

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

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Documents:  
**A/CONF.13/C.3/SR.31-35**

## **Summary Records of the 31<sup>st</sup> to 35<sup>th</sup> Meetings of the Third Committee**

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume V (Third Committee (High Seas: Fishing: Conservation of Living Resources))*

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 Conference<sup>1</sup> 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.<sup>1</sup> 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

<sup>1</sup> 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 <sup>1</sup>)**

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 <sup>1</sup>)**

2. Mr. WALL (United Kingdom) withdrew his delegation's proposal for the insertion of a new article

<sup>1</sup> 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,<sup>1</sup> 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

<sup>1</sup> 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.