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

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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 point 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