

United Nations Conference on the Law of the Sea

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

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from all accounts, there was no reason to believe that that depth would not ultimately be increased to 600, 800 or even 1000 metres, for the apparatus was simple and was attached to the subsoil by a few cables and pipelines. In view of such rapid developments of possible exploitation the Committee must take stock of the position and determine its method of approach.

38. The Argentine representative had rightly stated that a legal definition must be given to a geographical term. The definition must therefore take into account a natural delimitation, perhaps on the lines suggested by the Canadian representative. On the other hand, if the problem were regarded merely as one on which coastal States had to make arrangements with regard to certain rights, the conventional juridical concept would suffice and President Truman's notion of the continental shelf as a motive for a particular measure, which the United States had proclaimed unilaterally, might be accepted on a collective basis in the convention resulting from the Conference's work.

39. The third approach, which was suggested by this increasing possible exploitation at extremely low depths, was that of establishing criteria similar to those used for fishing and navigation in the high seas with regard to jurisdiction over exploitation of submarine resources. In his delegation's opinion, all three methods should be taken into account in drawing up the final definition.

40. Mr. OBIOLS-GÓMEZ (Guatemala) observed that the Committee seemed to be agreed on the need to recognize the legal status of the continental shelf but that opinions varied on the delimitation of the area in question. He deplored the confusion caused by the dual criterion of depth and possible exploitation. The International Law Commission's text might be compared to a traffic regulation under which vehicles could travel at 100 kilometres an hour or at the maximum speed of the vehicle. He suggested that the problem could best be solved by setting up a working party.

The meeting rose at 12.55 p.m.

SIXTEENTH MEETING

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

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 67 (A/CONF.13/C.4/L.4, L.6, L.7, L.8, L.11, L.12, L.18, L.24/Rev.1, L.26) (continued)

1. Mr. FATTAL (Lebanon), introducing his delegation's amendment to article 67 (A/CONF.13/C.4/L.8), said that it had been submitted for legal rather than technical reasons. It was important that the definition in that article should be clear and specific. As the text stood, the rights of the coastal State were not clearly limited, and were related to hypothetical future conditions. The present limiting depth for exploitation of the resources of the seabed and subsoil was between 60 and 70

metres; in his view, the margin between that depth and 200 metres was more than adequate. It had been mentioned that Chilean collieries were being operated at a depth of 1,000 metres below the surface of the sea, but, since they were worked from the mainland the fact was irrelevant to the international law of the sea. The Conference's task was to find solutions to present problems, not to legislate for future generations. If the criterion of possible exploitation were retained and it eventually became possible to exploit submarine areas at much greater depths, it was possible that four-fifths of an area which now formed part of the high seas would become the exclusive preserve of technically developed coastal States, instead of being open to the entire international community as *res communis*. If the clause relating to possible exploitation were retained, it would be unnecessary to mention the 200 metre limit, since the definition would then refer, not to a depth of 200 metres, but to some other, unspecified, depth.

2. Mr. RUIZ MORENO (Argentina) recalled that the International Law Commission's text provided the basis for the Committee's discussion. He therefore thought that Committee should first decide whether a limiting depth should be laid down in article 67, and, if so, whether it should be 200 metres, as in the Commission's draft, or 550 metres, as suggested by the United Kingdom delegation (A/CONF.13/C.4/L.24/Rev.1) and, in connexion with article 68, by the Netherlands delegation (A/CONF.13/C.4/L.19). Once that issue had been settled, the Committee could decide whether to include a clause relating to possible exploitation.

3. Mr. QUARSHIE (Ghana) agreed that the Committee's main task was to discuss the Commission's text, which his delegation supported, though it might be prepared to accept a limiting depth of 550 rather than 200 metres.

4. Mr. BOCOBO (Philippines) introduced his delegation's amendment (A/CONF.13/C.4/L.26). The Conference was legislating, and should therefore lay down beyond any doubt whether the articles relating to the continental shelf applied equally to corresponding areas round the coasts of islands. A similar proposal had been made in paragraph 1 of the Netherlands amendments (A/CONF.13/C.4/L.18), and if it were approved the Philippine amendment would become redundant. The International Law Commission had said in paragraph 10 of its commentary to article 67 that island shelves were also covered, but that should be stated explicitly in the article itself.

5. He could not agree that the Commission's text should be discussed before the Committee took up the amendments to it, since no one would know definitely how the term "continental shelf" was to be understood until either the Netherlands or the Philippine proposal had been voted upon. Moreover, rule 40 of the Conference's rules of procedure laid down that amendments should be voted on before the proposal to which they related — in the case in point, the Commission's text of article 67.

6. Mr. GOMEZ ROBLEDO (Mexico) agreed that rule 40 should be respected and the amendment furthest from the original proposal put to the vote first.

7. Mr. RIAZ MORENO (Argentina) supported the Philippines amendment.

8. Mr. MOUTON (Netherlands) also agreed that rule 40 should be followed. But he would like to hear what other delegations felt about the principle of specifying in article 67 that the term "continental shelf" subsumed island shelves. It would, of course, be possible, in drafting the convention, to add an interpretative footnote on the lines of paragraph 10 of the Commission's commentary, but the Netherlands delegation considered that it would be better to make the point clear in the text itself.

9. Mr. KANAKARATNE (Ceylon) agreed with the views expressed by the representatives of Ghana and Argentina. It would not be possible for the Committee, in the short time at its disposal, to reopen issues which it had taken the International Law Commission eight years to settle. In his view, "amendment" meant a positive suggestion for an interpolation or addition to, or for a deletion from, an original text. Some of the proposals before the Committee, however, were entirely new texts which lay outside the Committee's terms of reference. The present text of article 67 was the result of a great deal of work by the International Law Commission, which had adopted it as the formula most likely to command the support of the majority of nations. In his view, the only true amendments to article 67 were those submitted by France (A/CONF.13/C.4/L.7), by Lebanon (A/CONF.13/C.4/L.8), by the Republic of Korea (A/CONF.13/C.4/L.11) and by the Philippines (A/CONF.13/C.4/L.26). The proposals made by France and Lebanon, being identical might well be voted on together as a single principle. The Committee should first choose between the two alternatives presented by France and Lebanon on the one hand and by the Republic of Korea on the other. In other words, it should decide whether it wished to include the criterion of possible exploitation and whether it wished to include that of depth. Only if it proved impossible to reach agreement on article 67 in either of those two ways would it be necessary to consider fresh proposals.

10. Mr. BOCOBO (Philippines) agreed that the purpose of an amendment was not to frustrate the original intention, but to make the text acceptable.

11. Mr. MÜNCH (Federal Republic of Germany) did not agree that the Conference was bound by the International Law Commission's text. If any articles, or even sections of the Commission's draft, proved unacceptable to the majority, the Conference was free to adopt a different system. Neither did he agree with the representative of Ceylon; at the 6th meeting, he (Mr. Münch) had expressed his appreciation of the valuable work done by the Commission, but he felt that the aim of the Conference must be to engineer an agreement among the States responsible for the international law in force.

12. Mr. SCHWARCK ANGLADE (Venezuela) agreed that the Conference's aim must be to reach agreement by the most practical means at its disposal. The best course would therefore be to base the discussion on the International Law Commission's draft — the result of eight years' work — without embarking upon a

detailed discussion of the technical considerations on which the legal concepts laid down therein rested.

13. Mr. QUARSHIE (Ghana) thought that the representative of Ceylon had been somewhat misunderstood. He himself had understood him to say that there were two types of amendment before the Committee; those which were in effect drafting changes, and those which entailed more radical changes of substance or order. He thought it might be easier to reach agreement by considering the first type first — for example, the amendments proposed by the Republic of Korea, the Philippines and Argentina. If agreement could not thus be reached, the more far-reaching amendments, such as that of the United Kingdom, could be considered.

14. Mr. RUIZ MORENO (Argentina), associating himself with the remarks made by the representatives of Ceylon and Ghana, drew attention to paragraph 9 of General Assembly resolution 1105 (XI), in which the International Law Commission's report on its eighth session was referred to the Conference "as the basis for its consideration of the various problems involved in the development and codification of the law of the sea". As a tentative working plan, he suggested that the Committee might consider, without prejudice to any subsequent vote, four main issues relating to article 67. The first was whether the term "continental shelf" should be replaced by another term, such as "submarine areas" as proposed by the United Kingdom and, indirectly, by the Philippines and Netherlands delegations. The second, touched upon in both the United Kingdom and Netherlands proposals, was whether the limiting depth of 200 metres should be increased. The third, raised in the proposals submitted by the delegations of Argentina, France, Lebanon and the Republic of Korea, was whether the criterion of possible exploitation should be abandoned. The fourth concerned the introduction of certain new ideas into the definition, as proposed by the delegation of Panama (A/CONF.13/C.4/L.4).

15. Mr. MÜNCH (Federal Republic of Germany) raised the question of the fundamental difference between the Committee's proceedings and those of a national parliament where, if the amendments to an original text were defeated, the text did not automatically become law. The International Law Commission's draft articles were not submitted to the Conference in the same way that a bill was submitted to a parliament. Supporting the views expressed by the representatives of Mexico and the Philippines, he quoted rule 40 of the rules of procedure which provided that the amendment furthest removed in substance from the original proposal should be voted on first. The International Law Commission's text being the original proposal, the Committee should vote first upon those amendments which sought to replace it by a completely new text, such as that submitted by the United Kingdom (A/CONF.13/C.4/L.24/Rev.1).

16. Mr. OBIOLS-GÓMEZ (Guatemala), while in general agreement with the suggestions put forward by the representative of Argentina, thought that the Committee might adopt a slightly different plan. Whatever name was given to the concept of the continental shelf was a relatively unimportant matter. There

remained three main points to which the Committee might usefully address itself: the definition of the continental shelf in terms of depth, dealt with in the French, Lebanese, Netherlands and United Kingdom proposals; its definition in terms of distance from the outer limit of the territorial sea, as proposed by the delegation of Yugoslavia (A/CONF.13/C.4/L.12); and its definition in terms of possible exploitation alone, as proposed by the delegations of Panama, Argentina and the Republic of Korea. The Philippine proposal appeared to command the support of all delegations, and hardly called for discussion.

17. Mr. MOUTON (Netherlands) wondered whether, if the Committee's support for the proposal to include island shelves in the concept of the continental shelf were indeed unanimous, a decision to that effect could not be taken forthwith. Such a decision would be a first step along the road to agreement.

18. Mr. CAICEDO CASTILLA (Colombia), although agreeing that island shelves should be included in the continental shelf as proposed by the delegation of the Philippines, did not think that the proposal should be put to the vote before other proposals further removed from the International Law Commission's text. He would endorse the opinion of the representatives of Mexico and the Federal Republic of Germany that the Committee should respect the rules of procedure, and rejected the views advanced by the representative of Ceylon; the Committee consisted of representatives of sovereign States who were free to adopt any decision they saw fit.

19. Mr. GARCIA AMADOR (Cuba) observed that, confronted as it was with a large number of amendments many of which were very similar, the Committee might be well advised to set up a working group, a customary procedure in the United Nations.

20. The CHAIRMAN would not rule out the possibility of setting up a working group if a definite proposal were moved to that effect; but he believed that such a step should be taken only if it became evident that agreement on any particular article could not be reached otherwise.

21. Mr. MOUTON (Netherlands) drew attention to his delegation's amendment to article 68 (A/CONF.13/C.4/L.19), the substance of which was very similar to that of the United Kingdom amendment to article 67. If the Committee adopted the working plan suggested by the representative of Argentina, the Netherlands proposal on article 68 should also be taken into consideration.

22. Miss WHITEMAN (United States) remarked that, although many representatives had not yet spoken on the substance of article 67, the attitude of the Committee as a whole towards that article appeared to be extremely fluid. The United States delegation was inclined to favour the text proposed by the International Law Commission, which was the outcome of careful consideration over a very long period. Certain delegations had proposed that the submarine areas reserved for purposes of exploitation to the coastal State should be subjected to a definite limit in terms of depth. While appreciating those delegations' desire for precision, she

doubted whether, in an age of rapid scientific progress, it would be wise to limit the area of exploitation in that way. Only a few years previously exploitation of the seabed and subsoil in 200 metres of water had seemed the maximum achievable, but scientists were already talking in terms of a much higher order of magnitude. Exploitation could not, however, continue indefinitely towards the middle of the ocean; the continental slope fell away steeply and rapidly, so that exploitation beyond a certain limit would not be an economic proposition. The definition of the rights of the coastal State to the continental shelf and continental slope adjacent to the mainland proposed by the International Law Commission would benefit individual States and the whole of mankind. But in accepting the Commission's text, the United States delegation wished to emphasize that it recognized the right of the coastal State to exploit the subsoil by tunnelling from the mainland irrespective of the depth of the superjacent waters.

The meeting rose at 5.5 p.m.

SEVENTEENTH MEETING

Monday, 24 March 1958, at 10 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 67 (A/CONF.13/C.4/L.4, L.6, L.7, L.8, L.11, L.12, L.26, L.29, L.30, L.32) (continued)

1. The CHAIRMAN said that three new proposals had been submitted by India (A/CONF.13/C.4/L.29), Canada (A/CONF.13/C.4/L.30) and jointly by the Netherlands and the United Kingdom (A/CONF.13/C.4/L.32), which last replaced the previous individual proposals of these countries (A/CONF.13/C.4/L.18 and A/CONF.13/C.4/L.24/Rev.1).

2. Mr. CAICEDO CASTILLA (Colombia) considered that article 67 should be approved in the form proposed by the International Law Commission. Though it might seem appropriate to reserve for the international community the natural wealth of the seabed and subsoil and for its exploitation to be regulated by an international organization, that would probably not be acceptable to every State. It was no good burking the fact that for imperative economic reasons coastal States had already by unilateral action established their claim to exclusive rights over such resources. The Commission's formula was fully consistent with those practical considerations, and was legally objective and impartial. It was regrettable that some of its opponents should have put forward narrower and less effective proposals. A purely technical approach would fail to take into account all the special circumstances, because science was in a constant state of evolution. For that reason, a strictly geological concept which would require subsequent modification in the light of new discoveries had been rejected by the Inter-American Specialized Conference on Conservation of Natural

Resources held at Ciudad Trujillo, and the formula adopted there had later been embodied in the Commission's draft article, which now offered a permanently valid criterion. A purely geological definition would have perpetuated natural inequalities and would therefore have been extremely unjust, because the rights of the coastal State derived, not from the natural configuration of its continental shelf, but from its geographical vicinity. The criterion established by the Commission was realistic, prudent and consistent with future possibilities of exploitation. The safeguards provided for States with a narrow continental shelf did not jeopardize the interests of others.

3. The criterion of the depth of the sea for defining the shelf would be most unreliable, because it might conflict with scientific progress and require frequent revision. That would make the codification of the law of the sea unreliable, and would call for periodic modifications, which would compel States to denounce the convention on account of the difficulties inherent in the revision of a universal agreement.

4. Article 67 favoured the small and poor countries, because the seabed and subsoil which belonged to them could be exploited only by them or with their authorization. On the other hand, under the 200-metre formula, the submarine area beyond that depth might be exploited by other, more industrially advanced States, with the result that the area up to the 200-metre limit might not be exploited by the coastal State, whereas the adjacent zone would be exploited.

5. Admittedly, States with a greater industrial capacity would always enjoy an advantage, and the adoption of the 200-metre system would perpetuate it. The solution lay, not in that system, but in embodying in the draft text provisions to facilitate by international organizations the financing or, or at least the provision of technical assistance in, the exploitation of the various continental shelves.

6. The term "continental shelf" should be retained because it was well known and because its juridical meaning had been clearly established in article 67. The term would also apply to islands in the generally accepted use of that word, with the exception of islets forming part of a continental shelf.

7. The Colombian delegation would vote for the original text of article 67 and against all amendments thereto. The article provided a permanent solution for the problem of the definition of the continental shelf and for that of scientifically possible exploitation; safeguarded the States without a wide shelf, while in no way causing prejudice to those States that had such a shelf, because the latter would have unimpaired enjoyment of their shelf; guaranteed equality of rights to all coastal States, which would enjoy equal rights in the submarine area, since they would stem from the basic right of self-preservation and defence of States. That was of supreme importance, because the protection of the law should operate to mitigate or abolish the inequalities of nature. That was an example of the evolution of international law analogous to that of municipal law. The old civil law had been replaced by social law, which aspired to abolish or mitigate the effects of existing inequalities between men, which were regarded by some as quite natural. But in modern law, the protection of

human beings was taking the form of state intervention on behalf of the weaker and the under-privileged.

8. The same process should take place in the international sphere. It was inadmissible that some States should enjoy the gifts of nature, whereas others were deprived of them. The protection of the law should prevent such a situation arising and the formula of that juridical safeguard, which was perfectly justifiable, was contained in article 67.

9. Mr. GIHL (Sweden) said that in view of the withdrawal of the United Kingdom proposal (A/CONF.13/C.4/L.24/Rev.1) his delegation wished to reintroduce the text, which in its opinion was the best that had been proposed, but with the substitution of the words "control and jurisdiction" for "sovereign rights".¹ His delegation had already explained at the 4th meeting the reasons why that phrase was unacceptable in the context of the continental shelf.

10. Miss GUTTERIDGE (United Kingdom) explained that the joint proposal, which contained no definition of the continental shelf, sought in paragraph 1 to make clear that the provisions applied to the seabed and subsoil of all submarine areas adjacent to the mainland or island coasts. On the latter question, her delegation reserved its position until the Commission came to deal with article 72, because the present article was not concerned with the drawing of median and lateral lines. In cases where—as off the west coast of Norway—there was a deep channel immediately off the coast, the provisions would apply in the same way as to a continental shelf in the geological sense of the term.

11. Paragraph 2 dealt with the rights of the coastal State to explore and exploit the natural resources, which would be defined in article 68, up to a depth of 550 metres. Needless to say, the rights of the coastal State to carry out such exploitation by means of tunnels from the land remained unaffected.

12. Mr. BOCOBO (Philippines) said that the concluding provision in article 67 rendered nugatory the effect of the 200-metre limit. Moreover, his delegation did not favour the criterion possible of exploitation, because sovereignty was indivisible and absolute, and did not depend upon the State's ability to develop the natural resources of the area in question. Secondly, as the continental shelf was a continuation of *terra firma*, the coastal State possessed over it the same inalienable dominion as over its land territory. Finally, if the criterion of possible exploitation were admitted, less-developed countries would be in danger of forfeiting their untapped natural wealth to those with great industrial and technical facilities. Such natural resources belonged to the coastal State in fee simple and must be preserved as a sacred trust for future generations. The safeguards laid down in articles 69, 70 and 71 ensured that such absolute dominion constituted no danger to the international community.

13. His delegation disagreed with the criterion based on depth, because according to the Philippine Constitution, mineral resources belonged to the State, so that those lying within the continental shelf beyond the

¹ Subsequently circulated as document A/CONF.13/C.4/L.33.

depth laid down by the International Law Commission could not be alienated. He therefore supported the Canadian proposal that, where there was a well-defined boundary, that should be regarded as the outer limit of the continental shelf; a provision of that sort would be more in keeping with the fundamental principle of absolute State sovereignty.

14. Mr. NIKOLIC (Yugoslavia) said that present geographical knowledge was inadequate to provide a juridically sound definition, and the Commission in striving to combine the criteria of depth and possible exploitation had adopted conflicting concepts. Clearly, it would be a waste of time to try and establish which of the two was the more precise, and with a view to finding a practical solution it would be preferable, without depriving States of rights acquired by unilateral action, to choose a criterion of depth that would provide a definite limit, thereby obviating the danger of large maritime areas being parcelled out between States.

15. The answer to the Indian representative's question at the 14th meeting as to whether the coastal State was precluded from exploiting the seabed and subsoil beyond a depth of 200 metres must be in the negative, because that would be an encroachment upon the freedom of the high seas. Hence the need to give serious consideration to the Yugoslav proposal (A/CONF.13/C.4/L.12) for a boundary line of 100 miles from the outer limit of the territorial sea.

16. Again, the answer *de lege ferenda* to the question whether it was open to any State to exploit the seabed and subsoil outside the continental shelf must also be in the negative.

17. He entirely agreed with the Brazilian representative on the need first to choose the appropriate term to describe the continental shelf, then to decide on a criterion imposing a reasonable limit so as to safeguard the principle of the high seas and, lastly, to include a provision concerning the continental shelf of islands.

18. The articles pertaining to the continental shelf were closely connected with the régime of the territorial sea and the contiguous zone, and must therefore form an integral part of the draft convention; they could not be relegated to a separate instrument.

19. Mr. WERSHOF (Canada) said that under his delegation's proposal (A/CONF.13/C.4/L.30) the edge of the continental shelf would be regarded as its outer limit in those cases where it was well defined, and in all other cases the shelf would be deemed to extend to a certain agreed depth. The arbitrary figure of 200 metres had been chosen for the latter purpose, but his delegation would be willing to consider another and could, if there was general agreement, support the original United Kingdom proposal which had been reintroduced by the Swedish delegation, for a figure of 550 metres. Indeed, he would have voted for that proposal, which had the same objective as his own, since a depth of 550 metres would have covered all clearly demarcated continental shelves and would render the first provision in the Canadian proposal unnecessary.

20. Before expressing an opinion on the joint Netherlands - United Kingdom proposal, he must seek

clarification on two points. First, he wished to be assured that the effect of paragraph 1, coupled with the first sentence in paragraph 2, would not be, as it might appear, to confer on coastal States sovereign rights to an unlimited distance. Secondly, he wished to know whether the intention was to debar all other States from exploiting the seabed and subsoil from above in areas beyond a depth of 550 metres. Though that might not be feasible at present, technical developments might make it possible within the not too distant future. It was understood, of course, that the coastal State had the sole right of exploitation by means of tunnels from the land to any distance. It appeared from the Commission's draft that, at least in theory, subject to not interfering with navigation or fishing, any State was entitled to exploit the seabed and subsoil on the high seas.

21. Mr. GÓMEZ ROBLEDO (Mexico), observing that paragraph 2 in the joint Netherlands - United Kingdom proposal related to the substance of article 68, proposed that discussion should be restricted to paragraph 1 unless it were decided to consider articles 67 and 68 concurrently.

22. The CHAIRMAN said that he intended to discuss the procedural aspect at the following meeting.

23. Mr. JHIRAD (India) said that he was more and more convinced that it would be difficult to improve on the Commission's draft and in that respect would endorse the Colombian representative's arguments. There was nothing extravagant in enabling the coastal State to exploit the seabed and subsoil at a greater depth than 200 metres if that were possible, and he saw no objection to sea areas being shared out between States provided it was done equitably. In any case, there was little prospect of that in the near future.

24. He disagreed with the view that the criterion of possible exploitation was open to ambiguity; it depended quite simply on whether the depth permitted exploitation. On that point, the third Indian amendment, while preserving intact the principles of the Commission's draft, might meet the objections raised.

25. Explaining his amendments (A/CONF.13/C.4/L.29), he said that, though there were no serious legal objections to the term "continental shelf", it was inapt and had given rise to a whole series of different geological definitions which might lead to confusion. His delegation therefore suggested the expression "coastal submarine domain", which provided some indication of the régime that was being proposed, but was in no way intended to anticipate the provisions of article 68.

26. The reason for the second amendment was that, since by definition the continental shelf was separated from the coast by the subsoil and seabed of the territorial sea, the expression "in the vicinity of" would be more appropriate than "adjacent to".

27. With regard to the third Indian amendment, although his delegation did not attach a great deal of importance to the precise figure adopted and would vote in favour of the Commission's draft if that commanded majority support, it had proposed a depth of 1,000 metres so as to cover future eventualities.

28. He reserved his comments on the joint Netherlands - United Kingdom proposals until the questions he had put at the 14th meeting had been elucidated.

29. Mr. OBIOLS-GÓMEZ (Guatemala) said that it was utterly unjust to establish two criteria of depth, as had been done by the International Law Commission, to the prejudice of countries that were less technically advanced. The under-developed countries had every right to reserve for their exclusive exploitation a continental shelf up to the limit of what could be exploited. He therefore supported the Korean amendment (A/CONF.13/C.4/L.11).

30. He also criticized the Commission's choice of the term "continental shelf", because it was restrictive and did not correspond to the geological formations in question. He favoured some such expression as "submarine areas".

31. Mr. KANAKARATNE (Ceylon) said that the debate had shown the difficulty of reconciling scientific and legal concepts. The International Law Commission had deliberately restricted article 67 to a definition in the scientific sense, and had left the juridical question of the coastal State's rights to the next article. By contrast, the United Kingdom and Netherlands delegations wished to cover both those questions in a single provision. In his view, the Commission's approach had been correct and the two concepts should be kept distinct. Acceptance of the United Kingdom - Netherlands proposal would merely confuse the issue, unless the sponsors agreed to confine their proposal on article 67 to the first paragraph of their text and to submit the second paragraph as a separate proposal relating to article 68.

32. He fully endorsed the first amendment proposed by India, as the use of the expression "coastal submarine domains" would circumvent the difficulties—already stressed by the International Law Commission in paragraph 9 of its commentary to article 67—which arose out of trying to apply a juridical definition to a geological situation. The term "continental shelf" had a strict scientific connotation, and should not be introduced into international law in a wholly artificial sense. The Indian proposal was therefore admirable, as it showed that what was envisaged was something other than a purely geological feature.

33. With regard to the second Indian amendment, he felt that the proposed change would represent little or no improvement. The hallmark of the proposed instrument should be juridical clarity, and the expression "in the vicinity of" was regrettably vague.

34. He agreed with the representative of India that the Commission's basic wording of article 67 represented an excellent endeavour to reconcile all the different interests at stake. His delegation would therefore support that provision, even in its present form. It would like to know, however, what interpretation should be placed on the article in dealing with exploitable areas far removed from any single coastal State. Would all the marine areas of the globe be parcelled out among the different nations, or would the seabed beneath isolated parts of the high seas be open to exploration and exploitation by all comers?

35. Lastly, he could not understand the Yugoslav

representative's suggestion that the success of the Fourth Committee's work was somehow dependent on the results achieved in other committees. The Conference having been expressly authorized by the General Assembly to draw up one or more international conventions, the question of the juridical régime of the adjacent submarine domains could clearly be covered by a separate instrument.

36. Mr. GROS (France) noted a tendency on the part of certain delegations to depart from the International Law Commission's deliberations without apparent justification. The Commission had studied the question of the continental shelf for the simple reason that the shelf was a recognized geographical and oceanographical institution, which had been known and defined over a quarter of a century earlier. Professor Gidel—whose views were significantly quoted only in the very rare instances when they did not coincide with the official position of the French Government—had already spoken of it in 1930. The Commission had thus adopted the line of reasoning that its function was to confirm, first, that the notion was acceptable in international law and, secondly, that the State enjoyed in the area a competence limited by international law. Starting from those premises, it had sought to define that competence, both territorially and functionally. Some delegations, however, were adopting precisely the opposite process of reasoning. They contended that the State had a right to all that was situated off its coasts, to a "domain" which was already ascertainable. Thence they argued that as the domain already naturally belonged to the State, the only test to determine the limits of its competence was that of possible exploitation. That would ultimately mean that each State had a right to proceed as far as it could, not just at any one moment but for ever, and that there was a "sector" of water opposite its coasts over which it would have exclusive rights as soon as it could assert them. In those circumstances, it might be safer not to depart unduly from the Commission's intentions and not to put forward a new theory according to which States would have rights over veritable "sections" of the high seas off their coasts, the acceptance of which would nullify the universally recognized principle of the freedom of the high seas.

37. Mr. RUIZ MORENO (Argentina) said that the debate had undoubtedly shown the need for agreement on terminology. Equally important, however, was the need to bear in mind the realities of international life. One of those realities was that no State could countenance the presence of foreign installations in a zone immediately opposite its coastal defences. Furthermore, many of the views heard in the course of the debate had been prompted by the apprehension of the poorer States that other more powerful or richer States might come to exploit the resources off their coasts. A clause might therefore be included to the effect that no State could exploit the seabed and subsoil off the coast of another State where the latter was precluded from so doing solely by a lack of technical means already at the disposal of others. Such a provision would at least dispel all doubts. Furthermore, it should be stressed that no exploitation was ever permissible without the coastal State's consent.

38. Another difficulty might arise in cases of exploitation near a line of demarcation between two adjacent States. The resulting problems could perhaps best be forestalled by a provision that, on the continental shelf, the sovereign rights of the coastal State extended perpendicularly to the centre of the earth.

39. Finally, he would welcome some enlightenment from a member of the International Law Commission regarding the Commission's views on the spatial limits and exact nature of the coastal State's rights.

40. Mr. O'SULLIVAN (Ireland) asked what interpretation should be placed on the word "domain" in the Indian proposal. That term was at times used very loosely, but in its strict legal sense it implied the existence of a juridical personality with dominion.

41. Mr. JHIRAD (India) replied that in the Indian proposal the term was used in a very general sense only. The legal régime of the domain would be settled in the subsequent articles.

42. Miss GUTTERIDGE (United Kingdom), replying to the suggestion made by the representative of Ceylon, said that the United Kingdom delegation would be perfectly disposed to defer consideration of the second paragraph of the United Kingdom - Netherlands proposal until the Committee came to article 68. The paragraph might indeed have to be revised in the light of further discussions. She reserved her delegation's right, however, to reply to criticisms of the second paragraph already voiced.

43. Mr. MOUTON (Netherlands) said that his delegation also had no objection to deferring discussion of paragraph 2, but wished to stress that the paragraph was not being withdrawn.

44. Mr. KRISPIS (Greece) said that the second sentence of paragraph 2 of the United Kingdom - Netherlands proposal seemed to apply solely to article 67. The Committee might thus be obliged to revert to article 67 during its discussion on article 68.

45. Mr. MOUTON (Netherlands) said that the maximum depth was material only in relation to the rights of the coastal State. It could thus be equally well discussed in connexion with article 68.

46. Mr. MÜNCH (Federal Republic of Germany) observed that the lack of clarity existing on certain points demanded the utmost caution. The Committee was aware of what article 67 had been designed to convey because the Commission had explained its view in the relevant commentary. From the point of view of the law of nations, however, the commentary would be of little validity and future lawyers might find great difficulty in deciding precisely what had been envisaged. In the absence of a proper definition of a continental shelf, and without any judicial body to whom points of interpretation could be referred, States would place on the provision whatever construction suited them best.

47. An added difficulty was the uncertainty of the idea of possible exploitation. He himself believed that, as the main purpose was to ensure the utilization of resources for the maximum benefit of all mankind, the subjective approach to the question would seem

preferable. The whole matter, however, required clarification, as did the question of the situation beyond the outer limits of the continental shelf.

48. Mr. MOUTON (Netherlands) considered that there was no question of conflict of interests. To take a practical example, the coastal State would merely grant a concession to a petroleum undertaking and derive a substantial income in return. The question whether the coastal State was rich or poor would make no difference whatever, except that a poorer State might find the revenue all the more welcome. Furthermore, the fact that the coastal State granted some concern an exploitation licence would in no way affect the status of the submarine area concerned.

49. The equality of States, on which many speakers had dwelt, had been one of the main considerations in the minds of the sponsors of the United Kingdom - Netherlands proposals, who had been particularly anxious to safeguard the rights of States without a shelf. The Commission had admittedly also tried to make provision for such cases in the last phrase of its draft article 67, but only in paragraph 11 of its commentary—which, as had been stressed, lacked legal force—had it referred to the rights of States exploiting the subsoil by means of tunnels from *terra firma*. The United Kingdom - Netherlands proposal, on the other hand, sought to protect such exploitation by expressly abandoning the narrow concept of the continental shelf in the strict sense and referring to all submarine areas contiguous to the outer limit of the territorial sea.

50. No legislation could be designed to remain valid in perpetuity, and new methods of exploitation might soon render obsolete those known in 1958. At the current stage of development, however, it was vital to remember the distinction between tunnelling from *terra firma* and exploitation from above, as in the former case the extent of the coastal State's outward penetration was a matter wholly alien to the problem of the continental shelf and of no concern to either navigation or fishing.

51. With regard to the contention that, if any State should exploit at a certain depth, all States should be entitled to claim sovereign rights over submarine areas lying at an equal depth beneath the surface, he said that recognition of such a principle might raise important issues of evidence.

52. Beyond the outer limit of the submarine areas over which the coastal State enjoyed limited sovereignty, the situation was governed solely by the régime of the high seas; there was no longer any question of exclusive rights and, provided that there was no resulting interference with navigation or fishing, any State would theoretically be free to erect what installations it pleased.

53. Lastly, he quoted from the report of the experts of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/2) to show that there was strong support for the rejection of any definition of boundaries corresponding to the technical possibilities of exploitation.

The meeting rose at 1 p.m.

EIGHTEENTH MEETING

Monday, 24 March 1958, at 3.20 p.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 67 (A/CONF.13/C.4/L.4, L.6, L.7, L.8, L.11, L.12, L.26, L.29, L.30, L.32, L.33)

1. Mr. MOUTON (Netherlands) said that, following the discussion at the previous meeting, he and the United Kingdom representative had agreed to propose that, to prevent confusion, the following sentence be added to the text which they were jointly proposing for article 67 (A/CONF.13/C.4/L.32): "The extent to which the coastal State may exercise rights over these areas is provided for in the next article." They were advocating a system completely different from that recommended by the International Law Commission. They did not think that either the areas or the rights concerned should be limited except in regard to the question of obstacles being placed in the sea.

2. Miss GUTTERIDGE (United Kingdom) added that she and the Netherlands representative had agreed that there should be no reference in article 67 to the criterion of depth, whereas it should be used in the article concerned with the rights of coastal States in regard to the areas in question.

3. Mr. BARROS (Chile), explaining his views on article 67 and the amendments proposed thereto, said that the system which it was proposed to follow of voting article by article had the grave disadvantage that delegations might appear to be bound to certain provisions relating to the problem of the continental shelf without knowing what the contents of subsequent parts of the text under discussion would be. Since the Committee was dealing with a single subject, he must reserve his delegation's position in regard to that subject as a whole until the text finally agreed by the Committee was complete, and, since that subject was closely related to matters being discussed by other committees, until the results of their discussions on those matters, particularly the question of fishing and the conservation of the living resources of the sea, were known. The vote which was about to take place on article 67 should not have any effect on the final decision regarding the form and number of the draft instruments to be adopted in plenary session at the end of the Conference. It was on that basis that, for the reasons he had explained at the previous meeting, he would vote for the text of article 67 submitted by the Commission and against all the amendments proposed to it.

4. Mr. KANAKARATNE (Ceylon) asked whether the Swedish amendment (A/CONF.13/C.4/L.33) was in fact intended as an amendment to article 67. He pointed out that much of it was word for word the same as the amendment proposed by the same delegation to article 68 (A/CONF.13/C.4/L.9).

5. Mr. GIHL (Sweden) replied in the affirmative. He had decided to propose his amendment to article 67 because he did not think that the joint Netherlands-United Kingdom amendment, which covered the same problems as his amendment, would prove satisfactory.

6. Mr. MÜNCH (Federal Republic of Germany) suggested that, because of the difficulties to which the representative of Chile had referred, the Committee should defer voting on the question of the width of the submarine areas under discussion until it had completed its work on all the other matters with which it had to deal. While following that course, the Committee might none the less vote on the various definitions proposed for inclusion in article 67 in so far as that one question was not affected thereby.

7. Mr. JHIRAD (India) proposed that the voting on article 67 and the proposed amendments be deferred until the following day. Representatives had scarcely had time to consider the amendments to the article submitted earlier in the day. It was possible that if his suggestion were adopted, he might be in a position at the following meeting to withdraw his delegation's amendment to the article (A/CONF.13/C.4/L.29).

8. Mr. KRISPIS (Greece) opposed the proposal of the Indian delegation.

9. Mr. MOUTON (Netherlands) supported the proposal.

10. The CHAIRMAN put the proposal to the vote.

The proposal of the Indian delegation to defer until the following day the voting on article 67 and the amendments submitted thereto was adopted by 41 votes to 5.

11. Mr. GROS (France), answering the questions put by the Indian representative at the 14th meeting to representatives who proposed that the definition of the continental shelf should be restricted by using only the criterion of the 200-metre depth line, said that the reply to the first and second questions—whether the coastal State was to be precluded from exploiting the natural resources of the continental shelf beyond the 200-metre limit if exploitation was possible, and whether exploitation of the shelf beyond that limit would be open to all States—was that beyond the 200-metre limit the régime of the high seas was applicable, and that all States, whether coastal or not, could exploit the natural resources. The answer to the third question—whether any legal régime for the seabed and subsoil beyond the 200-metre limit was suggested—was that the existing rules of positive international law were applicable.

ARTICLE 68 (A/CONF.13/C.4/L.2, L.3, L.6, L.7, L.9, L.10, L.13, L.19, L.27, L.32)

12. Mr. HARDERS (Australia) said that his delegation might co-sponsor a proposal for the definition of "natural resources".¹

13. Mr. MOUTON (Netherlands) recalled that at the 17th meeting the sponsors of the joint Netherlands and United Kingdom proposal on article 67 (A/CONF.13/

¹ Subsequently circulated as document A/CONF.13/C.4/L.36.

C.4/L.32) had agreed that paragraph 2 of that proposal should be regarded as an amendment to article 68. The purpose of the text was that the coastal State should be given the fullest possible opportunity to explore and exploit the natural resources of the continental shelf. Grounds for limitation would arise only if a coastal State used methods liable to interfere with the rights of other users. Moreover, exclusive rights over areas which constituted part of the high seas could not be granted unless they were limited. If a coastal State having exclusive rights built artificial islands or used floating devices or mobile installations in an area of the high seas for any length of time, shipping might be hampered and fishing facilities interfered with. Accordingly, the Netherlands and United Kingdom delegations proposed to limit the right by fixing the area beyond the outer limit of the territorial sea to a depth line of 550 metres, which was the lowest known edge of the continental shelf and offered ample opportunity for coastal States to develop techniques for building installations on the high seas. Indeed, it might be said that that depth line would give coastal States unlimited rights of exploitation for fifty or more years.

14. His delegation was aware that proposals were being considered for some wording other than "sovereign rights" to describe the jurisdiction of the coastal State. It would reserve its position on that subject. It also intended to submit an additional paragraph containing a definition of "natural resources".

15. Miss GUTTERIDGE (United Kingdom) recalled the Canadian representative's query whether the effect of the Netherlands-United Kingdom proposal on article 68 would be to place no limit on the rights of the coastal State owing to its reference to "sovereign rights". She would hope that the Netherlands representative's statement had dispelled that doubt; if not, her delegation would be prepared to consider any alternative wording that would clarify the matter.

16. Mr. JHIRAD (India) appreciated the wish of the Netherlands and United Kingdom delegations to limit the rights of the coastal State, on the one hand, and to ensure that there should be no limit to land-tunnelling of submarine areas on the other. The wording they had proposed, however, did not seem to achieve that purpose. If the International Law Commission's draft of article 67 were accepted, no limit would be set on the rights of the coastal State, and the result would be the same if the Netherlands-United Kingdom text for that article were adopted, but the joint proposal on article 68 invested the coastal State with sovereign rights, which were precluded in the case of exploitation devices working beyond the 550-metre depth line. While that constituted a limitation of the coastal State's rights, there were no provisions for allowing other States to operate such devices.

17. Mr. MOUTON (Netherlands) recalled his earlier proposal (A/CONF.13/C.4/L.19) to add a form of words which would link the provisions of article 67 to those of article 68. The Indian representative's criticism was justified, and his delegation would try to alter its proposal in order to obviate misunderstanding.

The meeting rose at 4.25 p.m.

NINETEENTH MEETING

Tuesday, 25 March 1958, at 10.15 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 67 (A/CONF.13/C.4/L.4, L.6, L.7, L.8, L.11, L.12, L.26, L.29/Rev.1, L.30, L.32, L.33) (concluded)

1. Mr. RUIZ MORENO (Argentina) withdrew his delegation's proposal concerning article 67 (A/CONF.13/C.4/L.6) in view of other proposals submitted to the Committee.

2. Mr. GIHL (Sweden) withdrew his delegation's proposal (A/CONF.13/C.4/L.33) in favour of the revised proposal of India (A/CONF.13/C.4/L.29/Rev.1).

3. Miss GUTTERIDGE (United Kingdom), speaking as a co-sponsor of the joint proposal submitted by the Netherlands and the United Kingdom (A/CONF.13/C.4/L.32), withdrew that proposal.

4. Mr. MOUTON (Netherlands) was also prepared to withdraw the Netherlands and United Kingdom joint proposal, provided that the revised Indian proposal was accepted.

5. Mr. JHIRAD (India) apologized for issuing a revision (A/CONF.13/C.4/L.29/Rev.1) of his proposal at so late a stage in the proceedings. The revision was motivated by a desire to retain as much as possible of the spirit and substance of the International Law Commission's text, while meeting certain justified objections raised in the course of the debate. The present text was intended to make it clear that the limit of a depth of 550 metres did not apply to exploitation of the subsoil by under-water tunnelling from *terra firma*.

6. Mr. WERSHOF (Canada) asked permission to amend his delegation's proposal (A/CONF.13/C.4/L.30) by replacing the words "200 metres" by "550 metres".

7. Mr. NIKOLIC (Yugoslavia) wished to amend his delegation's proposal (A/CONF.13/C.4/L.12) in the same manner.

8. In the absence of objections, the CHAIRMAN ruled that the revised Indian proposal and the revised Canadian and Yugoslav proposals, as orally amended, should be admitted to the vote.

9. Mr. MÜNCH (Federal Republic of Germany) wished to reintroduce the proposal originally submitted and subsequently revised by the representative of Canada (A/CONF.13/C.4/L.30).

10. After a brief procedural discussion, the CHAIRMAN ruled that the vote be taken upon the proposals relating to article 67 in the order established according to the procedure described in his statement regarding the method of voting (A/CONF.13/C.4/L.37).

The Yugoslav proposal (A/CONF.13/C.4/L.12) was rejected by 39 votes to 2, with 21 abstentions.

The French proposal (A/CONF.13/C.4/L.7) was rejected by 48 votes to 12, with 7 abstentions.

11. The CHAIRMAN ruled that, since the Lebanese proposal (A/CONF.13/C.4/L.8) was identical with the French proposal, it would not be put to the vote.

12. Mr. MOUTON (Netherlands) said that he would vote in favour of the revised Indian proposal, because it conveyed the intention of the proposal submitted by his delegation jointly with that of the United Kingdom, but was more neatly phrased and closer to the International Law Commission's text.

The revised Indian proposal (A/CONF.13/C.4/L.29/Rev.1) was rejected by 31 votes to 21, with 16 abstentions.

13. Mr. MOUTON (Netherlands) recalled that he had withdrawn the joint Netherlands and United Kingdom proposal subject to the adoption of the revised Indian proposal; he would therefore wish to reintroduce the joint proposal.

14. The CHAIRMAN said that he could not allow conditional votes.

The proposal originally submitted by Canada and reintroduced by the Federal Republic of Germany (A/CONF.13/C.4/L.30) was rejected by 45 votes to 4, with 18 abstentions.

The Canadian proposal, as amended, was rejected by 39 votes to 16, with 12 abstentions.

The Panamanian proposal (A/CONF.13/C.4/L.4, L.4) was rejected by 38 votes to 4, with 26 abstentions.

The Korean proposal (A/CONF.13/C.4/L.11) was rejected by 42 votes to 13, with 13 abstentions.

The Philippine proposal (A/CONF.13/C.4/L.26) was adopted by 31 votes to 10, with 25 abstentions.

At the request of Mr. KANAKARATNE (Ceylon), a vote was taken by roll-call on the International Law Commission's draft article 67, as amended by the Philippines.

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

In favour: Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, Ghana, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Ireland, Israel, Jordan, Liberia, Libya, Mexico, Morocco, New Zealand, Norway, Peru, Portugal, Romania, Saudi Arabia, Spain, Sweden, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Uruguay, Venezuela, Yugoslavia, Albania, Australia.

Against: France, Federal Republic of Germany, Italy, Japan, Republic of Korea, Netherlands, Pakistan, Argentina, Belgium.

Abstaining: Burma, Greece, Iceland, Iran, Monaco, Philippines, Poland, Switzerland, Turkey, United Kingdom.

The International Law Commission's text for article 67, as amended by the Philippines, was adopted by 51 votes to 9, with 10 abstentions.

15. Mr. LETTS (Peru) said that, from the beginning of the discussions on the law of the sea in the United Nations, his delegation had always considered that any agreement reached on the continental shelf should be part of an over-all agreement on the whole régime of the sea. The inner limit of the continental shelf, for example, was identical with the outer limit of the territorial sea, a subject that had been referred to the First Committee. He therefore wished to state for the record that his delegation's approval of article 67 or of any other article on the continental shelf was within the framework of the unity of the whole problem; in other words, it was subject to a proviso that all of those articles formed part of a general agreement on the whole legal régime of the sea.

16. Mr. JONSSON (Iceland) said that, since his country's continental shelf contained no mineral resources or sedentary fisheries, his delegation did not consider that it was just to limit the natural resources of the continental shelf to those categories, and it could not agree that the superjacent waters of the shelf should be open to exploitation by all. His government believed that it would be reasonable that there should be a zone outside the territorial sea under the exclusive jurisdiction and control of the coastal State. He had voted against all the amendments because they failed to take account of that fundamental fact. He reserved his delegation's position on the other articles relating to the continental shelf.

17. Mr. WERSHOF (Canada) said that he had abstained from voting on the amendment by the Federal Republic of Germany since it was, in fact, the original Canadian amendment. His delegation was accordingly not opposed to that text and, if it had been voted on after the amended Canadian proposal, it would have voted in favour of it.

18. Mr. RUIZ MORENO (Argentina) said that his delegation had voted against the International Law Commission's draft for article 67, as amended by the proposal of the Philippines, because he considered that it did not embody a clear geographical concept of the submarine zones of the continental shelf.

19. Mr. STABELL (Norway) said he had voted against those amendments which in his opinion encroached upon the régime of the high seas further than was justified by practical considerations. He had abstained from voting on certain other amendments because, although he sympathized with the motives which had prompted them, he did not consider that they offered a practical solution in existing circumstances.

20. The amendments proposed by India and Canada were in general agreement with his delegation's point of view. When they were both defeated, he had voted for the International Law Commission's draft as amended by the Philippine proposal, because, although he considered that that text lacked balance and precision, it might still form the basis of an international régime and was accordingly preferable to no agreement at all. His delegation's final attitude would depend

upon decisions reached both in the Fourth Committee and in other committees on articles relating to the continental shelf.

21. He thanked the representative of the United Kingdom for her statement (17th meeting) about the configuration of the seabed off the Norwegian coast, expressing a view which was in conformity with that of scientific experts. It confirmed his delegation's view that the Norwegian trough was a part of the continental shelf, and did not exclude Norway from the seabed beyond it.

22. Mr. OBIOLS-GOMEZ (Guatemala) said that he had voted for the International Law Commission's draft as amended because he considered, in accordance with the principle of the equality of States, that if it became possible for any nation to exploit the resources of the seabed beyond a depth of 200 metres, the rights of all other States over the seabed off their coasts would automatically be extended to the new limit permitted by technological advances.

23. Miss GUTTERIDGE (United Kingdom) said that she had abstained from voting on the International Law Commission's draft of article 67, as amended, because she considered that it was likely to give rise to uncertainty, and she reserved her delegation's right to give the matter further consideration.

24. Mr. SEIN (Burma) said that, although he had intended to vote for the original text of the International Law Commission's draft of article 67, he had abstained from voting on that text as amended by the Philippine proposal. That was because, when the vote was taken on the Philippine amendment, he had abstained from voting in order not to prejudice an amendment, proposed by Burma to article 10 (A/CONF.13/C.4/L.3), which was under consideration in the First Committee.

ARTICLE 68 (A/CONF.13/C.4/L.2, L.3, L.6, L.7 L.9, L.10, L.13, L.19, L.27, L.31, L.36) (continued)

25. Mr. GROS (France), said that the amendment submitted jointly by Australia, Ceylon, Federation of Malaya, India, Norway and the United Kingdom (A/CONF.13/C.4/L.36) closely resembled his own delegation's amendment (A/CONF.13/C.4/L.7), adding a second paragraph to article 68. Since he did not believe the differences between the two texts would justify two separate votes, he would withdraw his amendment in favour of the six-power proposal, which provided the precise definition of the natural resources of the continental shelf which was needed to avoid subsequent difficulties.

26. With regard to the nature of the rights of the coastal State over the continental shelf, he considered that the United States proposal (A/CONF.13/C.4/L.31) expressed his government's view, and he would accordingly support that amendment.

27. Mr. RUIZ MORENO (Argentina) introducing his delegation's amendment (A/CONF.13/C.4/L.6), said that according to the geological view the continental shelf was a prolongation of the territory of the coastal State under the surface of the sea, and it was therefore

not possible to make a distinction between the rights of the coastal State over the mainland and its rights over the continuation of the mainland beneath the sea. Nor was it possible to distinguish from a legal point of view between sovereignty and sovereign rights. The expression "sovereign rights" used by the International Law Commission corresponded to the accepted legal term "jurisdiction". His delegation was accordingly proposing the substitution of the word "sovereignty" for the expression "sovereign rights".

28. The second paragraph of the amendment took account of the fact that sovereignty was not absolute and was accordingly to be exercised under certain conditions.

29. The third paragraph corresponded to the International Law Commission's draft.

30. The last paragraph was almost identical with the last sentence of paragraph 2 of the Commission's commentary on article 68. His delegation considered that it was advisable to include that explanation in the text of the article, and he noted that the United States proposal, which had been supported by France, also recommended the inclusion of the word "exclusive" in the text of the article.

31. Mr. SEIN (Burma) introduced his delegation's amendment to article 68 (A/CONF.13/C.4/L.3), which had the effect of widening the meaning of the term "natural resources" to include the bottom-fish of the continental shelf.

32. There were three reasons why his delegation was not satisfied with the International Law Commission's text of article 68: The first was the need for coastal States with rapidly increasing populations to become self-sufficient in fish and sea-food. For most coastal States, that need was more urgent than the need to exploit the mineral resources of the shelf. Secondly, the International Law Commission had made no proposals for defining, limiting and regulating the rights and duties of States exercising the right of freedom of fishing contemplated under article 27. That omission was the cause of some of the rigid attitudes maintained by two groups of delegations, the industrially developed countries on the one hand, and the less-developed countries on the other. Thirdly, it was essential to find a fair and reasonable compromise if the Conference were to succeed.

33. There seemed to have been some misunderstanding of his delegation's proposal, which was apparently due to four causes. The first was the failure to apply fully the spirit of paragraph 2 of General Assembly resolution 1105 (XI), which had recommended that the Conference "should take into account not only the legal but also the technical, biological, economic and political aspects of the problem". The second was the failure to make a distinction between two parts of the high seas—namely, the high seas proper and the frontiers of the high seas bordering on coastal States. The third factor was an inadequate conception of the freedom of fishing on the high seas, which took no account of considerations of democracy and economic justice. Such a conception was at the base of the indefensible and outmoded policy of *laissez-faire* in the fishing of the high seas. Since the living resources of the high seas

were not inexhaustible, freedom of fishing in those seas must be defined, limited and regulated. Fourthly, there was an over-emphasis on legal niceties. Law was respected in so far as it was based upon reason, equity, and free consent and adapted itself to changing conditions.

34. The term "bottom-fish" was used in the proposed amendment not in a strictly biological sense, which might lead to confusion, but rather in the sense of marine organisms whose general habitat was the surface of the seabed of the continental shelf and whose exploitation required the use of gear that would disturb the surface of that seabed. His delegation would acknowledge the full freedom of fishing in the superjacent waters, provided that there was no infringement of the sovereign rights of the coastal State over the surface and subsoil of the continental shelf.

35. The proposed amendment would, needless to say, be subject to any existing agreements or conventions between States.

36. In relation to article 69, the proposal should not be construed as prejudicing the legal status of the superjacent waters of the high seas. Most industrially developed States already exploited the bottom-fish on their own continental shelves, and the proposal was aimed at safeguarding the rights of the less-developed States to do the same.

37. His delegation was putting forward the proposal in good faith as a compromise in the hope of increasing the area of agreement. For that reason, if it did not prove possible to agree on some reasonable widening of the meaning of the term "natural resources", such as that proposed by his delegation, he would not be able to support the existing text of article 68, although his delegation did not object to it in principle.

38. Mr. WERNER (Switzerland) said that under article 68 the Committee had two main subjects to discuss: the nature of the rights of the coastal State, and the definition of natural resources. He thought it might facilitate the Committee's work if both the debate and the voting were divided accordingly, so that there would, in fact, be two debates and two sets of votes.

39. Mr. SOLE (Union of South Africa) supported the Swiss representative's suggestion. Since some of the proposed amendments dealt with the definition of natural resources, it might be advisable to discuss that subject before other amendments were considered.

40. The CHAIRMAN said he would consider whether such a plan of work could be drawn up.

41. Miss GUTTERIDGE (United Kingdom) said that her delegation would withdraw its previous proposal (A/CONF.13/C.1/L.27) in favour of the new six-power proposal.

42. With regard to the organization of the Committee's work, she said that several representatives who normally attended meetings of the Third Committee were anxious to be in the Fourth Committee when the natural resources of the continental shelf were being discussed, and she therefore hoped that it would be possible to arrange the debate on the definition of the natural resources at a time when the Third Committee was not meeting.

43. Mr. ROSENNE (Israel) said that it was not merely a matter of arranging for representatives who normally attended Third Committee meetings to be present during the debate in the Fourth Committee on natural resources. He felt that some of the questions which the Fourth Committee had to consider should be discussed in the light of the general régime of fishing which would be discussed in the Third Committee. The question of bottom-fish, for instance, might well be dealt with at a joint meeting of the Third and Fourth Committees.

44. The CHAIRMAN said that, although joint meetings with the Third Committee might be useful, there were certain practical difficulties in arranging such meetings.

45. Mr. BARROS (Chile) suggested that, since the subject of natural resources was linked with work of other committees—whereas no other committee was dealing with the question of the sovereign rights of coastal States over the continental shelf—it might be better to discuss the latter subject first.

46. Mr. LIMA (El Salvador) thought that if the natural resources of the continental shelf were discussed exclusively in the Fourth Committee, the aspects that were closely related to the general régime of fishing would not receive sufficient attention. It might yet be some time, however, before the Third Committee reached the relevant item on its agenda, and he therefore suggested that the Chairman should consult the Chairman of the Third Committee.

47. Mr. KANAKARATNE (Ceylon) said that the International Law Commission had drafted two separate articles—articles 60 and 68—and thereby distinguished between sedentary fish described as such by reason of the species caught, and those so described by reason of the equipment used. Any attempt to discuss the subjects of articles 60 and 68 at the same time would constitute a backward step by putting back into the melting-pot two ideas which the International Law Commission had succeeded in crystallizing. Any joint meeting with the Third Committee would certainly lead to a general discussion of articles 60 and 68.

48. Mr. LIMA (El Salvador) said that he had not intended to recommend a joint discussion of articles 60 and 68, but merely a meeting that would make it possible for the Fourth Committee to consider the natural resources of the continental shelf within the context of the general régime on fishing. That might help to clarify the Committee's ideas on natural resources, and lead in the end to more workable solutions.

49. Mr. ROSENNE (Israel) said that the difficulty arose because of the introduction, in the amendments proposed by Burma (A/CONF.13/C.4/L.3) and Yugoslavia (A/CONF.13/C.4/L.13), of bottom-fish into the régime of the continental shelf, although that was a subject which the Third Committee was more competent to discuss. He hoped, therefore, that it might be possible to arrange joint meetings on that subject with the Third Committee.

50. The CHAIRMAN said that the governing factor must be what would facilitate the progress of the Fourth

Committee in its own work, but he would look into the possibility of arranging joint meetings with the Third Committee.

The meeting rose at 1 p.m.

TWENTIETH MEETING

Wednesday, 26 March 1958, at 10.15 a.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 68 (A/CONF.13/C.4/L.2, L.3, L.6, L.9, L.10, L.13, L.31, L.36) (continued)

1. Mr. GIHL (Sweden) recalled that he had stated the views underlying the Swedish proposal (A/CONF.13/C.4/L.9) at the Committee's 4th meeting. He agreed with the opinion advanced by the Swiss representative at the 19th meeting that two distinct questions were involved in article 68, that of the rights exercised by the coastal State over the continental shelf and that of the nature of the resources to which those rights extended. The Swedish proposal bore on the first of those questions. The rules proposed by the International Law Commission with regard to the continental shelf were new rules that did not form part of existing international law. The rights exercised by coastal States in virtue of those rules presupposed the consent of other governments. It was advisable that such rules should be established, provided they were limited to what was strictly necessary in order to assure the right of coastal States to explore and exploit the natural resources of the continental shelf. The Swedish delegation objected to the use of the term "sovereign rights" to describe the limited rights of coastal States. Although sovereign rights within the international community were always subject to certain limitations, the term implied the exercise of all rights not expressly limited by international law and conventions and might give rise to abuse in the present context. The freedom of scientific research on the continental shelf, for example, was not clearly established by the International Law Commission's text. In that connexion, he would support the Danish proposal (A/CONF.13/C.4/L.10).

2. Mr. NIKOLIC (Yugoslavia) said that the purpose of the Yugoslav proposal (A/CONF.13/C.4/L.13) was twofold: to define the purpose for which the coastal State might exercise its sovereign rights, and to emphasize that the rights thus defined were exclusive to the coastal State, whether or not it exercised them. By including bottom-fish and certain other submarine species among the natural resources of the continental shelf, the proposal sought to give fair compensation to the less-developed coastal States which were for technological reasons unable to exploit the mineral inorganic resources of their continental shelf.

3. It was to be regretted that in its decision on article 67 the Committee had failed to set a firm boundary, whether in terms of depth or of distance, to

the area over which the coastal State's rights extended. The territorial rights of States were clearly delimited by frontiers; it was all the more important that a delimitation should be fixed on the high seas. Adoption of the Netherlands proposal (A/CONF.13/C.4/L.19) might remedy the situation to some extent. If that proposal were rejected, however, the Yugoslav representative foresaw the possibility of future disputes, for which the Conference would be largely responsible.

4. Replying to a point of order raised by Mr. KANAKARATNE (Ceylon), the CHAIRMAN said that, subject to the Committee's approval, he accepted the suggestion by the Swiss representative at the preceding meeting that the proposals relating to article 68 should be divided into two groups; a conference room document based on that suggestion would be issued shortly, and voting on the proposals would be conducted accordingly. During the discussion, however, representatives were free to speak on either or both aspects of article 68.

5. Mr. DE LA PRADELLE (Monaco) welcomed the Chairman's decision. It was impossible to decide on the nature of the rights of the coastal State unless the object of those rights was also known. For example, it was perfectly acceptable that the coastal State should exercise exclusive rights over the natural resources of the continental shelf, provided only mineral resources were meant; but if the natural resources included certain intermediate biological species as well, those rights should not be exclusive. The relative force of the various formulations proposed such as sovereignty, sovereign rights, jurisdiction and control, exclusive rights depended entirely on the interpretation given to them. In his opinion, the term "exclusive rights" proposed by the United States (A/CONF.13/C.4/L.31) and endorsed by France was even more emphatic than "sovereign rights". It might also be argued that "jurisdiction and control" were in fact tantamount to sovereignty, whereas the Swedish representative evidently intended the former phrase to imply more limited rights. Whatever wording the Committee decided to adopt, it should not lose sight of the fact that all the matters before it were related to the law of the sea and were governed—at least in part, as, for example, sedentary fisheries were—by existing international law. Since, however, the Committee was dealing not only with *lex lata*, but also with *lex ferenda*, it had a duty to ensure the maximum possible freedom of navigation and fishery in the future. The delegation of Monaco rejected those arguments which would make the sea a place for the exercise of complete and exclusive sovereign rights; it supported the principle of limited sovereignty as put forward in the proposals of Sweden and Yugoslavia, and shared the Yugoslav representative's apprehensions as to possible future disputes unless the rights of the coastal State were clearly delimited on the basis of the principle of freedom of the high seas.

6. Replying to a question by Mr. MÜNCH (Federal Republic of Germany), Miss GUTTERIDGE (United Kingdom) stated that the joint Netherlands and United Kingdom proposal (A/CONF.13/C.4/L.32) had been withdrawn, without prejudice, however, to any other

proposal on article 68 which the United Kingdom delegation might submit or support.

7. Mr. MOUTON (Netherlands) added that he intended to submit an amendment incorporating the substance of paragraph 2 of the joint proposal by Australia, Ceylon, the Federation of Malaya, India, Norway and the United Kingdom (A/CONF.13/C.4/L.36).

8. Mr. CARTY (Canada) pointed out that the Netherlands proposal (A/CONF.13/C.4/L.19) mentioned a depth line of 550 metres. He recalled that, like the representatives of the Netherlands, the United Kingdom and India, he had favoured a depth limit of 550 metres in connexion with article 67; but, since the Committee had adopted a text in which a depth of 200 metres was stated as a criterion for defining the continental shelf, he wondered whether the Netherlands proposal was still appropriate.

9. Mr. MOUTON (Netherlands) said that the Netherlands proposal, like the joint Netherlands and United Kingdom proposal, had been withdrawn, but its substance would probably be embodied in a new proposal. The 550-metre depth limit upon exploration and exploitation devices working on or in the superjacent waters should not be confused with the 200-metre depth limit used to define the continental shelf; the two matters were entirely separate.

10. Mr. CALERO RODRIGUES (Brazil) wondered whether the definition given in the six-power proposal could not be interpreted to include inanimate objects such as cargoes and wrecks of ships which might be found on the seabed.

11. Mr. JHIRAD (India) said that such an interpretation was ruled out by the use of the term "non-living resources"; wrecks and cargoes could on no account be described as resources.

12. Replying to a question by the Netherlands representative, he explained that the definition did include shells and other inanimate resources which had once formed part of living resources.

13. Mr. LIMA (El Salvador) recalled that the 1956 Inter-American Specialized Conference of Ciudad Trujillo had recognized that the continental shelf appertained exclusively to the coastal State, and was subject to its jurisdiction and control. That, as the El Salvador representative at the conference had emphasized, was tantamount to full sovereignty. Legal unity demanded that the rights of the coastal State over its continental shelf should be the same as its rights over its territory and its territorial sea. The International Law Commission's records showed that no cogent reason had ever been advanced for the reluctance to grant full sovereignty to the coastal State over the continental shelf, a reluctance which had much in common with the attitude of a number of countries towards the question of the territorial sea prior to The Hague Codification Conference, and which appeared to be motivated by the fear of granting too many rights too quickly to coastal States. One of the main objections to the principle of sovereignty over the continental shelf was that the coastal State might then claim sovereignty over the epicontinental waters as well. That

objection was unfounded, since the legal status of the superjacent waters of the continental shelf would be clarified in another article; the delegation of El Salvador, however, did not wish to prejudge its position on that point. Finally, apart from the juridical aspect, the granting of full sovereign rights over the continental shelf was also in the interest of the economically under-developed countries.

14. Miss WHITEMAN (United States), introducing her delegation's proposal (A/CONF.13/C.4/L.31), said that terms such as "sovereignty" or "sovereign rights" might, in the opinion of some, introduce an element of uncertainty about the legal status of the superjacent waters and airspace. The United States delegation was firmly opposed to anything which might, even remotely, cast doubt upon that status. The fact that article 69 contained clearly defined provisions on the matter was enough; the Committee was discussing article 68 and should strive to perfect it rather than depend on a subsequent article for clarification. That was why the United States delegation was proposing the replacement of the word "sovereign" by the word "exclusive".

15. She would endorse the second paragraph of the United Kingdom proposal on paragraph 67 (A/CONF.13/C.4/L.24/Rev.1) and would hope that the Committee would approve it.

16. Replying to a question by Mr. KANAKARATNE (Ceylon), Miss GUTTERIDGE (United Kingdom) said that the proposal referred to by the United States representative was not before the Committee at present; she was, however, considering whether to reintroduce part of it as an amendment to article 68, and would take due account of any expressions of support therefore.

17. Mr. MÜNCH (Federal Republic of Germany), referring to the statement by the representative of El Salvador, said that a number of delegations, including his own, disliked the concept of sovereignty over the continental shelf, because sovereignty was an attribute of a community of men and, since man was a land animal, sovereignty was always territorial. That opinion was borne out by a vast corpus of theoretical and philosophical doctrine. The seabed and subsoil were part of the sea; man could not move on them without the help of complicated technical apparatus, still imperfect in many cases. Effective occupation of the seabed and subsoil would always, of necessity, be exercised only at isolated points. The territorial sea represented a necessary extension of territorial sovereignty; originally its breadth had been determined by the so-called cannon-shot rule, but although the range of artillery fire had greatly increased, the breadth of the territorial sea was still confined to a minimum. For practical as well as theoretical reasons, many delegations would prefer a term other than "sovereignty", and his delegation would shortly submit an amendment.¹ Much was said about the rights of economically under-developed States; but what, he asked, of the rights of land-locked countries?

18. Replying to a further remark by the representative of El Salvador, he said that the principal purpose of

¹ Proposal subsequently circulated as document A/CONF.13/C.4/L.43.

the territorial sea was to provide a minimum area for neutral navigation in wartime along the coasts of neutral States. The territorial sea was an exceptional institution; there were no grounds for a further extension of sovereign rights beyond its outer limit.

19. Mr. KWEI (China), supporting the United States proposal, said that sovereign rights were rights pertaining to a sovereign and had no legal basis unless full sovereignty was recognized. The concept of sovereignty was more or less clearly defined. More would be lost than gained by using the term "sovereign rights" for lack of another convenient term. The fact that the rights set forth in article 68 were limited by the provisions of subsequent articles was precisely the reason why the term "sovereign" should, from the purely juristic point of view, be avoided and replaced by the term "exclusive", which could, indeed, be interpreted as possessing even greater force.

20. Mr. DE LA PRADELLE (Monaco), referring to the statement by the representative of El Salvador, said that the objection to the continental shelf being integrated within the territorial sovereignty of a State was based on hard facts. Unlike the territorial sea, the continental shelf was exceedingly difficult to define; in some cases, as in that of Norway, it did not start directly at the coast; in others, such as the Persian Gulf, the Baltic Sea and the English Channel, it formed an unbroken shelf between one coast and another. Its geographical limitations were sometimes open to doubt; and the legal definition in article 67, adopted by the Committee, increased the uncertainty still further by introducing the concept of possible exploitation. Furthermore, the territorial sea comprised the seabed and subsoil, the superjacent waters, and—since the Paris Convention relating to the regulation of Aerial Navigation (1919) and the Chicago Convention on International Civil Aviation (1944)—the airspace above, whereas the continental shelf consisted only of the seabed and subsoil. While deprecating the views of those delegations which claimed sovereignty over the epicontinental waters as well as over the seabed and subsoil of the continental shelf, he would consider that their claim was more logical than that to the seabed and subsoil of the continental shelf alone. Both claims, however, represented an infringement of the freedom of the high seas and could not be countenanced.

21. In conclusion, he would reiterate the opinion that he had advanced at the 9th meeting that an international organization would be the most suitable medium for administering the law of the sea in relation to the continental shelf.

22. Mr. GARCIA AMADOR (Cuba) said that there were two problems posed by the amendments submitted by Mexico (A/CONF.13/C.4/L.2) and Argentina (A/CONF.13/C.4/L.6). The first was what might be the effect of acknowledging the full sovereignty of a coastal State over the superjacent waters of the continental shelf; he had dealt with that in his statement at the 11th meeting. He would reserve the right to speak further on that subject when article 69 was under discussion. The other problem was the possible effect of recognizing the coastal State's full sovereignty over

the continental shelf as opposed to the superjacent waters.

23. The main argument adduced in favour of that point of view as, opposed to the functional sovereignty proposed in the International Law Commission's draft, was that the continental shelf was a continuation of the territory of the coastal State below the surface of the sea. That had been recognized by the Inter-American Specialized Conference of Ciudad Trujillo, but he did not consider that that geological fact, or any other, was bound to lead to the adoption of a particular legal position. The fact that the area concerned was submerged differentiated it from the other territory of the coastal State. It was a basic principle in international law that although the principle of the sovereignty of a State over its territory might be acknowledged, when particular portions of that territory were being considered, some clarification of the principle might be necessary. The Hague Codification Conference of 1930 had recognized that the territorial sea was an integral part of the territory of a State; yet it was undeniable that a State did not exercise absolute sovereignty over that area, since there was an obligation in law to recognize the right of passage, and it was clear that the penal and civil jurisdiction of a State was not the same in its territorial sea as in the rest of its territory. Those were legal facts demonstrated by the invariable practice of States.

24. The status of the submerged area of the continental shelf was even more complicated. Under the terms of the text approved for article 67 at the previous meeting, the area in question was not exactly defined, and would vary in extent according to the technical means possessed by the coastal State, and there might be a secondary zone of the continental shelf, beyond the zone which the coastal State was technically able to exploit. Since there was no apparent limit to technological development, the area in question was not only impossible to define at present, but always would be so. It was a fundamental requirement of the international law of all periods that territorial sovereignty should apply to an area of known limit, and he asked those who advocated acknowledging the full territorial sovereignty of the coastal State over the continental shelf how they proposed to resolve that problem of international law in relation to submerged territory. That was a legal problem of a technical nature which the International Law Commission had taken fully into account when attempting to define the rights of the coastal State over the continental shelf, and which would have to be given serious consideration by the Fourth Committee as well.

25. There were other objections to the notion of full sovereignty over the seabed and subsoil of submarine zones, since within those areas there existed certain rights guaranteed by the freedom of the seas. One of those rights was the right to lay and maintain submarine cables and pipelines. Another was the freedom of scientific research, which was the subject of a document prepared by the International Council of Scientific Unions and transmitted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) (A/CONF.13/28). It should be remembered also that freedom of navigation included freedom

of submarine navigation. It might be necessary for a submarine to come to rest on the seabed, an act which would be fully in accordance with the principle of the freedom of the seas but would become technically a legal impossibility if the sovereignty of the coastal State extended to the seabed and subsoil of the high seas. It might be maintained that the coastal State could authorize such acts, but it was not, he felt, within the Committee's power to transform any aspect of the freedom of the high seas into a mere concession by those States. That was a principle which did not harm the interests of coastal States.

26. In its 1951 draft, the International Law Commission had proposed the somewhat vague expression "jurisdiction and control", which it replaced in 1956 by the phrase "sovereign rights". That had been done in order to recognize the essential and legitimate interest of the coastal State in exploring and exploiting the natural resources of its continental shelf. The unilateral declarations of States of their rights over the continental shelf all made it clear that that exploitation was the only interest of the coastal State. The International Law Commission had therefore explicitly stated that for that purpose only the rights of the coastal State were both sovereign and exclusive and not to be exercised by other States without the consent of the coastal State. He could not understand the insistence of some delegations, and in particular those of Argentina, El Salvador and Mexico, on the notion of sovereignty if the only purpose of that sovereignty was the exploration and exploitation of the natural resources, since that was clearly acknowledged by the International Law Commission's draft. He would have no objection to the use of the word "sovereignty" provided that it was followed, as in the Commission's draft of article 68, by the proviso that it was for the purpose of exploring and exploiting the natural resources.

27. Mr. WERNER (Switzerland) was glad that the Fourth Committee had agreed to consider separately the two subjects dealt with in article 68. He shared the fears expressed by the representatives of the Federal Republic of Germany and Sweden, and said that even States which were not fortunate enough to possess a coastline might be strongly attached to the principle of the freedom of the seas. His delegation would not be able to vote for any text that acknowledged the sovereignty or sovereign rights of the coastal States over the continental shelf, because that might have far-reaching consequences. He sympathized with the reasons that had prompted the Swedish amendment, but the expression "control and jurisdiction" was not sufficiently precise. He would therefore support the United States amendment, though his reasons for preferring that solution were not the same as those given by the representative of the United States in her explanation of the proposal. She held that the expression "exclusive rights" was less far-reaching than "sovereign rights", but on that point he agreed with the representative of Monaco that no expression including "sovereign rights" could convey anything more than "exclusive rights". Moreover, he regarded the United States proposal as a skilful compromise, since in practice it would give those who were claiming more than existing international law would justify all

that they were asking for, while reserving the question of principle, which could be left open for further discussion by experts in legal theory. That solution was the most practical way of effecting a further evolution of international law.

28. Mr. RUIZ MORENO (Argentina) was glad to note that the Cuban representative would be prepared to accept the expression "sovereignty" instead of "sovereign rights" provided it was followed by certain limitations. The delegation of Argentina and others who held the same views were not insisting on a full and unlimited sovereignty; they wanted a recognition of the rights of sovereignty of the coastal State, which could be followed by whatever limitations the Conference might agree on with regard to the superjacent waters, fishing and so forth. The rights of the coastal State had been established in international law by over thirty unilateral declarations. Those claims were based on the physical relationship between the submarine areas in question and the mainland. Since the mineral resources of the mainland often extended out under the sea, the coastal State must have the same rights over those resources as it possessed on dry land.

29. With regard to the United States representative's reference to the first part of paragraph 2 of the International Law Commission's commentary on article 68, he would draw attention to the next sentence in the same paragraph reading: "Hence it was unwilling to accept the sovereignty of the coastal State over the seabed and subsoil of the continental shelf." The word "hence" made it clear that the International Law Commission had feared lest a claim of sovereignty by the coastal State might affect the full freedom of the superjacent sea. It was for those reasons, which were not of a legal nature, and failed to take account of the physical identity of the continental shelf and the territory of the coastal State, that the International Law Commission had not accepted the idea of the sovereignty of the coastal State.

30. It had been said that the geological nature of the continental shelf was not a sufficient basis for the sovereignty of the coastal State, but he would quote Montesquieu's view that laws were necessary relationships derived from the nature of things, and he would maintain that the geological nature of the continental shelf must be a prime consideration in defining its legal status.

31. The Cuban representative had stated that exact delimitation was an essential element of territorial sovereignty, but territorial sovereignty was exercised by several powers in Antarctic areas where there was no precise delimitation. The same representative had said that sovereignty could not be exercised over an area that lay under water, but in many areas mines that had no direct relationship with a continental shelf were worked below the surface of the seabed. Nor could he accept the view that coastal States should allow their continental shelves to be used as landing grounds for the submarines of other States.

32. He accordingly adhered to the opinion that the intimate relationship between the physical territory of the continental shelf and the physical territory of the mainland must lead to recognition of the sovereignty

of the coastal State, duly restricted by limitations to be agreed by the Conference.

33. Mr. ROSENNE (Israel) referred to his statement at the 9th meeting, in which he had stressed the need to maintain unimpaired the full freedom of the superjacent waters of the continental shelf and the air space above them. The word "sovereignty" was not suitable, although he would be prepared to accept the expression "sovereign rights" if it were understood that the word "sovereign" was merely a description of the content of those rights as applied to the continental shelf, in accordance with paragraph 2 of the International Law Commission's commentary on article 68.

34. He would vote for the United States amendment because the expression "exclusive rights" was a more exact description of the nature of the rights in question.

35. He would speak later on the second subject dealt with in article 68—namely, the definition of natural resources.

36. Mr. MOUTON (Netherlands) said that the Fourth Committee might be hampered by a strict notion of the vertical identity of media; in other words, many delegations might fear that, if the rights of the coastal State over the continental shelf were referred to as sovereign rights, that might lead to claims of sovereignty over the superjacent waters. That apprehension was referred to in paragraph 2 of the International Law Commission's commentary on article 68. It might facilitate the discussion if he drew attention to some cases in which that vertical identity was not maintained. One example was the territorial sea, where, although the coastal State had full sovereignty over the marine subsoil, its sovereign rights in the waters of the territorial sea were limited by the right of innocent passage. There was accordingly a difference in legal status between the subsoil and the superjacent waters of the territorial sea. Another example was the frontier area between the Netherlands and the Federal Republic of Germany where, by agreement between the two countries, Dutch coal mines continued beyond the frontier, so that in that area the surface was German territory and in the mines below it was the Netherlands which had the exclusive right of exploitation.

37. Miss WHITEMAN (United States of America) said that the representative of Argentina had suggested that an unfounded fear lay behind the opposition to the word "sovereignty"; but that fear was justified by the views that had been expressed.

38. Mr. KANAKARATNE (Ceylon) thought that the Committee had been too much concerned with abstract legal principles. He would refer to the preamble to the United Nations Charter, and stress the inclusion of the idea of the economic advancement of all peoples as one of the purposes for which international machinery was to be employed. If the principle of the freedom of the high seas were upheld regardless of all other considerations, it might well conflict with that aim of the Charter. He would agree with the United States representative that whatever safeguards were provided by article 69, the expression "sovereignty" should not be used in article 68 if there were any possibility that it might be misunderstood. Ceylon was not yet prepared

to take a decision on the expressions "sovereignty", "exclusive rights" and so forth, but he was interested to note that the amendments proposed by Mexico, Argentina, Yugoslavia and the Netherlands all referred, either implicitly or explicitly, both to sovereignty or sovereign rights and to exclusive rights. If the delegations concerned could agree that the expression "exclusive rights" was in fact what was meant by "sovereignty", it might be possible for the Committee to agree on the United States amendment.

39. Mr. DE LA PRADELLE (Monaco) would be prepared to accept the formula "sovereign rights" if it were followed by some expression limiting the effect of those rights, as had been suggested. He would prefer "sovereign rights" to "exclusive rights", since sovereignty could be surrendered, whereas exclusive rights could not be ceded. He would therefore support a text referring to sovereign rights for the purpose of exploring and exploiting natural resources. He would interpret the term "natural resources" to mean mineral resources only, but would enlarge on that at a later stage.

40. With regard to quotation of the United Nations Charter by the representative of Ceylon, he would point out that the only reference in the Charter to sovereignty was to the "sovereign equality" of all Member States. He would draw attention to the reference in Article 55 to human rights and fundamental freedoms for all; those were the principles that should form the background of the Committee's discussion.

The meeting rose at 1.10 p.m.

TWENTY-FIRST MEETING

Wednesday, 26 March 1958, at 3.25 p.m.

Chairman: Mr. A. B. PERERA (Ceylon)

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

ARTICLE 68 (A/CONF.13/C.4/L.2, L.3, L.6 and Rev.1, L.9, L.10, L.13, L.31, L.36, L.39) (continued)

1. Miss SOUTER (New Zealand) observed that, according to some delegations, the concept of the freedom of the seas had become anachronistic, and should be set aside in order to take account of newer needs and interests. Her delegation shared the view that the United Nations Charter provided a yardstick for judging the International Law Commission's work. It would be seen that, far from being out of step with the principles of the United Nations, the principle of the freedom of the seas reconciled the interests of individual States with those of the world community. At its third session in 1951, the Commission had acknowledged that the exploration and exploitation of the continental shelf might affect the freedom of the seas—and had favoured such exploration and exploitation only because they met the needs of the international community. It had decided that for the time being those needs would best be met by entrusting exploration and exploitation to the