration placed countries with underdeveloped scientific capacities at a disadvantage.

9. Mr. LLOSA (Peru) supported the proposals of the Republic of Korea and Mexico. It was surprising that there should be any objection to a legal effort to strengthen the principles of the United Nations Charter at a conference convened under United Nations auspices. It was the moral duty of all States to do everything in their power to strengthen the authority of the United Nations organization; accordingly, the reference to Article 33 of the Charter was not only desirable, but necessary.

10. He also endorsed the Venezuelan representative's suggestion, which he regarded as a kind of scientific guarantee for the settlement of disputes which might arise. The proposal should, however, indicate the need for the Food and Agriculture Organization of the United Nations (FAO) or some other impartial organization to study the scientific questions raised in a dispute during the proceedings.

11. Mr. AGUERREVERE (Venezuela) agreed with the Peruvian representative's suggestion.

12. Mr. CASTAÑEDA (Mexico) accepted the Venezuelan and Peruvian sub-amendments.

13. The CHAIRMAN put the proposals of the Republic of Korea and Mexico (A/CONF.13/C.3/L.64 and A/CONF.13/C.3/L.1) as amended by the Venezuelan and Peruvian delegations, to the vote.

The proposals were rejected by 32 votes to 19, with 12 abstentions.

14. Mr. POPOVIC (Yugoslavia), speaking on his amendment (A/CONF.13/C.3/L.14), said that his delegation was in favour of arbitration, but of such arbitration as would really amount to a friendly way of settling disputes. The difference between the procedures proposed by the International Law Commission and in the Yugoslav proposal was that the former was not really concerned with the peaceful settlement of disputes, the outcome of which would be doubtful since there was no means of forcing the losing party to comply with the decision. The method of settling disputes contemplated in paragraph 3 was not really that of arbitration at all. The Yugoslav proposal was based on the precedents of certain peace treaties and in that connexion he quoted article 5 of the 1952 Brussels International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions and Other Incidents of Navigation.

The Yugoslav proposal (A/CONF.13/C.3/L.14) was rejected by 37 votes to 3, with 19 abstentions.

15. Mr. SOLE (Union of South Africa) suggested a slight change in the amended text of paragraph 1 of the joint proposal submitted by Greece and the United States. If the last phrase were to read "to seek a solution by other methods of peaceful settlement *such* as are provided in Article 33 of the Charter of the United Nations", the reference to Article 33 would no longer exclude any other methods on which the parties might agree.

16. Mr. WALL (United Kingdom) suggested that the words "not more than" should be inserted before "five members" in paragraph 1. Serious disputes might need consideration by all five members, but it might not be necessary to take more than three scientists from their work in the case of less important disputes.

17. Mr. HERRINGTON (United States of America) with reference to the suggestion of the South African representative, observed that Article 33 of the Charter took into account all methods of settling disputes.

18. With regard to membership of the arbitral commission, it had been pointed out that, since legal, administrative and scientific experts would serve on the commission, it would be better to extend its composition to five.

19. Mr. TREJOS FLORES (Costa Rica) agreed that Article 33 of the Charter was all-embracing.

20. Mr. SERBETIS (Greece) endorsed the United States representative's replies to the South African and United Kingdom representatives.

21. Mr. POPOVIC (Yugoslavia) thought that the sponsors of the joint proposal had been mistaken in basing their text on paragraph 2 of the International Law Commission's draft and not on paragraph 3. He could see no reason why the Secretary-General of the United Nations should nominate all the members if agreement could not be reached on the appointment of one member or on that of the chairman. It would be better for each party to appoint its own members, to appoint the chairman jointly and to leave it to the Secretary-General to appoint the chairman if they could not agree.

22. Mr. SCHERMERS (Netherlands) said he had come to the conclusion that, by virtue of the clause in paragraph 1 of the joint proposal reading "unless the parties agree to seek a solution by another method of peaceful settlement", parties to a dispute would be free to agree that the dispute should be settled by an arbitral commission consisting of less than five members. That being so, he was able to accept the joint proposal.

23. Mr. LLOSA (Peru) said that, although he was opposed to the arbitration clauses proposed by the Greek and United States delegations it should be observed that in the first sentence of the joint text the term "special commission" was used and in other sentences the word "commission" was not qualified by any adjective, whereas in the text for the article submitted by the International Law Commission the term "arbitral commission" which was completely clear, was used consistently throughout.

24. If all the members of the arbitral commission were

appointed by the Secretary-General of the United Nations, as the joint proposal suggested should be done in certain circumstances, the Secretary-General would in effect be the sole arbitrator. Why should the chairman of the arbitral commission not be appointed by the President of the International Court of Justice?

25. Mr. GARCIA AMADOR (Cuba) said it was not correct to say that if all members of the arbitral commission were appointed by the Secretary-General he would in fact be the sole arbitrator. It was as incorrect as stating that members of an arbitral commission who were appointed by a government and who in fact served continuously in a personal capacity acted as representatives of the government that had appointed them.

26. Mr. CASTAÑEDA (Mexico) asked for a vote by roll-call on the joint proposal by Greece and the United States (A/CONF.13/C.3/L.67) with the amendments accepted by its sponsors during the discussion.

A vote was taken by roll-call.

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

In favour: Pakistan, Panama, Philippines, Portugal, Spain, Sweden, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Argentina, Australia, Belgium, Brazil, Canada, Ceylon, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, El Salvador, Finland, France, Federal Republic of Germany, Greece, Honduras, Iceland, Iran, Ireland, Israel, Italy, Japan, Liberia, Netherlands, New Zealand, Norway.

Against: Peru, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Guatemala, Haiti, Republic of Korea.

Abstaining: Thailand, Tunisia, United Arab Republic, Venezuela, Burma, Ecuador, Ghana, India, Indonesia, Mexico.

The joint proposal submitted by Greece and the United States of America (A/CONF.13/C.3/L.67), as amended, was adopted by 38 votes to 14, with 10 abstentions.

27. Mr. CASTAÑEDA (Mexico) said he had not voted against the proposal because he was not opposed to arbitration, Mexico being a party to several agreements providing for arbitration. But he had not voted for the proposal because he was convinced that the arbitration clauses proposed would be so mandatory and rigid that States would not be willing to ratify any convention containing them. By adopting the joint proposal, the Committee had nullified all the other draft articles on which it had agreed. He had asked for a roll-call vote in order that later it might be possible to compare the list of States which had not ratified the instrument containing the text with a list of States who had voted for the joint text.

28. Mr. GOLEMANOV (Bulgaria) said he had voted against the proposal because his country could not accept the compulsory arbitration proposed by the two

delegations. He regretted that the Committee had not adopted the Mexican delegation's realistic proposal.

29. Mr. KRYLOV (Union of Soviet Socialist Republics) said he had voted against the text because it was unrealistic. He was in favour of providing for arbitration in article 57, but he was opposed to the compulsory form of arbitration proposed by the two delegations.

30. Mr. LEE (Republic of Korea) said he had voted against the text because the States which became parties to it would be compelled to submit every dispute in which they were involved to arbitration, and he thought that the States which were parties to a dispute should be free to agree on whatever method of settlement they thought most suitable.

31. Mr. POPOVIC (Yugoslavia) said he had voted against the proposal, not because Yugoslavia, which was a party to several arbitration agreements, was opposed to arbitration, but because the text proposed provided for something which was not really arbitration.

32. Mr. SCHERMERS (Netherlands), Mr. MARTIN (Philippines) and Mr. ALLOY (France) withdrew the proposals of their delegations regarding article 57 (A/CONF.13/C.3/L.59, A/CONF.13/C.3/L.5 and A/CONF.13/C.3/L.3 respectively).

33. The CHAIRMAN explained that the adoption of the text proposed jointly by Greece and the United States of America had implied the rejection of the draft text of article 57 adopted by the International Law Commission; the former had accordingly replaced the latter.

The meeting rose at 5.15 p.m.

THIRTY-FIRST MEETING

Monday, 14 April 1958, at 10.15 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 58 and 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.3, L.15, L.61, L.64, L.68, L.69) (continued)

1. Mr. KRYLOV (Union of Soviet Socialist Republics) withdrew his delegation's proposal (A/CONF.13/C.3/L.61) in so far as it related to article 58, but reserved his delegation's right to submit the whole proposal in plenary session.

2. Mr. LEE (Republic of Korea), having regard to the Committee's decisions on article 57, withdrew his delegation's proposal (A/CONF.13/C.3/L.64) in so far as it related to article 58.

3. Mr. ALLOY (France), in view of the Committee's decisions on previous articles, withdrew his delegation's proposal regarding article 58 (A/CONF.13/C.3/L.3).

4. The CHAIRMAN ruled that the Committee's decisions on article 57 implied that it had rejected the Mexican proposal (A/CONF.13/C.3/L.1) in so far as it related to article 58.

5. Mr. HERRINGTON (United States of America) said that his delegation had joined the delegations of Greece and Pakistan in sponsoring the text they had submitted for article 58 (A/CONF.13/C.3/L.68) because of the considerations he had expressed at previous meetings on the need for a satisfactory procedure for settling international disputes over fisheries. His delegation was of opinion that suitable criteria should be laid down in article 58 to indicate the limits of the jurisdiction of the special commissions to which article 57 related; to make it clear to States which were about to become parties to the international instrument containing the articles with which the Third Committee was dealing exactly what obligations they were about to undertake; to show those who had to select the members of the special commissions what legal, scientific and other technical qualifications the persons they chose should have; and, of course, to provide guidance for the commissions themselves. The International Law Commission's comments on article 58 showed that it had recognized that it was important that such criteria should be laid down. All the criteria set out in paragraph 1 of the three-power proposal (A/CONF.13/C.3/L.68) had been taken from the International Law Commission's commentary on article 58, with the exception of that contained in subparagraph (a) (i), which the sponsors of the proposal thought should be added to the criteria laid down by the Commission. Paragraph 2 of the text they had proposed was in substance exactly the same as paragraph 2 of the Commission's text for the article.

6. Mr. WALL (United Kingdom), while prepared to vote in favour of the three-power proposal, would be grateful if the sponsors would consider deleting subparagraph (a) (i) of paragraph 1. He did not consider that section really necessary and feared it would have a regrettable restrictive effect since in the case of disputes concerning nationals of a State fishing for a stock of fish which a second State considered had an effect on another stock of no interest to the first State it might furnish grounds for arguing that the articles under consideration did not cover such disputes.

7. Mr. HERRINGTON (United States of America) replied that subparagraph 1 (a) (i) of paragraph 1 was intended to cover such disputes. He asked whether the United Kingdom representative's objections would disappear if the words "fishing or otherwise" were inserted before the words "concerned with"?

8. Mr. LUND (Norway) said that in principle he was in favour of the three-power proposal, but he too hoped that the sponsors would agree to delete subparagraph (a) (i), concerning which he felt certain doubts.

9. Mr. SERBETIS (Greece) saw no objection to the deletion of that portion of the text, because he recognized that it might cause difficulties in certain circumstances.

10. Mr. SCHERMERS (Netherlands) was in favour of the principle of the three-power proposal, but would

propose the insertion at the end of the first sentence of paragraph 1 of the words: "and ascertain whether the competent international conservation body concerned with the adjacent high seas, if any, recognizes that there is a need for the urgent application of the conservation measures adopted by the coastal State". His reason for that proposal was that it would be only realistic to lay down that the special commission should consult the international conservation body concerned, inasmuch as the text of article 55 approved by the Committee would give coastal States the right to adopt unilateral measures of conservation in respect of any stock of fish in any area of the high seas adjacent to their territorial sea in circumstances indicated in that article.

11. He also hoped that the sponsors would agree to delete sub-paragraph (a) (i) of paragraph 1.

12. Mr. CORREA (Ecuador) was completely opposed to paragraph 2 of the three-power proposal. No special commission should have the right to decide that the measures in dispute should be suspended before it even started to discuss the dispute. The paragraph was inconsistent with paragraph 3 of the text for article 55 approved by the Committee. There was no legal basis for paragraph 2. To adopt it would mean destroying the balance of the articles referred to the Committee. In view of the opposition to the arbitration clauses approved by the Committee at the previous meeting, it would be extremely unwise to give any special commission the powers described in the paragraph.

13. Mr. MALLIN (Ireland) was in favour of the principle of the three-power proposal, but he also feared that sub-paragraph (a) (i), of paragraph 1, if adopted in its present form, would cause difficulty, because it might be interpreted in different ways. He hoped that either it would be deleted or the addition just proposed by the United States representative would be agreed. Disputes of the kind described by the United Kingdom representative would certainly occur. He drew attention to the statements of Professor van Cleve in paragraph 13 of the document entitled "The Economic and Scientific Basis of the Principle of Abstention" (A/CONF.13/3). In his opinion, sub-paragraph (a) (ii) of paragraph 1 covered all that was covered by sub-paragraph (a) (i). The addition proposed by the Netherlands representative appeared to him unnecessary, since the first sentence of the three-power text was quite sufficient.

14. Mr. LIMA (El Salvador) asked what were the criteria in article 55 which the delegations of the three Powers had in mind. Did the first sentence of their text relate to the "requirements" listed in paragraph 2 of article 55? If so, the sentence should be amended to read: "The special commission shall, in disputes arising under article 55, ascertain whether the requirements listed in paragraph 2 of article 55 are in fact fulfilled." Following the adoption of paragraph 6 of the text approved by the Committee for article 57, there appeared to be no justification for adopting the text proposed by the delegations of the three Powers for paragraph 1 of article 58, since it covered nothing that was not covered by the said paragraph 6 of article 57. He was opposed to sub-paragraph (a) (i) in particular, for the reasons explained by the United Kingdom representative.

15. He agreed with everything that the representative of Ecuador had said regarding paragraph 2 of the three-power text. He could, however, vote for that paragraph if amended in such a way as to remove the inconsistency with paragraph 3 of article 55 and to indicate exactly the circumstances in which he thought the special commission might decide that the measures in dispute should not be applied pending its award. It should obviously not take such a decision if there was an urgent need for the measures to be applied. He feared that if paragraph 2 were adopted in its present form the special commission would decide that urgently needed measures should not be applied pending its award.

16. Mr. RUIVO (Portugal) regarded the text proposed by the three Powers as a great improvement on that of the International Law Commission, since the criteria laid down in it were entirely objective. He was inclined to support the additional clause proposed by the Netherlands representative, since it would help to ensure that the special commission would have valid data on which to base its findings. Sub-paragraph (a) (i) of paragraph 1 should be amended so as to cover the disputes mentioned by the United Kingdom representative.

17. His delegation attached great importance to paragraph 2 of the three-power proposal. It was firmly convinced that the special commission should be given the powers indicated in that paragraph to offset the right of taking unilateral action conferred on the coastal State by article 55.

18. Mr. AGUERREVERE (Venezuela) agreed with the representatives of Ecuador and El Salvador.

19. It would be sufficient to lay down general criteria. The detailed provisions of paragraph 1 of the three-power proposal might prove to be a quite unnecessary obstacle to the proper performance of its functions by the special commission.

20. Paragraph 2 was not consistent with the rights which it had been agreed coastal States should enjoy. He doubted whether those representatives who believed that paragraph 2 did not apply to measures taken by the coastal State were correct in that belief. It would therefore be best to delete the whole paragraph. If that were not done, a clause should be added stating specifically that the paragraph did not apply to measures taken by the coastal State in the exercise of its rights.

21. Mr. MELO LECAROS (Chile) was in favour of adopting paragraph 1 of the three-power proposal with the few minor amendments required. For the reasons explained by previous speakers, paragraph 2 could not possibly be adopted in its present form. It should be amended in such a way that at least it would not contradict paragraph 3 of article 55.

22. Mr. QURESHI (Pakistan) said that the joint proposal related to all the articles on fishing except article 55 and that sub-paragraph (a) (i) of paragraph 1 applied to articles 51, 52 and 53. Moreover, paragraph 2, which referred to action by non-coastal States, was not contradictory to any other article and merely provided for a temporary injunction in the cases covered by articles 51, 52 and 53. Article 55 as adopted with the amendments contained in document A/CONF.13/

C.3/L.66/Rev.1 did not affect paragraph 3; the International Law Commission's text of that paragraph would therefore remain, and recourse to the arbitral commission would take place only as an exceptional last step, after the possibilities set forth in Article 33 of the Charter had been exhausted. It had been argued that some States might prefer to appeal to the jurisdiction of the International Court of Justice, but it must be borne in mind that the Court also could issue temporary injunctions, since that procedure was inherent in common law. Accordingly, the three-power proposal provided for the two stages of temporary injunction and final settlement.

23. Mr. LUND (Norway) did not consider that paragraph 2 of the three-power proposal was contradictory to article 55, since it ensured that the provisions of the articles on fishing should be binding pending the settlement of disputes. It might clarify the situation to add at the end of the proposal the words "when *prima facie* examination of the case shows that the measures taken are unnecessary or inappropriate."

24. Mr. LEE (Republic of Korea) could not vote for the three-power proposal, because, in his opinion, paragraph 2 would restrict the rights of coastal States stipulated in article 55.

25. Mr. CUSMAI (Italy) did not think that paragraph 2 of the three-power proposal contradicted article 55. He saw it, rather, as a guarantee against the taking of unjustified conservation measures. He stressed the need for caution and objectivity in considering the proposal, since an injudicious decision might ruin all the work already done.

26. Mr. LACLETA (Spain) observed that, if paragraph 2 were deleted, there would be no guarantee that a State might not, within a short time, reintroduce conservation measures differing only slightly from those in dispute.

27. Mr. OBIOLS GOMEZ (Guatemala) thought that the joint proposal should be slightly reworded. Sub-paragraph (a) of paragraph 1 was generally acceptable, but the reference to article 54 should be deleted and the words "or concerned with conservation measures" might be added at the end of sub-paragraph (a)(i). It was important to make it clear that paragraph 2 applied only to disputes under Articles 52 and 53.

28. Mr. SCHERMERS (Netherlands) pointed out that the text which had been adopted for article 55 did not replace paragraph 3 of the International Law Commission's text. Accordingly, there was no conflict between article 55 and paragraph 2 of the three-power proposal. The special commission must have the right to suspend the application of any measures which it thought wrong.

29. Mr. ALLOY (France) said he would support the three-power proposal, provided that it was changed along the lines suggested by the Netherlands and United Kingdom representatives. He considered it vitally important to maintain paragraph 2, in order that there might be some legal limitation on the rights of coastal States if they were considered exorbitant.

30. Mr. PANIKKAR (India) could accept the criteria listed in paragraph 1, which represented the scientific terms of reference of the special commission. He could even accept the additional restrictions on the application of article 56 set forth in sub-paragraph (b) of paragraph 1. Nevertheless, it should be remembered that the success of the articles depended to a great extent on their flexibility. Too many definitions and restrictions on the work of the special commission might militate against the very purpose for which it was to be created. He therefore preferred the International Law Commission's text of article 58, but suggested a slight change in paragraph 1, the last sentence of which might read "in other cases, it shall apply appropriate criteria according to the circumstances of each case."

31. Paragraph 2 of the joint proposal was to some extent incompatible with article 55. The two definite schools of thought that existed in the Committee on that point might be reconciled along the lines of the Venezuelan and Norwegian suggestions.

32. Mr. ANDERSON (Australia) thought that a unanimous decision might be reached if the Committee could agree on the wording of paragraph 2 of the three-power proposal. He suggested that that end might be achieved by adding the sentence, "This clause shall not apply to disputes under article 55."

33. Mr. OLAFSSON (Iceland) feared that adoption of the Netherlands amendment to paragraph 1 would merely complicate the system adopted in article 57. The special commission would undoubtedly seek expert advice when necessary, but it would be incorrect to prescribe how and where it should seek it.

34. Mr. WALL (United Kingdom) thought that the Australian suggestion to add a sentence to paragraph 2 was too extreme. It might be more appropriate to insert the words "if grounds of urgency are not established" after the word "decide". The tenor of the Norwegian suggestion was really covered by the fact that the word "may", and not "shall", was used.

35. Mr. POPOVIC (Yugoslavia) thought that paragraph 2 of the three-power proposal was incompatible with paragraph 3 of article 55. The rights of the coastal State and the maintenance of the relations between States interested in conservation measures should be covered by a compulsory provision. The use of the word "may" was incompatible with the character of arbitration as a legal institution.

36. Mr. CORREA (Ecuador) thought that, in view of the close interdependence of articles 54 and 55, it was inadvisable to set forth two different sets of criteria, as was done in paragraph 1 of the three-power proposal. Not only was it incorrect to restrict the activities of the special commission, but the criteria in respect of article 54 were at variance with the text of that article, which applied to entire areas and not merely to certain stocks of fish.

37. Mr. LLOSA (Peru) considered that the three-power proposal was clearly incompatible with paragraph 3 of article 55. The text of article 55 as adopted by the Committee fell far short of recognizing the due rights

of the coastal State; the adoption of the three-power proposal would vitiate even that paltry concession.

38. Mr. HERRINGTON (United States of America) could not admit that there was any discrepancy between the three-power proposal and the provisions of article 55, since paragraph 3 of the International Law Commission's text of that article was still in being. He suggested that the co-sponsors of the three-power proposal and representatives who had made suggestions to amend it should consult together informally and try to draft an agreed text.

It was so agreed.

The meeting rose at 12.10 p.m.

THIRTY-SECOND MEETING

Monday, 14 April 1958, at 4.45 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLES 58 and 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.15, L.68, L.69) (continued)

Vote on article 58

1. Mr. HERRINGTON (United States of America) said that after consultation with other delegations the sponsors of the three-power proposal (A/CONF.13/C.3/L.68) thought that general agreement had been reached on all points with the exception of paragraph 2. He thought that a further period of consultation would make it possible to reach agreement on that point also and he therefore asked that the meeting should be suspended.

The meeting was suspended at 4.50 p.m., and resumed at 6 p.m.

2. Mr. HERRINGTON (United States) said that, as a result of informal talks held since the preceding meeting of the Committee, agreement had been reached on a number of points concerning the three-power proposal (A/CONF.13/C.3/L.68). First, the Netherlands delegation's proposed addition to paragraph 1 had been withdrawn. Secondly, the co-sponsors had agreed to withdraw sub-paragraph (a)(i) of paragraph 1 of their proposal. Paragraph 2 had presented the greatest difficulty; but while the co-sponsors had not been able to reach complete unity of views on it, a large measure of agreement had been established. Accordingly, on behalf of the co-sponsors, he proposed the following addition to paragraph 2: "provided that, in the case of disputes under article 55, the measures shall only be suspended when it is apparent to the commission on the basis of *prima facie* evidence that the need for such urgent application of the measures does not exist."

3. Replying to a question by the representative of Ecuador, the CHAIRMAN said that, since the amendment proposed by the United States representative did

not substantially alter the meaning of the three-power proposal, it should be discussed and voted upon before being circulated in writing.

4. Mr. CORREA (Ecuador) remarked that the discussion at the preceding meeting had shown that paragraph 2 of the three-power proposal directly contradicted the provisions of paragraph 3 of article 55, as adopted (A/CONF.13/C.3/L.77). He did not think that the amendment proposed by the United States representative on behalf of the co-sponsors of the proposal introduced any real change. Urgency was one of the conditions for validity of measures adopted by the coastal State under sub-paragraph (a) of paragraph 2 of article 55. By providing that such measures could be suspended by the special commission if they were not urgent, the United States amendment merely created a vicious circle. Paragraph 3 of article 55, as adopted, was a small concession to the coastal States, which, surely, need not be retracted so long as the condition or urgency set forth in sub-paragraph (a) of paragraph 2 was applied in the final award of the special commission. As an amendment to replace that proposed by the representative of the United States, he proposed that the following words should be added to paragraph 2 of the three-power proposal: "provided that measures under article 55 cannot be suspended."

5. Mr. MELO LECAROS (Chile) was convinced that paragraph 2 of the proposal directly contradicted paragraph 3 of article 55, as adopted, and had no place in a document of general law. The amendment proposed by the United States representative in no way rectified that situation. He would only be able to support the three-power proposal if the Ecuadorian amendment, which was designed to keep article 58 within the spirit of article 55, was adopted. If it was rejected, however, he would vote against the proposal with or without the United States amendment, and would, indeed, be obliged to reconsider his position with regard to all the articles connected directly or indirectly with the conservation of the living resources of the sea and with the rights of coastal States in that matter.

6. Mr. HERRINGTON (United States) regretted that the compromise solution embodied in his amendment did not meet the objections of the representatives of Ecuador and Chile. None of the co-sponsors of the three-power proposal was wholly satisfied with that solution, but extensive discussion had shown it to constitute the only possible basis of agreement; the Committee should give it serious consideration if it hoped to arrive at a constructive result.

7. Mr. AGUERREVERE (Venezuela) said he would vote in favour of the three-power proposal provided that paragraph 2 was deleted. It was true that paragraph 2 of the International Law Commission's draft article 58 was almost identically worded; but a decisive new factor in the situation had been introduced by the fact that, in article 55, paragraph 3, as adopted by the Committee, stipulated unconditionally that measures adopted by the coastal State should remain in force pending settlement. Unless the Committee wished to revoke that provision, it must reject paragraph 2 of the three-power proposal.

8. Discussion had shown two conflicting lines of thought in the Committee. One was that measures adopted by the coastal State should remain in effect until the special commission had made its award. The other was that the commission should have the power to suspend such measures until the award was made. He felt that the Committee should vote on those two principles without delay.

9. Mr. TREJOS FLORES (Costa Rica) agreed with the representatives of Ecuador and Chile. While appreciating the efforts made by the co-sponsors of the three-power proposal to reach a satisfactory solution, he felt that the amendment proposed by the United States representative, far from offering such a solution, merely worsened the position of the coastal State. The object of the amendment, in effect, was to enable the special commission to issue an interlocutory award pending its final decision. That interlocutory award would be made on the basis of *prima facie* evidence as to the lack of urgency, without reference to the parties concerned or to the background of the case. Once such a decision had been reached, it was extremely unlikely that the special commission would subsequently find that urgency did exist; in other words, the interlocutory award would prejudice the outcome of the commission's investigations regarding the validity of the measures adopted by the coastal State.

10. He was unable to accept paragraph 2 of the three-power proposal in its original form, still less with the addition of the phrase proposed by the United States representative.

11. Mr. AGUERREVERE (Venezuela) agreed with the representatives of Ecuador, Chile and Costa Rica. He would vote in favour of paragraph 2 of the three-power proposal as amended by the representative of Ecuador, but not as amended by the representative of the United States.

12. Mr. OLAFSSON (Iceland) was pleased to note that agreement had been reached on the suggestion made by the Netherlands representative at the preceding meeting, and on sub-paragraph (a)(i) of paragraph 1 of the joint proposal. Although he was not fully satisfied with the amendment proposed by the United States, he was convinced that it offered a solution based on the largest possible measure of agreement. The amendment should be read in connexion with the phrase "in the light of the existing knowledge of the fishery" in sub-paragraph 2(a) of article 55 as adopted. Having considered the amendment in that light, he would vote for it in a spirit of conciliation.

13. Mr. QURESHI (Pakistan) emphasized that paragraph 2 of the three-power proposal was identical with paragraph 2 of article 58 as drafted by the International Law Commission, except for the substitution of the term "special commission" for "arbitral commission". Moreover, paragraph 3 of article 55, as adopted, was substantially the same as the corresponding paragraph of the International Law Commission's draft. It would be seen, therefore, that paragraph 2 of the three-power proposal had not been hastily composed, but corresponded to the outcome of the International Law Commission's deliberations. It was a normal procedure

for courts of law and, by the same token, also for international arbitral bodies, to issue an injunction first and a final judgement later. Hence, the amendment moved by the United States representative on behalf of the co-sponsors of the three-power proposal was fully in keeping with established legal practice. Under that amendment, the onus of proof that a measure was not urgent would not lie with the coastal State, but with the non-coastal State. It would be extremely difficult to submit such proof in a manner capable of satisfying the special commission that a *prima facie* case existed for suspending the measure, so much so that recourse to the provision concerned would, he was sure, be had only on very rare occasions. In fact, the provision would be of as much benefit to the coastal State as to other States. Lastly, he pointed out that, since no amendment had been submitted to paragraph 2 of the Law Commission's draft article 68, that paragraph could doubtless have been adopted without objection; he failed to see why the same provision incorporated in the proposal should give rise to so much disagreement.

14. Mr. LACU (Argentina) said that he fully agreed with the representatives of Ecuador, Chile, Costa Rica and Venezuela and would vote against paragraph 2 of the three-power proposal. Nor did he think that paragraph 1 of that proposal constituted an improvement on paragraph 1 of the Law Commission's draft, since it overlooked the provisions of article 54 and might give rise to duplication of procedure in matters of a similar nature.

15. Mr. POPOVIC (Yugoslavia) proposed that discussion of paragraph 2 of article 58 should be postponed until paragraph 2 of article 53, and paragraph 3 of article 55 of the Law Commission's draft had been discussed.

That proposal was rejected by 26 votes to 6, with 29 abstentions.

16. Mr. GANDJI (Iran) said that his delegation would vote for paragraph 1 of the three-power proposal as amended by the sponsors, and also for paragraph 2 as amended by the representative of Ecuador, if the words "cannot be" were replaced by the words "shall not be". He had listened carefully to the representative of Pakistan but had not been convinced that his delegation should vote for the three-power proposal. In the text of article 55, as adopted, the emphasis had been removed from the urgency of the need for conservation measures and placed instead on the need for those measures in the light of the existing knowledge of the fishery. The special commission would not be able to take an immediate decision as to whether the measures in question were sound; it would have to wait until it had heard both parties.

17. Mr. CASTAÑEDA (Mexico) said that he would vote for the amendment proposed by the representative of Ecuador, because he considered that the three-power proposal was in open contradiction to the terms of article 55, as approved, and that the Ecuadorian amendment was the absolute minimum that could be accepted, if the rights accorded to the coastal State in article 55 were to have any meaning or value. He

supported the change to the amendment suggested by the representative of Iran.

18. Mr. CORREA (Ecuador) said that he would accept the change proposed by the representative of Iran.

19. Mr. ANDERSON (Australia) said that he could not understand how the rights of the coastal State were prejudiced by the three-power proposal in its new form. It might be that under the terms of the proposal the coastal State did not get all it might desire, but it suffered no major loss. No coastal State could ask for the continuation of conservation measures if it was obvious to the commission on *prima facie* evidence that there were no grounds for urgency, and the proposal in its present form meant no more than that. He was as anxious as any representative to protect the rights accorded by article 55, but even if the commission found against the coastal State in the first instance, the conservation measures would merely be suspended until the final hearing of the case.

20. Mr. LIMA (El Salvador) recalled that at the previous meeting he had said he could not accept paragraph 2 of the three-power proposal, because it would completely destroy the rights of the coastal State in the matter of conservation. He had taken part in the informal consultations on the proposal and, being partly responsible for the suggested addition to paragraph 2, he was prepared to accept it. The arguments advanced against the new text of paragraph 2 were weighty and deserved very serious consideration, but he did not believe that it destroyed the rights of the coastal State. The basis of the right to dictate conservation measures was the urgency of the need to do so, and the present text clearly stipulated that the measures could only be suspended if it could be shown that there was no such urgency. Even if paragraph 2 was not included in article 58, the special commission would in any case have to adjudicate on the question of urgency, under the terms of article 55. Paragraph 2 merely enabled the commission to pronounce earlier on that question; in other words, a decision on it might be reached within three months instead of eight months. A difference of five months was no major infringement of the rights of the coastal State.

21. The intention had never been that a decision to suspend conservation measures should be taken before both parties to the dispute had been heard as required in any judicial proceeding. Paragraph 2 merely placed special emphasis on determining at an earlier stage, but after both parties had been heard on the matter, whether or not conservation measures were justified on grounds of urgency.

22. Mr. POPOVIC (Yugoslavia), on a point of order, said that since his delegation's proposal (A/CONF.13/C.3/L.15) had the effect of deleting paragraph 2 of article 58 it was further removed in substance from the International Law Commission's draft than the joint proposal and should therefore be voted on first.

23. The CHAIRMAN ruled that the order of voting had already been approved by the Committee and that the Yugoslav proposal would therefore have to be voted on after the three-power proposal.

24. The CHAIRMAN put to the vote the oral amendment to the three-power proposal (A/CONF.13/C.3/L.68) proposed by the representative of Ecuador.

At the request of the representative of Ecuador, a vote was taken by roll-call.

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

In favour: Panama, Peru, Philippines, Uruguay, Venezuela, Yugoslavia, Argentina, Bolivia, Burma, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Indonesia, Iran, Mexico.

Against: New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Australia, Belgium, Bulgaria, Canada, Ceylon, China, Cuba, Czechoslovakia, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Ghana, Greece, Ireland, Israel, Italy, Japan, Liberia, Monaco, Netherlands.

Abstentions: Nicaragua, Tunisia, United Arab Republic, El Salvador, Honduras, Iceland, India, Republic of Korea.

The Ecuadorian amendment was rejected by 39 votes to 17, with 8 abstentions.

25. Mr. GARCIA AMADOR (Cuba) said that he had voted against the amendment because he believed that the three-power proposal amending article 58 safeguarded the rights accorded to the coastal State under article 55; the vote had shown that fears to the contrary were not justified.

26. Mr. REGALA (Philippines) said that he did not consider it in accordance with established practice for additional arguments to be introduced into explanations of votes.

27. Mr. CORREA (Ecuador) said that as his amendment had been rejected he would be obliged to vote against the present text of the three-power proposal.

28. Mr. OZORES (Panama) asked that the three-power proposal should be voted paragraph by paragraph.

Paragraph 1 of the three-power proposal (A/CONF.13/C.3/L.68) as amended was adopted by 43 votes to 8, with 11 abstentions.

29. The CHAIRMAN put to the vote paragraph 2 of the three-power proposal as amended.

At the request of the representative of Ecuador, a vote was taken by roll-call.

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

In favour: Cuba, Denmark, Dominican Republic, El Salvador, Finland, France, Federal Republic of Germany, Ghana, Greece, Honduras, Iceland, Ireland, Israel, Italy, Japan, Liberia, Monaco, Netherlands, New Zealand, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, Canada, Ceylon, China.

Against: Colombia, Costa Rica, Czechoslovakia, Ecuador, Guatemala, Indonesia, Iran, Republic of Korea, Mexico, Panama, Peru, Philippines, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia, Albania, Argentina, Bolivia, Bulgaria, Burma, Chile.

Abstentions: India, Nicaragua, Poland, Tunisia, United Arab Republic.

Paragraph 2 of the three-power proposal (A/CONF.13/C.3/L.68) as amended was adopted by 35 votes to 24, with 5 abstentions.

The three-power proposal (A/CONF.13/C.3/L.68) as amended, was adopted as a whole by 30 votes to 16, with 3 abstentions.

30. Mr. POPOVIC (Yugoslavia) said that his delegation had submitted its proposal (A/CONF.13/C.3/L.15) in the belief that criteria should be established as a basis for the decisions of the special commission, and that paragraph 2 of the International Law Commission's draft article 58 should not be included. Conservation measures, whether adopted by the coastal State or by other States, should remain in force pending the final decision of the special commission; for such measures did not exclude foreign fishermen, but merely required them to comply with the same rules as the nationals of the coastal State. The continuation of conservation measures in force for a period of a few months pending the final award would be no hardship for foreign fishermen. However, in view of the fact that the three-power proposal had been adopted by the Committee, he would not press his delegation's amendment to a vote.

The meeting rose at 7.40 p.m.

THIRTY-THIRD MEETING

Tuesday, 15 April 1958, at 10.20 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLE 59 (PEACEFUL SETTLEMENT OF DISPUTES) (A/CONF.13/C.3/L.1, L.16, L.19, L.61, L.64, L.73) (continued)

1. The CHAIRMAN pointed out that the Mexican proposal (A/CONF.13/C.3/L.1) conflicted with provisions that had already been adopted. He therefore proposed that the Committee should decide to dispense with a vote on it.

The Chairman's proposal was adopted by 29 votes to none, with 1 abstention.

2. The CHAIRMAN observed that there was no need to take a vote on the proposal of the Republic of Korea (A/CONF.13/C.3/L.64), which was closely allied to the Mexican proposal.

3. Mr. POPOVIC (Yugoslavia) withdrew his proposal (A/CONF.13/C.3/L.16), since it was consequential

upon article 57, which his delegation could not support in the form in which it had been adopted.

4. Mr. KRYLOV (Union of Soviet Socialist Republics) withdrew his amendment (A/CONF.13/C.3/L.61) and said that his delegation would reintroduce it in the plenary conference.

5. Mr. ALVAREZ (Uruguay) said that the purpose of his delegation's proposal (A/CONF.13/C.3/L.73) concerning article 59 was to extend the application of paragraph 2 of Article 94 of the United Nations Charter to the decisions of the arbitral or special commission provided for in the article 57 approved by the Committee. The proposal would allow one of the parties in a dispute to have recourse to the Security Council if the other party failed to discharge the obligations incumbent on it in virtue of an arbitral decision of the special commission.

6. Uruguay considered it necessary that there should be a guarantee, on the international level, of the implementation of the decisions of the special commission, which were of vital importance to the States concerned and to the international community as a whole. Moreover, from the legal point of view, the Uruguayan proposal completed the system of peaceful settlement provided in articles 57, 58 and 59 of the International Law Commission's draft, which had been confined to rendering compulsory the decisions of the arbitral commission. As regards their practical effectiveness, the proposed amendment would place such decisions on the same footing as the decisions taken by the International Court of Justice in matters relating to the continental shelf in conformity with article 73 as approved by the Fourth Committee.

The Uruguayan proposal (A/CONF.13/C.3/L.73) was adopted by 8 votes to 5, with 29 abstentions.

The International Law Commission's text of article 59, as amended, was adopted by 35 votes to none, with 10 abstentions.

ADDITIONAL ARTICLES 59 A AND 59 B PROPOSED BY NORWAY (A/CONF.13/C.3/L.62, A/CONF.13/C.3/L.63)

7. Mr. LUND (Norway), introducing his proposal for a new article 59 A (A/CONF.13/C.3/L.62), said that his delegation had been anxious to make the proposed system more adjustable to changing conditions. All fisheries experts would agree that conservation measures were open to change, even if they were based on sound scientific findings. Fishing was only one of the factors influencing marine resources; environmental variations had an even greater effect on the growth and reproduction of the fish population. Accordingly, natural functions could not be regulated solely by conservation measures and regulations should be based on other factors, such as the types of gear used, the introduction of vessels which could remain at sea for long periods, the use of large factory ships and new methods of detecting shoals of fish. It was only reasonable to allow for the review of arbitral awards in the light of such changes.

8. Mr. RUIVO (Portugal), Mr. OZERE (Canada) and Mr. CHRISTENSEN (Denmark) supported the Norwegian proposal.

The Norwegian proposal (A/CONF.13/C.3/L.62) was adopted by 39 votes to 2, with 9 abstentions.

9. Mr. LUND (Norway), introducing his proposal for a new article 59 B (A/CONF.13/C.3/L.63), recalled his delegation's statement in the general debate (5th meeting) concerning the relationship between the articles on fishing and existing international conventions. The articles envisaged two main stages with regard to the conservation problems. In the first place, the parties concerned should seek agreement; secondly, failing such agreement the dispute should be settled by an outside body, such as the commission referred to in article 57. It was generally agreed that States parties to conventions had to conduct their negotiations through the procedures established by such instruments. The question now arose whether the new rights approved in the articles were applicable in cases where conventions did not result in the adoption of the measures concerned. A comparison between the list of international conventions on conservation in chapter V of the report of the 1955 Rome Conference¹ and the statistics published by the Food and Agriculture Organization of the United Nations in a document entitled "The Economic Importance of the Sea Fisheries in Different Countries" (A/CONF.13/16) showed that the world catch of fish was mostly derived from areas covered by international conservation conventions. Accordingly, the extent to which the articles were applicable to parties to such conventions was a very important factor.

10. The purpose of the Norwegian proposal was to provide an answer to the question referred to in paragraph 31 of the International Law Commission's report (A/3159, p. 4). International conventions on conservation fell into two categories: first, conventions concerning fixed measures combined with an international commission having the power to recommend amendments in accordance with prescribed procedure; and, secondly, conventions not containing fixed regulatory measures, but providing for an international commission having the power to recommend specific regulations. In that connexion, he cited paragraph 75 of the report of the Rome Conference.¹ The International Law Commission's articles were not intended to improve the existing conservation system, but only to solve problems where no satisfactory agreement existed. The Norwegian delegation therefore considered it unnecessary to make the articles applicable to parties to existing conventions, for they were at liberty to insert arbitration clauses in those instruments. Furthermore, where regulatory measures were covered by existing conventions, new measures would not be binding upon the parties without their consent.

11. The Norwegian delegation's attitude was based on its experience in several conservation commissions, the main task of which was to develop more intensive research on the national and the international level, to

balance scientific requirements of conservation with the interests of the States and to reduce differences of structure in the fishing industry of various countries. However, if it was the general feeling of the Committee that conservation systems would be improved by extending the application of the articles to parties to conventions, his delegation would consider the opinions expressed very carefully.

12. Mr. SCHERMERS (Netherlands) said he would vote for the Norwegian proposal, which was very important to States parties to many special conventions.

13. In reply to a question from Mr. GARCIA AMADOR (Cuba), Mr. LUND (Norway) said that it might be left to the drafting committee to decide where his delegation's text should be inserted.

14. Mr. OLAFSSON (Iceland) said he could not vote for the Norwegian proposal, as it would render the provisions of article 55 completely illusory.

15. Mr. CORREA (Ecuador) observed that, although there might be certain special agreements debarring the parties from adopting measures under article 55, the terms of other such instruments might not exclude unilateral measures. Hence he would not be able to vote for the Norwegian proposal, which prescribed an inflexible rule, liable to restrict the scope of action of States parties to special conventions.

16. Mr. RUIVO (Portugal) supported the Norwegian proposal, which provided the best guarantees for enabling the regional commissions to take measures and make recommendations in accordance with the latest scientific developments. Unilateral action by members of regional fishing commissions might jeopardize conservation measures.

17. Mr. HERRINGTON (United States of America) said that, although his delegation sympathized with the motives of the Norwegian proposal, it doubted whether such an article would encourage co-operation among nations in the matter of conservation. On the contrary, it might prevent States from acceding to existing conventions and might even result in denunciation by States parties to such instruments. An essential factor of the success of international fisheries conventions had been their voluntary nature; the parties could always agree on a voluntary basis not to invoke the rights agreed in article 55.

18. Mr. GANDJI (Iran) agreed with the United States representative; besides, the Committee did not yet know what would be the final text of paragraph 2 of article 52.

19. Mr. MALLIN (Ireland) doubted whether the proposed new article would achieve the purpose for which it was intended. In some cases, a coastal State might be obliged to introduce conservation measures on a regional basis and then to seek the agreement of a number of other States. The consequent delay might be such as to vitiate the whole meaning of the provisions that the Committee had already adopted for article 55.

20. Ireland was a party to many fishing conventions and his delegation considered that nothing should be done to render those instruments less acceptable to

¹ cf. *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No.: 1955.II.B.2), paras. 26 to 42.

States. The ultimate effect of the Norwegian proposal might be to weaken, not to strengthen, existing conventions and to discourage the signature of new ones.

21. Mr. LUND (Norway), referring to the observations of the Ecuadorian representative, said that the Norwegian delegation's proposal was concerned with existing conventions and that new instruments would not be affected thereby.

22. He could not agree with the United States representative that the effect of his proposal would be to discourage parties to conventions from applying the provisions of those instruments. The main requirement was to clarify the relationship between the articles and existing conventions. His delegation would be interested in any suggestions that might improve the proposal.

23. Mr. PANIKKAR (India) said that regional fishing commissions had hardly begun to operate in south-east Asia, and that the region was the subject of few regional conventions. He was inclined to agree with representatives who considered that the acceptance of the article would be unlikely to encourage many States to accede to such instruments. Moreover, despite the Norwegian representative's explanation, he thought that the article might act as a deterrent to the negotiation of new conventions.

24. Mr. WALL (United Kingdom) recalled his delegation's statement in the general debate (7th meeting) that the cause of conservation would be advanced if the parties concerned were prepared to abide by the decisions of an impartial body. That view applied even in the case of disputes between members of a conservation body. Accordingly, he felt that the consequences of the Norwegian proposal might be harmful. It would be better not to adopt any mandatory provision, but to leave States to decide for themselves whether or not they should apply the procedure set forth in articles 57 and 58. He hoped the Norwegian representative would not press for a vote on his proposal.

25. Mr. OZERE (Canada) agreed with that view. Canada was a party to many fishing conventions and was anxious to encourage conservation by means of general international agreement, but that purpose was unlikely to be furthered by the adoption of the Norwegian proposal.

26. Mr. SCHERMERS (Netherlands) agreed with the Iranian representative that it was difficult to vote on the Norwegian proposal without knowing what the text of paragraph 2 of article 52 would be. He thought, however, that the proposal covered existing conventions and that a clause concerning the relationship between the articles and future agreements would be required.

27. The proposal might be amended slightly to make it more acceptable to many delegations. He therefore proposed that the vote on it should be postponed, pending informal discussion.

The Netherlands proposal was adopted by 38 votes to none, with 20 abstentions.

ADDITIONAL ARTICLE PROPOSED BY THE UNITED KINGDOM (A/CONF.13/C.3/L.28)

28. Mr. WALL (United Kingdom) said that his delegation proposed a new article to be inserted immediately after article 55 (A/CONF.13/C.3/L.28) because conservation conventions and commissions which had been in existence for a long time had proved to be very successful institutions; they provided an excellent means of centralizing scientific resources and speeding up conservation work, and gave better results than *ad hoc* negotiations. The purpose of the new draft article was merely to ensure that the negotiations referred to in articles 52, 53, 54 and 55 should be conducted through such a commission in cases in which one existed. The adoption of the proposal would not affect the rights of the States which were members of such commissions, as would the adoption of the Norwegian proposal (A/CONF.13/C.3/L.63). There was nothing sinister about the proposal; his delegation was not trying to place a limitation on the rights of the coastal State.

29. Mr. LUND (Norway) said he agreed with the United Kingdom proposal as far as it went. Since, however, the subject of that proposal was closely connected with the subject of his delegation's proposal, he wished to propose that further discussion on it be deferred, so that in the meantime those interested in the two proposals could meet together informally with a view to drafting a new text acceptable to the majority.

30. Mr. WALL (United Kingdom) said he was already to respond to that proposal, if the majority of the Committee was in favour of its adoption.

The proposal of the Norwegian representative was adopted by 48 votes to none, with 10 abstentions.

OUTSTANDING PARAGRAPHS IN ARTICLES 52 TO 56

Article 52, paragraph 2 (A/CONF.13/C.3/L.31, L.37, L.48)

31. Mr. ALVAREZ (Uruguay) said that his delegation had proposed (A/CONF.13/C.3/L.31) that the words "a period of six months" be substituted for the words "a reasonable period of time" because paragraph 2 should be made as explicit as possible, and that six months was a reasonable period of time in the circumstances, especially since that was also the period mentioned in article 55 as approved by the Committee (A/CONF.13/C.3/L.77).

32. Mr. WALL (United Kingdom) said that the sponsors of the nine-power proposal (A/CONF.13/C.3/L.48) agreed that a specific period of time should be mentioned in the paragraph, but they thought that the period should be twelve months, not six. He would point out that the clause in article 55 to which the representative of Uruguay had just referred related to urgent cases whereas the paragraph under discussion related to ordinary cases. Much time was always required to obtain the scientific and other data which were necessary for planning sound conservation measures.

The nine-power proposal (A/CONF.13/C.3/L.48) was adopted by 33 votes to 6, with 17 abstentions.

33. The CHAIRMAN ruled that the decision just taken implied the rejection of the Uruguayan proposal (A/CONF.13/C.3/L.31) and that it was unnecessary to vote on the Spanish proposal (A/CONF.13/C.3/L.37) since in substance it was exactly the same as the proposal just adopted.

Paragraph 2 of article 52, as amended, was approved on first reading by 41 votes to none, with 15 abstentions.

Article 53, paragraph 2 (A/CONF.13/C.3/L.3, L.11, L.31, L.32, L.36, L.37)

34. Mr. ALLOY (France) withdrew his delegation's proposal regarding paragraph 2 of article 53 (A/CONF.13/C.3/L.3), saying that he would vote in favour of specifying that the period referred to should be twelve months.

35. Mr. ALVAREZ (Uruguay) withdrew his delegation's proposal relating to the paragraph (A/CONF.13/C.3/L.31) because of the decision just taken by the Committee on paragraph 2 of article 52.

36. The CHAIRMAN said that the proposals submitted by the delegations of Japan (A/CONF.13/C.3/L.32), Spain (A/CONF.13/C.3/L.37) and Sweden (A/CONF.13/C.3/L.36) regarding the paragraph were exactly the same in substance.

The substance of those proposals was adopted by 39 votes to none, with 16 abstentions.

37. Mr. POPOVIC (Yugoslavia) said his delegation had decided to withdraw its proposal regarding the paragraph (A/CONF.13/C.3/L.11) in view of the rejection, at the 32nd meeting, of the proposal made orally by the representative of Ecuador regarding article 58.

Paragraph 2 of article 53, as amended, was approved on first reading by 42 votes to 7, with 6 abstentions.

*Article 54, paragraph 3
(A/CONF.13/C.3/L.3, L.13, L.33, L.37, L.43)*

38. Mr. POPOVIC (Yugoslavia) withdrew his delegation's proposal (A/CONF.13/C.3/L.13) in so far as it related to paragraph 3 of article 54.

39. The CHAIRMAN said that several delegations had made proposals of which the substance was to specify a period of twelve months in place of the words "within a reasonable period of time". He put the substance of those proposals to the vote.

The substance of those proposals was adopted by 39 votes to 1, with 14 abstentions.

40. The CHAIRMAN declared that the decision just taken by the Committee implied the rejection of every proposal to the effect that the period in question should be longer or shorter than twelve months.

41. He put to the vote the proposal regarding paragraph 3 submitted jointly by the Netherlands, Portugal, the United Kingdom and the United States of America (A/CONF.13/C.3/L.43), saying that the purpose of that proposal was solely to make the meaning of the article clearer.

The proposal was adopted by 23 votes to one, with 17 abstentions.

Paragraph 3 of article 54, as amended, was approved on first reading by 44 votes to one with 11 abstentions.

*Article 55, paragraph 3
(A/CONF.13/L.3, L.13, L.37)*

42. Mr. POPOVIC (Yugoslavia) withdrew the part of his delegation's proposal (A/CONF.13/C.3/L.13) relating to paragraph 3 of article 55.

43. Mr. MELO LECAROS (Chile) said that the second sentence of paragraph 3 of the International Law Commission's draft article 55 should not be put to the vote, since earlier decisions on other parts of the Commission's draft implied that the Committee had rejected that sentence. It was inconsistent in particular with paragraph 3 of the text for article 55 in document A/CONF.13/C.3/L.77.

44. Mr. AGUERREVERE (Venezuela) agreed with the representative of Chile.

45. Mr. LUND (Norway) was of the opinion that the substance of the sentence was consistent with the decisions taken by the Committee on other parts of the text. He said that the whole of paragraph 3 of the Commission's text for article 55 should be put to the vote. He drew attention to the note at the end of document A/CONF.13/C.3/L.77.

46. Mr. GARCIA AMADOR (Cuba) said that there was no conflict of substance so far as the sentence in question was concerned. The word "settlement" in paragraph 3 of the text in document A/CONF.13/C.3/L.77 had been incorrectly translated into Spanish.

47. Mr. CORREA (Ecuador) said that the sentence was, to say the least, unnecessary in view of paragraph 2 of the text for article 58 adopted by the Committee at the previous meeting. The sentence should not be put to the vote. If it were, he would vote against it.

48. Mr. GANDJI (Iran) said that, for the reasons explained by the representative of Ecuador, he also would vote against the sentence if it were put to the vote.

49. Mr. RIGAL (Haiti) said that he too would vote against the sentence, because measures taken unilaterally of the kind to which the sentence related should not remain in force if the special commission mentioned in article 57 considered that they should be suspended.

50. Mr. GARCIA AMADOR (Cuba) proposed that all the texts in question should be referred to the drafting committee to be appointed by the Committee.

51. Mr. HERRINGTON (United States of America) supported the Cuban representative's proposal.

The proposal of the representative of Cuba was adopted by 46 votes to 3, with 7 abstentions.

52. Mr. AGUERREVERE (Venezuela) said he had voted for the proposal on the understanding that the drafting committee would not change the substance of any text which had been approved by the Committee.

Article 56, paragraph 2 (A/CONF.13/C.3/L.3, L.30, L.31, L.33, L.36, L.37)

53. The CHAIRMAN put to the vote the substance of the proposals of Japan (A/CONF.13/C.3/L.32), Spain (A/CONF.13/C.3/L.37) and Sweden (A/CONF.13/C.3/L.36) to the effect that a period of twelve months should be specified in place of the words "within a reasonable period".

The substance of those proposals was adopted by 38 votes to one, with 18 abstentions.

54. The CHAIRMAN ruled that the decision just taken by the Committee implied the rejection of the French proposal relating to the paragraph (A/CONF.13/C.3/L.3) and of the Uruguayan proposal relating to the paragraph (A/CONF.13/C.3/L.31).

55. Mr. KRYLOV (Union of Soviet Socialist Republics) said that he had agreed with the representative of Poland to withdraw their joint proposal (A/CONF.13/C.3/L.30), in view of the decision just taken regarding the Japanese, Spanish and Swedish proposals.

Paragraph 2 of article 56, as amended, was approved on first reading by 46 votes to 7, with 4 abstentions.

56. Mr. LLOSA (Peru) explained that he had abstained during the voting on all the texts adopted at the meeting which reinforced the arbitration system approved by the Committee, because he was opposed to that system in as much as it did not provide the coastal State with the necessary guarantees against unfair fishing on the part of nationals of other States in the areas of the high seas adjacent to its coast.

The meeting rose at 12.50 p.m.

THIRTY-FOURTH MEETING

Tuesday, 14 April 1958, at 3.20 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ARTICLE 60 (FISHERIES CONDUCTED BY MEANS OF EQUIPMENT EMBEDDED IN THE FLOOR OF THE SEA) (A/CONF.13/L.7, L.51, L.74, L.75)

1. Mr. PANIKKAR (India), introducing his delegation's amendment (A/CONF.13/C.3/L.51), said that for several centuries, long before state legislation on fisheries, fishermen on the west coast of India had used permanent installations of stakes and adjunct equipment in fishing with bottom nets. Fishing families had hereditary rights over the staked areas.

2. The species caught were demersal fish, belonging to the régime of the high seas, but the waters were shallow and unsuitable for navigation by large vessels. Moreover, recognition of freedom of fishing in such areas would mean unavoidable friction between the fishing communities of different nations. It would be

as undesirable for Indian fishermen to establish such permanent equipment on the continental shelf of an adjacent State as it would be for foreign fishermen to do so in Indian coastal waters. His delegation therefore proposed to delete the provision permitting non-nationals to take part in such fishing activities on an equal footing with nationals. If the Conference could not accept that proposal on legal grounds, India would reserve the right to seek protection for such fisheries under prescriptive rights.

3. There should be a closer definition of "equipment embedded in the floor of the sea". All the three principal gear types described in the introduction in the document prepared by the Food and Agriculture Organization of the United Nations and entitled "Technical Particulars Concerning the Methods of Fishing conducted by Means of Equipment Embedded in the Floor of the Sea" (A/CONF.13/12) were used by India's coastal fishermen, but they should not all be protected under article 60, which should exclude easily removable traps, anchored nets, and various types of equipment used for long lining and pelagic fishing. He would accordingly accept the definition of the gear in the Ghana proposal (A/CONF.13/C.3/L.74).

4. Article 68, in the form adopted by the Fourth Committee, granted the coastal State exclusive rights to exploit anything in its continental shelf. It would therefore be unrealistic to allow all nationals to fish the surface of the shelf with permanent equipment. Whatever the juridical status of that anomalous situation, any decision which took away the coastal fishermen's age-old rights would be unfair.

5. Article 60 provided that regulations adopted by the coastal State would not affect the general status of the areas as high seas, and the same idea seemed to underlie the Portuguese proposal (A/CONF.13/C.3/L.75). Fishing with other than the traditional national equipment should, of course, be free; but his delegation could not accept the present wording of that amendment, because the expression "different kinds of sedentary fishing gears" could include the type of fishing that the amendments proposed by India and Ghana were seeking to protect.

6. Mr. CHEN (China) said that if protection was to be given to small fishermen striving to earn a living, article 60 would be an appropriate place to give it, and he would therefore support the Indian amendment. He also supported the definition in paragraph 2 of the Ghana amendment.

7. Mr. LUND (Norway) said that the protection of permanent fixed fishing equipment was a major international problem, of which article 60 dealt with only a small and rather specialized aspect. Norwegian fishermen frequently suffered damage from trawlers to their long lines and anchored nets. The international Convention for regulating the Police of the North Sea Fisheries, signed at The Hague in 1882, had attempted to deal with the problem, but had been made obsolete by progress in fishing techniques. The problem would have to be dealt with internationally, but the Conference could not consider it at the present stage and should not consider any single aspect of it not presenting an urgent problem of international law.

8. Mr. KASUMA (Indonesia) supported the Indian amendment because the situation was similar in his country. Sixty per cent of the total fish-catch was obtained by simple trap systems which had been established for centuries and on which the local fishermen depended for their livelihood. The large number of such fisheries in the superjacent waters of Indonesia's continental shelf and their great importance to the country's economy made the Indian amendment essential. His delegation also was in favour of the definition in paragraph 2 of the Ghana amendment.

9. Mr. CORREA (Ecuador) said that the Indian amendment made article 60 consistent with article 68 as adopted by the Fourth Committee. It accorded with his country's policy of supporting the rights of the coastal State, and he would therefore vote for it.

10. Mr. OZERE (Canada) said that, since article 60 referred to a single special aspect of fishing, the principle proposed in the Indian amendment might be accepted without any danger of establishing a precedent for other types of fishery. He agreed that in that particular case it would be impracticable to allow other nationals to participate. The Indian amendment was, however, very close to paragraph 1 of the Ghana amendment, which he slightly preferred.

11. Mr. TSURUOKA (Japan) considered that paragraph 2 of the Ghana amendment was acceptable since it was quite an improvement on the International Law Commission's text in that the definition as set forth in that paragraph would help to avoid disputes which might arise with respect to the interpretation of "fisheries conducted by means of equipment embedded in the floor of the sea". His delegation would find it difficult to accept paragraph 1 of the Ghana amendment without some additional phrase such as "in the absence of opposition by the States concerned".

12. Mr. PANIKKAR (India) said that for the sake of agreement he would accept the Ghana proposal, so that the two proposals could be considered together and the drafting committee could reconcile them.

13. Mr. QUARSHIE (Ghana), introducing his delegation's proposal (A/CONF.13/C.3/L.74), said that fishing with fixed gear had long been established in his country, which had suffered considerably from destruction of the gear by fishing vessels of other nations. Whatever the legal issues, to permit non-nationals to take part in such fishing in the waters of the coastal State was not only in conflict with the provisions of article 68 as adopted but might do considerable harm to the economies of such countries as Ghana.

14. Mr. HERRINGTON (United States of America) said that, in view of the special situation of the fisheries concerned, he would find article 60 more acceptable if the two ideas embodied in the Ghana and Indian amendments were included.

15. Mr. THURMER (Netherlands) asked whether, since some coasters drew only two metres of water, the representatives of Ghana and India would consider adding the words "such gear should by no means hinder navigation".

16. Mr. PANIKKAR (India) said that, although he had no objection in principle to that suggestion, it was in practice unnecessary since the special fisheries concerned could only survive in areas where there was no regular navigation. Moreover, that problem might more suitably be dealt with by the Second Committee. He therefore could not accept the Netherlands representative's suggestion.

17. Mr. QUARSHIE (Ghana) agreed with the representative of India.

18. Mr. WALL (United Kingdom), supported by Mr. REGALA (Philippines), said that since the Indian amendment and paragraph 1 of the Ghana amendment had the same object, it would be advisable to vote first on the Ghana amendment. If that were adopted, the Indian amendment would no longer be necessary.

19. Mr. PANIKKAR (India), explained that his delegation's practical requirements would be met by paragraph 1 of the Ghana amendment, but his own amendment was needed to bring article 60 into legal harmony with article 68 as adopted. He agreed, however, that the Ghana amendment should be put to the vote first.

The Ghana proposal (A/CONF.13/C.3/L.74) was adopted by 35 votes to one, with 21 abstentions.

The Indian proposal (A/CONF.13/C.3/L.51) was adopted by 22 votes to 7, with 27 abstentions.

20. Mr. WALL (United Kingdom) said that he had wished to speak a few minutes earlier, but had not been called upon. He submitted that under rule 40 of the rules of procedure the Indian amendment, being incompatible with paragraph 1 of the Ghana amendment which had already been adopted, could not be voted upon, and he therefore proposed that that vote should be annulled.

21. The CHAIRMAN put to the vote the United Kingdom proposal that the vote on the Indian amendment (A/CONF.13/C.3/L.51) should be annulled.

The proposal was adopted by 20 votes to 17, with 10 abstentions.

22. Mr. CORREA (Ecuador) did not consider it correct procedure to decide that a vote was out of order after it had taken place. Any such question should be raised before the vote.

23. U KHIN (Burma), introducing his delegation's amendment (A/CONF.13/C.3/L.7), said that it should have been voted on before the other two amendments. Burma had proposed the deletion of article 60 because the right of the coastal State to regulate fisheries was made conditional on long previous exercise by its nationals. Many under-developed States might find that they could extend their existing fisheries with state encouragement; in that case the coastal State could not regulate the new fisheries. All along the coast of Burma there were fisheries of the type in question. The very nature of such operations meant that none of the fisheries could be far from the coast. Some of them would be outside a territorial sea of six miles, but all would be inside a territorial sea of twelve miles. All were regulated by the Burma Fisheries Act of 1887,

which also covered any such fisheries that might be added from time to time.

24. The situation he described existed not only in Burma, but also in all other countries possessing the same type of fisheries. Since interference with the régime of the high seas by such fisheries would be negligible, his delegation had considered that it would be better to leave unchanged the present situation, in which the prescriptive rights of the coastal State were tacitly recognized in international law.

25. In the light of the debate he now suggested, however, that article 60 might be retained if the phrase "where such fisheries have long been maintained and conducted by its nationals" were deleted. He therefore proposed the deletion of that phrase instead of the deletion of the whole article.

26. Mr. REGALA (Philippines) said that, in view of the Ghana amendment already adopted, which included a phrase relating to long usage, there would be no point in considering the new Burmese proposal.

27. Mr. DE JAUREGUI (Spain) agreed.

28. Mr. AGUERREVERE (Venezuela) supported the new proposal put forward by the Burmese representative, which would remove an element of uncertainty from article 60 and better protect the rights and interests of coastal States. The proposal in no way contradicted the Ghana proposal adopted by the Committee.

29. Mr. PANIKKAR (India) regretted the procedural difficulties which had arisen in connexion with his proposal. He was satisfied with the decision to annul the vote on his proposal, and agreed with the United Kingdom representative's views on procedure.

30. While sympathizing with the reasons for the new Burmese proposal, he feared that it might contradict the provisions already adopted, and hoped that the representative of Burma would withdraw it.

31. U KHIN (Burma) saw no contradiction whatever between his new proposal and that of Ghana. For reasons already stated, he considered the deletion of the phrase "where such fisheries have long been maintained and conducted by its nationals" to be essential.

The new Burmese proposal was rejected by 20 votes to 5, with 27 abstentions.

32. The CHAIRMAN remarked that, in view of the adoption of the Ghana proposal, the Portuguese proposal (A/CONF.13/C.3/L.75) need not be put to the vote.

33. Mr. RUIVO (Portugal) amended his proposal to read "... and shall not discriminate against foreign fishermen working with different kinds of fishing gears." The proposal as amended would, he said, not conflict with the provisions of the Ghana proposal already adopted; the Ghana proposal related to fisheries conducted by means of equipment embedded in the floor of the sea, whereas the amended Portuguese proposal was intended to ensure the freedom of operation of mobile fishing devices, such as those used in shrimp trawling.

34. Mr. QUARSHIE (Ghana) felt that it would be most regrettable if the Committee adopted the Portuguese proposal, thereby weakening the provisions of the Ghana proposal.

35. Mr. FREMLIN (Sweden) said that he had voted for the Ghana proposal but would also support the Portuguese proposal; the two were in no way inconsistent.

36. Mr. REGALA (Philippines) feared that the adoption of the Portuguese proposal in addition to the Ghana proposal would render the whole of article 60 ineffective.

37. Mr. PANIKKAR (India) said that the Portuguese proposal was not inconsistent with the Ghana proposal but not really necessary; the principle it sought to establish was embodied in other articles on fishing on the high seas already adopted by the Committee. The Ghana proposal detracted from that principle only in respect of the special case of fishing by means of equipment embedded in the floor of the sea.

38. Mr. WALL (United Kingdom) agreed with the representative of India. The Portuguese proposal neither detracted from nor added to the provisions already adopted; he had no objection to its adoption as a clarifying clause, but thought it should not be linked with the concept of discrimination against foreign fishermen, since the principle of non-interference with mobile fishing equipment should apply equally to nationals of the coastal State and of foreign States.

39. Mr. THURMER (Netherlands) also agreed with the representative of India.

40. Mr. QURESHI (Pakistan) pointed out that article 60 was specifically connected with fisheries conducted by means of equipment embedded in the floor of the sea. The Portuguese proposal was therefore out of place.

41. Mr. RUIVO (Portugal), having regard to the views expressed in the discussion, withdrew his proposal.

Article 60 as amended was adopted by 49 votes to one, with 7 abstentions.

ARTICLE 49 (RIGHT TO FISH)

(A/CONF.13/C.3/L.12, L.20, L.24, L.50, L.72, L.79)

42. The CHAIRMAN stated that the Italian proposal (A/CONF.13/C.3/L.24), having been adopted at a previous meeting, was no longer before the Committee.

43. Mr. OLAFSSON (Iceland) said that he would prefer his proposal (A/CONF.13/C.3/L.79) to be discussed in connexion with the other proposals concerning claims to exclusive or preferential fishing rights on the basis of special conditions, rather than with article 49.

44. Mr. THURMER (Netherlands) withdrew his proposal (A/CONF.13/C.3/L.20).

45. Mr. POPOVIC (Yugoslavia) pointed out that his proposal to add an article 53 A (A/CONF.13/C.3/L.12) was closely linked with article 49 and dealt with the same subject as the Indian proposal (A/CONF.13/

C.3/L.50). Accordingly he proposed that it should be considered in connexion with article 49.

46. Mr. KRYLOV (Union of Soviet Socialist Republics) said that both the Yugoslav and the Indian proposals were outside the competence of the Third Committee and within that of the First Committee.

47. Mr. PANIKKAR (India), while denying that his proposal was outside the competence of the Third Committee, since it was directly linked with article 49 which had been assigned to that committee, suggested that its consideration might be postponed for a few days while similar questions were being discussed in the First Committee. He further suggested that, since all the proposals relating to article 49 concerned additions, the International Law Commission's text of that article might be discussed and voted on forthwith.

48. Mr. POPOVIC (Yugoslavia) associated himself with the Indian representative's remarks. He suggested that consideration of his proposal (A/CONF.13/C.3/L.12) also might be deferred for a few days.

49. Mr. KRYLOV (Union of Soviet Socialist Republics) accepted the suggestion made by the representatives of India and Yugoslavia.

50. Mr. GARCIA AMADOR (Cuba) remarked that proposals concerning exclusive fishing rights were being discussed in the First Committee in connexion with article 66 on the contiguous zone. Since the question of fisheries as a whole, including exclusive and preferential fishing rights, had been assigned to the Third Committee, it might be argued that those proposals were outside the First Committee's competence, but not that the proposals of India and Yugoslavia were outside that of the Third Committee. He agreed, however, that for practical reasons it might be advisable to defer consideration of the Indian and Yugoslav proposals pending a decision on related matters in the First Committee.

51. Mr. THURMER (Netherlands) disagreed, holding that the Indian proposal should be considered by the First Committee.

52. Mr. OZERE (Canada) endorsed the suggestion for a postponement. If that suggestion were not adopted, however, the question of the Third Committee's competence to discuss the Indian and Yugoslav proposals should be referred to the General Committee, which might solve the problem by arranging for a joint meeting of the First and Third Committees.

53. Mr. OLAFSSON (Iceland) and Mr. HERRINGTON (United States of America) also agreed that consideration of the Indian and Yugoslav proposals should be deferred.

54. The CHAIRMAN invited the Committee to vote on the proposal to postpone consideration of the Indian and Yugoslav proposals, including the question of the Third Committee's competence to discuss them.

The proposal was adopted by 57 votes to none, with 6 abstentions.

55. Mr. WALL (United Kingdom), introducing his proposal (A/CONF.13/C.3/L.72), recalled that during

the general debate (7th meeting) he had expressed the view that article 49 should give equal weight to the right to fish and to the duty to adopt conservation measures. That was the sole object of his proposal. It might be argued that the duty of States to adopt conservation measures was already inherent in the terms of article 49 and in those of certain other articles already adopted by the Committee. He felt, nevertheless, that his proposal would provide a desirable counter-balance to the provisions of article 49 in the International Law Commission's draft.

56. Mr. PANIKKAR (India), Mr. CASTAÑEDA (Mexico), Mr. OLAFSSON (Iceland) and Mr. HERRINGTON (United States of America) supported the United Kingdom proposal.

The United Kingdom proposal (A/CONF.13/C.3/L.72) was adopted by 53 votes to none, with 2 abstentions.

Article 49, as amended, was adopted by 50 votes to none, with one abstention.

57. Mr. REGALA (Philippines) recalled that the Committee had decided to consider the joint proposal of the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60) in connexion with article 49.

59. The CHAIRMAN stated that the vote on article 49 would be without prejudice to the joint proposal of the Philippines and the Republic of Viet-Nam, which would be discussed subsequently.

The meeting rose at 6.5 p.m.

THIRTY-FIFTH MEETING

Wednesday, 16 April 1958, at 10.30 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

ADDITIONAL ARTICLE 59 B PROPOSED BY NORWAY (A/CONF.13/C.3/L.63) (continued ¹)

1. Mr. LUND (Norway) withdrew his delegation's proposal for the insertion of a new article immediately after article 59 (A/CONF.13/C.3/L.63), saying that his delegation had consulted with a number of representatives after the discussion which had taken place at the 33rd meeting, and had concluded that it would perhaps be best to leave the parties to fisheries conservation agreements, and the commissions named therein, to deal with the matters to which the proposal related.

ADDITIONAL ARTICLE, PROPOSED BY THE UNITED KINGDOM (A/CONF.13/C.3/L.63) (continued ¹)

2. Mr. WALL (United Kingdom) withdrew his delegation's proposal for the insertion of a new article

¹ Resumed from the 33rd meeting.

(A/CONF.13/C.3/L.28) after article 55, on the understanding that it might submit later a different proposal on the same subject, which would probably be in the form of a draft resolution.

3. The CHAIRMAN established that no member of the Committee present would object to that action.

ADDITIONAL ARTICLE TO FOLLOW ARTICLE 49,
PROPOSED BY NEPAL (A/CONF.13/C.3/L.6)

4. Mr. SHAHA (Nepal) said that Nepal was known as the land of Guatama Buddha, who was famous for his consideration and kindness towards animals. No code of rules such as that which the Conference had been convened to draw up should ignore the humanitarian, ethical and moral aspects of the problems to which it related. The purpose of his delegation's proposal (A/CONF.13/C.3/L.6) was to enjoin on those pursuing the creatures of the sea, particularly whales, not to inflict any unnecessary suffering on them. All the methods at present used for catching whales caused them great suffering. His delegation was not proposing that all whaling should be brought to an end, or that the whaling industry should be curtailed. It was aware that that industry was of great economic importance to many countries; but it wished to point out that there was no valid reason for being cruel when it was possible to be kind without additional effort. All present agreed that exploitation of the living resources of the sea should be accompanied by conservation measures, which were a form of moderation. He hoped that the Committee would display a desire for another and equally desirable form of moderation by adopting his delegation's proposal.

5. Mr. NARAYANAN (India) supported the proposal, and agreed with the ethical arguments adduced by the representative of Nepal. Scientific progress now provided humane methods for all capture and slaughter of the living creatures of the sea. The proposal permitted the use of other methods where humane methods had not been "developed to a practical state". If the majority of the Committee would not include the proposed text among the articles adopted by the Committee, he would vote in favour of embodying it in a draft resolution for adoption by the Conference.

6. U KHIN (Burma), supporting the proposal, said that it had long since been agreed that farm animals should be slaughtered by humane methods; the same rule should apply to sea animals.

7. Mr. ALVAREZ DEL VILLAR (Mexico) also expressed support for the proposal. He suggested that Mr. Lillie, the adviser to the delegation of Nepal, should be invited to speak.

8. Mr. LILLIE, adviser to the delegation of Nepal, speaking at the invitation of the CHAIRMAN, said that the text proposed by Nepal related to all sea creatures, including whales, seals and penguins, other sea birds, polar bears, the free-swimming fish, species such as crabs and lobsters, and all other creatures associated with the sea.

9. In the capture and killing of many of those creatures much unnecessary suffering was inflicted; that was not

a credit to mankind in its present age of advancement. For example, the suffering inflicted on the whale by a harpoon head exploding inside its body was one of the most dreadful torments inflicted on any creature. In addition, great waste was caused through infection of the body by putrefactive organisms from the torn intestines during the lacerated animal's long struggles. In areas such as the ice-fields of the North Atlantic, a large number of seals were taken by rifle fire, which caused both suffering and a waste quite the opposite of conservation. The careful control exercised over, for instance, the fur-sealing of the North Pacific and the sealing of South Georgia showed that such industries could be operated in a reasonably humane way. There were less widespread activities, such as the taking of polar-bear cubs and the killing of the adults, which could rarely be justified, whatever method was employed. There were conditions in the fisheries that could, of course, hardly be changed at present. People often dismissed statements about what was done to fishes by saying that they were cold-blooded; but capture in a trawl-net, although there might be no pain, was not unlike the death of a man by drowning or suffocation. Underwater spear-fishing, which was becoming increasingly destructive and frequently caused mutilation only, might soon for the sake both of conservation and of humaneness have to be ended in areas where no control was exercised.

10. Serious attempts were being made to improve the situation. For example, research had been going on for some years to perfect a humane electrical harpoon for whaling; but some delay was being caused in the final stage by the unco-operative attitude of people who feared that the adoption of new methods would make it easier for new men to take over their work. There were international agreements, as in whaling, regarding the size, numbers and species which might be caught; the observance of the rules depended entirely on the goodwill of those in the industry. There were no means of compelling any country to deep to the code of behaviour.

11. The article proposed by the delegation of Nepal would, perhaps more than any other in the law of the sea, depend on the goodwill of all countries; an appeal rather than an order. It had been suggested that the delegation of Nepal should propose the appointment of a permanent commission to determine which methods were humane and practical; the delegation thought that perhaps more might be accomplished by leaving the text, as it was, in the form of an appeal. The key point perhaps was that the observation of the proposed text would become a powerful aid to mankind's own preservation by making the observation of the conservation articles something that came naturally to men because of a personal regard for life. If men continued to destroy life cruelly by mechanical and chemical means, and to pollute their surroundings in this world by increasing radioactivity, they would almost certainly never find anywhere else in our universe that they could call home. If all representatives believed that men had the right to take the lives of the creatures of the sea at will, they should surely be considerate enough to lay down at least that those creatures should be deprived of their lives in as humane a way as possible. The creatures of the sea were entirely in man's

power. Men could inflict unnecessary suffering on them, arguing that to take their lives humanely would cost more and would not be good business, or that it was not their concern, but that of others ; or men could have consideration for them in the belief that life meant something more than material success.

12. Mr. DE LA PRADELLE (Monaco) supported the principle of the Nepalese proposal. Unnecessary suffering should not be inflicted on whales and other creatures of the sea. They had developed from the same common ancestor as man. The adoption of the proposal would improve international law. He had been shocked by accounts he had read of the massacring of seals in the Behring Sea. He thought, however, that the text proposed went somewhat too far. It should be amended to read "In catching and slaughtering the living creatures of the sea unnecessary suffering should be avoided as far as possible."

13. Mr. QUARSHIE (Ghana) also supported the principle of the proposal. Societies concerned with the prevention of cruelty to animals should operate in all areas where the living creatures of the sea were caught. He regretted that the proposal contained no indication of how it should be put into effect. Perhaps it should be inserted in article 55 in such a way as to oblige the coastal State to ensure that no unnecessary suffering was inflicted on animals in any area of the high seas adjacent to its territorial sea.

14. Mr. GANDJI (Iran) supported the principle of the proposal but suggested, to make adequate allowance for cases in which nationals of more than one State exploited the same stock and some of those States lacked the technical and economic means necessary for employing humane methods, the addition at the end of the text of the words "in all cases except those in which the livelihood of a people would be endangered because the technical and economic means necessary for employing such methods are lacking".

15. Mr. GOHAR (United Arab Republic) presumed that the proposed article would apply mainly to large, warm-blooded sea animals. Effect should be given to the suggestion made by the representative of Iran ; it was necessary to consider human beings as well as sea animals.

16. Mr. SOLE (Union of South Africa) proposed that the text submitted by Nepal should be put in the form of a draft resolution. The Committee should consider the effect on public opinion of any text it might adopt. The principal need was to educate the people who caught whales, seals and other creatures of the sea. The resolution he was suggesting would have more influence on those people than a short article tucked away in a draft convention which would probably not be ratified by a large number of States. He believed that several States which would support the resolution he was suggesting would not become parties to any convention containing the arbitration clauses approved by the majority of the Committee.

17. Mr. ANDERSON (Australia) agreed with the representative of South Africa. "Slaughtering" was not an appropriate term to use in relation to sea animals.

In many cases it was necessary to be cruel in order to be kind. It was not so easy to be kind to sea animals as might be supposed from what Mr. Lillie had said. It was not practical to use an electric harpoon for whaling. One whaling company had spent a large sum on research to produce such a harpoon. The whaling industry was in a precarious position, and the price of whale oil was falling.

18. The CHAIRMAN put to the vote the proposal made by the representative of the Union of South Africa.

The proposal was adopted by 39 votes to 10, with 7 abstentions.

19. After some discussion, the CHAIRMAN proposed that a group consisting of representatives of Nepal, Australia and Monaco should put the Nepalese proposal (A/CONF.13/C.3/L.6) in the form of a draft resolution and submit it for consideration at a later meeting of the Committee.

It was so agreed.

PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL FISHING RIGHTS ON THE BASIS OF SPECIAL CONDITIONS (A/CONF.13/C.3/L.45, L.60, L.66/Rev.1, L.69, L.79)

20. Mr. REGALA (Philippines) said that the sponsors of the proposal of the Republic of Korea (A/CONF.13/C.3/L.45), the joint proposal of the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60) and the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) would perhaps withdraw them and submit a single proposal instead.

21. Mr. ALAVAREZ DEL VILLAR (Mexico) said his delegation had joined the other sponsors of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1), because, in order to obtain the largest possible yield from fisheries, it was necessary to restrict the quantities that might be caught ; to restrict the seasons during which various species might be caught ; to restrict the types of equipment which might be used ; to refrain from building dams or other industrial installations or doing anything else to prevent the migration of certain species from internal waters to the high seas ; and to take other conservation measures. The nationals of a State which took such measures and thereby made large sacrifices in areas over which it had complete sovereignty should enjoy greater rights than the nationals of other States in respect of stocks of fish which those measures helped to maintain in areas of the high seas adjacent to that State.

22. He had in mind particularly the Gulf prawns (*camarones*) caught in the Gulf of Mexico, and the grey whale. If large quantities of those prawns were caught while migrating to the high seas from Mexican waters, his country's food reserves would seriously decrease. They should be allowed to reach the high seas, because there they were of more use to Mexico and mankind as a whole ; but Mexicans, since they refrained from catching them in Mexican waters, should enjoy special rights over them in areas of the high seas adjacent to Mexico. The grey whale could be hunted easily with rudimentary equipment near the Mexican coast but for an agreement, to which his country was a party, to

prohibit its hunting there. It would have completely disappeared in the absence of such agreements, and had increased as a result of them. States which refrained from catching fish and other resources in the way he had described could not be expected to continue to do so for the benefit of other States and not themselves.

23. Mr. ANDERSEN (Iceland) said that his delegation had already introduced its proposal (A/CONF.13/C.3/L.79) in another committee, but wished to sum up again its underlying motives. Iceland's entire economic structure was built on its coastal fisheries, and it would be virtually uninhabitable without them. Owing to the lack of other resources, almost all the necessities of life had to be imported and financed through exports, 97 per cent of which consisted of fish products. Many representatives had expressed sympathy and support for the proposal, but some had suggested that the problem might be solved if a twelve-mile exclusive fishery jurisdiction for the coastal State were to be adopted.

24. The maximum sustainable yield of the fish stocks in the Icelandic coastal area had been thoroughly investigated, and it was known that the fishing operations carried out there by many nations, with fishing gear of ever-increasing efficiency, represented a constant threat of overfishing. Moreover, large factory ships using electrical apparatus would probably soon be introduced and would increase the danger. Restrictive measures would obviously have to be applied in order to keep the catch within the maximum sustainable yield.

25. The essence of the Icelandic proposal was therefore that a country with no other resources should be able to satisfy its requirements on a priority basis. Though a twelve-mile limit would go a long way to meet those requirements, it might prove unsatisfactory because of developments in fishing gear. Iceland had therefore proposed that in exceptional cases it should be lawful to take special measures, not in terms of a fixed number of miles, but under a flexible system for meeting actual requirements.

26. Although many representatives had agreed that Iceland's case was a special one, they had found the formula too far-reaching, especially in the use of the words "necessary distance" and "primarily dependent", which they had felt might lead to abuse. His delegation would therefore be prepared to revise the proposal by replacing the word "primarily" by "overwhelmingly" to stress that a special situation was at issue. It would agree to add an arbitration clause. It would take into account any improvements that might be suggested, such as the proposed criteria that over 90 per cent of the State's exports must be derived from coastal fisheries, or that a very high percentage of its nutritional requirements or of its gross national product must consist of fisheries produce. It would also agree to simplify the problem by referring to Iceland and other similar countries by name. The main point, however, was that goodwill alone would not solve the problem; sympathy and co-operation should be shown in concrete terms.

27. Mr. CHRISTENSEN (Denmark) said that his delegation thoroughly sympathized with the Icelandic

proposal, in view of the situation of the Faroe Islands and Greenland. According to a document published by the Food and Agriculture Organization of the United Nations (FAO) entitled "The Economic Importance of the Sea Fisheries in Different Countries" (A/CONF.13/6), the Faroe Islands were among the countries and territories producing more than 100,000 tons of fish annually. In 1956 the catch had been 3½ tons per inhabitant, the highest per capita figure. Of the island's exports, 95 to 99 per cent consisted of fisheries products. Only 3 per cent of their 540 square miles was arable. Their fishing area covered only 7,500 square miles. Although the area was small, it contained some of the best fishing grounds in the North Atlantic. Those had attracted many foreign fishing boats, and several species had been overfished, so that some of the islanders had had to leave their own fishing grounds and go elsewhere. The establishment of Iceland as a sovereign State had been a severe setback to the Faroes, which thereby lost their former right to fish in Icelandic internal and territorial waters. In 1957 one-third of their fishermen had had to seek employment in foreign ships. Accordingly the islanders were in favour of restricting foreign fishing off their shores, and Denmark looked upon the Icelandic proposal with sympathy.

28. Greenland was in a similar position. Its sparsely populated arctic wastes allowed little farming, and its population of 26,000 largely depended on its marine resources: 87 per cent of its total income was derived from coastal hunting and fishing. There were as yet very few problems in this connexion, but technical developments and even small climatic changes might change the situation and make restrictive measures necessary in the future.

29. His delegation considered that the Icelandic proposal should be limited either by establishing a twelve-mile zone or by including an arbitration system as a guarantee against abuse.

30. Mr. BUU KINH (Republic of Viet-Nam), introducing the proposal which his delegation had submitted jointly with that of the Philippines (A/CONF.13/C.3/L.60), stressed that preferential fishing rights were neither absolute nor unconditional. It was clear from the proposal that a coastal State claiming such rights must fish mainly on its coasts and must derive its subsistence mainly from such fishing. The principle was not contrary to that of freedom of fishing in the high seas, but was based on the need to secure subsistence, not luxury, for human beings.

31. Safeguards against abuse were inherent in the system set forth in the proposal. Information on the means of subsistence of States was available and could be verified by the regional economic commission.

32. The proposal also covered the needs of countries, such as his own, which had large but undeveloped fishing fleets and could not venture far into the high seas. They were thus placed at a disadvantage in comparison with more advanced fishing countries; but so eminent an authority as Professor Scelle had said that the progress of legal systems consisted not only in proclaiming equality of rights, but also in compensating for *de facto* inequalities. He agreed with the suggestion that a joint text might be found for the proposal of the

Republic of Korea, the joint proposal of the Philippines and the Republic of Viet-Nam, and the eleven-power proposal.

33. Mr. WALL (United Kingdom) regretted the tendency that had become evident in the debate to regard the coastal States as communities of fishermen whose resources were being exploited, and the non-coastal States as rapacious profiteers who despoiled the fisheries of other countries. The question of profit had been raised; but any successful fishing operation resulted in profit. The main reason why men went to fish was to earn their livelihood in an occupation that appealed to them. The distinction between different kinds of States in that respect was therefore illusory. As for the charge of rapacity, the classical example cited in that connexion was the North Sea, which was said to have been over-fished. It had admittedly been heavily fished for a hundred years by many fleets, but the figures for the total catch of demersal species by all nations from 1910 to 1950 varied very slightly and had increased somewhat since 1950. It could not therefore be said that stocks were destroyed in heavily fished seas. The catch might of course be higher if optimum conservation measures were introduced; but a reduction in the number of fishing vessels operating in a sea need not correspondingly reduce the catch.

34. The total population of the countries surrounding the North Sea was approximately 200 million, and the fishing vessels of those countries had naturally gone farther afield, especially to the North Atlantic. However, the population surrounding that ocean was only about one million people, 200,000 of whom lived in Iceland, the Faroe Islands and Greenland. Those countries were indeed dependent on their marine resources, but it seemed unfair to leave all those resources for 200,000 people and make 200 million go short. The Uruguayan representative had suggested that the large-scale fishing nations could go elsewhere than to coastal waters for their operations; but it was well known that there could be no extensive fishing in mid-ocean.

35. It was also incorrect to say that the European fishing countries destroyed coastal fish stocks. The Icelandic representative had adduced that argument in the Fourth Committee in connexion with plaice; but that fish represented 1 per cent of the catch in Iceland's coastal waters. Cod was the most important species, representing 60 per cent of the catch, and the statistics showed that the catch per 100 hours' fishing had not changed greatly between 1905 and 1955. Moreover, the per capita catches of fish by Icelanders and Faroe Islanders were among the highest in the world, a fact which proved that the stocks had not been depleted.

36. With regard to the danger of factory ships mentioned by the Icelandic representative, he observed that Iceland could take unilateral measures against that kind of fishing under article 55. The Mexican representative's complaint that the great fishing countries were depleting the cold northern waters and moving to southern waters where fish were less abundant was quite unfounded. The fishing countries of northern Europe were fishing in the northern waters, where the human population was small, for food for 200 million people. They wanted those resources to be conserved

and the livelihood of all fishermen to be safeguarded; that was why the United Kingdom had advocated a six-mile instead of a three-mile limit for exclusive fishing rights.

37. Mr. MELO LECAROS (Chile) recalled that paragraph 3 of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) had been left in abeyance when article 55 had been adopted. The sponsors had thought it necessary to adopt a provision permitting all coastal States to take, in emergency situations, measures necessary for the subsistence of the inhabitants.

38. Practically two-thirds of the area of Chile was covered with mountains; only 250,000 square kilometres were arable; there was not enough water to irrigate that area, and the population was increasing rapidly. The importance of fishing to his country could therefore not be over-estimated, and it was essential to guarantee means of subsistence if restrictions were imposed on the intensity of fishing. He thought it would be logical to amalgamate the proposal of the Republic of Korea (A/CONF.13/C.3/L.45), the joint proposal of the Philippines and of the Republic of Viet-Nam (A/CONF.13/C.3/L.60) and the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1), and would support Iceland's proposal (A/CONF.13/C.3/L.79), because that country's claim for special consideration seemed quite justified.

39. Mr. HERRINGTON (United States of America), speaking on the joint proposal submitted by Canada and the United States (A/CONF.13/C.3/L.69), said that his delegation felt it most important to include in any conservation régime a procedure encouraging States to restore or maintain the productivity of fisheries. Under certain special conditions a nation would hesitate to establish and enforce regulations limiting the catch of its fishermen, or to spend large sums on building up stocks of fish, if the yield was to be harvested by any State which might be attracted by the increased productivity.

40. Since 1923 the United States and Canada had spent large sums and enforced severe restrictions in order to save the salmon and halibut resources of the north-east Pacific from depletion and to develop a maximum sustainable yield. As a result of those measures the 1954 catch had been the highest in history. Intensive measures had also been taken to restore stocks of the sockeye red salmon of the Fraser river. Other salmon runs on the Pacific coasts of the two countries, and the fur-seal of the north Pacific, were further examples of successful conservation. Through that achievement the interests of the international community had been served by the increase of food production.

41. Similar conservation problems would undoubtedly occur in other parts of the world as fishery resources and conservation procedures were developed. The procedure in the joint proposal would apply to specific stocks of fish and would not interfere with other fishing activities in the same area. Moreover, it would not limit the coastal State adjacent to the high seas in which a stock occurred, even if the nationals of that State did not participate in the fishing. It would apply equally to all States and would promote the full utilization of a fishery resource. Its basic provisions were that the State

fishing the resource must have added to productivity by constructive conservation measures and must utilize the resource fully, and that any question concerning the fulfilment of those conditions should be settled objectively and rapidly through the procedure adopted by the Committee. Furthermore, it would not displace any State that had been fishing the resource, and would not interfere with a coastal State's fishing the resource in its coastal waters. The principle of abstention was essential to any complete set of articles on high seas fisheries conservation.

42. Mr. OZERE (Canada), speaking on the joint proposal (A/CONF.13/C.3/L.69), observed that the problem had been discussed at the 1955 Rome Conference,¹ where the abstention principle had been approved on the ground that, where opportunities existed for a country to develop or restore the productivity of resources, and where such development or restoration by the harvesting State was necessary to maintain productivity, conditions should be made favourable for such action.

43. The International Law Commission had stated in its commentary on article 53 that it lacked the necessary scientific and economic competence to study those exceptional situations adequately and had therefore refrained from making any definite proposal. It had recognized, however, that the principle reflected problems and interests which deserved recognition in international law.

44. The joint proposal was based on four main principles. First, the abstention should be invoked only where a resource was fully utilized, or where the entrance of new States into the fishery could not increase total yield without endangering the conservation of the resource. It would not apply to resources which were not exploited to their maximum sustainable limit; and therefore no nation could be denied access to unused or partially used resources. Secondly, it could be invoked only against new entrants who had not contributed to the development or maintenance of the resource. Thirdly, in view of the special interests of the coastal State, the abstention could not be invoked against that State in respect of fisheries adjacent to its territorial sea. Lastly, it could be invoked only subject to impartial arbitration under articles 57 and 58, to determine whether the necessary conditions existed.

45. The Canadian and United States delegations believed that adequate protection was provided for coastal and non-coastal States and that the principle was both equitable and essential to conservation. Although it might not be applicable to many fisheries at the present time, that did not mean that latent conditions for its application did not exist in a number of fisheries. As the United States representative had pointed out, conservation of salmon and halibut in the north-east Pacific would be difficult, if not impossible, without the protection embodied in the principle, and similar situations might arise at any time in other parts of the world.

The meeting rose at 1 p.m.

THIRTY-SIXTH MEETING

Wednesday, 16 April 1958, at 8.45 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS ON THE BASIS OF SPECIAL CONDITIONS (A/CONF.13/C.3/L.45, L.60, L.69, L.70, L.79) (continued)

1. Mr. MALLIN (Ireland) suggested that the vote on the proposals before the Committee should be deferred pending certain decisions on related questions in the First Committee.

2. Mr. KRYLOV (Union of Soviet Socialist Republics) said his delegation was sympathetic to the Icelandic proposal (A/CONF.13/C.3/L.79), as it was to all proposals motivated by special conditions and the needs of the populations of coastal States. The wording of the proposal, however, lacked clarity in several respects. The phrase "necessary distance from the coast", in particular, was extremely difficult to interpret as long as decisions on related matters had not been reached in the First Committee. Similarly, the expressions "exceptional circumstances" and "relevant local considerations" were excessively broad, and would be out of place in an international legal document. If the Icelandic proposal were put to the vote at present, he would, regretfully, be obliged to vote against it. He considered that the vote on the proposals before the Committee should be postponed, as had been suggested by the representative of Ireland.

3. Mr. CORREA (Ecuador) supported the Icelandic proposal. The case of Iceland was but one of a number of special cases in different parts of the world. Sympathy for those special cases had been expressed in the International Law Commission, in the Sixth Committee of the General Assembly, and during the general debate at the present Conference. It would be regrettable if, after the adoption of most of the articles of a general nature, countries which had no special interests of their own allowed their sympathy to slacken and failed to support proposals such as that submitted by Iceland. If the international instrument to be prepared by the Conference was to have true authority it had to be founded on a deep sense of justice. He appealed to the Committee to support the Icelandic proposal.

4. Mr. LLOSA (Peru) expressed sympathy with the Icelandic proposal, as with any other designed to meet the case of coastal States which, by reason of their geographical position, their economic dependence on the living resources of the sea and their efforts to conserve those resources, deserved special consideration in particular circumstances. Peru, being one of those countries, could not but support such proposals. He considered, however, that the principle of abstention was set forth most appropriately in paragraph 3 of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1). If restrictions had to be imposed on the intensity of

¹ cf. *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No.: 1955.II.B.2), para. 61.

fishing, it was only fair to give special consideration to the interests of neighbouring coastal States, which depended on fisheries for their subsistence and economy, and which incurred much effort and expense on scientific investigations and on conservation and control measures. The principle of abstention thus formulated was much more just than that set forth in the joint proposal submitted by Canada and the United States (A/CONF.13/C.3/L.69). In particular he failed to see the purpose of the provision at the end of paragraph 2 of the latter proposal to the effect that abstention should be required pending the arbitral decision, subject to paragraph 2 of article 58.

5. Mr. ANDERSEN (Iceland) asked for a postponement of the discussion on his delegation's proposal.

6. Mr. OZERE (Canada) was in favour of continuing the discussion on the proposals before the Committee, but thought that the vote should be deferred; the sponsors of those proposals might be inclined to modify their drafts in the light of the discussion and of decisions on related matters in the First Committee.

7. After a procedural discussion, Mr. CORREA (Ecuador) proposed that the second reading of the articles already adopted by the Committee should take place on April 18; the vote on proposals still before the Committee should be taken at a subsequent meeting.

It was so decided.

8. Mr. HERRINGTON (United States) wished to explain the meaning of paragraph 1 (a) of the joint proposal (A/CONF.13/C.3/L.69). When a stock of fish which qualified for abstention was found in the waters adjacent to the territorial sea of several States, and one or more of those States were not fishing and had never fished that stock, any such non-fishing State might nevertheless at any time begin to fish that stock by reason of its geographical position. It was not proposed that any coastal State should, because it had not in the past fished that stock, forgo fishing a stock of fish found in the waters adjacent to its coast. The co-sponsors of the joint proposal would be glad to modify the text of paragraph 1 (a) to make its meaning clear.

9. Mr. IZHEVSKY (Union of Soviet Socialist Republics) said that the joint proposal submitted by Canada and the United States conflicted with the fundamental principle of several articles adopted by the Committee—in particular, article 53. Under the proposal, one of the most extreme methods of regulating the size of fish stocks—that of limiting the yield—would be applied in the interests of certain States and to the detriment of others—a discriminatory practice.

10. Referring to the document entitled "The Economic and Scientific Basis of the Principle of Abstention" by Professor Richard van Cleve (A/CONF.13/3), he remarked that the author had made no attempt to establish an economic foundation for the principle of abstention. Furthermore, the biological foundations for determining fish stocks were by no means universally accepted by scientists; and the paper failed to provide any justification for its conclusion that the participation

of new States in fishing the stocks subject to regulation would endanger the measures for conserving the stock and, consequently, the stock itself.

11. Regulation of the yield was undoubtedly an effective method of maintaining an intensely fished stock. However, precisely because it might injure the economic interests of a State, that method should not be applied except on the basis of strong scientific evidence. In view of the statements made at the Rome Conference of 1955¹ concerning the principle of abstention, an attempt to introduce it as a principle of international law could not be considered justified. The scientific foundations of the principle required further thorough consideration by a special international conference.

12. Current knowledge of the biology of a number of principal oceanic fish species did not, as yet, reveal with certainty the causes of the fluctuation of stocks or of the rational limit of their utilization. Stocks of a number of fish species were diminishing, so that the question of the influence of utilization on the size of fish stocks had naturally assumed great importance. There were no real grounds, however, for holding utilization principally responsible for the reduction in the size of stocks of the species in question. Natural factors, which had frequently accounted for variations in the size of fish stocks, were entirely ignored by the supporters of the principle of abstention. Professor van Cleve's assumption that the influence of natural factors was relatively stable could not be accepted universally.

13. Only scientifically sound measures should be contemplated in fishing practice, and *a fortiori* in international collaboration in the conservation of fish stocks. He mentioned several such measures, but pointed out that the need for a limitation of yield, amounting in certain instances to complete temporary prohibition of fishing, arose in very rare cases only—e.g., with regard to easily fished stocks such as plaice, turbot, salmon, etc., in certain limited areas.

14. Any measures for the limitation of the fishing of stocks fished by more than one particular State should be developed and applied jointly by all the States concerned. The principle of abstention meant abstention from overfishing in cases where overfishing could be objectively proved. It was difficult to understand why that principle should apply only to newcomers or to those who were not fishing the stock regularly. Such an interpretation of abstention bore no relation to the scientific foundations of fishing or to the methods of regulating fish stocks undergoing development on an international scale.

15. The Soviet delegation was fully aware on grounds of experience of the effectiveness of measures of conservation of stocks and regulation of their utilization. It even appreciated the need, in certain cases, for unilateral measures designed to limit the utilization of a stock dependent on regulation and reconstitution measures. It could not be convinced, however, that fishing within the established limit should be exclusively by a State or States which had been fishing that stock for a long period of time.

¹ cf. *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No.: 1955.II.B.2), paras. 60 to 66.

16. As an example of good international collaboration on a scientific basis in the utilization of living resources, he mentioned the International Convention for the Regulation of Whaling, the parties to which established an annual whaling quota in which they were all entitled to participate within the prescribed period of time.

17. For the above reasons, the Soviet delegation would be unable to support the joint proposal submitted by Canada and the United States.

18. Mr. TSURUOKA (Japan) said that he did not consider that enough time remained for the Conference to give the necessary consideration to a legal innovation such as the idea of abstention. However, he wished to say that the system proposed by Canada and the United States (A/CONF.13/C.3/L.69) would in effect give a fishing monopoly to the coastal States, while other States would be excluded without compensation from fishing in particular areas of the high seas. That would be inequitable and at variance with the principles of equality of States before the law and the freedom of the high seas. It was not strictly true that the proposed exclusion of non-coastal States would be conditional. One of the so-called conditions was the need to take conservation measures, aimed at achieving the maximum sustainable yield; but that situation occurred so frequently that it could not justify the proposed departure from accepted practice. Nor could it be justified on the basis of the intensity of the fishing carried on by the coastal State. Statements made in Committee had given the impression that many coastal States wished to gain a privileged position because they were not yet sufficiently well equipped to be able to fish intensively; once they were able to do so they would have no reason to claim a preferential right, and yet the joint proposal suggested that such States should have the right to demand that other States should abstain from fishing.

19. He believed that scientific experts would not support the idea that there were in fact such cases as those suggested in the joint proposal submitted by Canada and the United States. If a few such cases did exist they should be governed by the provisions of article 53.

20. The Committee should consider carefully what countries would profit by the proposal and what countries would be the losers. Paragraph 1(c) of the proposal might have the effect of excluding countries which had agreed at an earlier stage to abstain from fishing. It would not be right to exclude countries that had previously been prevented from fishing in a particular region of the high seas either by violence or by measures taken by a coastal State in contravention of international law. There was no safeguard against that situation either in the joint proposal or in the proposal submitted by the Republic of Korea (A/CONF.13/C.1/L.45).

21. The latter proposal showed what dangerous developments there might be from the system advocated in the joint proposal submitted by Canada and the United States. Under the proposal submitted by the Republic of Korea the single fact that the coastal State had made sacrifices in its efforts to conserve the living resources and increase their productivity would be a sufficient excuse to require other States to abstain from

fishing in the area of the high seas adjacent to its territorial sea. Such a definition of "sacrifices" was so vague that it was bound to lead to abuses, since it was a widespread practice to impose some kind of limitation relating to the size of the fish, the mesh of the fishing nets, fishing seasons and so forth. The proposal of the Republic of Korea tended to give the coastal State a fishing monopoly simply by virtue of the fact that it carried on fishing in the waters in question. Moreover the Korean proposal went further than the joint proposal in that the latter required abstention only from States whose nationals were not fishing a particular stock, whereas the Korean proposal would exclude all other States, even if they were fishing in conformity with the measures adopted by the coastal State. The system proposed by Canada and the United States was all the more dangerous inasmuch as some countries seemed unwilling to accept the arbitration system provided in article 57.

22. If any country which had made sacrifices in order to exploit certain living resources of the sea could monopolize those resources, the fishing industries of new States still at an early stage of economic development would suffer, for they would be excluded from fishing in a number of areas throughout the world.

23. The doctrine of abstention was not in accord with the general principles of conservation, which could not justify the proposition that one State should be allowed to fish while others were excluded. According to that doctrine a small country like Japan, whose unproductive soil made it heavily dependent on fishing for the subsistence of its population, would be excluded from fishing in any part of the high seas adjacent to the territorial sea of coastal States—a contingency fraught with very serious economic and social dangers for his country.

24. Mr. LUND (Norway) said that, although he was not prepared to express the final view of his delegation on the joint proposal by Canada and the United States, it appeared to him that since the steps proposed were a type of conservation measure the problem could best be solved by negotiations among the States affected, with the possibility of recourse to the arbitration procedure provided for in article 57 if agreement could not be reached. He was not convinced that it was necessary to have any general rule relating to abstention.

25. Mr. HULT (Sweden) said that his country had nothing to gain or to lose under the terms of the joint proposal. However, his delegation was in principle opposed to any discriminatory measures and hence could not support the proposal. He believed that the problem should be dealt with by regional agreements.

26. Mr. THURMER (Netherlands) said that he could not agree that the coastal State should have an exclusive right to fish a certain stock. The joint proposal was in conflict with the principle of freedom of fishing on the high seas. His delegation considered that that principle had already been affected by the Committee's decisions more than was desirable or justifiable, and he was therefore opposed to the proposal of the Republic of Korea (A/CONF.13/C.3/L.45), the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) and the joint proposal (A/CONF.13/C.3/L.69).

27. Mr. ALLOY (France) said that he believed the Committee had already gone far enough in granting unilateral rights over the living resources of the sea to the coastal State. The system proposed by Canada and the United States was likely to lead to serious abuses. It was important to avoid any form of discrimination in conservation measures, and his delegation would therefore be unable to vote for the proposal in question.

28. Mr. RUIVO (Portugal) said that the articles already adopted provided sufficient safeguards for the legitimate interests of States co-operating in conservation measures. He agreed with other speakers that the system proposed by Canada and the United States was discriminatory and that it might lead to abuses. Not inconceivably, the proposed provisions might be extended to large fleets fishing on the high seas, which also made sacrifices in that they limited fishing in various ways and spent large sums on research. There was also a risk that the proposal might adversely affect the future exploitation of zones which were not at present fished, but might be in the future. His delegation would therefore be unable to vote for the joint proposal by Canada and the United States.

29. Mr. GANDJI (Iran) said that, in the light of the observations made at the previous meeting by the representatives of Canada and the United States, his delegation would be glad to vote for their joint proposal.

30. Mr. GOLEMANOV (Bulgaria) said that his delegation would vote against the joint proposal submitted by Canada and the United States. The proposal tended to discriminate against newcomers and opened the door to abuses. There was no scientific justification for the notion of abstention. The International Law Commission had referred to it in paragraphs (4) and (5) of the commentary on article 53, but had refrained from including any provision concerning abstention in the draft articles. The principle of abstention not only conflicted with the freedom of the seas but might also affect the rights of the coastal State already accepted by the Third Committee. His delegation would therefore vote against the proposal.

31. Mr. CIEGLEWICZ (Poland) said that his delegation supported the freedom of the high seas and the right of all nations to fish in the high seas. Consequently, it opposed the joint proposal submitted by Canada and the United States. All fishing nations knew that there might be occasions when it was necessary to abstain from fishing, but he did not consider that there was any biological justification for excluding one group of nations from fishing while allowing another group to continue to fish.

32. Mr. ANDERSON (Australia) said that his delegation was in favour of the joint proposal by Canada and the United States. In any case where there was disagreement concerning the existence of the situation described in the proposal, it was open to the States concerned to resort to arbitration under article 57. It was only just that if a State spent its resources on re-establishing a particular stock, other States should be prevented from entering the area and enjoying the benefit of what might represent years of work by the coastal State. The knowledge that it was protected in

that way would encourage the coastal State to improve its fisheries. Some of the countries which opposed the suggested system had in fact benefited from a very similar policy applied to seal stocks, but he saw no reason why the principle of abstention should be applied only to seals.

33. Mr. LACLETA (Spain) said that the joint proposal by Canada and the United States might constitute an indirect means of allowing some States to appropriate zones of the high seas. The legitimate object of the proposal could be achieved under the articles already adopted, so there was not need for any such discriminatory system. His delegation would therefore not support the proposal.

34. Mr. PANIKKAR (India) said that his delegation did not believe that abstention was a scientific question. The principle of abstention might operate to the advantage of coastal States wishing to develop their fisheries. The Committee agreed in supporting the principle of the freedom of fishing on the high seas and yet it had also agreed to limit that freedom to some extent by recognizing the special interests of the coastal State. The Committee might similarly recognize that the principle of abstention might encourage the coastal State to use modern scientific methods in developing its coastal fisheries. There were many instances in India where there was a very close connexion between the stocks in the inshore waters and those in the offshore waters, and any conservation measures adopted would have to recognize that connexion. His delegation supported the special interests of the coastal State with regard to conservation measures, and would accordingly support the joint proposal by Canada and the United States.

35. Mr. MESECK (Federal Republic of Germany) said that he could not support the joint proposal because it conflicted with the principle of the freedom of the high seas.

36. Mr. WALL (United Kingdom) said that, unlike some of the speakers, he did not think the proposal of Canada and the United States would help the coastal State to solve any problem that could not be solved in other ways. The general problems of the less-developed coastal States had been dealt with in article 55, which allowed the coastal State to take unilateral measures to protect its off-shore fisheries. The joint proposal, however, might prejudice the position of the coastal State if its provisions were extended to deep-sea fishing. Deep-sea fishing States, such as the United Kingdom, would then be able to take part in maximum intensity fishing and exclude coastal States. It was likely that countries carrying out intensive fishing and conducting conservation and research programmes would be the larger industrialized countries, rather than the less-developed coastal States whose position had received special consideration at the present Conference.

37. A similar situation already existed in the whaling industry in the Antarctic Ocean. The fishing was intensive and any increased fishing would not increase the yield. As the operation involved expensive factory ships, the participants all came from the industrialized countries. Would it be right that that group of countries

should permanently exclude any other country from taking part in whaling in the Antarctic Ocean?

38. The cod-fishing in the north Atlantic had not yet reached the same level of intensity as whaling, but it might well do so in future. If that happened, cod fisheries would become the monopoly of a group of States which included his own country and Iceland. In that case, Iceland, which was the coastal State, would not gain anything from the arrangement, since it did not have the major share of the catch.

39. He believed that there were very serious economic considerations involved in the proposal under discussion. The coastal States should examine carefully the real meaning of the proposal before them. He thought that the implications of the proposal were too far-reaching and he hoped that the authors would reconsider it before it was voted upon.

40. Mr. ANDERSON (Australia) said that, in view of the reference to the coastal State in the opening words of the joint proposal he could not understand how the representative of the United Kingdom could maintain that the proposal would not further the interests of the coastal State.

41. Mr. WALL (United Kingdom) said that the opening words of the proposal included the phrase "alone or with the nationals of one or more other States." The position of a coastal State fishing together with other States would be similar to the situation of Iceland with regard to cod-fishing; in other words, the coastal State might only be a partner in the monopoly, possibly with a very small share of the proceeds.

42. Mr. INDRAMBARAYA (Thailand) said that he believed the observations of the representative of India applied to the fish in the coastal waters of Thailand; he would, therefore, support the joint proposal of Canada and the United States.

The meeting rose at 10.50 p.m.

THIRTY-SEVENTH MEETING

Thursday, 17 April 1958, at 10.25 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

DRAFT RESOLUTION PREPARED BY A WORKING GROUP COMPOSED OF THE REPRESENTATIVES OF AUSTRALIA, MONACO AND NEPAL (A/CONF.13/C.3/L.85)

1. Mr. DE LA PRADELLE (Monaco), speaking as a member of the working group, said that its main desire had been that the Committee should reach a unanimous decision on its resolution. The observations made at the 35th meeting had been duly taken into account and States would not now be asked to change their methods considerably in order to achieve euthanasia for marine fauna. The resolution allowed for the differing capacities of States and merely called for improvement in the

methods by which whales and seals were hunted. He was sure that the religions and philosophies of participating States endorsed that small measure of consideration for animals from which mankind profited so greatly.

2. Mr. SHAHA (Nepal) hoped that the Committee would adopt the draft resolution unanimously.

3. Mr. ANDERSON (Australia) said that, as the only member of the working group who represented a whaling nation, he wished to commend the draft resolution to all other countries engaged in that industry.

The draft resolution (A/CONF.13/C.3/L.85) — based on the Nepalese proposal in document A/CONF.13/C.3/L.6 — was adopted unanimously.

PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.45, L.50, L.60, L.66, L.69, L.70, L.79) (continued)

4. The CHAIRMAN invited the Committee to continue its discussion of the joint proposal submitted by Canada and the United States (A/CONF.13/C.3/L.69).

5. Mr. LEE (Republic of Korea) supported the joint proposal because it would protect the interests of coastal States where marine resources depended on conservation measures and more fishing would not result in an increase of the sustainable yield. The abstention principle had been discussed at the 1955 Rome Conference¹ as a special case for fishery conservation management. The International Law Commission had also mentioned in its report the desirability of creating, building up or restoring stocks which would otherwise be destroyed or reduced to levels below their potential productivity.

6. The Japanese representative had said at the 36th meeting that the Korean proposal was intended to monopolize coastal fishery and that the abstention principle was incompatible with the freedom of fishing on the high seas and the principle of equality. That argument seemed to attempt to justify an unrestricted exercise of the freedom of fishing to the detriment of the coastal State. The Japanese delegation had not supported the special interest of the coastal State in maintaining the productivity of living resources, and had not recognized the competence of the coastal State to take unilateral conservation measures in urgent cases; accordingly it disregarded the special situation of coastal States primarily dependent upon fishing for the livelihood of their populations.

7. Fishery conservation programmes on a world scale were designed to protect not only the interests of the coastal State, but also the general interests of the international community. Korea was among the countries to which coastal fishing was vital, since over 600,000 Koreans were engaged in fishing and between two and three million were dependent upon fishing resources for their livelihood. Korea had therefore made

¹ cf. *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No. : 1955.II.B.2), paras. 60 to 66.

efforts to apply and enforce conservation measures, to the extent of imposing restraints on its own fishermen. The position of coastal States was quite different from that of countries carrying on unrestricted fishing activities off the coasts of other States with purely commercial motives.

8. The abstention principle was incorporated in the International Convention for the High Seas Fisheries of the North Pacific Ocean concluded by the United States, Canada and Japan, under which Japan, which was not a coastal State of North America, was obliged to abstain from fishing certain stocks off the coasts of the United States and Canada, who as coastal States were entitled to utilize the resources of their coastal waters.

9. Freedom of fishing in the high seas was not a universally valid principle. The article on the freedom of the high seas was subject to other provisions, since the articles with which the Committee was dealing must be regarded as an integral whole. The Japanese representative had therefore been wrong in invoking the freedom of the high seas without regard to restrictive stipulations not related to fishing.

10. Mr. QURESHI (Pakistan) observed that the main arguments against the joint proposal submitted by Canada and the United States were, first, that the aim of "abstention" could be achieved by "conservation" as approved by the Committee under articles 51 to 55; and secondly that abstention measures might discriminate against newcomers. The arguments in favour of the proposal were based on the need to maintain current yields of fish resulting from the investments, sacrifices and research of the coastal State and other States participating in the fisheries.

11. The two points of view could be reconciled if a realistic view of the situation were taken. Several basic facts had to be taken into account in considering the joint proposal. First, the stipulation that the nationals of a coastal State must be fishing a specific stock, either exclusively or with nationals of other States, meant that if only non-nationals were fishing a particular stock in an area adjacent to a coastal State the abstention principle could not be invoked either by the fishing non-nationals or the non-fishing coastal State. Secondly, the principle could not be invoked unless evidence existed that the coastal State and the participating States had been applying a conservation programme over a number of years. Thirdly, there must be evidence that the maintenance of the current yield and the development of the fish stock were due solely to the conservation programmes carried out by the coastal State and other participating States. Fourthly, the coastal State was bound to extend full protection, without discrimination, to non-nationals who had been fishing the stock and participating in conservation measures. Fifthly, newcomers were to be debarred from entering the field until research and conservation had been effectively practised by the coastal State, and only on the ground that the resource was barely sufficient to meet the economic requirements of those already in the field; in other words, that new entrants in such circumstances would cause losses to others without benefiting themselves. Sixthly, the abstention principle could not be applied against newcomers when the

fishery was capable of greater yields, but only so long as abstention could maintain the current yield as a result of a conservation programme enforced by the coastal and other participating States. Finally, the abstention principle could not be applied as a matter of course, in the same way as conservation measures, since the coastal State had first to take adequate conservation measures, conduct research and collect data over long periods in order to establish that the current optimum yield had been maintained by its conservation programme.

12. All the action which the Committee proposed was directed towards the single goal of increasing food production. If stocks of fish were depleted by the entry of adventurers into well-managed fisheries, the result would be detrimental to mankind; over-fishing was a short-sighted policy, with wide repercussions.

13. It was inherent in human nature that a man should claim a harvest which he had prepared by great effort and at great cost. No State could be reasonably expected to invest money, labour and time in developing a resource if it were not assured of returns. That principle held good in various branches of economic activity. Traditional and established rights had to be respected, under certain limitations and conditions; the abstention principle was no departure from those established practices. Besides, the element of initiative and effort must be recognized. If initiative were discouraged, not only prospective participants in it but mankind as a whole would lose. Moreover, on a long view the abstention principle would apply neither to an adjacent coastal State nor to areas of the high seas where a specific conservation programme had not been applied.

14. The highly developed fishing nations knew most of the rich fishing grounds and were participating in those resources. They would therefore not be affected by the abstention principle in their regular fishing areas. The under-developed coastal States, on the other hand, would be obliged to husband the resources of the seas adjacent to their territories for a long time to come and would not be adversely affected by the principle.

15. In conclusion, he suggested that the sponsors of the joint proposal should meet informally with its main opponents and some neutral delegations and attempt to draw up an agreed text.

16. Mr. MELO LECAROS (Chile) and Mr. REGALA (Philippines) asked the sponsors to clarify the scope of the last sentence of paragraph 1 of the joint proposal. In particular they wished to know whether the tenor of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1), of which they were co-sponsors, was taken into account in that sentence.

17. Mr. HERRINGTON (United States of America) agreed with the Indian representative and other speakers that abstention was not essentially a scientific problem, and reiterated that the United States strongly advocated the inclusion in any official high seas conservation régime of a procedure to encourage States to restore or maintain fishing productivity. He could not, however, agree with the Soviet representative that the study of fisheries was insufficiently advanced for a definition of full utilization. The science of fish population dynamics

had made great strides in the past twenty years and reasonably accurate measurement could now be made of the utilization of an increasing number of stocks, such as salmon, halibut and fur seals, to which the sponsors of the proposal had referred. Sardines, mentioned by the Soviet representative, underwent wide environmental fluctuations and were therefore not subject to the abstention principle. He also could not agree with the Soviet representative that fishing rarely had to be limited. His own country's experience had amply proved that catches of certain species had to be strictly limited if productivity was to be maintained.

18. The Japanese representative seemed to have misunderstood the nature of the joint proposal (A/CONF.13/C.3/L.69), which related specifically to stocks of fish and did not exclude newcomers from any area of the high seas. The Japanese representative had also alleged that a coastal State could invoke abstention unilaterally without a test, thus causing economic and social suffering; but the proposed procedure could not be invoked against any State which was fishing a stock or had done so within a reasonable period.

19. It had also been stated that the proposal was not based on scientific data and that the principle had not been recognized by the International Law Commission. The Canadian representative had dealt adequately with the latter criticism, and the proposed criteria made the relationship between the procedure and scientific findings quite clear. A stock might be at a much lower level of productivity than its potential, owing to a natural disaster, to over-fishing in the past, or to the fact that positive conservation measures could greatly increase production. At such a low level of yield, foreign fishermen would not consider it worth while to come to the grounds. If, however, productivity were built up, they would be anxious to fish them.

20. The reason why the proposal was related to the coastal State was that projects to develop special fisheries always originated in the internal, territorial or adjacent waters. As a project became more successful, its effect spread further offshore; but in the first phase only the coastal State and perhaps a close neighbour were concerned. Additional States might become interested at a later stage. It was feasible to reach agreements with close neighbours who might be concerned with conservation while productivity was low, but it was obviously impossible to include all countries at that time. The only solution to the problem was to make abstention an international rule. He could understand the concern of representatives who feared misapplication of the principle. However, some of that anxiety might stem from the arguments advanced in the document entitled "The Economic and Scientific Basis of the Principle of Abstention" (A/CONF.13/3), to the effect that wherever there were conservation measures there should also be abstention; that theory was not embodied in the joint proposal.

21. Although the proposal raised many difficult problems, the issue should not be evaded. Anxious for the widest possible agreement, his delegation was prepared to review the proposal in the light of comments made in the Committee.

22. Mr. MALLIN (Ireland) thought that some of the difficulties raised by the joint proposal had not been

resolved by the debate, which had been considerably coloured by the statements in document A/CONF.13/3. The arguments were mainly economic and seemed to be cogent; nevertheless the proposal itself contained protection against abuses. A particularly good case could be made for applying the abstention principle to certain species about which a considerable amount was already known.

23. Ireland had made great efforts and spent much money on research on the Atlantic salmon, to the extent of modifying various projects, to its own economic disadvantage, in order to build special fisheries and to conserve the species. Despite extensive research, however, not much was known about what happened to the salmon of the high seas. If the salmon were to be caught in any quantity by improved methods of fishing, his country might have to reconsider its programmes, since it would have no incentive to spend money on improving a stock from which it would derive no benefit. The United States representative had said that the problems covered by the proposal would generally arise in coastal waters. He wondered whether equally accurate evidence was available with regard to many other species. The sponsors might consider narrowing their proposal to deal with particular species rather than stocks.

24. The second problem was how the proposal might be put into effect. It was notoriously difficult to get fishermen to obey general conservation regulations. In his own country's experience that problem had arisen with regard to privately owned fisheries which had become public as a result of a Supreme Court judgement. Several methods had been advocated for regulating such fishing in tidal waters, but none of them had yet been put into operation because of the questions of equity involved.

25. Mr. OLAFSSON (Iceland) considered that the Committee's decisions on conservation problems would be incomplete until the abstention principle was included in the conservation articles. He had been surprised by the opposition that the joint proposal had encountered, and remained unconvinced by the arguments against it.

26. Mr. LLOSA (Peru) said that, while he sympathized in principle with any proposal relating to the special situation of coastal States, he considered that the last sentence of paragraph 2 of the joint proposal was in conflict with article 58, paragraph 2, which the Committee had adopted.

27. Mr. OZERE (Canada) said that the discussion had revealed many misunderstandings which should be cleared up before the Committee voted on the principle of abstention. He was, however, in favour of the Chairman's suggestion that the authors of the proposal should consult representatives informally and re-draft their text in order to make it more acceptable.

28. In reply to the questions raised by the representatives of Chile and the Philippines, he explained that the purpose of condition (c) in paragraph 1 was to make clear that the coastal State should not be asked to abstain from fishing any stock in waters adjacent to its territorial sea.

29. With reference to the remarks of the representative of Peru, he explained that the arbitration clauses would

apply to disputes regarding the text under discussion in exactly the same way as to disputes regarding article 55.

30. In answer to those who had objected to the proposal because it related to matters other than conservation, he said that without a provision such as that under discussion it would not be possible to conserve certain special stocks of fish, such as the north Pacific salmon.

31. It had been argued that that provision would be unfair; but surely it would be unfair of States which had not taken part in measures to conserve a stock of fish to exploit it equally with a State that had. The text applied only to stocks which had been developed at considerable cost over a long period.

32. It had also been argued that the proposal should be rejected because it was discriminatory. The text would apply to all States which adhered to it; there was nothing discriminatory about that. The principle it contained did not work only to the advantage of his country; for example, Canada was a party to an agreement providing that its nationals should abstain from fishing Alaska salmon in the Behring Sea.

33. One representative had objected to the text because it might be abused. Every one of the articles adopted by the Committee might be abused. To deal with abuses, the authors had worded paragraph 2 to provide for the settlement of disputes by the impartial arbitral body named in article 57.

34. It was quite untrue to state that the text would entitle States to appropriate to themselves whole areas of the high seas. The text related only to special stocks of fish.

35. Mr. HERRINGTON (United States of America) agreed with the representative of Canada that it would be wrong to vote on the principle of abstention at the present juncture, and also agreed with that representative's explanation in reply to the remarks of the representative of Peru.

36. Mr. WALL (United Kingdom) was also opposed to a vote on the principle of abstention at the present stage; it was impossible to foresee what text regarding that principle would finally be adopted if the vote suggested by the Chairman were favourable to it. If the principle were voted on immediately, he would have to vote against it; but if the wording of the proposal were satisfactorily changed he would be ready to consider it further.

37. The representative of Canada had said that the text applied only to certain special stocks of fish. He himself suggested that the authors might, when they were redrafting it, change it so as to make that clear. They might also consider making it less mandatory.

38. The United States representative had said that the adoption of the text would not completely exclude from any area of the high seas a State which had not fished in the area before; but it might exclude States from areas in which it applied to all the stocks.

39. Mr. CASTAÑEDA (Mexico) said that he was in favour of the principle of abstention and was prepared to vote for the text proposed by Canada and the United States. He asked why in the text under discussion there was no provision similar to the one in article 55 requiring parties to a dispute to enter into negotiations

before submitting the dispute to the arbitral commission mentioned in article 57.

40. Mr. HERRINGTON (United States of America) said that the subject matter of the text was closer to that of article 53, which dealt with newcomers, than to that of article 55, which related to cases in which the nationals of more than one State were fishing in the same area. He did not, however, feel strongly on the Mexican representative's point.

41. Mr. KASUMA (Indonesia) supported the principle of the text, particularly in regard to condition (a) in paragraph 1, but thought that it should be expressed in the way proposed by the sponsors of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1).

42. Mr. CUSMAI (Italy) did not wish to embody the principle of abstention in the articles referred to the Committee, because he held that it was difficult to apply objectively, there was insufficient scientific knowledge to justify its application, and it was discriminatory. The matters under discussion should be settled by regional agreements, not by a world convention.

43. Mr. SOLE (Union of South Africa) favoured the principle of abstention but believed for practical reasons that the matters under discussion should be settled by regional agreements. If the majority thought that they should be settled by a world-wide agreement, the text under discussion should be embodied in an instrument separate from the draft articles which the Committee had already adopted.

44. Mr. HULT (Sweden) said that approximately sixty per cent of the stock of salmon in the Baltic came from his country, which in the near future would have to spend roughly 4,000,000 kronor a year on measures to conserve that stock. Nationals of other States took at least fifty per cent of the total salmon catch on the high seas of the Baltic. The Swedish Government nevertheless believed that the nationals of all States should be equally entitled to fish for salmon there. The matters under discussion should be settled by regional agreements rather than by a world convention. The Swedish authorities had discussed the problem with the authorities of neighbouring countries and, although they had not yet agreed on a text, they had reached agreement in principle.

45. Mr. HERRINGTON (United States of America) asked whether Sweden would welcome nationals of States without a Baltic coastline who fished for salmon there after agreement had been reached on such a text.

46. Mr. HULT (Sweden) replied that his country would have no objection. Vessels belonging to such countries had already been fishing for salmon there.

47. Mr. RUIVO (Portugal) said that the discussion had shown that the joint proposal was an economic and not a scientific one. He was opposed to the text because its authors had obviously not taken into account either the great changes which stocks of fish underwent, such as the recent large increase in the stock of cod off Greenland, or cases in which larger quantities could be caught without reducing the stock. It would

hinder both countries with large fishing fleets which wished to obtain more fish, and under-developed countries which wished to expand their fishing industries, and would also hinder international scientific co-operation.

48. The CHAIRMAN proposed that the Committee should not take any definite decision on the joint amendment submitted by the delegations of Canada and the United States (A/CONF.13/C.3/L.79) until its sponsors had had an opportunity to discuss it with representatives of other countries informally, and to revise it.

The proposal was adopted by 47 votes to none, with 13 abstentions.

49. Mr. OLAFSSON (Iceland) said he was grateful to the previous day's speakers for the understanding they had shown of the special circumstances on which his delegation's proposal (A/CONF.13/C.3/L.79) was based.

50. The United Kingdom representative had said at the 35th meeting that it would be unfair to leave the marine resources of the high seas off Iceland, the Faroe Islands and Greenland to their 200,000 inhabitants and make the 200 million inhabitants of the countries surrounding the North Sea go short. If it were agreed that the coastal State should have exclusive fishing rights as far as twelve nautical miles from the baseline and his delegation's proposal were adopted, there would still be large areas in the north Atlantic where the countries surrounding the North Sea would be free to fish, and they would be able to import fish from Iceland. The days of autarky were over. Every country should produce the commodities which it was best able to produce. Iceland imported most of the commodities it needed.

51. Mr. JONSSON (Iceland) referred to the United Kingdom representative's further statement at the 35th meeting in which he had said that it was incorrect to say that the European fishing countries destroyed coastal fish stocks, and, referring to the fact that the Icelandic representative had adduced that argument in the Fourth Committee in connexion with plaice, had added that that fish represented one per cent of the catch in Iceland's coastal waters. As regards the figure given for plaice in that statement, it was correct. However, the catch of plaice in Icelandic waters in 1955 had been roughly 8 per cent of the total European catch of plaice. He had chosen that species because the scientific work on it was clear-cut and of high quality.

52. He could have based his argument on figures relating to haddock. In 1955 the catch of haddock had accounted for 7.2 per cent of the total catch in Iceland's coastal waters and for 17 per cent of the total European catch of haddock. The stock of haddock in Iceland's coastal waters, which had previously been very much over-fished, had made a remarkable recovery since 1952. In 1957 the average experimental catch in Faxa Bay had been 778 kg per one-hour haul as compared with 85 kg before the closure of the Bay.

53. In 1955 the catch of cod had accounted for 60 per cent of the total catch in Iceland's coastal waters, and for 21 per cent of the total European catch of cod. From 1947 to 1952 the catch of English trawlers per 100 hours had varied from 38 to 44 tons; from 1953 to 1956 it had varied from 52 to 77 tons. The total catch had risen from 330,000 tons in 1951 to 540,000 tons in 1955. He had not mentioned cod in his general statement solely because it raised more complex problems than plaice, which was quite representative of the progress of Icelandic stocks under protective measures.

54. Mr. POPOVIC (Yugoslavia) said that for reasons which were not merely selfish his delegation thought that special consideration should be given to the interests of the coastal State, especially the small one. It would not support any unsubstantiated claim; it thought that the Committee should uphold Iceland's claim as moderate and based on solid reasoning.

55. Mr. PANIKKAR (India) also considered that special regard should be paid to the interests of the coastal State, and particularly to those of the people of sparsely populated land areas such as the Laccadive Islands who depended on fishing for their existence because their land was not suitable for cultivation. He therefore felt much sympathy with the delegation of Iceland; but he could not vote for the wording it had proposed. It would be wrong to give the coastal State greater rights than other States over any stock of fish which could be taken in greater quantities without harm. His delegation had made the precise proposal that the coastal State should "have exclusive fishing rights up to a distance of twelve nautical miles measured from the baseline" (A/CONF.13/C.3/L.50); that proposal was still awaiting discussion by the Committee.

56. He believed that the contents of the proposal of the Republic of Korea (A/CONF.13/C.3/L.45) and of the proposal submitted by the Philippines and the Republic of Viet-Nam (A/CONF.13/C.3/L.60), the principle of which he supported, were covered by the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1). He wondered whether the subject of the proposal of Iceland was not also covered by that proposal. The authors of those four proposals might perhaps consider submitting a single proposal in their place.

57. Mr. OLAFSSON (Iceland) suggested that no definite decision be taken on his delegation's proposal at the current meeting, because his delegation was reconsidering it in the light of the discussion.

That suggestion was adopted by 49 votes to none, with 7 abstentions.

58. Mr. WALL (United Kingdom) considered that the Committee should not vote on the text proposed by the delegation of Iceland, which related to a purely economic problem, without first asking the General Committee for a direction, since the same text was also before the First Committee.

The meeting rose at 12.40 p.m.

THIRTY-EIGHTH MEETING

Friday, 18 April 1958, at 10 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

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

SECOND READING OF ARTICLES APPROVED
BY THE THIRD COMMITTEE ON FIRST READING

1. Mr. HERRINGTON (United States) recalled that the Committee had decided to postpone its decision on article 49 until it had taken a decision on some provisions of the other articles referred to it.

2. In reply to a question by Mr. WALL (United Kingdom), the CHAIRMAN stated that a discussion on substance was still possible at the present stage of the Committee's work.

3. The CHAIRMAN proposed that the Committee should vote first on articles 57 to 59.

The proposal was adopted by 37 votes to none, with 14 abstentions.

Article 57

4. Mr. ALVAREZ (Uruguay) pointed out that there was some ambiguity in the word "constitución" in the Spanish text of paragraph 5 of the article. In his view, the period allowed to the special commission under that provision should date from the time when it was set up.

5. After an exchange of views in which Mr. GARCIA AMADOR (Cuba), Mr. LACLETA (Spain), Mr. CORREA (Ecuador) and Mr. HERRINGTON (United States) took part, Mr. LACU (Argentina), seconded by Mr. ALVAREZ (Uruguay), proposed that the word "constitución" in the Spanish text be replaced by the word "designación" and that the corresponding changes be made in the English and French texts.

The proposal of Argentina was adopted by 36 votes to 3, with 15 abstentions.

Article 57, as amended, was approved by 39 votes to 10, with 6 abstentions.

Article 58

6. Mr. CORREA (Ecuador) asked that each paragraph of article 58 be put to the vote separately.

7. His delegation had previously stated the reasons why it regarded paragraph 2 as unacceptable. When the vote by roll-call had been taken at the 32nd meeting, the provision in question had been approved by a very small majority; the summary record set forth in detail the attitude which the various delegations had adopted in that connexion.

Paragraph 1 of article 58 was approved by 38 votes to 7, with 9 abstentions.

8. Mr. HERRINGTON (United States) understood from the provisions of paragraph 2 of article 58 that if the special commission decided that the measures in dispute should not be applied pending its award, it

would complete its work expeditiously and make its award as quickly as possible.

9. Although he was unable to state precisely within what period the special commission would make its award, he personally felt that, in a clear-cut case, it would be able to announce its decision before five months had elapsed.

10. Mr. NARAYANAN (India) pointed out that, in order to bring the two texts into line, the word "should" in the third line of the English text should be replaced by the word "shall".

It was so decided.

11. Mr. CORREA (Ecuador) stated that his delegation would vote against paragraph 2, because it considered that that provision rendered inoperative the provisions of article 55 that were favourable to the coastal States.

12. Mr. GANDJI (Iran) recalled that his delegation had voted against paragraph 2 of article 58 on first reading, because it considered that the provision in question was tantamount to the pronouncement of an award before a case had been heard.

13. The United States representative had just explained that if the measures were suspended under the terms of paragraph 2, the special commission's award would have to be made as soon as possible. His own delegation would not vote for paragraph 2 unless the special commission which decided to suspend the measures was not required to wait five months before making its award.

14. Mr. NARAYANAN (India) recalled that, at the first reading, his delegation—which accepted the principle of arbitration—had abstained when the vote had been taken on paragraph 2 because of the changes that had been made in it. However, since the majority of the Committee's members had approved the provision in question, his delegation would support it on second reading.

Paragraph 2 of article 58 was approved by 34 votes to 21, with 6 abstentions.

15. Mr. KRYLOV (Union of Soviet Socialist Republics) stated that his delegation—which was opposed to compulsory arbitration—would vote against article 58 as a whole.

16. It would, however, vote for article 59, as its provisions were unobjectionable, and were not related to those of the preceding article.

17. Mr. MELO LECAROS (Chile) said he would vote against paragraph 2 of article 58, as it rendered nugatory the advantages accorded to coastal States under article 55.

18. Mr. GARCIA AMADOR (Cuba) stated that he would vote for article 58, which seemed to him to safeguard the interests of non-coastal and coastal States alike. He had observed that at the first reading the coastal States had already voted for that article.

Article 58 as a whole was approved by 40 votes to 17, with 5 abstentions.

19. Mr. GOLEMANOV (Bulgaria) explained that he had voted against articles 57 and 58 for reasons of

principle. His delegation was unable to accept the principle of compulsory arbitration.

Article 59

Article 59 was approved by 53 votes to none, with 7 abstentions.

20. Mr. GLASER (Romania) explained that his delegation had voted against articles 57 and 58 for reasons of principle, because his government was unable to agree to compulsory arbitration in general. On the other hand, it had voted for article 59, because it had no objection to a State's agreeing voluntarily and in full knowledge of the facts to arbitration and because it seemed desirable to his delegation that the provisions of paragraph 2 of Article 94 of the Charter of the United Nations should be applicable to the decisions of the special arbitral commission.

21. Mr. OBIOLS-GOMEZ (Guatemala) had abstained from voting on articles 57 and 58 because his delegation was unable to accept compulsory arbitration in the form laid down for such arbitration in the articles in question.

22. Mr. CORREA (Ecuador) explained that his delegation had voted for articles 57, 58 and 59 with the proviso that they would not be applicable if they proved incompatible with the Constitution of Ecuador.

23. Mr. LLOSA (Peru) said that his delegation considered that the provisions on which the vote had just been taken did not provide adequate safeguards for coastal States and impaired the authority of the United Nations and the International Court of Justice.

Article 50

Article 50 was approved by 59 votes to none, with 4 abstentions.

24. Mr. LUND (Norway) said, in explanation of his vote, that he had abstained because he did not think that in defining the expression "conservation of the living resources of the high seas", preference should be given in article 50 to certain aspects of the exploitation of the resources of the sea.

Article 51

Article 51 was approved unanimously.

Article 52

25. Mr. LACU (Argentina) and Mr. CORREA (Ecuador) pointed out that the Spanish text of article 52 should be redrafted. In particular the word "vivos" should be inserted between the words "recursos" and "marinos". Both the English and the French text referred to "living" marine resources.

26. Mr. GARCIA AMADOR (Cuba) observed that the words "se dedica a pescar 'en' la misma o 'en' las mismas reservas" should read as follows: "se dedica a pescar 'de' la misma o 'de' las mismas reservas". The correction would, moreover, bring the text into line with the International Law Commission's draft.

27. Mr. MELO LECAROS (Chile) asked that each paragraph of article 52 be put to the vote separately.

Paragraph 1 of article 52 was approved by 61 votes to none, with one abstention.

Paragraph 2 of article 52 was approved by 47 votes to 11, with 5 abstentions.

Article 52 as a whole was approved by 48 votes to 8, with 7 abstentions.

28. Mr. GLASER (Romania) said that he had voted for paragraph 1 of article 52, and against article 52 as a whole, because, although the Romanian Government endorsed the principles set forth in paragraph 1 of article 52, it was opposed to the establishment of compulsory arbitration. From the legal point of view, the reference to the principle of compulsory arbitration in several articles was to be deplored, as it would compel delegations which did not accept it to express their opposition time and again.

29. Mr. KRYLOV (Union of Soviet Socialist Republics) agreed with the Romanian representative.

Article 53

30. Mr. KRYLOV (Union of Soviet Socialist Republics) proposed that, in paragraph 1, the words "on an equal footing" be inserted in the second line between the words "engage" and "in fishing", and that the words "in form or in fact" to be inserted in the fifth line after the words "shall not be discriminating".

31. Mr. WALL (United Kingdom) said that the words "shall not be discriminating" in the fifth line of paragraph 1 should preferably be replaced by the words "shall not discriminate against their nationals".

32. Mr. ASANTE (Ghana) requested that the Soviet Union representative should explain exactly what he meant by his proposal to insert the words "on an equal footing" in paragraph 1.

33. Mr. KRYLOV (Union of Soviet Socialist Republics) said that what he had in mind was solely equality before the law.

34. Mr. NARAYANAN (India) proposed, in an effort to combine the Soviet Union and United Kingdom proposals, that the words "shall not discriminate against their nationals, in fact or form" be substituted for the words "shall not be discriminating". The advantage of such a wording would be that it also covered the principle of equal rights which the Soviet Union representative wanted to see mentioned in the second line of article 53.

35. Mr. WALL (United Kingdom) and Mr. KRYLOV (Union of Soviet Socialist Republics) accepted the proposal.

The Indian proposal was adopted by 52 votes to one, with 5 abstentions.

36. Mr. MELO LECAROS (Chile) asked that each paragraph of article 53 as amended be put to the vote separately.

Paragraph 1 of article 53, as amended, was approved by 58 votes to none, with one abstention.

Paragraph 2 of article 53, as amended, was approved by 40 votes to 12, with 6 abstentions.

37. Mr. QURESHI (Pakistan), explaining his vote on the Indian representative's amendment, said that he had voted against it because it might cause confusion.

38. Mr. LUND (Norway) said he had voted against the Indian amendment for the same reason as the Pakistan representative. He considered article 53 to be incorrectly worded.

Article 53, as amended, was approved by 45 votes to 9, with 7 abstentions.

Article 54

39. Mr. THURMER (Netherlands) wished it placed on record that the Netherlands delegation would vote against articles 54 and 55 because the Committee's proposals, if adopted, would give coastal States special rights, contrary to the interests of mankind in general.

40. Mr. TSURUOKA (Japan), Mr. PIRKMAYR (Federal Republic of Germany), Mr. HULT (Sweden) and Mr. ALLOY (France) associated themselves with the statement of the Netherlands representative.

41. Mr. KRYLOV (Union of Soviet Socialist Republics) asked for a separate vote to be taken on the first three paragraphs of article 54 and on paragraphs 4 and 5.

42. Mr. MELO LECAROS (Chile) asked for a separate vote to be taken on paragraph 5 of article 54.

43. Mr. NARAYANAN (India) said that, after hearing several representatives express reservations concerning articles 54 and 55, he wished to point out that the articles formed part of a whole from which they could not be severed. Should they be deleted, the Government of India could not accept the other articles of the draft.

44. Mr. GANDJI (Iran), Mr. OLAFSSON (Iceland) and Mr. HERRINGTON (United States) endorsed the statement by the Indian representative.

45. Mr. AGUERREVERE (Venezuela) asked for a separate vote to be taken on paragraphs 3, 4 and 5 of article 54.

46. Mr. LACLETA (Spain) asked for articles 54 and 55 to be voted on paragraph by paragraph.

47. Mr. WALL (United Kingdom) said he was prepared to vote for the text proposed for article 54 except as regards paragraph 4. With regard to article 55, he would again vote against this provision. At the same time, his delegation would further study article 55 in the light of whatever decisions the First Committee might reach about the limits of the territorial sea and exclusive fishery jurisdiction. The United Kingdom delegation would also wish to appraise the fishery conservation articles as an integrated whole and would make known in plenary session their final position.

48. Mr. RUIVO (Portugal) said that he wished to enter reservations with respect to paragraphs 3, 4 and 5 of article 54 and asked that the article be voted on paragraph by paragraph. He would be obliged to vote against article 55.

At the request of Mr. CORREA (Ecuador) and Mr. CASTAÑEDA (Mexico), a vote was taken by roll-call on paragraph 1.

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

In favour: Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, El Salvador, Finland, Ghana, Guatemala, Honduras, Iceland, India, Indonesia, Iran, Ireland, Republic of Korea, Liberia, Mexico, New Zealand, Nicaragua, Pakistan, Panama, Peru, Philippines, Poland, Romania, Saudi Arabia, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Albania, Argentina, Australia, Brazil.

Against: France, Federal Republic of Germany, Japan, Monaco, Netherlands, Sweden.

Abstaining: Israel, Italy, Norway, Portugal, Spain, Switzerland, Belgium.

Paragraph 1 of article 54 was approved by 50 votes to 6, with 7 abstentions.

49. Mr. LUND (Norway), explaining his abstention, said that it was because paragraph 1 of article 54 did not establish a rule of law, but merely contained a postulate which his delegation could not accept as valid in its general form.

50. Mr. RUIVO (Portugal) and Mr. MICHELSEN (Belgium) said that they had abstained for the same reason as the representative of Norway.

51. Mr. LACLETA (Spain) said that he had abstained from voting because he did not approve of the implications of the paragraph.

Paragraph 2 of article 54 was approved by 54 votes to 3, with 6 abstentions.

Paragraph 3 of article 54 was approved by 50 votes to 2, with 10 abstentions.

Paragraph 4 of article 54 was approved by 41 votes to 19, with 3 abstentions.

Paragraph 5 of article 54 was approved by 40 votes to 2, with 11 abstentions.

Article 54 as a whole was approved by 41 votes to 8, with 15 abstentions.

52. Mr. KRYLOV (Union of Soviet Socialist Republics) explaining his abstention from the vote on article 54 as a whole, said that though his delegation set great store by the provision in paragraph 1, it considered paragraph 5 unacceptable.

Article 55

53. Mr. KRYLOV (Union of Soviet Socialist Republics) asked for his delegation's proposal (A/CONF.13/C.3/L.42/Rev.1) to add a new sub-paragraph (d) to paragraph 2 of article 55 to be put to the vote again. Should that proposal be rejected, the Soviet Union delegation would be obliged to vote against article 55.

The Soviet proposal was rejected by 13 votes to 9, with 36 abstentions.

54. Mr. WALL (United Kingdom) proposed adding the words "in fact or form" to sub-paragraph (c) of paragraph 2, to make the provision consistent with article 53 as amended.

55. Mr. AGUERREVERE (Venezuela) asked for a vote on article 55 in parts. Paragraphs 1, 2 and 3 could be taken together; paragraph 4 by itself; and then paragraphs 5 and 6 together.

56. Mr. GOHAR (United Arab Republic) asked the Committee to replace the expression "scientific findings" in sub-paragraph (b) of paragraph 2 by "scientific principles". As it stood, sub-paragraph (b) of paragraph 2 was practically impossible to apply, because scientific findings were usually not available. On the other hand, the similarity which often existed between the stocks of fish in several areas justified basing conservation measures on rules already in use elsewhere, without waiting for the results of scientific investigations. When conditions were identical, there was no danger in basing conservation measures on scientific principles used in other areas to prevent the stock of fish from diminishing.

57. Mr. HERRINGTON (United States) felt that the change proposed by the representative of the United Arab Republic was inadvisable.

58. Mr. NARAYANAN (India) recalled that the terms used in sub-paragraph (b) of paragraph 2 had been chosen after careful thought. It was important that all measures taken should be based on scientific findings. The word "scientific" should not cause any alarm, for even simple data about the measurement of distances and spawning seasons were scientific.

59. Mr. ASANTE (Ghana), Mr. ANDERSON (Australia) and Mr. CORREA (Ecuador) supported the proposal made by the representative of the United Arab Republic.

60. Mr. RUIVO (Portugal) considered that it would be dangerous to adopt scientific principles as a criterion for conservation measures. Such measures should be based essentially on actual data concerning the stocks of fish in question. The change proposed by the delegation of the United Arab Republic might undermine the scientific basis on which all conservation measures should be founded.

The proposal of the United Arab Republic was rejected by 25 votes to 22, with 10 abstentions.

Paragraphs 1, 2 and 3 of article 55 were approved by 46 votes to 13, with 4 abstentions.

61. Mr. CORREA (Ecuador) recalled that the provision contained in paragraph 4 of article 55 had been included as the result of a proposal by the Norwegian delegation and had only been approved (27th meeting) by 17 votes to 14. At the time, the Norwegian representative had explained, with reference to "uninhabited territories" that Antarctica was a case in point. The vagueness of that provision introduced a dangerous element into the convention which might reduce the right of the coastal State to nothing.

62. Mr. MELO LECAROS (Chile), supported by Mr. LACU (Argentina) considered that, even if the paragraph in question were supplemented by the words "in Antarctica", it would still remain unacceptable, because it would deal with a part of the world which was not in fact uninhabited; it would thus contain an inexact statement. It should be possible to apply conservation measures to all areas of the high seas where resources existed, which was exactly the position in Antarctica.

63. Mr. WALL (United Kingdom) thought that the provision in paragraph 4 of article 55 was a logical one, since the purpose of article 55 was to deal with urgent questions. In Antarctica, there were neither fishermen to protect nor people to feed. His delegation felt that paragraph 4 should be left as it stood.

64. Mr. ANDERSON (Australia) drew attention to the difficulties connected with the interpretation and application of paragraph 4.

Paragraph 4 of article 55 was rejected by 29 votes to 12, with 20 abstentions.

65. Mr. ALVAREZ (Uruguay) pointed out that paragraph 5 of article 55 duplicated provisions which appeared elsewhere, and it could thus be deleted.

66. Mr. GARCIA AMADOR (Cuba) thought that it was rather paragraph 3 which should be deleted.

Paragraph 5, which now became paragraph 4, was approved by 32 votes to 22, with 8 abstentions.

Paragraph 6, which now became paragraph 5, was approved by 41 votes to 4, with 11 abstentions.

Article 55 as a whole, as amended, was approved by 34 votes to 20, with 5 abstentions.

67. Mr. LLOSA (Peru) recalled that, when the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) had been under discussion, he had stated that it did not pay sufficient attention to the rights of the coastal State; that it gave them no protection against wasteful fishing by foreign enterprises; and that it was completely at variance with the traditional principles of Peru's foreign policy.

68. Those views of his delegation had been further strengthened as a result of the efforts made by some other delegations to remove from article 55 anything that was favourable to coastal States. For those reasons, his delegation had been obliged to vote against article 55 as a whole.

69. Mr. CIEGLEWICZ (Poland) said that the Polish delegation had voted against article 55 as a whole, for reasons which it had already explained. In particular, it could not agree that unilateral measures should have compulsory effects.

Article 56

Article 56 was approved by 42 votes to 8, with 6 abstentions.

Article 59 A

Article 59 A was approved by 49 votes to none, with 6 abstentions.

70. Mr. GLASER (Romania) said that he had voted for article 59 A because that article established a procedure which was not compulsory, but which the States concerned were free to adopt.

Article 60

Article 60 was approved by 51 votes to one, with 5 abstentions.

The meeting rose at 1.30 p.m.

THIRTY-NINTH MEETING

Monday, 21 April 1958, at 10.25 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81)

1. Mr. MELO LECAROS (Chile) said that his delegation was in favour of a single instrument covering all the topics with which the Conference had dealt, for the reasons which had twice led the General Assembly to the conclusion that the law of the sea should be treated as a whole.

2. Referring to the paper on final clauses prepared by the secretariat (A/CONF.13/L.7), he said that the term "accession" should be more precisely defined; whereas in some countries it implied ratification, in the Latin American countries it implied signature subject to approval by the legislature. So far as reservation clauses were concerned, he said that some countries might not be able to ratify certain articles, particularly those concerning arbitration, and as a consequence a reservation clause was necessary.

3. Mr. CUSMAI (Italy) said that the articles which the Committee had adopted would be best embodied in a convention, a more appropriate instrument than a declaration, which could not include the arbitration clauses or bind States to adopt the measures necessary to put the articles into effect.

4. Mr. REGALA (Philippines) said that all the articles which obtained a two-thirds majority in the plenary Conference should be embodied in a single convention. A declaration would not be a fitting form of certification. It was possible that agreement might not be reached on certain articles, such as article 3, but there were groups of articles which were generally acceptable, in particular those dealing with fishing and the continental shelf. It might be advisable to embody such groups in separate conventions. Articles which, although adopted by the various committees, failed to obtain a two-thirds majority in the plenary Conference might be incorporated in a declaration, which would be of assistance to future conferences.

5. Mr. CORREA (Ecuador) said that, so far as the articles referred to the Committee (articles 49 to 60) were concerned, three courses were possible which the Committee might recommend to the plenary Conference

as alternatives. Firstly, the articles adopted by the Committee might constitute a separate convention. In that case, it would be necessary to reconsider article 49 with a view to including provisions regarding zones in which coastal States would have exclusive fishing rights. Secondly, the provisions adopted by the Committee might form part of a general convention, which was the intention of the International Law Commission. The final decision would have to be taken by the plenary Conference, in the light of the work of the First and Second Committees and could not be taken at the present stage. Thirdly, the articles might be embodied in a declaration; but a declaration would not be a binding instrument, for it would have only moral force, and hence could not contain the articles on arbitration. A separate protocol would be required for States which were prepared to accept compulsory arbitration.

6. If it was decided that the provisions adopted by the Committee should form the subject of a separate convention, then final clauses should be recommended which were based on those reproduced in the secretariat paper (A/CONF.13/L.7). By reason of the interdependence of the branches of the law of the sea, his delegation was strongly in favour of a general convention embodying all the articles adopted by the various committees.

7. Mr. PANIKKAR (India) said that his delegation was in favour of a separate convention for the articles relating to fishing, and opposed the idea of embodying the provisions in a declaration. The final clauses suggested by the secretariat (A/CONF.13/L.7) would form a convenient basis for discussion. The convention should be permanently open for acceptance, and the procedure of initial acceptance followed by later ratification should be allowed. Articles 49 to 60 were so closely interdependent that partial acceptance should not be permitted, and accordingly he considered that the clause disallowing reservations should be adopted by the Committee.

8. Mr. OZERE (Canada) and Mr. GANDJI (Iran) agreed with the remarks of the Indian representative.

9. Mr. POPOVIC (Yugoslavia) said that, because the various sections of the law of the sea were closely interdependent, his delegation was in favour of a single general convention. The new provisions which the Conference adopted could only come into force if embodied in a treaty.

10. With regard to the respective merits of a convention and a declaration, he said that history contained several examples of declarations which were no less binding than conventions. Nevertheless, on balance, his delegation considered that a convention would be a more appropriate instrument in the case of the articles relating to the law of the sea.

11. Mr. CASTANEDA (Mexico) said that the ideal instrument would be that which made the provisions adopted truly binding. But no conclusion could be reached until a decision had been taken on article 49. He therefore supported the suggestion by the representative of Ecuador that the Committee should recommend alternatives to the plenary Conference.

12. Miss SOUTER (New Zealand) said that her delegation supported the Indian representative's suggestion for a separate convention to embody the articles already adopted by the Committee relating to the conservation of the living resources of the sea. In view of the interdependence of those articles, no reservations should be allowed.
13. Mr. HERRINGTON (United States of America) said that he agreed with the remarks of the Indian and New Zealand representatives, although it would be necessary to await the decision taken regarding article 49. If reservations were allowed or if some articles were rejected by the plenary Conference, a separate convention might not be acceptable to many States.
14. Mr. LUND (Norway) said that his delegation agreed with the United States delegation.
15. Mr. LLOSA (Peru) said that his delegation broadly agreed with all those who had proposed that it should be left to the plenary Conference to decide the type of instrument which should be adopted. A general convention would be most appropriate.
16. Mr. SCHWARCK ANGLADE (Venezuela) said that his delegation maintained the view it had expressed in other committees that no recommendation should be made to the plenary Conference as to the type of instrument. It could support a convention, though not necessarily a separate one. Reservations should be allowed.
17. Mr. CORREA (Ecuador) said that, as no formal proposal had been submitted, he wished to suggest that the rapporteur should include in his report a summary of the views expressed at the present meeting and any final clauses which might be recommended.
18. Mr. WALL (United Kingdom) said that articles 49 to 60 were so closely linked that no reservations should be allowed. He therefore agreed with the statements made by the representatives of India, New Zealand and the United States of America.
19. Mr. LÜTEM (Turkey) said that, as the final votes requiring a two-thirds majority had not yet been taken, the Committee should leave the form of instrument to the plenary Conference, as the Second Committee had done. His delegation therefore agreed with the suggestion of the representative of Ecuador.
20. Mr. PANIKKAR (India) proposed formally that the Committee should recommend to the Conference that the results of the Committee's work be embodied in a convention relating to fishing and the conservation of the living resources of the sea. The question of reservations could be postponed until after a decision on article 49 had been taken.
21. Mr. HULT (Sweden) said that his delegation was in favour of recommending a separate convention to which no reservations would be allowed.
22. Mr. THURMER (Netherlands) said that his delegation was in favour of recommending a separate convention for articles 49 to 60, provided that no extra articles were added and no reservations were allowed.
23. Mr. CASTAÑEDA (Mexico) said that the Indian proposal could not be accepted, because the plenary Conference had not yet confirmed the articles which the Committee had adopted, and thus it was not known what articles the convention would contain. The Indian representative himself had said that his delegation could not support the other articles if articles 54 and 55 were rejected.
24. Mr. PANIKKAR (India) said that his proposal dealt only with the question of a separate convention; he had made no formal proposal concerning reservations.
25. Mr. RUIVO (Portugal) said that his delegation was in principle in favour of a separate convention, though it would be influenced by the final decisions of the plenary Conference and by the decision on the articles concerning claims to exclusive or preferential rights by virtue of special conditions. The latter could not be admitted in a convention of a general nature.
26. Mr. KRYLOV (Union of Soviet Socialist Republics) said that the Conference, even if not able to produce a general convention, might agree on a separate convention relating to fishing. His delegation therefore agreed with the representative of Ecuador that it was too early to decide on the type of instrument required, and that the matter should be left to the plenary Conference.
27. Mr. CHRISTENSEN (Denmark) said that his delegation agreed with the statements made by the representatives of India, New Zealand, the United Kingdom and the United States.
28. Mr. ANDERSON (Australia) said that his delegation was in favour of a separate convention, but it could not decide whether to support the Indian proposal until it appeared in writing and until a decision was taken on article 49.
29. Mr. MELO LECAROS (Chile) said that it was clear that the countries which supported a separate convention were those hostile to provisions giving special rights to the coastal State. If a single convention were not adopted, those countries would only support what was in their interests. His delegation supported the suggestion of the representative of Ecuador that a decision on the type of instrument should be left to the plenary Conference.
30. Mr. LÜTEM (Turkey) said that the Committee could not reach a decision on the question under consideration before it had dealt with all the proposals before it. The question should therefore be left to the plenary Conference.
31. Mr. KASUMA (Indonesia) said that, on the basis of his interpretation of the terms of reference of the Conference, he would support the Indian representative's proposal. He agreed, however, that it would be difficult to reach a final decision on the question of the type of instrument since the Committee had not yet completed its work. His delegation attached particular importance to articles 49, 54 and 55, and on their adoption would depend its position on the fisheries articles as a whole.
32. Mr. LACLETA (Spain) said that his delegation supported the Indian representative's proposal because

the fisheries articles constituted a separate unit and unless they were taken as such his delegation would be unable to participate in the vote. The Committee had not, in any case, completed consideration of article 49.

33. Mr. PANIKKAR (India) pointed out that under his delegation's proposal the Committee would merely recommend to the Conference that the fisheries articles should be the subject of a separate convention. The Committee would, of course, have to dispose of all outstanding proposals first. The proposal would be circulated in writing.

34. Mr. GANDJI (Iran) said that he would support the Indian representative's proposal, on the grounds that the fisheries articles were very closely interrelated and that his delegation would be unable to accede to any convention unless it included articles 49, 54 and 55.

35. The CHAIRMAN suggested that the Committee should defer further consideration of the matter until it had completed its examination of article 49 and the question of exclusive and preferential rights.

The Chairman's suggestion was adopted by 41 votes to none, with 13 abstentions.

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

CONSIDERATION OF PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.12, L.45, L.60, L.69, L.70, L.79/Rev.1, L.86 to L.88) (continued)¹

36. Mr. ANDERSEN (Iceland) said that his delegation had always maintained that a general twelve-mile zone, representing either the territorial sea or the extent of exclusive jurisdiction over fisheries, while effective in certain cases, would not adequately meet the needs of countries which were overwhelmingly dependent on coastal fisheries for the livelihood of their population. The case of Iceland, 97% of whose exports consisted of fisheries products, was special indeed, and his delegation had accordingly submitted a suitable proposal in the First Committee (A/CONF.13/C.1/L.131). That proposal had been withdrawn, however, and a similar one submitted in the Third Committee (A/CONF.13/C.3/L.79), which itself had later been amended as a result of the valuable advice of certain delegations.

37. The revised proposal (A/CONF.13/C.3/L.79/Rev.1) was based on the idea that in exceptional cases, such as that of Iceland, fisheries problems would arise in their most acute form when the maximum sustainable yield had been obtained and when fishing had been limited accordingly. At that point, the extent of the fishing activities of fishermen of different nationalities would have to be determined equitably, and countries such as Iceland must be accorded preferential fishing rights corresponding to their almost complete dependence on fishing. Unless such rights were

recognized, Iceland might well become uninhabitable in consequence of intensive fishing around its coasts.

38. That view was not selfish but merely realistic. Iceland, owing to its geographical position, found it extremely difficult to diversify its economy, and, although experiments with banana and grape production were being carried out, the present international division of labour, whereby it imported the necessities of life in exchange for fisheries products, was obviously to the general advantage. If the survival of a nation was at stake, a departure from the general rule should be authorized.

39. He requested a roll-call vote on his revised proposal.

40. Mr. SCHWARCK ANGLADE (Venezuela) felt that the second paragraph of the revised Icelandic proposal, which he supported in general, was unnecessary.

41. Mr. ANDERSEN (Iceland) explained that the second paragraph had been added at the suggestion of certain delegations, which thought that the proposal might otherwise be regarded as dangerous. The new paragraph would ensure that the provisions of the preceding paragraph were not abused. His delegation had no strong views on the matter, and he therefore suggested that a separate vote should be taken on the second paragraph.

42. Mr. NGUYEN-QUOC-DINH (Republic of Viet-Nam) said that, for reasons he had explained earlier, his delegation considered that preferential fishing rights should be granted to certain States. The exercise of such rights should, of course, be reasonably limited so as to prevent their abuse; such a safeguard was provided for in the revised Icelandic proposal, which was in accordance with his country's interests. If that proposal were adopted, his delegation, with the agreement of the other two co-sponsors, would withdraw the three-power proposal (A/CONF.13/C.3/L.86).

43. Mr. CASTAÑEDA (Mexico) said that he supported the revised Icelandic proposal. There was very little likelihood of its abuse since, like all other international rules drafted in general terms, it would merely serve as a guide and would be interpreted by competent bodies in the event of disagreement. Its wording was, if anything, rather too restricted and would seem to apply only to the case of Iceland, particularly in view of the use of the words "overwhelmingly dependent". Although a more broadly applicable rule would have been better, his delegation would vote for the proposal despite the reservations it had about the reference to article 57.

44. Mr. CHRISTENSEN (Denmark) said that his delegation would vote for the revised Icelandic proposal, on the understanding that the reference to arbitration procedure would be retained.

45. Mr. WALL (United Kingdom) considered that the Committee should hear explanations of other proposals on exclusive or preferential fishing rights before reaching a decision on the revised Icelandic proposal. That proposal was in some respects rather vague; the reference to the limitation of the total catch, for example, failed to mention conservation, and he

¹ Resumed from 37th meeting.

wondered whether the limitation decision would be based on conservation principles. Moreover, would that decision be taken as a matter of course by the fishing States under article 52 through an international conservation body or unilaterally by the coastal State under article 55?

46. He also observed that a decision to limit the catch would be based essentially on scientific evidence, whereas the preferential rights of the coastal State implied a consideration of economic criteria. Under the revised Icelandic proposal, disputes would be referred to an arbitral commission under article 57; but those commissions were composed of experts other than economists. In those circumstances, he doubted seriously whether such bodies would be qualified to assess the relative economic interests of different States. Furthermore, the proposal failed to indicate which economic criteria would be used in reaching decisions.

47. The Cuban representative had stated at the 29th meeting that a coastal State should not be granted exclusive rights by virtue of its special interests if other States also had interests in the area affected. That was quite true, and he considered that the special interests of Iceland—which, in any event, possessed a modern fishing fleet—were to some extent overlapped by the interests of the small-boat communities of Greenland and the Faroes. It would be very difficult indeed to decide such questions in respect of the north Atlantic area where an intricate balance of economic interests was maintained.

48. Mr. ANDERSEN (Iceland) explained, with reference to the United Kingdom representative's remarks, that conservation had not been mentioned in the proposal because the crux of the problem was how to divide the yield after the catch had been limited. It was then that the need for preferential rights arose. The procedure under his proposal would be quite simple—the matter would first be taken up in the competent regional fisheries body, and, if no agreement was reached in that body, the coastal State would adopt unilateral measures which under the second paragraph could be referred to arbitration. The decision on the coastal State's claims to preferential rights would be based on both scientific and economic considerations and the arbitral commissions would, in his view, be eminently qualified to examine such questions.

49. Mr. STABELL (Norway) said that despite his country's close friendship with Iceland he would be unable to support the revised Icelandic proposal. Account should be taken of the interests of Norwegian fishermen who were economically just as dependent as those of Iceland on certain traditional fisheries. The standard of living of certain Norwegian coastal communities was no higher than that of Icelandic communities and therefore his delegation was unable to accept the principle that a State should be granted preferential rights by reason of the existence of a special situation.

50. Mr. LEE (Republic of Korea) said that his delegation, on behalf of the co-sponsors, withdrew the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) as well as its own proposal (A/CONF.13/C.3/L.45)

since they were duplicated by the revised Icelandic proposal.

51. Mr. ALVAREZ (Uruguay) said he would vote in favour of the revised proposal of Iceland because his delegation viewed the special position of that country with sympathy and well understood the aspirations of its inhabitants.

52. The existence of countries which were underdeveloped owing to the lack of economic and technical means was an actual fact, and not—as some remarks made at the 35th meeting might appear to imply—a notion invented by the small countries to help them in their negotiations with the larger States. As the representative of the United Kingdom had pointed out, the problem would not be solved by millions of human beings leaving the resources of the sea in the hands of some thousands. What was required was that countries which possessed great economic wealth should consent to the sacrifice of a small share of their interests for the sake of those who were less fortunate, in order to allow the latter to breathe more easily and lead a better existence.

53. The CHAIRMAN proposed the closure of the debate on the revised Icelandic proposal.

The proposal was adopted by 27 votes to 10, with 18 abstentions.

54. The CHAIRMAN put paragraph 1 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) to the vote.

At the request of the representative of Iceland, a vote was taken by roll call.

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

In favour: Ghana, Hungary, Iceland, India, Indonesia, Iran, Ireland, Republic of Korea, Mexico, Panama, Peru, Philippines, Tunisia, United Arab Republic, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Bolivia, Burma, Canada, Chile, Costa Rica, Czechoslovakia, Denmark, Ecuador.

Against: France, Federal Republic of Germany, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic.

Abstaining: Finland, Israel, Liberia, Switzerland, Thailand, Union of South Africa, United States of America, Australia, Brazil, Ceylon, China.

Paragraph 1 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) was adopted by 27 votes to 18, with 11 abstentions.

55. The CHAIRMAN put paragraph 2 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) to the vote.

At the request of the representative of Iceland, a vote was taken by roll call.

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

In favour: Sweden, Switzerland, Uruguay, Republic of Viet-Nam, Argentina, Belgium, Bolivia, Canada, Ceylon, China, Costa Rica, Denmark, Finland, France,

Federal Republic of Germany, Ghana, Iceland, India, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Panama.

Against: Portugal, Romania, Spain, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Republic of Korea, Peru.

Abstaining: Thailand, Tunisia, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Brazil, Burma, Czechoslovakia, Ecuador, Hungary, Indonesia, Iran, Liberia, Mexico, Philippines, Poland.

Paragraph 2 of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) was adopted by 26 votes to 12, with 18 abstentions.

56. The CHAIRMAN put the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) as a whole to the vote.

At the request of the representative of Iceland, a vote was taken by roll call.

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

In favour: Costa Rica, Czechoslovakia, Denmark, Ecuador, Ghana, Hungary, Iceland, India, Indonesia, Iran, Ireland, Mexico, Panama, Peru, Philippines, Tunisia, United Arab Republic, Uruguay, Republic of Viet-Nam, Yugoslavia, Argentina, Bolivia, Burma, Canada, Chile.

Against: France, Federal Republic of Germany, Italy, Japan, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic.

Abstaining: China, Finland, Israel, Republic of Korea, Switzerland, Thailand, Union of South Africa, United States of America, Venezuela, Australia, Brazil, Ceylon.

The Icelandic proposal as a whole was adopted by 25 votes to 18, with 12 abstentions.

The meeting rose at 1.15 p.m.

FORTIETH MEETING

Monday, 21 April 1958, at 2.45 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

In the absence of the Chairman, Mr. Krispis (Greece), Vice-President, took the Chair.

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

PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.12, L.45, L.60, L.66/Rev.1, L.69, L.70, L.79/Rev.1, L.86 to L. 89) (continued)

Explanations of votes on the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1)

1. Mr. O'HALLORAN (New Zealand) said that in

voting against the first paragraph of the Icelandic proposal and against the proposal as a whole his delegation had implied no judgement about the merits of a local situation not directly within its experience. It had formed the impression from statements made by the Icelandic delegation and delegations from other countries directly concerned with the problem, that the possibilities of ultimately arriving at a provision acceptable to those countries had not yet been fully explored. In these circumstances, his delegation considered that the adoption of the proposal could only prejudice the value of the articles on fishing as a whole.

2. Mr. ALLOY (France) said that his country's understanding of what was meant by fishing rights on the high seas had prevented the French delegation from voting for the Icelandic proposal. The French delegation could not go beyond the concessions it had already made to coastal States without jeopardizing the livelihood of the 55,000 French fishermen. The Icelandic proposal aimed at nothing less than granting an additional right to the coastal States. It was not, however, by granting an additional right that the question could be settled, but by negotiations between all the States concerned. The Icelandic proposal ran counter to the principle of equal fishing rights on the high seas, for restrictions on that right must be applied to all fishermen without discrimination.

3. The French delegation well understood Iceland's special position and would therefore be prepared, in the First Committee, to vote in favour of an amendment which took into account the point of view he had just outlined.

4. Mr. LEE (Republic of Korea) recalled that his delegation had already expressed the view that the provisions of article 54 and 55 did not adequately protect the interests of coastal States which exploited and conserved living resources of the seas as a means of subsistence for their peoples. It had accordingly submitted an alternative proposal (A/CONF.13/C.3/L.45), and was one of the co-sponsors of the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1).

5. For the same reasons as had already led it to vote against the provisions of article 57 concerning the settlement of disputes by compulsory recourse to arbitration, the Korean delegation had voted against the second paragraph of the Icelandic proposal.

6. The Korean delegation was in favour of a form of words which would leave the States concerned a measure of latitude to choose whatever procedure was best suited to the case in point and had therefore proposed that in the event of disagreement regarding the provisions of articles 52 to 56, the parties should seek a solution in accordance with the provisions of Article 33 of the United Nations Charter.

7. Mr. THURMER (Netherlands) pointed out that at the previous meeting he had asked to speak in the discussion on the Icelandic proposal and that, contrary to the provisions of the rules of procedure, he had not been given the floor. He therefore proposed formally that the Committee should reconsider the decision it had taken on the Icelandic proposal.

8. The CHAIRMAN said that the Netherlands

representative's proposal was in order. A simple majority would suffice for its adoption.

9. Mr. OZERE (Canada) thought that the Netherlands representative's proposal could only delay the Committee in its work.

10. Mr. ANDERSEN (Iceland) pointed out that it was open to any delegation to submit to a plenary meeting of the Conference amendments to a proposal adopted by the Committee.

11. Mr. WALL (United Kingdom) said that though he had been in the same position as the Netherlands representative at the previous meeting, he saw no point in re-considering the decision that had been taken. The best course would be for those delegations who were unhappy about the solution proposed by the Icelandic delegation to prepare an amendment which could obtain a majority vote in plenary meeting. He associated himself with the remarks of the New Zealand representative.

12. After a procedural discussion in which Mr. GANDJI (Iran), Mr. ANDERSEN (Iceland) and Mr. REGALA (Philippines) took part, the CHAIRMAN put to the vote the Netherlands representative's proposal that the Committee reconsider the Icelandic proposal.

The proposal was rejected by 33 votes to 3, with 18 abstentions.

13. Mr. HULT (Sweden) said he had voted against the Icelandic proposal. The Swedish delegation fully appreciated the difficulties facing Iceland, which depended on fishing for a major part of its resources, but in its view the First Committee's adoption of paragraph 2 of the revised Canadian proposal (A/CONF.13/C.1/L.77/Rev.3) would remove most of those difficulties.

14. Mr. MICHIELSEN (Belgium) said he had been unable to vote in favour of the Icelandic proposal, which infringed the principle of the freedom of the high seas and might seriously prejudice the interests of fishermen from other countries. Moreover, the First Committee's adoption of paragraph 2 of the revised Canadian proposal should largely meet Iceland's requirements. In his delegation's view, the form of the Icelandic proposal could also have been considerably improved if a lengthier discussion had been devoted to it.

15. In conclusion he expressed the hope that a form of words which could satisfy all delegations could be prepared for submission to the plenary meeting.

16. Mr. ASANTE (Ghana) said he had voted in favour of the proposal by Iceland, whose situation he well understood, since his country also drew a large part of its resources from the sea. Large numbers of people might see their means of subsistence curtailed, however, if the provisions of the Icelandic proposal were put into effect. He was therefore glad to learn that an amendment to it might be submitted at the plenary meeting.

17. Mr. KRYLOV (Union of Soviet Socialist Republics) said he had voted against the Icelandic proposal. For him to have voted in favour of it, it would have had

to stipulate that it related solely to Iceland, but it did not in fact do so.

18. Mr. RUIVO (Portugal) said he had voted against the Icelandic proposal, which, in his delegation's view, did not solve the problem of conservation but provided for discriminatory measures which infringed the freedom to fish on the high seas. Moreover, in very many cases, the fishermen to suffer from such discriminatory measures would have a lower standard of living than those on whose behalf they were taken.

19. In his view, the proposal which Canada had submitted to the First Committee should not be taken into account in the present debate, since it was still under discussion.

20. Mr. LIMA (El Salvador) requested that it be placed on record that his delegation had intended to vote in favour of the Icelandic proposal but had been unable to attend the meeting at which it had been put to the vote.

21. Mr. LLOSA (Peru) said he had voted in favour of the Icelandic proposal, as it related to special conditions such as those in which Peru found itself with regard to the living resources off its coasts, on which the economic life of the entire country depended.

22. Mr. ANDERSEN (Iceland) expressed his surprise that the Soviet Union representative, who, in the International Law Commission, had voted in favour of inserting the comment on article 49, should have said that the Icelandic proposal was not sufficiently precise. The Icelandic delegation was very disappointed at the attitude which the Soviet Union delegation had adopted with regard to its proposal.

23. The CHAIRMAN pointed out that the members of the International Law Commission were appointed in their personal capacity, whereas delegates to the Conference represented their governments.

24. Mr. CASTAÑEDA (Mexico) observed that, in the Spanish text of the Icelandic proposal, the word "overwhelmingly" had been mistranslated "absolutamente".

25. The CHAIRMAN replied that that observation would be taken into account in the final text.

PROPOSAL SUBMITTED BY CANADA AND THE UNITED STATES (A/CONF.13/C.3/L.88)

26. Mr. HERRINGTON (United States of America) said that after the debate on the proposal submitted by Canada and the United States (A/CONF.13/C.3/L.69), the two delegations had thought it should be replaced by another proposal (A/CONF.13/C.3/L.88), which he hoped would commend itself to the members of the Committee.

27. Mr. TSURUOKA (Japan) appreciated the co-operative attitude of the delegations of Canada and the United States. However, he had some comments to make on the draft proposal which Mr. Herrington had just presented. First, the procedure known as abstention, referred to in the third paragraph of the preamble, had nothing to do with the conservation measures inasmuch as it lacked scientific basis, thus being contradictory

to the articles concerning conservation which had already been adopted in the Committee.

28. Secondly, the Canadian and United States joint proposal was based on the assumption that any State would not be disposed to spend money for the restoration of the productivity of certain stocks of fish unless other States would abstain from fishing them. Any State would have to take conservation measures whenever necessary for the general interests of the international community. Every year Japan was spending more than one million dollars for the maintenance of the productivity of salmon, but had never asked other States to abstain. It was unreasonable that a State giving protection only to part of certain stocks of fish should claim the monopoly of those stocks of fish as a whole. Furthermore, it was not fair that a State which was to be responsible for the depletion of the living resources of the sea, caused by intensive fishing by that State, should ask other States to abstain.

29. Finally, the joint proposal referred to the Report of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955,¹ but that reference was not appropriate.

30. For all those reasons, his delegation was unable to accept the Canadian and United States joint proposal.

31. Mr. WALL (United Kingdom) recognized that the new proposal (A/CONF.13/C.3/L.88) presented by Canada and the United States represented an advance over the proposal it replaced (A/CONF.13/C.3/L.69), for it took account of the special situations involved in the development of stocks of fish. He could not vote for the new proposal, but would abstain. In the first paragraph of the preamble to the proposal it would be preferable to replace the word "conclusion" by the word "declaration", for the text cited was not, strictly speaking, a conclusion of the International Technical Conference on the Conservation of the Living Resources of the Sea.

32. Mr. THURMER (Netherlands) said that the resources of the sea should be regarded as the property of all and that no one was entitled to reserve their use for himself. For that reason, his delegation would vote against the Canadian and United States joint proposal, which it considered to favour discriminatory measures.

33. Mr. LLOSA (Peru) said that, having supported the proposal of Iceland at the preceding meeting, his delegation was prepared to support the Canadian and United States joint proposal (A/CONF.13/C.3/L.88). Those two proposals referred to special situations, and Peru certainly found itself in one. It had spent large sums on the conservation of stocks of fish off its coasts and had for forty years been carrying out a programme designed to increase stocks of fish and encourage the production of guano, which was essential to its agriculture. He was glad that the United States delegation had presented the proposal contained in

document A/CONF.13/C.3/L.88, and his delegation would vote for it.

34. Mr. HULT (Sweden) asked if the sponsors really meant that such a misuse of a fish stock as to cause depletion ought to give the fishing State a monopoly for the future through the principle of abstention.

PROPOSALS OF YUGOSLAVIA (A/CONF.13/C.3/L.12), INDIA (A/CONF.13/C.3/L.50) AND PORTUGAL (A/CONF.13/C.3/L.70)

35. Mr. POPOVIC (Yugoslavia) said that his delegation would withdraw its proposal (A/CONF.13/C.3/L.12) and reserve the right to revert to the question in the plenary Conference.

36. Mr. PANIKKAR (India) announced that his delegation was also withdrawing its proposal (A/CONF.13/C.3/L.50) and reserving the right to revert to the question in the plenary Conference.

37. Mr. RUIVO (Portugal) announced that his delegation was withdrawing its proposal (A/CONF.13/C.3/L.70), which would very shortly be replaced by a more general recommendation stressing the need for the establishment of co-operation between coastal States and the competent international institutions in the adoption of measures for the conservation of stocks.

PROPOSAL OF THE UNITED KINGDOM
(A/CONF.13/C.3/L.87)

38. Mr. WALL (United Kingdom) drew attention to the draft resolution on international fishery conservation conventions (A/CONF.13/C.3/L.87) presented by his delegation, which he was placing before the Committee for its approval.

39. Mr. LUND (Norway) said that he was prepared to vote in favour of that draft resolution.

40. Mr. PANIKKAR (India) said that he would vote for the United Kingdom proposal.

The United Kingdom draft resolution (A/CONF.13/C.3/L.87) was adopted by 49 votes to none, with 11 abstentions.

A vote was taken by roll-call on the joint proposal by Canada and the United States (A/CONF.13/C.3/L.88).

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

In favour: Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Republic of Korea, Liberia, Federation of Malaya, Mexico, New Zealand, Panama, Paraguay, Peru, Philippines, Saudi Arabia, Thailand, Tunisia, Union of South Africa, United Arab Republic, Republic of Viet-Nam, United States of America, Argentina, Australia, Bolivia, Brazil.

Against: Finland, France, Federal Republic of Germany, Italy, Japan, Netherlands, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania,

¹ United Nations publication, Sales No.: 1955.II.B.2, para. 61.

Belgium, Bulgaria, Byelorussian Soviet Socialist Republic.

Abstaining: Denmark, Haiti, Israel, Norway, Switzerland, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia.

The joint proposal of Canada and the United States (A/CONF.13/C.3/L.88) was adopted by 38 votes to 17, with 8 abstentions.

NETHERLANDS PROPOSAL (A/CONF.13/C.3/L.59)

41. Mr. URBINA (Ecuador) requested that discussion of the Netherlands proposal (A/CONF.13/C.3/L.59) be postponed until the next meeting.

It was so agreed.

SECOND READING OF ARTICLES APPROVED BY THE THIRD COMMITTEE ON FIRST READING (continued)¹

Article 49

42. Mr. THURMER (Netherlands) said that his delegation could not accept paragraph 1 (b). There was a danger of placing too much emphasis on national interest, which might lead to disputes in a world in which they were only too frequent already. He reminded the Committee of his delegation's views on the resources of the high seas, which belonged to all countries. The Netherlands delegation, being unable to accept the text of paragraph 1 (b), moved that a separate vote be taken on it.

43. Mr. LLOSA (Peru) pointed out that paragraph 1 (b) had only been adopted on first reading after a long discussion, which was the reason why it had been retained in the text by the drafting committee. He therefore thought it useless to reconsider the question and was opposed to a separate vote on paragraph 1 (b).

44. Mr. PANIKKAR (India) considered that article 49, on which the Committee had to take a decision, formed a whole which should not be divided. He, too, was therefore opposed to a separate vote on paragraph 1 (b).

The Netherlands motion that article 49 be put to the vote in parts was defeated by 41 votes to 13, with 6 abstentions.

Article 49 was approved on second reading by 50 votes to 8, with 5 abstentions.

45. Mr. WALL (United Kingdom) explained that he had abstained from voting on article 49 because he did not see any difference whatever between paragraph 1 (b) and paragraph 1 (c).

46. Mr. RUIVO (Portugal) said that he had voted against article 49 because he did not approve of paragraph 1 (b).

47. Mr. CASTAÑEDA (Mexico) pointed out that after the adoption of article 49 the question of the contiguous zone still had to be settled by the First Committee and by the plenary Conference.

48. Mr. GARCIA AMADOR (Cuba), referring to the comment of the representative of Mexico, said it would be advisable to wait for the First Committee to decide on the kind of instrument to be recommended to the plenary Conference.

49. Mr. GANDJI (Iran) agreed with the representatives of Mexico and Cuba.

Article 49 A (A/CONF.13/C.3/L.79/Rev.1)

A vote was taken by roll call.

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

In favour: Indonesia, Iran, Ireland, Mexico, Panama, Paraguay, Peru, Philippines, Tunisia, United Arab Republic, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ghana, Guatemala, Iceland, India.

Against: Italy, Japan, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Albania, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, France, Federal Republic of Germany, Haiti.

Abstentions: Israel, Republic of Korea, Liberia, Switzerland, Thailand, Union of South Africa, United States of America, Australia, Brazil, China, Finland.

Article 49 A was approved on second reading by 29 votes to 21, with 11 abstentions.

Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81) (continued)

50. Mr. GARCIA AMADOR (Cuba) thought that the Committee should first settle a prior question. He referred to his remarks at the present meeting when paragraph 1 of article 49 was being considered. The matters examined by the Committee fell into two groups: those relating to the conservation of living resources, and those relating to the claiming of exclusive or preferential fishing rights in specific zones of the sea. The Cuban delegation considered that for each of those two groups the Committee should submit a separate instrument to the Conference. For the second group it might perhaps submit more than one instrument.

51. Mr. LLOSA (Peru) recalled that suggestions very similar to that just made by the Cuban delegation had already been put forward by other delegations at the preceding meeting.

52. The CHAIRMAN suggested that the Committee adjourn the discussion on the kind of instrument required to embody the results of its work.

It was so decided.

The meeting rose at 5.45 p.m.

¹ Resumed from the 38th meeting.

FORTY-FIRST MEETING

Monday, 21 April 1958, at 8.15 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81) (continued)

1. The CHAIRMAN summed up the viewpoints emerging from the discussion, as follows:

2. Some delegations thought that the decision on the nature of the instrument should be left to the plenary Conference and that the Committee should do no more than transmit to the plenary Conference, through its rapporteur, a summary of its discussions on the point.

3. Other delegations considered that the Committee should recommend that the results of its work be embodied in a particular kind of instrument, some favouring a convention, others preferring a declaration. The delegations advocating the adoption of several separate instruments by the Conference, and those in favour of a general convention, could be ranged in the same category.

4. Finally, there were some delegations which thought that the Committee should state its views on whether reservations to the instruments should be permitted.

5. He thought that the Committee should first decide whether it should be left to the plenary Conference to take a decision on the basis of a summary of the Committee's discussions, or whether the Committee should recommend that the results of its work be embodied in a particular instrument.

6. Mr. SOLE (Union of South Africa) pointed out that, in similar circumstances, the Second Committee had decided to leave the matter to the plenary Conference and to transmit to the latter the record of its proceedings. The Fourth Committee, on the other hand, had recommended that the Conference embody the results of its work in a convention relating to the continental shelf.

7. The fact must not be overlooked that the plenary Conference largely consisted of the same representatives as the committees. It was therefore desirable for the committees to clear the ground as much as they could in order to lighten the plenary Conference's task. The delegation of the Union of South Africa thought that the Third Committee should likewise recommend to the Conference that the results of its work be embodied in a convention. It agreed, however, that the Committee might first choose between the alternative courses indicated by the Chairman; in which case, should it decide in favour of a positive recommendation, it would have to state its views on the form of instrument in which the results of its work should be embodied.

8. Mr. ASANTE (Ghana) agreed with the representative of the Union of South Africa, and supported the proposal made orally by the Indian delegation at an earlier meeting that the results of the Committee's work be embodied in a convention. In any case, the Ghana delegation felt that the Committee must make a definite recommendation to the plenary Conference.

9. Mr. CORREA (Ecuador) considered that a decision on the kind of instrument in which the results of the Committee's work was to be embodied should be left to the plenary Conference, and that a summary of the Committee's discussions on the matter, together with the proposals emerging therefrom, should be transmitted to it.

10. As the South African representative had pointed out, the Fourth Committee had made a definite recommendation to the Conference. However, as was clear from the Fourth Committee's report (A/CONF.13/L.12, section VI), after the Canadian delegation had proposed that the results of the Fourth Committee's work be embodied in a "separate" convention relating "only" to the continental shelf, the Fourth Committee, on the proposal of the Soviet Union representative, had decided to delete the words "separate" and "only", with the result that its final recommendation was that the Conference embody the results of its work "in a convention..."

11. At that stage in the Conference's work, it was hard for the Committees to decide whether the various questions dealt with should be the subject of separate conventions or whether the Conference should adopt a general convention. He therefore thought it preferable for the Third Committee to put three alternatives to the plenary Conference: first, the adoption of a separate convention on fishing and conservation of the living resources of the high seas; secondly, the inclusion of articles on fishing and conservation of the living resources of the high seas in a general convention; and thirdly, the adoption of a declaration on fishing and conservation of the living resources of the high seas and of an additional protocol on arbitration.

12. Mr. GARCIA AMADOR (Cuba) pointed out that reference must be made to the summary record of the 39th meeting of the Fourth Committee in order to grasp the meaning of the decision finally taken by that committee in similar circumstances to those of the Third Committee. At all events, it was clear from the Fourth Committee's report (A/CONF.13/L.12, section VI) that it had recommended to the Conference that the results of its work be embodied in "a convention relating to the continental shelf". The convention in question was not therefore a general convention, but one covering the articles considered by that committee.

13. However, whatever decisions were taken by the other committees, each committee should decide on the kind of instrument which it considered most appropriate for the subjects it had handled.

14. Mr. CAICEDO CASTILLA (Colombia) expressed the view that the Committee should recommend the plenary Conference to adopt a convention, such an instrument providing the surest guarantee that the provisions adopted by the Conference would be observed. Should the Conference reach agreement on the breadth of the territorial sea, there would be nothing to prevent its adopting a general convention covering all the subjects examined. If no agreement were reached on that point, however, it would be better for fishing and conservation of the living resources of the high seas to be dealt with in a separate convention.

15. Mr. SCHWARCK ANGLADE (Venezuela) also

thought that in recommending to the Conference that the results of its work be embodied in a convention "relating to the continental shelf", the Fourth Committee had in fact favoured a separate convention. The Venezuelan delegation considered, however, that the expedient of separate conventions should be adopted only if the Conference could not succeed in adopting a general convention.

16. Mr. MELO LECAROS (Chile) also felt that it was difficult for the Committee to take a decision before knowing whether the Conference would result in the adoption of a general convention. It was clear that, if the basis articles emerging from the discussion of the various Committees did not obtain a two-thirds majority in plenary session, the Conference could not adopt a general convention.

17. With regard to the meaning of the decision reached by the Fourth Committee, he would point out that, while the Fourth Committee's draft report (A/CONF.13/C.4/L.67) was not entirely clear, its final report (A/CONF.13/L.12) contained all the information required for the plenary Conference.

18. Mr. LUND (Norway), referring to the procedure adopted in the Second Committee, pointed out that the matters dealt with in that committee belonged to the realm of codification. The Third Committee, on the other hand, was called upon to formulate principles; it was therefore natural that it should make a recommendation on the form of instrument in which the results of its work should be embodied. In view of the nature of the questions dealt with, the proper form was that of a convention; but it was for the plenary Conference to decide whether those questions should be dealt with in a separate convention, or whether the articles relating to those questions should be incorporated in a general convention.

19. Mr. HERRINGTON (United States of America) was of the opinion that the only instrument in which the matters dealt with by the Third Committee could be effectively embodied was a convention. If an attempt were made to incorporate in a single convention all the articles and all the conclusions adopted by the Conference, the task would probably turn out to be so complicated that there would be slender hope of success. It therefore seemed preferable that the various subjects dealt with by the Conference should be embodied in separate conventions.

20. Mr. LIMA (El Salvador) considered that the choice before the Committee could be indicated as follows: first, if the Committee decided not to make a definite recommendation, the question would have to be settled by the plenary Conference; secondly, if the Committee did make a recommendation, it would have to decide between a declaration and a convention. Thirdly, if it decided in favour of a convention, would the convention be a separate one, or would the articles on fishing and conservation of the living resources of the high seas be included in a general convention? Fourthly, if the Committee preferred a general convention, should such a convention deal with all the subjects handled by all the committees? Fifthly, if the Committee decided in favour of a separate convention, would there be, on

the one hand, a separate convention on fishing and conservation of the living resources of the high seas, and, on the other hand, a convention dealing with all the remaining questions discussed by the Conference? And, finally, a subsidiary question arising out of the latter, did the Committee feel that a distinction should be drawn between fishing and the conservation of the living resources of the high seas?

21. In the case in point, matters of form were bound up with matters of substance; and it was clear from the discussions that complete agreement had not yet been achieved on substance. But it was still possible that at that late stage in the Conference's work, a basis of agreement could be reached by negotiation. If the attempt to do so were successful, a convention would clearly offer the best solution.

22. In the circumstances, the Committee might confine itself to expressing its views as to form, and leave it to the plenary Conference to take a final decision once the results of those last-minute negotiations were known.

23. The CHAIRMAN moved the closure of the debate on the first question he had put to the Committee.

It was so agreed.

24. The CHAIRMAN put to the vote the question whether the Third Committee should make a definite recommendation to the plenary Conference.

The Committee decided in favour of a definite recommendation by 28 votes to 16, with 7 abstentions.

25. The CHAIRMAN invited discussion on the question whether, in the Third Committee's opinion, the plenary Conference should adopt a convention or, alternatively, a declaration.

26. At the request of the CHAIRMAN, Mr. RATON (Secretary of the Committee) read out the following text of a proposal made orally at the 39th meeting by the representative of India: "The Third Committee recommends to the Conference that the articles adopted by the Committee be embodied in a convention on fishing and the conservation of the living resources of the high seas."

27. Mr. GARCIA AMADOR (Cuba) proposed that the Indian proposal be amended to stipulate that articles 49 to 59, dealing with the conservation of the living resources of the high seas, should be embodied in a separate instrument, the nature of which could be decided later.

28. Mr. PANIKKAR (India), Rapporteur, pointed out that the Indian and Cuban proposals were not incompatible, for, if the Committee recommended that the articles it had adopted on fishing and the conservation of the living resources of the high seas should be embodied in a convention, it would be for the plenary Conference to decide whether a distinction should be drawn between fishing and the conservation of the living resources of the high seas. In any case, the Committee was fully competent to express an opinion to the plenary Conference, on the understanding, as the Norwegian representative had said, that the actual decision would rest with the plenary Conference.

29. After an exchange of views, in which Mr. CORREA (Ecuador), Mr. MELO LECAROS (Chile) and Mr. LIMA (El Salvador) took part, on the advisability of continuing the debate on the basis of oral proposals, Mr. HERRINGTON (United States of America), seconded by Mr. ANDERSEN (Iceland), moved that the debate be adjourned until the Indian and Cuban proposals were available in writing.

The motion for the adjournment was not adopted, 15 votes being cast in favour and 15 against, with 19 abstentions.

30. The CHAIRMAN invited the Committee to continue the debate on the Indian and Cuban proposals.

31. Mr. LÜTEM (Turkey) said that, inundated as they were with a flood of amendments, the smaller delegations were in a particularly difficult position. It was even doubtful how they could properly express an opinion on the form of instrument in which the results of the Committee's work should be embodied. Furthermore, those delegations which were prepared to decide in favour of a convention were not always equally ready to accept all the obligations which it would involve. A recommendation by the Committee that a convention should be adopted would consequently be of no practical value. Accordingly, the Turkish delegation would vote against the Indian proposal.

32. Mr. RATON (Secretary of the Committee), in reply to requests for fuller information, stated that the text of the Indian proposal, as amended by Cuba, was as follows: "The Third Committee recommends to the Conference that the articles on conservation of the living resources of the sea (articles 49 to 59 inclusive) adopted by the Committee be embodied in a single instrument."

33. Mr. CORREA (Ecuador), on a point of order, stressed the importance of the decision which the Committee was called upon to take. Time should be allowed for careful examination of the proposals submitted, and he would therefore move the adjournment of the meeting.

The motion for the adjournment of the meeting was adopted by 18 votes to 14, with 17 abstentions.

The meeting rose at 10.20 p.m.

FORTY-SECOND MEETING

Tuesday, 22 April 1958, at 10.35 a.m.

Chairman: Mr. Carlos SUCRE (Panama)

Consideration of the kind of instrument required to embody the results of the Committee's work (A/CONF.13/L.7; A/CONF.13/C.3/L.81, L.90, L.91) (concluded)

1. Mr. PANIKKAR (India) said that, as a result of informal consultations with other delegations, the Indian proposal (A/CONF.13/C.3/L.90) had been amended by the addition of the following words: "The Convention shall consist of two sections, one dealing

with articles 49-59 inclusive and the other dealing with article 49 in part, the proposal of Iceland, article 60 and such other new articles as may be accepted by the Conference." That wording would separate the conservation articles from those dealing with fishing rights.

2. Mr. GARCIA AMADOR (Cuba) withdrew his delegation's amendment (A/CONF.13/C.3/L.91) to the original Indian proposal, and also its proposal for a preamble to the fisheries articles (A/CONF.13/C.3/L.81), but reserved the right to resubmit that proposal to the plenary Conference.

3. Mr. HERRINGTON (United States of America), Mr. GANDJI (Iran), Mr. ANDERSON (Australia), Mr. PAROLETTI (Italy) and Mr. WALL (United Kingdom) expressed their support of the revised Indian proposal.

4. Mr. ALVAREZ (Uruguay) said that he would vote for the revised Indian proposal. Reservations to the proposed convention should not be admissible as the fisheries articles were closely related and represented a compromise solution.

5. Mr. THURMER (Netherlands) said that his delegation would vote for the revised Indian proposal on the understanding that the fisheries articles were regarded and adopted as a self-contained unit.

6. Mr. KRYLOV (Union of Soviet Socialist Republics) said that his delegation, which was prepared to support the revised Indian proposal, did not share the views expressed by the Uruguayan and Netherlands representatives. The admissibility of reservations was a reality that had been accepted in international law; in any event, the question of final clauses would be examined in the Drafting Committee and the plenary Conference.

7. Mr. MALLIN (Ireland) said that he would vote for the revised Indian proposal. A convention embodying the Committee's work would be a milestone in international law.

8. Mr. CASTAÑEDA (Mexico) had some doubts about the way the problem was to be solved under the revised Indian proposal. He had already stated his view that the Committee must ensure that the fisheries articles received the widest possible measure of application and had binding force. A convention would admittedly fulfil the second condition, but he wondered, in the light of past experience with international instruments, whether it would ensure the greatest measure of applicability. From a purely practical point of view those two requirements would be better met by a declaration; that view had been confirmed by some representatives who had already stated that their governments would find it extremely difficult to accept certain of the fisheries articles, whose applicability would thereby be reduced. He feared that inadmissibility of reservations would make it impossible for some States to ratify the convention; on the other hand, reservations would deprive certain articles of their value. However, in view of the general feeling in the Committee, he was prepared to support the revised Indian proposal.

9. Mr. KASUMA (Indonesia) said that he was prepared to vote for the revised Indian proposal. His delegation was in general satisfied with the fisheries articles as adopted by the Committee, particularly as its objection to the arbitration procedure proposed by the International Law Commission had been overcome by the amendment of paragraph 1 of article 57.

10. Mr. GARCIA AMADOR (Cuba) agreed wholeheartedly with the Mexican representative that it would be infinitely better for the Committee to promulgate the fisheries articles in the form of a declaration. A convention would be suitable as a means of codifying existing international law but the work of the Third and Fourth Committees had ranged over a practically new field, and entirely new elements had been introduced. A declaration, being the more flexible instrument, would better reflect international law in the process of evolution and leave it room for further development. In view of the great scientific and technical advances that had been made in the field of fisheries during the past decade, it was impossible to believe that the Committee's articles, which were quite satisfactory at the present time, would still be adequate in ten years' time. His delegation would, however, be prepared to vote for the revised Indian proposal, which seemed to enjoy majority support.

11. Mr. LLOSA (Peru) agreed with the proposal made by the Ecuadorian representative at a previous meeting that the Committee should simply refer the results of its work to the plenary Conference, which alone should decide on the most appropriate instrument in which it should be embodied. All parts of the work of the Conference were interrelated, and it would be difficult for the Committee to take a decision *in vacuo*. His delegation would therefore be forced to vote against the revised Indian proposal.

The revised Indian proposal was adopted by 44 votes to 4, with 6 abstentions.

12. Mr. AGUERREVERE (Venezuela) thought the Committee was not in a position to deal with the question of reservations, that was a matter which should be decided by the plenary Conference.

13. Mr. CORREA (Ecuador) said that, although he had felt the Committee should not make any recommendations concerning the form of the instrument to be adopted, consistency now required that a recommendation be made concerning the final clauses of that instrument. That could be done at the next meeting.

14. Mr. KRYLOV (Union of Soviet Socialist Republics) could not agree that, having gone so far in the matter of recommendations, the Committee should go still further. The question of reservations was highly complex, and the Committee would be unable to deal with it and choose between the four alternative clauses contained in the secretariat note (A/CONF.13/L.7) in the very short time at its disposal. The matter was one for the plenary Conference and then the Drafting Committee. He therefore proposed that the Committee should make no recommendations to the plenary Conference on final clauses.

15. Mr. STABELL (Norway) supported the Soviet representative's proposal.

16. Mr. MELO LECAROS (Chile) supported the Ecuadorian representative's suggestion and said that the Committee would be in a better position to decide on the admissibility of reservations at the next meeting in the light of the plenary Conference's discussion of the subject that morning.

17. Mr. HERRINGTON (United States of America) said that the Committee was the best judge of the interrelation between articles and what action should be taken concerning reservations to articles, and therefore should make a recommendation on that subject for consideration by the plenary Conference. He agreed that the matter could be taken up at the next meeting.

18. Mr. CASTAÑEDA (Mexico) agreed that the problem was complicated and had wide ramifications. If the Committee decided that reservations were admissible, it would have to specify, for example, to which articles they would be admissible. He therefore supported the Soviet representative's proposal.

The Soviet proposal was adopted by 31 votes to 3, with 20 abstentions.

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

PROPOSALS CONCERNING CLAIMS TO EXCLUSIVE OR PREFERENTIAL RIGHTS BASED ON SPECIAL CONDITIONS (A/CONF.13/C.3/L.89) (concluded)¹

19. Mr. CORREA (Ecuador), introducing his delegation's proposal (A/CONF.13/C.3/L.89), said that its purpose was to give moral recognition to the special situations of countries whose subsistence depended on their coastal fisheries, or whose coastal populations depended on them for their food. It recommended that "States should collaborate to secure just treatment of such situations by regional agreements, by the recognition of duly justified unilateral measures, or by other means of international co-operation." The delegations of States in such special situations had already explained their cases. It would be difficult to include provisions on special situations in a convention of a general nature, so that some measure supplementary to the convention would have to be taken. If it were not, the Conference might be accused of leaving part of its work undone. It might be claimed that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1), which the Committee had adopted, already covered such situations, but in fact it dealt only with the specific case of Iceland. That was a further reason why his delegation had put forward its proposal.

20. Mr. GARCIA AMADOR (Cuba) said that only some of the proposals put forward by States in the special situations referred to in the Ecuadorian proposal had been adopted by the Committee for inclusion in the articles to be inserted in the convention. His delegation therefore supported the Ecuadorian proposal, but had reservations as to the wording. The

¹ Resumed from the 40th meeting.

imprecise phrase "duly justified" in the operative paragraph of the proposal was presumably intended to have the same meaning as similar phrases used elsewhere in the articles considered by the Conference. On that understanding, he made a formal proposal that the last paragraph of the Ecuadorian proposal should be amended by substituting for the phrase "duly justified unilateral measures" the phrase "unilateral measures in keeping with the provisions contained in the convention concerning fishing and the conservation of the living resources of the sea". By "convention" he meant the instrument to be recommended to the plenary Conference.

21. Mr. WALL (United Kingdom) disagreed with the view of the representative of Ecuador that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) covered only the case of Iceland. Other delegations had withdrawn similar proposals on the understanding that the Icelandic proposal contained a general provision. If the Ecuadorian proposal had been tabled in time for the discussion on claims to exclusive or preferential rights by virtue of special conditions, it might have been of assistance; but a new proposal on the same subject as the already adopted Icelandic proposal could not be considered unless the whole debate was reopened.

22. Mr. KRYLOV (Union of Soviet Socialist Republics) agreed with the view put forward by the United Kingdom representative that the Ecuadorian proposal contained the same concept as the Icelandic proposal, which he had voted against. He would vote in favour of the Ecuadorian proposal because the drafting was more satisfactory. However, there was a contradiction in referring at one and the same time to "duly justified unilateral measures" and "means of international co-operation"; he therefore supported the amendment proposed by the Cuban representative.

23. Mr. LLOSA (Peru) agreed with the representative of the United Kingdom that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) covered the special situations of other States besides Iceland; the Mexican representative, with the approval of the co-sponsors, had withdrawn the eleven-power proposal (A/CONF.13/C.3/L.66/Rev.1) on that understanding. The proposed Cuban amendment was not acceptable because the separate convention referred to had not yet been adopted by the plenary Conference.

24. Mr. INDRAMBARYA (Thailand) said that his delegation could not accept the Ecuadorian proposal because it would lead to confusion.

25. Mr. HERRINGTON (United States) said that the discussion on the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) had shown that it was not limited to the specific case of Iceland. The Ecuadorian proposal therefore to some extent duplicated the Icelandic proposal, and should be either modified or dropped.

26. Mr. MELO LECAROS (Chile) said that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) was a general provision concerning relatively normal special situations, such as that of Iceland. The Ecuadorian proposal, on the other hand, was merely a recommendation, relating to exceptional situations which

might arise sporadically, and was complementary to the universal system of international law, that was, to the separate convention on fishing and conservation. For those reasons, he supported the Ecuadorian proposal, but opposed the Cuban amendment, which would deprive the proposal of its complementary nature by attaching it to the Convention.

27. Mr. CASTAÑEDA (Mexico) said that the Ecuadorian proposal was not necessary in view of the adoption of the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1), which was not limited to the specific case of Iceland, but was a general provision. He suggested that the representative of Ecuador should withdraw his delegation's proposal.

28. Mr. CORREA (Ecuador) said that he had been unable to introduce his delegation's proposal (A/CONF.13/C.3/L.89) at the 40th meeting owing to his duties as Chairman of the Drafting Committee. Since it appeared from the discussion that the Icelandic proposal (A/CONF.13/C.3/L.79/Rev.1) covered a large variety of special situations and, in part, constituted a more precise legal formulation than his own delegation's proposal, and further that the adoption of his delegation's proposal might make difficult the adoption of the Icelandic proposal in the plenary Conference, he accordingly withdrew his delegation's proposal, whilst reserving the right to reintroduce it in the plenary Conference.

CONSIDERATION OF THE PORTUGUESE DRAFT RESOLUTION ON CONSERVATION MEASURES IN THE ADJACENT HIGH SEAS (A/CONF.13/C.3/L.92)

29. Mr. RUIVO (Portugal), introducing his delegation's proposal (A/CONF.13/C.3/L.92), said it was desirable that international co-operation in the conservation of living resources should develop on the basis of regional conventions and organizations. If there were no collaboration between regional organizations and States having jurisdiction over fishing areas adjacent to the high seas, the problem would be unnecessarily complicated. His delegation had therefore put forward the proposal that coastal States should collaborate with regional organizations in the application of conservation measures, basing itself on the arguments to that effect put forward at the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955. The proposal related only to conservation, and had no political or economic implications.

30. Mr. GARCIA AMADOR (Cuba) said that his delegation supported the Portuguese proposal, which was in keeping with the provisions adopted by the Committee, and of which his delegation was to have been a co-sponsor.

31. Mr. ALLOY (France) and Mr. THURMER (Netherlands) also expressed support for the Portuguese proposal.

32. Mr. ASANTE (Ghana) said that the strength of the proposal lay in the spirit of goodwill which it reflected, which could not be expressed in purely legal provisions. His delegation supported it.

33. Mr. LUND (Norway) said that his delegation supported the Portuguese proposal, but wondered whether it could not be incorporated in the United Kingdom proposal already adopted (A/CONF.13/C.3/L.87). The question should be left to the drafting committee.

34. Mr. MELO LECAROS (Chile) said that his delegation supported the substance of the Portuguese proposal, but that, as it stood, it would impose an obligation on the coastal State to co-operate with international conservation agencies. In order to remove that obligation, he suggested that the words "to the coastal States" should be inserted after the word "*Recommends*".

35. Mr. CASTAÑEDA (Mexico) expressed support for the substance of the Portuguese proposal, but said that in imposing an obligation on the coastal State to act in conformity with measures adopted by international conservation agencies, it modified the system already adopted in article 55. To eliminate the element of obligation, the second paragraph of the proposal should be amended by deleting the words "as far as practicable, adopt and enforce necessary conservation measures in fishing areas under their jurisdiction in co-operation with" and replacing them by the words "consult, and when practicable endeavour to co-ordinate their activities with". If that amendment were not accepted, his delegation would have to vote against the proposal.

36. Mr. PAROLETTI (Italy) said that his delegation supported the Portuguese proposal as originally drafted. It could not agree to the Mexican amendment because the proposal was only for a recommendation, and not for a rule with binding force.

37. Mr. RUIVO (Portugal) rejected the suggestion that his delegation's proposal imposed an obligation on the coastal State. The amendments which had been put forward did not affect its substance, and he was ready to consider drafting changes.

38. The CHAIRMAN proposed the suspension of the meeting in order to allow agreement to be reached on the amendments proposed to the Portuguese proposal.

39. After a brief suspension of the meeting, Mr. RUIVO (Portugal) announced that a compromise text had now been drafted, which read as follows: "*Recommends* that coastal States, in cases where a stock or stocks of fish or other living marine resources inhabit both the fishing areas under their jurisdiction and areas of the adjacent high seas, should co-operate with such international conservation agencies as may be responsible for the development and application of conservation measures on the adjacent high seas, in the adoption and enforcement, as far as practicable, of the necessary conservation measures in fishing areas under their jurisdiction."

40. Mr. HERRINGTON (United States of America) noted that biologists and fisheries experts were in agreement that any conservation programme must cover the entire stock under consideration. Where the jurisdiction of a coastal State was confined to a narrow band of water, the question of co-ordination was not too important, but if that jurisdiction were extended, the

problem became acute. Difficulties would certainly arise unless conservation programmes in waters under the jurisdiction of coastal States and adjacent waters were co-ordinated. Those considerations were rightly taken into account in the revised Portuguese proposal which he would support.

41. Mr. TSURUOKA (Japan) said that he would vote for the revised Portuguese proposal which was based on the idea that States were collectively responsible for sound conservation programmes.

42. Mr. PANIKKAR (India) supported the revised Portuguese proposal which provided for close co-operation between coastal and fishing States in the improvement of conservation programmes.

43. Mr. WALL (United Kingdom) said that his delegation would vote for the revised Portuguese proposal. It should, however, be retained as a separate proposal and not, as had been suggested the previous day, combined with other proposals.

44. Mr. LLOSA (Peru) and Mr. KASK (Canada) also expressed support for the revised Portuguese proposal.

The revised Portuguese proposal (A/CONF.13/C.3/L.92) was adopted by 46 votes to none, with one abstention.

The meeting rose at 1.10 p.m.

FORTY-THIRD MEETING

Wednesday, 23 April 1958, at 5.25 p.m.

Chairman: Mr. Carlos SUCRE (Panama)

Draft report of the Third Committee (A/CONF.13/C.3/L.93)

1. Mr. PANIKKAR (India), Rapporteur, said the report was brief and factual and reproduced on one side of the page the International Law Commission's draft of the articles concerned, and on the other the text adopted, followed by a note on the important changes.

2. Mr. WALL (United Kingdom) thought that the words "shall not be discriminatory in form or in fact" in paragraph 1 of article 53, which had also been adopted for article 55, should also be used in subparagraph 1 (a) (iii) of article 58.

3. Mr. PANIKKAR (India), Rapporteur, said that he had not felt competent to exceed the Committee's decisions in connexion with articles 53 and 55.

4. The CHAIRMAN did not think it advisable to introduce substantive changes. Even such a slight change as that suggested by the United Kingdom representative might open the door to a long debate.

5. Mr. RUIVO (Portugal) suggested that the United Kingdom representative bring up the point in the plenary Conference.

6. Mr. WALL (United Kingdom) asked that his suggestion be drawn to the attention of the Drafting Committee of the Conference. If that committee did not decide to incorporate the change, his delegation might raise the question in the plenary Conference.

7. Mr. ASANTE (Ghana) thought there should be a full stop after the word "others" in the third sentence of the first paragraph of the note to article 53. The last sentence thus formed could then be amalgamated with the second sentence of the note, in order to dispel the erroneous impression that two periods of seven months' grace for new entrants were entailed.

8. Mr. PANIKKAR (India), Rapporteur, pointed out that the two sentences referred to separate ideas; seven months were allowed for newcomers to put conservation measures into effect, and those seven months would date from the time of notification to the Food and Agriculture Organization of the United Nations.

9. Mr. HERRINGTON (United States of America) observed that, in the second paragraph of the resolution on conservation measures in the adjacent high seas, the words "the International Conservation Agencies" should read "such International Conservation Agencies".

10. The CHAIRMAN closed the debate and put the Committee's draft report to the vote.

The Committee's draft report (A/CONF.13/C.3/L.93) was adopted unanimously.

Conclusion of the Committee's work

11. The CHAIRMAN declared that the Committee had concluded its work.

The meeting rose at 6.30 p.m.

ANNEXES

(Note. — For the contents of these annexes, see Index to documents of the Third Committee, p. viii of the present volume.)

ARTICLES 49 TO 60 OF THE DRAFT OF THE INTERNATIONAL LAW COMMISSION (A/3159)

SUB-SECTION B. FISHING

RIGHT TO FISH

Article 49

All States have the right for their nationals to engage in fishing on the high seas, subject to their treaty obligations and to the provisions contained in the following articles concerning conservation of the living resources of the high seas.

CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

Article 50

As employed in the present articles, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products.

Article 51

A State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged shall adopt measures for regulating and controlling fishing activities in that area when necessary for the purpose of the conservation of the living resources of the high seas.

Article 52

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other marine resources in any area of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such resources.
2. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57.

Article 53

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other marine resources in the same area, the conservation measures adopted shall be applicable to them.
2. If these other States do not accept the measures so adopted and if no agreement can be reached within a reasonable period of time, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

Article 54

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.
2. A coastal State is entitled to take part on an equal footing in any system of research and regulation in that area, even though its nationals do not carry on fishing there.
3. If the States concerned do not reach agreement within

a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57.

Article 55

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time.
2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:
 - (a) That scientific evidence shows that there is an urgent need for measures of conservation;
 - (b) That the measures adopted are based on appropriate scientific findings;
 - (c) That such measures do not discriminate against foreign fishermen.
3. If these measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

Article 56

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State whose nationals are engaged in fishing there to take the necessary measures of conservation.
2. If no agreement is reached within a reasonable period, such State may initiate the procedure contemplated by article 57.

Article 57

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be submitted for settlement to an arbitral commission of seven members, unless the parties agree to seek a solution by another method of peaceful settlement.
2. Except as provided in paragraph 3, two members of the arbitral commission shall be named by the State or States on the one side of the dispute, and two members shall be named by the State or States contending to the contrary, but only one of the members nominated by each side may be a national of a State on that side. The remaining three members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute. Failing agreement they shall, upon the request of any State party, be nominated by the Secretary-General of the United Nations after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization, from nationals of countries not parties to the dispute. If, within a period of three months from the date of the request for arbitration, there shall be a failure by those on either side in the dispute to name any member, such member or members shall, upon the request of any party, be named,

after such consultation, by the Secretary-General of the United Nations. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

3. If the parties to the dispute fall into more than two opposing groups, the arbitral commission shall, at the request of any of the parties, be appointed by the Secretary-General of the United Nations, after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization, from amongst well qualified persons specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

4. Except as herein provided, the arbitral commission shall determine its own procedure. It shall also determine how the costs and expenses shall be divided between the parties.

5. The arbitral commission shall in all cases be constituted within three months from the date of the original request and shall render its decision within a further period of five months unless it decides, in case of necessity, to extend that time limit.

Article 58

1. The arbitral commission shall, in the case of measures

unilaterally adopted by coastal States, apply the criteria listed in paragraph 2 of article 55. In other cases it shall apply these criteria according to the circumstances of each case.

2. The arbitral commission may decide that pending its award the measures in dispute shall not be applied.

Article 59

The decisions of the arbitral commission shall be binding on the States concerned. If the decision is accompanied by any recommendations, they shall receive the greatest possible consideration.

FISHERIES CONDUCTED BY MEANS OF EQUIPMENT EMBEDDED IN THE FLOOR OF THE SEA

Article 60

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

DOCUMENT A/CONF.13/C.3/L.1

Mexico: proposal

[Original text: Spanish]
[7 March 1958]

Articles 57 to 59

Replace the text of the draft articles 57, 58 and 59 prepared by the International Law Commission by the following text:

“Disputes concerning the matters to which the present provisions relate shall be settled by the States concerned by the modes of pacific settlement provided for in Article 33 of the Charter of the United Nations.”

If the above proposal is approved, it will be necessary to make the corresponding changes in articles 52 to 56 inclusive.

DOCUMENT A/CONF.13/C.3/L.3

France: proposal

[Original text: French]
[13 March 1958]

Article 51

Replace the draft article by the following text:

“A State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged, shall adopt such measures as may be required in those circumstances for regulating and controlling fishing activities in that area when necessary for the purpose of the conservation of the living resources of the high seas.”

Article 52

PARAGRAPH 2

Replace the words “within a reasonable period of time” by the words “within two years”.

Article 53

PARAGRAPH 2

Replace the words “within a reasonable period of time” by the words “within two years”.

Article 54

PARAGRAPH 3

Replace the words "within a reasonable period of time" by the words "within two years".

Article 55

Replace the draft article by the following text :

"Having regard to the provisions of paragraph 1 of article 54, any coastal State which desires, with a view to the maintenance of the productivity of the living resources of the sea, to adopt measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, must open negotiations to that effect with the other States concerned.

"If these negotiations do not lead to an agreement within two years, any of the parties may initiate the procedure provided for in article 57. Pending the arbitral decision, none of the measures contemplated by the coastal State may be carried out."

Article 56

PARAGRAPH 1

Add after "the necessary measures of conservation" the words "at the same time mentioning the scientific findings which in its opinion make such measures necessary."

PARAGRAPH 2

Replace the words "within a reasonable period" by the words "within two years".

Article 57

PARAGRAPH 2

(a) In the first sentence, replace the words "Except as provided in paragraph 3" by the words "If the parties to the dispute fall into two opposing groups."

(b) In the third sentence, replace the word "nominated" by the word "designated".

(c) In the third sentence, add after the words "not parties to the dispute" the words: "selected because of their special knowledge of legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled".

Article 58

PARAGRAPH 1

Replace paragraph 1 of the draft article by the following text :

"The arbitral commission shall, in the case of measures proposed by coastal States, apply the following criteria :

- (1) The urgency of the measures of conservation must be capable of being scientifically established ;
- (2) The measures of conservation must be based on appropriate scientific findings ;
- (3) The measures of conservation must not discriminate against foreign fishermen.

"In other cases, the arbitral commission shall apply these criteria according to the circumstances of each case."

PARAGRAPH 2

Delete paragraph 2.

DOCUMENT A/CONF.13/C.3/L.4***Federal Republic of Germany: proposal**

*[Original text : French]
[17 March 1958]*

Articles 51 to 56

Replace articles 51 to 56 by the following provisions :

Article A

Any State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged, shall enact provisions applicable to its nationals for regulating and controlling fishing activities in that area when the conservation of the living resources of the high seas so require.

Article B

Where

- (a) Scientific evidence shows that there is a need for measures of conservation in certain areas of the high seas or for certain stocks of fish, and
- (b) The proposed conservation measures are based on appropriate scientific findings,

the States whose nationals are engaged in fishing in those areas or in the capture of the stocks of fish shall, at the request of one of them, undertake negotiations on suitable joint measures which shall be binding on their own nationals.

Article C

Any State having a special interest in the conservation of the living resources of a given area of the high seas shall be entitled, under the conditions laid down in article B, to request one or more other States whose nationals are engaged in fishing in the same area to enter into negotiations and to participate, on an equal footing, in agreements on the necessary measures of research and conservation, even if the nationals of such State or States are not engaged in fishing in the said area.

Within the meaning of this article, a State shall be deemed to have a special interest in the conservation of the living resources of a given area of the high seas when its own fisheries are exploiting the same stocks of fish in another area of the high seas or off its own coast and it can prove that such stocks are threatened with exhaustion owing to fishing activities in the first area.

* Incorporating document A/CONF.13/C.3/L.4/Corr.1.

Article D

When measures of conservation have been adopted under articles A, B and C, and nationals of other States come and fish the same stock or stocks of fish or exploit other resources of the high seas in the same area, but such States do not prescribe the same measures for their nationals, the States which have prescribed them for theirs may, in accordance with the principles set forth in

article B, request the aforesaid other States to enter into negotiations with a view to prescribing measures of conservation for their own nationals.

Article E

When, in the cases mentioned in articles B, C and D, no agreement is reached on measures of conservation within a reasonable period, any State concerned may initiate the procedure provided for in article 57.

DOCUMENT A/CONF.13/C.3/L.5**Philippines: proposal**

[Original text : English]
[19 March 1958]

Article 54

1. Insert the following paragraph after paragraph 1 :

“ 2. The inhabitants of a coastal State have a preferential right to catch fish in any area mentioned in paragraph 1 of the present article, but no coastal State shall prohibit the nationals of other States from fishing in said area, after the needs of its population have been reasonably assured.”

2. Paragraphs 2 and 3 of the original text should be re-numbered 3 and 4 respectively.

Article 57

Amend paragraph 1 by deleting the full stop at the end of the sentence and adding the following : “ or unless there is a treaty between them for the same purpose.”

DOCUMENT A/CONF.13/C.3/L.6**Nepal: proposal**

[Original text : English]
[19 March 1958]

Article 49

Add the following new article after article 49 :

“ Humane methods of catching and slaughtering the living creatures of the sea must be used whenever such methods are developed to a practical state.”

DOCUMENT A/CONF.13/C.3/L.7**Burma: proposal**

[Original text : English]
[20 March 1958]

Article 49

After the words “ to their treaty obligations ” insert the words “ to the rights of the coastal States as set out in article 68.”

Article 51

At the beginning of the article add the phrase “ Subject to the rights of coastal States as set out in article 68.”

Article 60

Delete the article.

DOCUMENT A/CONF.13/C.3/L.8**Sweden: proposal**

[Original text : English]
[21 March 1958]

Article 50

Add the following sentence :

“ Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.”

DOCUMENT A/CONF.13/C.3/L.9**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 51

1. After the words “ activities ” add the words “ of its nationals ”.
 2. Add a new paragraph reading: “ The adopted measures shall be based on appropriate scientific findings.”
-

DOCUMENT A/CONF.13/C.3/L.10**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 52

Amend paragraph 1 as follows :

1. After the word “ agreement ” add the words “ for their nationals ”.
 2. At the end of the paragraph add the following :
“ These measures shall be based on appropriate scientific findings.”
-

DOCUMENT A/CONF.13/C.3/L.11**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 53

PARAGRAPH 1

At the end of paragraph 1 add the words “ but shall not discriminate against them ”.

PARAGRAPH 2

The last sentence should be amended so as to read :

“ The measures adopted shall remain obligatory for the nationals of other States pending the final award of the arbitration body, unless the parties concerned have authorized, in the agreement establishing arbitration, the arbitration body to suspend the adopted measures even earlier.”

DOCUMENT A/CONF.13/C.3/L.12**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 53 A

Add a new article, 53 A, after article 53, reading as follows :

“ 1. A coastal State is authorized to adopt, in a belt of the high seas adjacent to its territorial sea, measures regulating and controlling the exploitation of the living resources of the sea and reserving an exclusive right of fishing for its nationals. The breadth of this belt, together with the breadth of territorial sea, shall not extend beyond twelve miles.

“ 2. The character as high seas of this belt and the right of free and unimpeded navigation in it are in no way affected.

“ The boundary of this belt between two States, the coasts of which are opposite each other at a distance less than the double extent of the belts of the high seas adjacent to their territorial seas, referred to in paragraph 1 of the present article, or between two adjacent States, is, in the absence of agreement, the median line every point of which is equidistant from the nearest points on the outer limit of the territorial sea of each State concerned.”

DOCUMENT A/CONF.13/C.3/L.13**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Articles 54 and 55

Articles 54 and 55 should be merged into one article to read as follows :

“ 1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high sea adjacent to the belt referred to in article 53 A, or, if a coastal State has not established such a belt, adjacent to its territorial sea.

“ 2. A coastal State may in any area of the high seas adjacent to the maritime belt referred to in article 53 A, or, if a coastal State has not established such a belt, adjacent to its territorial sea, adopt unilateral conservation measures for regulating and controlling fishing activities up to a distance not exceeding one hundred miles, measured from the outer limit of the maritime belt referred to in article 53 A or from the outer limit of its territorial sea respectively.

“ The measures adopted shall be based on scientific findings and shall not discriminate against foreign fishermen.

“ 3. If a State or States, whose fishermen had been regularly engaged in fishing activities in an area of the high seas before the adoption of conservation measures on the part of a coastal State, do not accept the measures so adopted, they may initiate the procedure contemplated by article 57. The measures adopted shall remain obligatory

pending the arbitral award, unless the interested parties have authorized, in the agreement establishing arbitration, the arbitration body to suspend the adopted measures even earlier.

“ 4. If the breadth of the high seas between the maritime belts, as described in article 53 A, of two States, the coasts of which are opposite each other, is smaller than the double of the breadth referred to in paragraph 2 of the present article, the boundary of the area of the high seas up to which a coastal State may adopt the unilateral measures referred to in paragraph 2 of the present article shall be, in the absence of an agreement, the median line every point of which is equidistant from the nearest points on the outer limit of the territorial sea of each of the States concerned. The same criterion of delimitation shall apply in the case of two adjacent States.

“ 5. If a coastal State has not adopted the measures referred to in paragraph 2 of the present article, a State or States whose nationals are regularly engaged in fishing activities in that area of the high seas cannot adopt conservation measures of their own, but may, if they so wish, approach the coastal State with a view to a joint adoption of conservation measures. If the coastal State and the States concerned do not reach agreement, any of the interested parties may initiate the procedure contemplated by article 57.”

DOCUMENT A/CONF.13/C.3/L.14

Yugoslavia: proposal

[Original text : English]
[21 March 1958]

Article 57

Replace article 57 by the following text :

“ 1. In the case of any disagreement between States under articles 52, 53, 55 and 56, the dissatisfied party shall request the other party to seek a solution of the dispute by peaceful settlement.

“ If the dispute cannot be settled by diplomatic means, the parties shall resort to mutual consultation for the purpose of settling the dispute in accordance with some of the methods of pacific settlement of international disputes provided for in Article 33 of the United Nations Charter.

“ If no agreement is reached within three months from the date of the request to settle the dispute in the manner provided for in the preceding paragraph, the parties to the dispute shall set up an arbitration body. The arbitration body shall consist of five arbitrators, unless decided differently by the parties concerned. Each of the parties to the dispute shall nominate two arbitrators, but only one of the arbitrators nominated by each side may be a national of a State on that side, while the other member shall be a national of a third State.

“ The arbitrators shall be appointed within two months. The nominated arbitrators shall designate a chairman by mutual agreement. The chairman may not be a national of one of the States involved in the dispute, nor a national of a State of which a national has already been appointed as arbitrator.

“ If, within a period of two months, the arbitrators do not reach agreement concerning the designation of the

chairman, both governments, or any one of them, may request the Secretary-General of the United Nations to nominate a chairman. The Secretary-General shall make this appointment within one month from the date of the receipt of the request for the appointment.

“ 2. The parties to the dispute may determine by agreement the volume of the dispute and the procedure and also determine how the costs and expenses shall be divided between the parties. If the parties fail to provide for this, the arbitrators shall settle these matters by their decisions.

“ The arbitration body shall convene within one month from the date of its appointment. It shall provide both parties to the dispute with the opportunity to submit their suits and shall hold a public contradictory hearing, unless stipulated differently in the agreement on the establishment of arbitration. The decision shall be brought and rendered public within one month from the date of the ending of the hearing.

“ 3. The arbitrators shall, when making their decisions, adhere to the present rules and to the agreements between the parties, as well as to other sources of international law applicable to the parties, and shall not bring decisions *ex aequo et bono* without the express authorization of the parties to the dispute.

“ The decisions of the arbitration body shall be adopted by a majority of votes and signed by all the arbitrators. The award of the arbitration body shall be explained and may, in addition to the decision, embody recommendations to the parties to the dispute.”

DOCUMENT A/CONF.13/C.3/L.15

Yugoslavia: proposal

[Original text : English]
[21 March 1958]

Article 58

Amend to read as follows :

“ 1. The arbitration body shall note in its award whether the measures adopted by the respective States, which are the object of a given dispute, are, or are not, in conformity with the present rules and, if not, in what they depart from these rules.

“ 2. In bringing its award the arbitration body shall apply the following criteria :

“ (a) Whether the State demanding the alteration or cancellation of adopted measures is authorized, on the basis of the present rules, to submit such a request ;

“ (b) Whether scientific evidence shows the necessity of conservation measures ;

“ (c) Whether the adopted measures are based on scientific findings and are appropriate for the purpose ;

“ (d) Whether the measures discriminate against foreign fishermen.”

DOCUMENT A/CONF.13/C.3/L.16**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 59

1. Replace the first sentence of article 59 by the following :

“If the arbitration body finds that the measures adopted by a respective State which are the object of dispute are not in accordance with the present rules, the respective State shall comply with the decision of the arbitration body and conform the adopted measures to the present rules as soon as possible.”

2. In the second sentence, replace the word “decision” by the word “award”.

DOCUMENT A/CONF.13/C.3/L.19**Thailand: proposal**

[Original text : English]
[25 March 1958]

Article 53

Delete the last sentence of paragraph 2.

Article 55

Delete the last sentence of paragraph 3.

Article 57

In paragraph 1, replace the words “an arbitral commission of seven members” by the words “the International Court of Justice”.

Articles 58 and 59

Delete the articles.

DOCUMENT A/CONF.13/C.3/L.20**Netherlands: proposal**

[Original text : English]
[25 March 1958]

Article 49

Replace the text adopted by the International Law Commission by the following :

“Nationals and ships of all States have the right freely to engage in fishing on the high seas. This right is subject to existing treaty obligations and to the provisions contained in the following articles concerning conservation of the living resources of the high seas.”

DOCUMENT A/CONF.13/C.3/L.21**Costa Rica, Mexico, Peru and United Arab Republic:* proposal**

[Original text : Spanish]
[25 March 1958]

Article 50

Add the following paragraph :

“Conservation programmes should be formulated with due regard to the special interest of the coastal State in the maintenance of the productivity of the resources of the high seas in the vicinity of its coasts.”

* At the 16th meeting, Chile asked to be included as a co-sponsor.

DOCUMENT A/CONF.13/C.3/L.22**Venezuela: proposal**

[Original text : Spanish]
[26 March 1958]

Article 51

Add the following phrase at the beginning of the article :
“Without prejudice to the rights and interests of the coastal State as provided for in this convention . . .”

DOCUMENT A/CONF.13/C.3/L.23**Venezuela: proposal**

[Original text : Spanish]
[26 March 1958]

Article 52

Insert the following phrase in paragraph 1 after the words “at the request of any of them,” :
“and without prejudice to the rights and interests of the coastal State as provided for in this convention.”

DOCUMENT A/CONF.13/C.3/L.24**Italy: proposal**

[Original text : French]
[26 March 1958]

Articles 49, 51 to 54 and 56

In the text of articles 49, 51, 52 (para. 1), 53 (para. 1), 54 (para. 2) and 56 (para. 1), replace the word “nationals” by the words “national ships”.

DOCUMENT A/CONF.13/C.3/L.25**Italy: proposal**

[Original text : French]
[26 March 1958]

Article 52

Replace paragraph 1 by the following :
“1. If the national ships of two or more States have been regularly engaged, for not less than three years, in fishing the same stock or stocks of fish or other marine resources in any area of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such resources.”

DOCUMENT A/CONF.13/C.3/L.26**Italy: proposal**

[Original text : French]
[26 March 1958]

Article 55

Insert the following paragraph after paragraph 1 :

“ In seas whose average breadth is less than one hundred miles, the measures which the coastal State adopts under the previous paragraph shall not have effect beyond ten miles from the normal baseline or the straight baseline, as the case may be, unless all the coasts belong to the same State.”

DOCUMENT A/CONF.13/C.3/L.27**Italy: proposal**

[Original text : French]
[26 March 1958]

Article 55 A

After article 55 add a new article, 55 A, to read as follows :

“ The measures adopted by virtue of articles 51, 52 and 55 shall, before their entry into force, be communicated by the States which ordered them to all the States signatories of this convention.”

DOCUMENT A/CONF.13/C.3/L.28**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[26 March 1958]

Article 51

- (1) After “ fishing ” insert “ any stock or stocks of fish or other living marine resources ”.
- (2) Delete “ for regulating and controlling fishing activities ”.
- (3) For “ the living resources of the high seas ” substitute “ those living resources ”.

- (2) After “ area ” insert “ or areas ”.

Additional article

Insert new article, immediately following article 55, as follows :

“ Where the stock or stocks of fish or other living marine resources are subject to regulation by any conservation commission of which the States concerned are members, the negotiations referred to in articles 52, 53 [54 and 55] shall be conducted through that commission.”

Article 52**PARAGRAPH 1**

- (1) Before “ marine resources ” insert “ living ”.

DOCUMENT A/CONF.13/C.3/L.29***Poland and Union of Soviet Socialist Republics: proposal**

[Original text : Russian]
[26 March 1958]

Article 53

Draft this article as follows :

“ 1. Subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States may engage on an equal footing in fishing the same stock or stocks of fish or other marine resources in the same area.

“ 2. The measures adopted shall be applied without discrimination also to the said States, unless these raise the question of varying or clarifying such measures by proposing to enter into negotiations.”

* Incorporating A/CONF.13/C.3/L.29/Add.1.

DOCUMENT A/CONF.13/C.3/L.30**Poland and Union of Soviet Socialist Republics: proposal**

[Original text : Russian]
[26 March 1958]

Article 56

PARAGRAPH 1

Draft this paragraph as follows :

“ Any State which, even if its nationals are not engaged in fishing in any area of the high seas, has an interest in the conservation of the living resources of that area, is entitled to take part on an equal footing in any research organization or system of regulation in that area, and may also request the State whose nationals are engaged in fishing there to take the necessary measures of conservation.”

PARAGRAPH 2

Delete this paragraph.

DOCUMENT A/CONF.13/C.3/L.31**Uruguay: proposal**

[Original text : Spanish]
[26 March 1958]

Articles 52, 53 and 56

Replace the words “ a reasonable period of time ” by the words “ a period of six months ”.

DOCUMENT A/CONF.13/C.3/L.32**Japan: proposal**

[Original text : English]
[26 March 1958]

Article 51

Replace the text by the following :

- “ 1. A State whose nationals are engaged in fishing certain stock or stocks of fish or other marine resources in any area of the high seas where the nationals of other States are not thus engaged, shall adopt measures for regulating and controlling fishing of such living resources in that area when necessary for the purpose of their conservation.
- “ 2. Due publicity must be given of any measures adopted under the preceding paragraph.”

Article 52

Replace the words “ within a reasonable period of time ” in paragraph 2 by the words “ within one year ”.

Article 53

Replace the words “ within a reasonable period of time ” in paragraph 2 by the words “ within one year ”.

DOCUMENT A/CONF.13/C.3/L.33**Japan: proposal**

[Original text : English]
[26 March 1958]

Articles 54 to 56

Replace these articles by the following single article :

- “ 1. Any State which, even if its nationals are not engaged in fishing certain stock or stocks of fish or other marine resources in an area of the high seas, has a special interest in the conservation of such living resources in that area, may request the State whose nationals are engaged in fishing such living resources there to take the necessary measures of conservation.
- “ 2. If no agreement is reached within one year, such State may initiate the procedure contemplated by article 57.”

DOCUMENT A/CONF.13/C.3/L.34**Republic of Korea: proposal**

[Original text : English]
[26 March 1958]

Article 52

ADDITIONAL PARAGRAPH

Insert a new paragraph after paragraph 1 to read as follows :

- “ 2. Notwithstanding paragraph 1, the existence of such negotiations between the States concerned for the purpose of adopting conservation measures does not prevent the coastal State from invoking article 54 or article 55.”

PARAGRAPH 2

Paragraph 2 shall accordingly be numbered paragraph 3.

DOCUMENT A/CONF.13/C.3/L.35**Mexico: proposal**

[Original text : Spanish]
[26 March 1958]

Article 51

Between the words “ high seas ” and the words “ where the nationals ”, insert the phrase : “ not contiguous to the coasts of another State ”.

Article 52

PARAGRAPH 1

Between the words “ high seas ” and the words “ these States ”, insert the phrase : “ not contiguous to the coasts of another State ”.

DOCUMENT A/CONF.13/C.3/L.36**Sweden: proposal**

[Original text : English]
[26 March 1958]

Article 52

PARAGRAPH 1

Insert in the first sentence “ regularly ” before the word “ engaged ”.

PARAGRAPH 2

Replace the words : “ within a reasonable time ” by the words “ within twelve months ”.

Article 53

PARAGRAPH 2

- (1) In the first sentence replace the words : " within a reasonable time " by the words : " within twelve months " .
 (2) Delete the second sentence of the paragraph.

Article 54 *

Delete the article.

Article 55 *

Delete the article.

* At the 23rd meeting, the Federal Republic of Germany and Japan asked to be included as co-sponsors.

Article 56

PARAGRAPH 1

Delete the words : " not adjacent to its coast " .

PARAGRAPH 2

Replace the words : " within a reasonable time " by the words " within twelve months " .

Article 57

PARAGRAPH 5

Replace the words : " three months " by the words : " four months " .

Article 58

Delete the article.

DOCUMENT A/CONF.13/C.3/L.37**Spain: proposal**

[Original text : Spanish]
 [26 March 1958]

Article 51

Between the words " are " and " engaged ", insert the word " normally " .

Article 52

PARAGRAPH 1

1. Between the words " are " and " engaged " insert the word " normally " .

PARAGRAPH 2

2. Substitute " a period of twelve months " for " a reasonable period of time " .

Article 53

PARAGRAPH 2

Substitute " a period of twelve months " for " a reasonable period of time " .

Article 54

PARAGRAPH 1

1. At the end of the paragraph, add the phrase " whose depth does not exceed isobath five hundred metres " .

PARAGRAPH 3

2. Substitute " a period of twelve months " for " a reasonable period of time " .

Article 55

For the text adopted by the International Law Commission, substitute the following :

" 1. Having regard to the provisions of paragraph 1 of article 54, any coastal State shall, with a view to the maintenance of the productivity of the living resources of the sea, notify (the United Nations Secretariat) of its intention to adopt within a period of twelve months, specific unilateral measures of conservation for any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations with the other States concerned have produced no agreement on such measures of conservation.

" 2. If the said measures are considered unacceptable by the other States concerned, any of the parties may initiate, within the prescribed period of twelve months, the procedure contemplated by article 57, the introduction of the measures being left in abeyance pending the arbitral decision.

" 3. The measures which the coastal State proposes to adopt under paragraph 1 above shall be valid as to other States only if the following requirements are fulfilled :

- (a) That scientific evidence shows that there is an urgent need for measures of conservation ;
- (b) That the measures proposed are based on appropriate scientific findings ;
- (c) That such measures do not discriminate against foreign fishermen."

Article 56

PARAGRAPH 2

Substitute " a period of twelve months " for " a reasonable period " .

DOCUMENT A/CONF.13/C.3/L.38**Portugal: proposal**

[Original text : French]
[26 March 1958]

Article 52

At the end of the article, add the following : “ and shall set up a regional fisheries board to ensure that these measures are effective and that they are carried out by member States ”.

Article 53

Add a new paragraph as follows :

“ States which are newcomers shall automatically be invited to join any regional fisheries board for the area in question.”

DOCUMENT A/CONF.13/C.3/L.39**Netherlands: proposal**

[Original text : English]
[26 March 1958]

Articles 51, 52 and 56**FIRST ALTERNATIVE**

1. Delete article 56.

2. Add to article 51 a paragraph 2, worded as follows :

“ If such State does not comply with this obligation, any other State which has a special interest in the conservation of the living resources in the said area, even if not adjacent to its coast, may request it to take the necessary measures of conservation, failing which within a reasonable period it may initiate the procedure contemplated by article 57.”

3. Replace paragraph 1 of article 52 by the following text :

“ 1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other marine resources in any area of the high seas, these States shall, at the request of any of them or at the request of any other State which has a special interest in the conservation of the living resources in that area, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such resources.”

SECOND ALTERNATIVE

In paragraph 1 of article 56, insert between “ the State ” and “ whose nationals ” the words “ or States ”, and at the end add “ under articles 51 or 52 respectively ”.

DOCUMENT A/CONF.13/C.3/L.40**United States of America: proposal**

[Original text : English]
[27 March 1958]

Article 53**PARAGRAPH 1**

1. Substitute the word “ any ” for the words “ the same ”, and insert the words “ or areas of the high seas ” after the word “ area ”.

2. Add the words “ [] months after the date on which the measures have been notified to the Director-General of the Food and Agriculture Organization of the United Nations ”.

Comments

The foregoing amendments are proposed (1) in order that the term "area of the high seas" be broadened to include "areas", since the same stock of fish or other marine resource might inhabit more than one area of the high seas at different seasons of the year or stages of its life cycle and be fished by the nationals of different States at those times, and (2) to reduce the possibility of misunderstanding on the part of third States by a requirement of advance notification of conservation measures in a regularized manner.

DOCUMENT A/CONF.13/C.3/L.41***Chile, Costa Rica, Ecuador and Peru: proposal**

[Original text : Spanish]
[27 March 1958]

Articles 54 and 55

Replace articles 54 and 55 by a single text, as follows :

- "1. In addition to the right established by article 49 to make use of the resources of the sea, a coastal State has a special right, inherent in its geographical situation, to adopt measures for their conservation and to regulate and control their exploitation in an area of sea adjacent to its territorial sea or to its contiguous zone, as the case may be.
- "2. Other States may not object to the provisions which a coastal State may adopt for that area, based on the conservation of the living resources of the sea and on the subsistence and economic development needs of its population, provided such provisions do not exclude foreign fishermen who comply therewith from the exploitation of those resources.
- "3. The provisions referred to in the preceding paragraph

* Incorporating A/CONF.13/C.3/L.41/Corr.1.

shall be based on scientific investigations and findings showing the need for them.

"4. When it is necessary to restrict the scale of fishing, a coastal State applying measures of conservation may require the nationals of other States who have been authorized to fish in that area to refrain entirely or partially from doing so for the period of time which may be necessary for a sufficient yield to be restored.

"5. When, in order to conserve the living resources of an area of sea, co-operation with other States is deemed desirable, because they are coastal States bordering the same sea or because their nationals are engaged in fishing in the said area, the coastal State shall institute negotiations with those States with a view to the adoption of joint conservation measures. Should no agreement be reached, however, the measures adopted by the coastal State by virtue of the preceding paragraphs shall continue in force.

"6. A coastal State shall have the right to join any research organization and to participate in any system of investigation set up by other States or international organizations in respect of the said area of sea."

DOCUMENT A/CONF.13/C.3/L.42**Union of Soviet Socialist Republics: proposal**

[Original text : Russian]
[28 March 1958]

Articles 54 and 55

Articles 54 and 55 to be merged to form one article, reading as follows :

- "1. Any coastal State having a special interest in the maintenance of the productivity of the living resources of any area of the high seas adjacent to its territorial sea may, to this end, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time.
- "2. The measures which the coastal State adopts under the

previous paragraph shall be valid as to other States only if the following requirements are fulfilled :

- (a) That scientific evidence shows that there is an urgent need for measures of conservation ;
- (b) That the measures adopted are based on appropriate scientific findings ;
- (c) That they do not discriminate against foreign fishermen ;
- (d) That they are essential, in order to ensure that the general steps taken by that State to safeguard the reproduction of the living marine resources are effective."

DOCUMENT A/CONF.13/C.3/L.42/Rev.1**Union of Soviet Socialist Republics: proposal**

[Original text : Russian]
[8 April 1958]

Article 55

Add the following new sub-paragraph (d) to paragraph 2 :

“(d) That they are essential in order to ensure that the large-scale measures taken by that State to safeguard the reproduction of the living resources of the sea are effective.”

DOCUMENT A/CONF.13/C.3/L.43**Netherlands, Portugal, United Kingdom of Great Britain and Northern Ireland and United States of America: proposal**

[Original text : English]
[28 March 1958]

Article 54

1. In paragraph 2, after “regulation” insert “for conservation purposes”.
2. Insert new paragraph 3, worded as follows :
“3. Any State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.”
3. Paragraph 3 would then become paragraph 4. In this paragraph after “agreement” insert “with respect to conservation measures”.

DOCUMENT A/CONF.13/C.3/L.44**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[28 March 1958]

Article 55

Delete paragraphs 2 and 3 of the article and substitute the following :

“2. Where a coastal State has adopted measures under paragraph 1 above other States concerned shall require their own nationals to observe such measures provided only that :

(a) Reasonable prior notice of the intention to introduce

the conservation measures shall have been given by the coastal State and the measures in question have been duly publicized ; and

(b) It shall have been demonstrated to the satisfaction of the appropriate body under article [57] that, pending a further or a final determination of the points in dispute, there is a prima facie case for taking some or all of the proposed conservation measures and those measures do not discriminate in form or in fact against foreign fishermen.”

DOCUMENT A/CONF.13/C.3/L.45**Republic of Korea: proposal**

[Original text : English]
[28 March 1958]

Article 54

1. Insert the following paragraph after paragraph 1 :
“2. A coastal State, which has made sacrifices in its efforts to conserve the living resources and increase the

productivity of these resources, through restraints on its own fishermen, in any area mentioned in the preceding paragraph 1, may require other States to refrain from fishing in the said area until such time as a sufficient yield from the resources has been restored.”

2. Re-number paragraphs 2 and 3 of the draft as 3 and 4 respectively.

Article 55

PARAGRAPH 1

Replace the words "provisions of paragraph 1 of article 54" by the words "provisions of paragraphs 1 and 2 of article 54,".

PARAGRAPH 2

1. Delete sub-paragraph (a).
2. Insert the word "unduly" between the words "discriminate" and "against" in sub-paragraph (c).
3. Renumber sub-paragraphs (b) and (c) as (a) and (b) respectively.

PARAGRAPH 3

Replace the last sentence by the following: "The measures adopted shall remain obligatory pending a final decision."

DOCUMENT A/CONF.13/C.3/L.46

Norway: proposal

[Original text: English]
[29 March 1958]

Article 55

PARAGRAPH 3

Add a new paragraph 3 worded as follows :

- "3. The coastal State may not exercise the right described in this article in areas of the high seas situated
- (a) more than * miles from its baseline, or
 - (b) closer to the baseline of another State than to its own baseline, or
 - (c) adjacent to uninhabited coasts."

* To be decided after discussion in the Committee.

DOCUMENT A/CONF.13/C.3/L.47

France, Federal Republic of Germany, Italy, Japan, Netherlands, United Kingdom of Great Britain and Northern Ireland and Yugoslavia: proposal

[Original text: English]
[29 March 1958]

Article 51

1. After the words "engaged in fishing" insert the words "any stock or stocks of fish or other living marine resources".
2. After the words "shall adopt" insert the words "for its own nationals".
3. Delete the words "for regulating and controlling fishing activities".

4. Replace the words "the living resources of the high seas" by the words "those living resources".

Note.— This proposal replaces the proposals concerning article 51 submitted by France (A/CONF.13/C.3/L.3), the Federal Republic of Germany (A/CONF.13/C.3/L.4), Italy (A/CONF.13/C.3/L.24), Japan (A/CONF.13/C.3/L.32), the Netherlands (A/CONF.13/C.3/L.39), the United Kingdom of Great Britain and Northern Ireland (A/CONF.13/C.3/L.28) and Yugoslavia (A/CONF.13/C.3/L.9).

DOCUMENT A/CONF.13/C.3/L.48

France, Federal Republic of Germany, Italy, Japan, Netherlands, Portugal, Sweden, United Kingdom of Great Britain and Northern Ireland and Yugoslavia: proposal

[Original text : English]
[29 March 1958]

Article 52

PARAGRAPH 1

- (a) Before the words "marine resources" insert the word "living".
- (b) After the words "in any area" insert the words "or areas".
- (c) After the words "with a view to prescribing by agreement" insert the words "for their nationals".

PARAGRAPH 2

Replace the words "within a reasonable period of time" by the words "within twelve months".

Note. — This proposal replaces the proposals concerning article 52 submitted by France (A/CONF.13/C.3/L.3), the Federal Republic of Germany (A/CONF.13/C.3/L.4), Italy (A/CONF.13/C.3/L.24, A/CONF.13/C.3/L.25), Japan (A/CONF.13/C.3/L.32), Netherlands (A/CONF.13/C.3/L.39), Portugal (A/CONF.13/C.3/L.38), Sweden (A/CONF.13/C.3/L.36), the United Kingdom of Great Britain and Northern Ireland (A/CONF.13/C.3/L.28) and Yugoslavia (A/CONF.13/C.3/L.10).

DOCUMENT A/CONF.13/C.3/L.50**India: proposal**

[Original text : English]
[31 March 1958]

Article 49

Add a new paragraph 2 to read as follows :

"2. A coastal State shall have exclusive fishing rights up to a distance of twelve nautical miles measured from the baseline."

DOCUMENT A/CONF.13/C.3/L.51**India: proposal**

[Original text : English]
[31 March 1958]

Article 60

PARAGRAPH 1

Delete the words "provided that non-nationals are permitted to participate in such activities on an equal footing with nationals".

DOCUMENT A/CONF.13/C.3/L.55

France, Netherlands, Portugal, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America: proposal

[Original text : English]
[31 March 1958]

Article 53

1. Insert the word "living" before the words "marine resources".
2. Replace the words "in the same area, the conservation measures shall be applicable to them" by the following "in any area or areas of the high seas, the other States shall apply the measures to their nationals no later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and in any case to any State specified by the State initiating the measure."

DOCUMENT A/CONF.13/C.3/L.59

Netherlands: proposal

[Original text : English]
[3 April 1958]

Article 57

Replace paragraphs 2 to 5 by the following :

- "2. Two members of the arbitral commission shall be named by the State or States on the one side of the dispute, and two members by the State or States contending to the contrary, but only one of the members nominated by each side may be a national of a State on that side. If, within a period of one month from the date of the request for arbitration, there shall be a failure by those on either side in the dispute to name any member, such member or members shall, upon the request of any party, be named by the Secretary-General of the United Nations after consultation with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations.
- "3. The remaining three members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute. Failing agreement within two months from the date of the request for arbitration they shall, upon the request of any State party, be nominated by the Secretary-General of the United Nations, after the same consultation, from nationals of countries not parties to the dispute.
- "4. If the parties to the dispute fall into more than two opposing groups, the arbitral commission shall, at the

request of any of the parties, be appointed by the Secretary-General of the United Nations, after consultation with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well qualified persons specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled.

"5. The arbitral commission shall in all cases be constituted within three months from the date of the request for arbitration.

"6. Any vacancy arising after the appointment shall be filled in the same manner as provided in paragraphs 2, 3 and 4 for the initial selection.

"7. The arbitral commission shall determine its own procedure. It shall render its decision within five months from the date of its constitution unless it decides, in case of necessity, to extend the time limit. It shall also determine the amount of the costs and expenses and how these shall be divided between the parties."

Note. — This amendment is intended to arrange the subject matter in a more systematic way, i.e., to remove an inconsistency between paras. 2 and 5 of the International Law Commission's draft in respect of the delays prescribed for the composition of the arbitral commission.

DOCUMENT A/CONF.13/C.3/L.60**Philippines and Republic of Viet-Nam: proposal**

[Original text : English]
[3 April 1958]

Article 54

Insert the following paragraph after paragraph 1 :

“2. If the inhabitants of a coastal State who engage in fishing do so mainly on the coasts of that State, and derive their subsistence as well as that of other inhabitants largely from such fishing, they shall have a preferential right to fish in any area mentioned in paragraph 1 of this article ; however, no coastal state shall have any right to prohibit fishing in such area by the inhabitants of other States after the needs of its population have been reasonably secured.”

Note. — This proposal replaces the proposal concerning article 54 submitted previously by the Philippines (A/CONF.13/C.3/L.5).

DOCUMENT A/CONF.13/C.3/L.61**Union of Soviet Socialist Republics: proposal**

[Original text : Russian]
[7 April 1958]

Articles 57 to 59

Replace articles 57, 58 and 59 by the following :

“Any dispute on questions relating to fishing on the high seas may, unless the parties can reach agreement within a reasonable period of time, be submitted to the International Court of Justice for consideration or referred to arbitration in accordance with the Statute of the Court and the agreements in force.”

DOCUMENT A/CONF.13/C.3/L.62**Norway: proposal**

[Original text : English]
[8 April 1958]

Article 59 A

Insert the following article after article 59 :

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

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

DOCUMENT A/CONF.13/C.3/L.63**Norway: proposal**

[Original text : English]
[8 April 1958]

Article 59 B

Insert the following article after article 59 :

“A State party to a special agreement which provides procedures for adopting conservation measures may not, without the consent of the other States parties to the agreement, invoke the rights accorded in paragraph 2 of article 52, and in article 55 as against these parties in respect of measures which fall within the scope of the special agreement.”

DOCUMENT A/CONF.13/C.3/L.64**Republic of Korea: proposal**

[Original text : English]
[8 April 1958]

Articles 57 to 59

Replace article 57, 58 and 59 by the following single article :

“In the case of any disagreement between States under articles 52, 53, 54, 55 and 56, the parties in dispute shall seek a solution of the dispute in accordance with the provisions of Article 33 of the Charter of the United Nations.”

DOCUMENT A/CONF.13/C.3/L.65

**Burma, Chile, Costa Rica, Ecuador, Indonesia, Republic of Korea, Mexico,
Nicaragua, Philippines, Republic of Viet-Nam and Yugoslavia: proposal**

[Original text : English]
[8 April 1958]

Article 54

After paragraph 2 add the following paragraph 3 :

“3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area without the concurrence of the coastal State(s) but may enter into negotiations with the coastal State(s) with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.”

Note. — The present proposal replaces the proposals relating to article 54 submitted by Chile, Costa Rica, Ecuador and Peru (A/CONF.13/C.3/L.41), and paragraphs 1 and 5 of the proposal submitted by Yugoslavia in document A/CONF.13/C.3/L.13.

DOCUMENT A/CONF.13/C.3/L.66

**Burma, Chile, Costa Rica, Ecuador, Indonesia, Republic of Korea, Mexico,
Nicaragua, Philippines, Republic of Viet-Nam and Yugoslavia: proposal**

[Original text : English]
[8 April 1958]

Article 55**PARAGRAPH 1**

Delete the phrase “provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time”, and add the following: “Any concerned State may initiate negotiations with the coastal State to work out joint conservation measures, but pending agreement the measures adopted by the coastal State shall remain in force”.

PARAGRAPH 2

Replace paragraph 2 by the following :

“2. The measures adopted shall be based on appropriate scientific findings and shall not discriminate against foreign fishermen.”

PARAGRAPH 3 AND ADDITIONAL PARAGRAPH

After paragraph 2 insert the following paragraphs 3 and 4 :

“3. The fishing interests of the coastal State should receive special consideration if restrictions are imposed on the intensity of fishing.

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

Note. — The present proposal replaces the amendments concerning article 55 submitted by Chile, Costa Rica, Ecuador and Peru in document A/CONF.13/C.3/L.41, and paragraph 2, the first sentence of paragraph 3 and paragraph 4 of the proposal submitted by Yugoslavia in document A/CONF.13/C.3/L.13.

DOCUMENT A/CONF.13/C.3/L.66/Rev.1

Burma, Chile, Costa Rica, Ecuador, Indonesia, Republic of Korea, Mexico, Nicaragua, Philippines, Republic of Viet-Nam and Yugoslavia:* revised proposal

[Original text : English]
[11 April 1958]

Article 55

PARAGRAPH 1

Replace the words " a reasonable period of time " by the words " six months ".

PARAGRAPH 2

Replace sub-paragraph (a) by the following :

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

PARAGRAPH 3

After paragraph 2 insert the following :

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

ADDITIONAL PARAGRAPH

Add the following paragraph :

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

* At the 35th meeting, Denmark asked to be included as a co-sponsor.

DOCUMENT A/CONF.13/C.3/L.67

Greece and United States of America: proposal

[Original text : English]
[8 April 1958]

Article 57

Amend article 57 to read as follows :

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

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

" 3. Any State party to a proceeding under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the

commission but without the right to vote or to take part in the writing of the commission's decision.

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

" 5. The special commission shall render its decision within a period of five months from the time it is constituted unless it decides, in case of necessity, to extend that time limit.

" 6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing sides regarding settlement of the dispute. The commission shall not render decisions *ex aequo et bono* without the express authorization of all the parties to the dispute.

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

Comments

In paragraph 1, the name of the commission has been changed to "special" commission to avoid confusion between the specialized functions of this commission and those of arbitration in the classical sense.

Revised paragraphs 1 and 2 would provide a simpler procedure for constituting a special commission which

would be suitable for handling disputes of both a two-sided and a multi-sided nature. A five-member body should adequately provide a suitable balance of the required expert skills.

The proposal in paragraph 3 for inclusion of a non-voting representative from each State party to the dispute would assure each such party of adequate presentation and consideration of the party's case in the proceedings. This

would be particularly desirable in situations where there are more than two parties to the dispute.

Paragraph 6 of the revised text would enable the parties to a dispute, by mutual consent, to restrict or expand the commission's terms of reference for the particular case, if they so desire, and in the absence of express authorization by the parties to the contrary, would limit the commission's decisions to the technical merits of the case according to specific criteria.

DOCUMENT A/CONF.13/C.3/L.68

Greece, Pakistan and the United States of America: proposal

[Original text : English]
[8 April 1958]

Article 58

Substitute the following language for article 58 :

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

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

- (i) That the States parties to the dispute are concerned with the same stock or stocks of fish of other living resources ;
- (ii) That scientific findings demonstrate the necessity of conservation measures ;
- (iii) That the specific measures are based on scientific findings and are practicable ; and
- (iv) That the measures do not discriminate against fishermen of other States.

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

"2. The special commission may decide that pending its award the measures in dispute shall not be applied."

Comments

Except for the criteria relating to article 55, article 58 does not include specific criteria for the fishery articles. This aspect of the matter seems to have been left by the International Law Commission to the "guiding principles" set forth in the commentary accompanying article 58. Specific criteria of a fixed character constitute a key element in the International Law Commission's fisheries conservation scheme. It is likely most States would be reluctant to commit themselves in advance to obligatory and binding procedure proposed by the International Law Commission without prior agreement on the special commission's terms of reference, thus circumscribing its authority in disputes under those articles.

The International Law Commission's "guiding principles" in the commentary to article 58 would, in large part, provide the substance of appropriate criteria for inclusion in the body of this article, serving the practical purpose of framing basic questions which might arise under the fishery articles. They are lacking in one important respect, however — i.e., they would not empower the special commission to determine whether the disputing parties are concerned with the same stock or stocks of fish in cases where this is made an issue.

This amendment proposes to incorporate the criteria in the articles themselves and to cover the situation regarding fishing the same stock or stocks of fish.

DOCUMENT A/CONF.13/C.3/L.69

Canada and United States of America: proposal

[Original text : English]
[8 April 1958]

Additional article and article 58

A. Insert the following additional article in the International Law Commission's articles on high seas fisheries conservation :

"1. Where the nationals of a coastal State, alone or with the nationals of one or more other States, are (a) fishing a stock of fish in an area of the high seas adjacent to the territorial sea of the coastal State with such intensity that an increase in fishing effort will not result in a substantial increase in the yield which can be maintained year after year, and (b) where the maintenance of the current yield,

or when possible, the further development of it is dependent upon a conservation programme carried out by those States, involving research and limitations upon the size or quantity of the fish which may be caught, then (c) States whose nationals are not fishing the stock regularly or which have not theretofore done so within a reasonable period of time, shall abstain from fishing such stock, provided however that this shall not apply to any coastal State with respect to fishing any stock in waters adjacent to its territorial sea.

"2. In the event of disagreement as to whether a particular stock of fish meets the qualifications for such abstention, any interested State may initiate the procedure contemplated

by articles 57 and 58. Subject to paragraph 2 of article 58, abstention shall be required pending the arbitral decision.

“3. The existence of conditions for application of the abstention procedure shall be notified by the regulating State or States to the Director-General of the Food and Agriculture Organization.”

B. Add the following language to article 58 at an appropriate place :

“Applicable to the determination of disputes arising under article [] are the following requirements :

- (i) That the stock is subject to adequate scientific investigation by the States fishing it regularly, designed to determine the measures required to make possible the maximum sustainable yield ;
- (ii) That the stock is under regulation including limitations upon the size or quantity of the fish which may be caught, by all the States fishing it regularly, required to make possible the maximum sustainable yield ;
- (iii) That the stock is under such exploitation that an increase in the amount of fishing will not be expected to result in a substantial increase in the sustainable yield ; and
- (iv) That the current yield is dependent upon the conservation programme.”

Comments

The “abstention” concept, as described above, relates to situations where coastal States have, through the expenditure of time, effort, and money on research

management, and through drastic restraint on their fishermen, increased or maintained the productivity or stocks of fish, which without such action would not exist or would exist at far below their most productive level. Under such conditions and when the stocks are being fully utilized, that is, under such exploitation that an increase in the amount of fishing would not result in any substantial increase in the sustainable yield, then States not participating, or which have not in recent years participated in exploitation of such stocks of fish, excepting the coastal States adjacent to the waters in which the stocks occur, should be required to abstain from participation in such fisheries.

The abstention procedure takes into account the fact that under the conditions stated above, the present, the continuing or the growing productivity of the stocks of fish is the result of and dependent on past and current action of the participating States, and that the participation of additional States would result in no increase in the amount of useful products. Rather than increasing production the advent of additional States is almost sure to stimulate the deterioration or stagnation of such conservation activities through removing the incentive for maintaining the conservation programmes.

In recognition of a “special interest” on the part of a coastal State, the adjacent coastal State should be excepted from the operation of the rule regarding abstention. Strict and precise criteria should be laid down in the qualifications of a fishery for the rule, and questions arising as to qualifications referred to the arbitral procedure contemplated by the International Law Commission's draft articles 57 to 59.

DOCUMENT A/CONF.13/C.3/L.70

Portugal: proposal

[Original text : English]
[9 April 1958]

Additional article

Add the following new article :

“In contiguous zones which previously were high seas, the coastal state shall, in conjunction with the competent international conservation agency concerned with the adjacent high seas, formulate conservation measures for the contiguous zones and shall adopt and enforce these measures.”

DOCUMENT A/CONF.13/C.3/L.71*

Belgium, France, Greece, Italy, Netherlands, Norway, Portugal, Spain and United Kingdom of Great Britain and Northern Ireland: proposal

[Original text : English]
[9 April 1958]

Article 55

Replace the text by the following :

“1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation

appropriate to any stock or stocks of fish or other living marine resources in any area of the high seas adjacent to its territorial sea, provided that :

- (a) Negotiations with the other States concerned have not led to an agreement on such measures of conservation ; and
- (b) The intended measures have been notified, twelve

* Incorporating A/CONF.13/C.3/L.71/Rev.1.

months before they are to be given effect, to the Director General of the Food and Agriculture Organization, who shall notify such measures to any State which so requests and in any case to any State specified by the State initiating the measures.

“2. The measures which the coastal State adopts under the previous paragraph shall be applied by other States to their nationals only if the following requirements are fulfilled :

- (a) That scientific evidence shows that there is a need for measures of conservation ;
- (b) That the measures adopted are based on appropriate scientific findings ;
- (c) That the measures do not discriminate in form or in fact against foreign fishermen ;
- (d) That the measures do not apply to the seas adjacent to the coasts of uninhabited territories.

“3. If these measures are not accepted by the other States concerned, any of the parties may initiate, within the prescribed period of twelve months, the procedure contemplated by article 57, the introduction of the measures being left in abeyance pending the arbitral decision.

“4. If the coastal State considers that the measures are urgently needed it may request, under the procedure of article 57, a provisional decision, which shall be given in the light of the existing state of knowledge of the fishery and of the requirements under paragraph 2 (c) and (d) above.”

Note.— This proposal replaces the proposals submitted to article 55 by France (A/CONF.13/C.3/L.3), Italy (A/CONF.13/C.3/L.26), Norway (A/CONF.13/C.3/L.46), Spain (A/CONF.13/C.3/L.37), and the United Kingdom of Great Britain and Northern Ireland (A/CONF.13/C.3/L.44).

DOCUMENT A/CONF.13/C.3/L.72

United Kingdom of Great Britain and Northern Ireland: proposal

[Original text : English]
[9 April 1958]

Article 49

Add the following paragraph :

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

DOCUMENT A/CONF.13/C.3/L.73

Uruguay: proposal

[Original text : Spanish]
[9 April 1958]

Article 59

Reblace the first sentence of article 59 by the following :

“The decisions of the arbitral commission shall be binding on the States concerned and the provisions of paragraph 2 of Article 94 of the Charter of the United Nations shall be applicable to those decisions.”

DOCUMENT A/CONF.13/C.3/L.74

Ghana: proposal

[Original text : English]
[10 April 1958]

Article 60

1. At the end of the first sentence add the following : “except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals”.

2. Add a paragraph 2 to read as follows :

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

DOCUMENT A/CONF.13/C.3/L.75

Portugal: proposal

[Original text : English]
[10 April 1958]

Article 60

At the end of the article add the following :

“... and will not discriminate against foreign fishermen working with different kinds of sedentary fishing gear.”

DOCUMENT A/CONF.13/C.3/L.79/Rev.1*

Iceland: revised proposal

[Original text : English]
[14 April 1958]

Article 49

Add the following two paragraphs :

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

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

Comments

During the general debates in the First, Third and Fourth Committees the Icelandic Delegation has drawn attention to the special case where a nation is dependent

* This proposal replaces proposal A/CONF.13/C.3/L.79, which read as follows :

“Add a new paragraph as follows :

“In exceptional circumstances, where a people is primarily dependent on its coastal fisheries for its livelihood and/or economic development, the State concerned has the right to exercise exclusive jurisdiction over the fisheries up to the necessary distance from the coast in view of relevant local considerations.”

upon the coastal fisheries for its subsistence. It was there shown that as far as Iceland is concerned the country is very barren. No minerals or forests exist there and most of the necessities of life have to be imported. These imports have to be financed through the exports, 97 per cent of which consist of fisheries products. In the First Committee, the Icelandic delegation stated that a zone of twelve miles from the baselines would go a long way in taking care of the Icelandic requirements. It would, however, be necessary to keep open the possibility for further action in Icelandic waters if experience should demonstrate the necessity thereof. In that respect the policy would be to satisfy the Icelandic requirements on a priority basis as far as fishing in the coastal areas is concerned.

If such an exceptional rule is limited to demonstrated need there should be no danger of abuse, and indeed, any differences of opinion would have to be settled through the usual channels. In the draft of the International Law Commission, expressions such as “where circumstances necessitate . . .”, “to any appreciable extent”, “sufficiently closely linked”, “reasonable measures”, “unjustifiable interference” and others were used. As Professor François, with justice, pointed out in his statement before the First Committee (A/CONF.13/C.1/L.10), such expressions all occur in national legislation and “... a codification of international law can no more do without these expressions than can national law”.

DOCUMENT A/CONF.13/C.3/L.81

Cuba: proposal

[Original text : Spanish]
[15 April 1958]

The following is the text of a preamble to precede the articles on the conservation of the living resources of the high seas, should it be decided to adopt those articles as a separate instrument. The text given below is that appearing as the preamble to the draft articles relating to the conservation of the living resources of the sea prepared by the International Law Commission at its seventh session (document A/2934, annex to chapter II, pp. 13 and 14).

...

“Considering that

“1. The development of modern techniques for the

exploitation of the living resources of the sea has exposed some of these resources to the danger of being wasted, harmed or exterminated,

“2. It is necessary that measures for the conservation of the living resources of the sea should be adopted when scientific evidence indicates that they are being or may be exposed to waste, harm or extermination,

“3. The primary objective of conservation of the living resources of the sea is to obtain the optimum sustainable yield so as to obtain a maximum supply of food and other marine products in a form useful to mankind,

“ 4. When formulating conservation programmes, account should be taken of the special interest of the coastal State in maintaining the productivity of the resources of the high seas contiguous to its coast,

“ 5. The nature and scope of the problems involved in the conservation of the living resources of the sea are such that there is a clear necessity that they should be solved

primarily on a basis of international co-operation through the concerted action of all States concerned, and the study of the experience of the last fifty years and recognition of the great variety of conditions under which conservation programmes have to be applied clearly indicate that these programmes can be more effectively carried out for separate species or on a regional basis, . . .”

DOCUMENT A/CONF.13/C.3/L.86

Republic of Korea, Philippines and Republic of Viet-Nam: proposal

[Original text : English]
[18 April 1958]

Additional article

Add the following new article :

“ The fishing interests of a coastal State shall receive special consideration, if any of the following conditions are met :

(a) The coastal State has imposed restrictions on its own fishermen to maintain the optimum sustainable yield from the fishery resources in its coastal waters ;

(b) The inhabitants of the coastal State derive their subsistence mainly from such fishing.”

DOCUMENT A/CONF.13/C.3/L.89

Ecuador: draft resolution

[Original text : Spanish]
[19 April 1958]

Special economic situations

“ *The United Nations Conference on the Law of the Sea,*

“ *Having considered* the situations described by countries whose subsistence or economic development primarily depends on or is closely bound up with their coastal fisheries,

“ *Having considered* also the situations described by countries whose coastal populations depend primarily on coastal fisheries for the animal protein of their diet and whose fishing methods are mainly limited to local fishing from small boats,

“ *Being aware* that a lack of concern for such situations would render the work of the Conference incomplete and would impair good international relations,

“ *Recognizing* that such situations call for exceptional measures befitting particular needs,

“ *Considering* that, because of the regional scope and exceptional nature of those situations, any measures adopted to meet them would be complementary to provisions incorporated in a universal system of international law,

“ *Recommends* that States should collaborate to secure just treatment of such situations by regional agreements, by the recognition of duly justified unilateral measures, or by other means of international co-operation.”

I

Text of articles adopted by the Third Committee (A/CONF.13/L.21, annex)*Article 49*

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this convention and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.
2. All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 50

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

Article 51

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

Article 52

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.
2. If the States concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 53

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and in any case to any State specified by the State initiating the measure.
2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 54

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.
2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for conservation purposes in that area, even though its nationals do not carry on fishing there.
3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.
4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.
5. If the States concerned do not reach agreement, with respect to conservation measures, within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 55

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within six months.
2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:
 - (a) That there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;
 - (b) That the measures adopted are based on appropriate scientific findings;
 - (c) That such measures do not discriminate in form or in fact against foreign fishermen.
3. These measures shall remain in force pending the settlement, in accordance with the pertinent provisions of this convention, of any disagreement as to their validity.
4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.
5. The principles of geographical demarcation as defined in articles 12 and 14 shall be adopted when coasts of different States are involved.

Article 56

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State or States whose nationals are engaged in fishing there to take the necessary measures of conservation under articles 51 and 52 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.
2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 57.

Article 57

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.
2. The members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization, from amongst well-qualified persons being nationals of countries not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.
3. Any State party to a proceeding under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.
4. The commission shall determine its own procedure, assuring each party to the proceeding a full opportunity to be heard and to present its case, and it shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on these questions.
5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend that time-limit not to exceed three months.
6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing sides regarding settlement of the dispute.
7. Decisions of the commission shall be by majority vote.

Article 58

1. The special commission shall, in disputes arising under article 55, apply the criteria listed in paragraph 2 of that article. In disputes under the remaining fishery articles the

commission shall apply the following criteria, according to the issues involved in the dispute :

- (a) Common to the determination of disputes arising under articles 52, 53 and 54 are the requirements :
 - (i) That scientific findings demonstrate the necessity of conservation measures ;
 - (ii) That the specific measures are based on scientific findings and are practicable ; and
 - (iii) That the measures do not discriminate against fishermen of other States.
- (b) Applicable to the determination of disputes arising under article 56 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.
2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 55, the measures shall only be suspended when it is apparent to the commission on the basis of *prima facie* evidence that the need for the urgent application of such measures does not exist.

Article 59 A

1. If the factual basis of the arbitral award is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.
2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the arbitration procedure contemplated by article 57 provided that at least two years have elapsed from the original arbitral award.

Article 60

1. The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.
2. Fisheries conducted by means of equipment embedded in the floor of the sea in this article means those using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently, or if removed, restored each season on the same site.

Article 60 A

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

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

II

**Text of draft resolutions adopted by the Third Committee
(A/CONF.13/L.21, annex)**

DRAFT RESOLUTION ON INTERNATIONAL FISHERY
CONSERVATION CONVENTIONS

The United Nations Conference on the Law of the Sea,

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

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

Recommends :

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

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

DRAFT RESOLUTION ON THE PROCEDURE OF ABSTENTION

The United Nations Conference on the Law of the Sea,

Mindful of the conclusion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955, that : " Where opportunities exist for a country or countries to develop or restore the productivity of resources, and where such development or restoration by the harvesting State or States is necessary to maintain the productivity of resources, conditions should be made favourable for such action ",¹

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

Believing that the procedure known as abstention, as described by the delegations of Canada and the United States of America during the deliberations of this conference, would in special situations serve the general

¹ *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No. : 1955.II.B.2), para. 61.

interest of conservation by encouraging States to inaugurate and continue constructive conservation programmes through ensuring to such States the product of their efforts,

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

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

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

DRAFT RESOLUTION ON CONSERVATION MEASURES
IN THE ADJACENT HIGH SEAS

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as reported in paragraphs 43 (a), 54 and others of the Report,² that any effective conservation management system must have the participation of all States engaged in substantial exploitation of the stock or stocks of living marine organisms which are the object of the conservation management system or having a special interest in the conservation of that stock or stocks,

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

DRAFT RESOLUTION CONCERNING HUMANE KILLING OF MARINE LIFE

The United Nations Conference on the Law of the Sea

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

² *Ibid.*

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