

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.4/SR.1-5

Summary Records of the 1st to 5th Meetings of the Fourth Committee

Extract from the *Official Records of the United Nations Conference on the Law of
The Sea, Volume VI (Fourth Committee (Continental Shelf))*

SUMMARY RECORDS OF THE FOURTH COMMITTEE

FIRST MEETING

Wednesday, 26 February 1958, at 4.55 p.m.

Acting Chairman: Prince WAN WAITHAYAKON
(Thailand)

Election of the Chairman

1. Mr. TABIBI (Afghanistan) nominated Mr. Perera (Ceylon).

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

Mr. Perera (Ceylon) was elected Chairman by acclamation.

The meeting rose at 5 p.m.

SECOND MEETING

Friday, 28 February 1958, at 4.30 p.m.

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

Election of the Vice-Chairman

1. Mr. SEN (India) nominated Mr. Quarshie (Ghana).

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

Mr. Quarshie (Ghana) was elected Vice-Chairman by acclamation.

Election of the Rapporteur

3. Mr. STABELL (Norway) nominated Mr. Díaz González (Venezuela).

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

Mr. Díaz González (Venezuela) was elected Rapporteur by acclamation.

The meeting rose at 4.40 p.m.

THIRD MEETING

Monday, 3 March 1958, at 10.45 a.m.

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

Organization of the work of the Committee

1. The CHAIRMAN drew the Committee's attention to

paragraph 12 of the report of the General Committee, approved by the Conference (A/CONF.13/L.2). He suggested that, since its time was limited and it was difficult to hold a short general debate, the Committee might confine itself to a discussion of the articles referred to it.

2. Mr. WERSHOF (Canada) considered that, as so few articles had been (referred to the Committee, a general debate would be desirable.

3. Mr. GROS (France) said that the General Committee had considered that there should be a general debate. The articles on the continental shelf drafted by the International Law Commission did not constitute positive international law, but related to a new legal institution submitted to the Conference for incorporation in positive law. Accordingly, three general problems should be discussed first: the definition, the limitations, and the legal status of the new legal institution. The Committee could with advantage discuss those three general problems before debating articles and any amendments thereto.

4. Mr. MÜNCH (Federal Republic of Germany) agreed with the French representative, and pointed out that there was yet another problem that could be settled only in a general debate. That was the question of possible objections to the rules proposed by the International Law Commission for the continental shelf. The delegation of the Federal Republic of Germany, which opposed the whole conception of the proposed rules, intended to submit a memorandum on the subject, suggesting an entirely different system.

5. Mr. TSURUOKA (Japan) supported the views of the representatives of France and the Federal Republic of Germany.

6. The CHAIRMAN observed that the consensus of the Committee seemed to be in favour of a general discussion, and suggested that the first three weeks of the Committee's work might be devoted to a general debate.

It was so agreed.

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159)

General debate

STATEMENT BY MR. GROS (FRANCE)

7. Mr. GROS (France) said that the International Law Commission had submitted rules concerning jurisdiction over the resources of the continental shelf, and frequently they were vitally important resources. During the early stages of its work, however, the Commission had not had the benefit of complete geographical, geological and oceanographic data; in that respect, it had been less fortunate than the Conference, for which the United Nations Secretariat had provided extensive and valuable documentation. The presence of the scientific experts attending the Conference justified the hope that the jurists could rely on their regular assistance.

8. The notion of the continental shelf was new in international law, as the International Law Commission had recognized in its definition in article 67. It must be noted, however, that scientific knowledge concerning the shelf was still incomplete, a circumstance reflected in the Commission's definition, which, because it was not based on an objective criterion, could hardly be described as satisfactory.

9. The problem of definition arose only in respect of the seabed and subsoil of submarine areas outside the area of the territorial sea. The limit of the continental shelf must be constant, definite and known. The Commission, however, had not been consistent in its successive definitions. At its third session, in 1951, in its first draft¹ it had used the criterion of possible exploitation, from which it followed that all areas in which exploitation would be technically possible owing to the depth of water would be included in the continental shelf. The French delegation considered that criterion to be not only too vague, but also subjective, for it did not leave it clear whether, for the purpose of judging what was technically possible, the technical capacity of each State in respect of its own continental shelf or that of the most advanced States was to be taken into account.

10. At its fifth session, in 1953,² the Commission had reconsidered its decision and had abandoned the criterion of possible exploitation in favour of that of a depth of 200 metres. That was the criterion traditionally applied by the geographical and oceanographic specialists who had written on the continental shelf. Although that criterion had considerable advantages, the opinion of the technical experts that it was not valid in all cases should not be overlooked; indeed, one famous geographer had described it as a rough approximation. It was for the Fourth Committee, therefore, to decide whether the 200-metre criterion would provide a basis for establishing a juridical definition. The French delegation, for its part, would be unable to support the existing text of article 67; in particular, the final phrase was open to serious objections, for it seemed to provide a double criterion, adding to that of the 200-metre line that of possible technical exploitation.

11. For those reasons, the French delegation was unable to accept as a criterion valid in law a concept lacking in constancy, uniformity and certainty. A careful study would have to be made of the definition and limit of the continental shelf before embarking on the consideration of the juridical content of that notion which it was proposed to introduce in international law.

The meeting rose at 11.25 a.m.

FOURTH MEETING

Tuesday, 4 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 (articles 67 to 73) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. RUIZ MORENO (ARGENTINA), MR. SOLE (UNION OF SOUTH AFRICA), MR. GIHL (SWEDEN), U. MYA SEIN (BURMA), MISS GUTTERIDGE (UNITED KINGDOM), MR. KWEI (CHINA), MR. CARL STABEL (NORWAY), MR. CARBAJAL (URUGUAY) AND MR. RUBIO (PANAMA).

1. Mr. RUIZ MORENO (Argentina) said that, while it was gratifying that the International Law Commission had finally recognized the reality of the continental shelf, it was a pity that the Commission was reluctant to accept the principle of sovereignty of the coastal State over the continental shelf. His delegation believed that the sovereignty exercised over the continental shelf should be analogous to that exercised over the mainland territory, both by reason of the physical nature of the continental shelf and by reason of the nature of the rights vested in States.

2. Geology and oceanography had established that the continental shelf consisted of an extension of the continent itself under the sea, and it was that scientific conclusion which constituted the basis of President Truman's proclamation of 1945 upholding the jurisdiction of the State over the continental shelf and of subsequent proclamations by Peru, Chile and Argentina couched in similar terms.

3. Eminent international jurists minimized the difference between the seabed and the subsoil, which were regarded as being capable of occupation as a *res nullius*, provided that there was no infringement of the rights deriving from the freedom of the seas. Views had been held on that matter for some considerable time. Vattel, for instance, said that by reason of the various forms of utilizing the sea adjacent to the coast, it was subject to ownership and, hence, that the coastal State could appropriate an asset which lay within its reach, take possession thereof and exploit it in the same way as it had been able to acquire dominion over its land territory.

4. For centuries past, the activities of States had been carried on on the seabed outside the limit of the territorial sea — e.g., in the case of sedentary or permanent fisheries. Another important case was the exploitation of mines that ran out from the coast under the sea. For that reason, the right of States to occupy part of the subsoil had had to be recognized, since there was no rule in positive law prohibiting such action.

5. The Argentine delegation believed that the law relating to the continental shelf needed to be further developed. According to one theory, the submarine areas adjacent to the coast but outside the territorial sea constituted a *res nullius* capable of being occupied and appropriated by the coastal State. Those submarine areas were dependent on or appurtenances of the main-

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

² *Ibid.*, Eighth Session, Supplement No. 9 (A/2456), paras. 61 to 66.

land, and their ownership vested in the owner of the mainland. Hence, the coastal State, as the sovereign of the land, also exercised sovereignty over the continental shelf. In support of that view, he would cite the principle of "contiguity" accepted by the United States Government and many international jurists.

6. It was true that the affirmation of rights over the continental shelf took the form of unilateral acts by States, but that was not a valid reason for not recognizing the full rights of the State. International law was based on custom, and every custom originated in specific acts of States which by repetition acquired the force of a general and binding rule. That was the origin of the thesis relating to the territorial sea. The principal instrument affecting the continental shelf, President Truman's proclamation of 1945, and its acceptance by other States had given rise to a practice which, though based on unilateral acts, had acquired the validity of a principle of international law. The practice might perhaps be modified to take account of the interdependence of peoples, and there might well have to be regulations safeguarding the interests of shipping and fishing, but there could be no alteration of the principle of the sovereignty of the coastal State over the continental shelf.

7. For a considerable period, the problem of the continental shelf had escaped the attention of international law, but the reason for that was that technical progress had not revealed the possibilities of exploitation of its natural resources. A similar situation had arisen in regard to the law of the air, but there the principle of sovereignty had achieved full recognition and was established in international law. The Argentine delegation, therefore, considered that the approach to the problem should be reversed; the article should first assert the sovereignty of the coastal State over the continental shelf and then proceed to limit that sovereignty.

8. Mr. SOLE (Union of South Africa) said that his delegation accepted the broad ideas underlying the articles on the continental shelf as drafted by the International Law Commission. However, his Government had some misgivings about the vagueness of some of the provisions. As the representative of France had pointed out at the previous meeting there was some contradiction in article 67 between the reference to a depth of 200 metres and the notion that the continental shelf might be regarded as extending for as far as it was exploitable. Articles 70 and 71 used the expressions "reasonable measures" and "unjustifiable interference". Speaking as one whose experience was diplomatic and political rather than legal, he felt that a lawyer's interpretation of such expressions was likely to be very different from the interpretation placed on them by governments and politicians. The statement of the representative of Argentina showed how much importance governments attached to the continental shelf, and what disagreements might arise over the interpretation of such words as "reasonable" and "unjustifiable". He fully appreciated the difficulties that had faced the International Law Commission, but felt that the Conference should examine more closely the procedure suggested by the Commission for the settlement of disputes concerning the interpretation of the articles.

9. Article 73 provided that such disputes should be

submitted to the International Court of Justice at the request of any of the parties unless they agreed on another method of peaceful settlement. He believed that the International Law Commission had taken the view that the disputes likely to arise would not be of a technical character, and would therefore be suitable for submission to the International Court. He was not convinced that that would in fact be the case. If, for example, the continental shelf of a State were mined for radio-active materials, it was not likely that a dispute relating to such operations could be dealt with simply in legal terms, since the dispute would have its origin in a new field of science. Possibly other representatives might consider that such disputes might be referred to an arbitral body, not necessarily identical with the body referred to in article 57, but one organized on broadly the same principles.

10. Mr. GIHL (Sweden) said that his government took the view that the recent tendency of States to claim sovereignty over the continental shelf outside their territorial seas was not consistent with existing international law, and that any such claims required confirmation by international agreement. It was in the general interest that the subsoil of the continental shelf should be exploited, and the exploitation should be under the control of the coastal State. However, only the powers necessary for this purpose should be recognized, and he felt that draft article 68 went too far in using the expression "sovereign rights". The rights in question should be limited to those necessary for the exploration and exploitation of the natural resources. The expression "jurisdiction and control" was preferable. It should be stipulated, furthermore, that the coastal State was not empowered to interfere with scientific research. He also considered that the words "natural resources" should be replaced by some expression denoting inorganic natural resources exclusively. The exploitation of the natural resources of the continental shelf should be carried out with the least possible interference with the freedom of the seas. Article 71, providing for the establishment of safety zones at a reasonable distance around any installations on the continental shelf, was too vague. The International Law Commission had mentioned in its commentary on the article a possible maximum width of 500 metres for such zones, and his government felt that that figure should be inserted in the text of the article. The notion of the continental shelf was a constructive development in international law, but it was in the interests of the international community that any powers given to the coastal State in the shelf should be clearly limited.

11. U MYA SEIN (Burma) said that it was necessary for representatives to avoid taking up rigid attitudes, for otherwise the Conference might suffer the same fate as The Hague Conference of 1930, and the purpose of General Assembly resolution 1105 (XI) would be defeated. In paying tribute to the International Law Commission's draft, he said that generality was the keynote of nearly every article. Some of the articles, however, did not take full account of realities. The term "natural resources", for example, had been narrowly interpreted, in a way which failed to make allowance for the needs of States whose populations and consequential feeding problems had greatly increased in recent years.

Hence, the term should be widened to cover "bottom fish" and other species which had their habitat at the bottom of the sea. Any argument against widening the meaning of the term, on the ground that to do so would violate the principle of freedom of fishing on the high seas, would be based on a narrow interpretation of the term "high seas" favouring the interests of certain countries at the expense of the rest. In that connexion, he regretted to find that freedom of fishing on the high seas was in reality a principle which only applied to a few fortunate countries and not to all. The question was further obscured by the absence of a comprehensive definition and regulation of the rights of nations to fish on the high seas. Clarification was needed on that point.

12. Miss GUTTERIDGE (United Kingdom) said that the United Kingdom agreed in general with the principles embodied in the International Law Commission's draft articles dealing with the continental shelf, which represented a new development in international law. The United Kingdom agreed with the representative of France that the admissibility of the criterion of exploitability (mentioned in article 67) needed further consideration, since it was open to the criticism that it would make the extent of the continental shelf uncertain. The question of detached areas of the continental shelf also arose under article 67 (cf. paragraph 8 of the commentary in that article). She felt that the article should only apply to detached areas of shelf which were in genuine proximity to the continental shelf, and that it might be desirable to add an amendment to article 67 to make that point clear. Articles 68, 69 and 70 were acceptable to the United Kingdom. Her delegation attached great importance to the provision in article 68 which stated that the sovereign rights of the coastal State over the continental shelf were exercisable only "for the purpose of exploring and exploiting its natural resources". The Swedish representative had suggested that the term "natural resources" might need closer definition; this would require careful consideration in the light of the technical papers which had been prepared for the Conference.

13. With regard to article 69, the Argentine representative had put forward different principles which the United Kingdom could not accept. Certain of the examples from the legislation and practice of the United Kingdom which he had given could not be cited in support of his thesis.

14. The United Kingdom delegation might later submit amendments to articles 71 and 72. In particular, her delegation considered that article 71 should expressly specify the breadth of the safety zones mentioned in paragraph 2 of that article, and a specific provision should be inserted concerning the removal of abandoned or disused installations, (cf. paragraph 5 of the commentary on that article). With regard to the median line mentioned in article 72, her delegation would suggest that an extra clause might be added to make it possible for the median line to be fixed more easily. Referring to the South African representative's views on article 73, she pointed out that that article did not exclude the submission of technical disputes to a technical body.

15. Mr. KWEI (China) said that the International Law Commission's draft articles dealing with the continental shelf endeavoured to reconcile recognized principles of

international law. While paying tribute to the Commission's draft, he thought that certain amendments might be proposed to make the wording of the articles more precise. For example, the term "sovereign rights" in article 68 should be replaced by "rights of control and jurisdiction", since the control over the continental shelf should not be of the same degree as control over the territorial sea.

16. Article 67 was not precise enough. The legal status of the continental shelf was, in the terms of that article, subject to two different limitations: a depth of 200 metres (approximately 100 fathoms), or beyond that limit, to where the depth of the superjacent waters admitted of the exploitation of the natural resources of the said areas. Although it might be said that the former imposed a limitation of area and the latter a limitation of purpose, it was nevertheless true that, from the legal point of view, the latter contradicted the former in that it removed the limit which was fixed in the former for the purpose of avoiding disputes or uncertainty. China had no preference for one limitation over the other, but he felt that one of the two was redundant.

17. There were dangers in imposing a limit of depth of 200 metres and giving the coastal State sovereign rights over the area between the 200-metre line and its coast. The impression might be created that the continental shelf was an extension of the territorial sea and the contiguous zone. Furthermore, if a coastal State failed to exploit its continental shelf and also debarred other States from exploiting it, the natural resources of the sea would remain unexploited. He felt that the right of the coastal State over the continental shelf should be recognized on the condition that the exploitation of the natural resources was possible and that the coastal State had taken steps with a view to their development. In other words, the coastal State's right over the continental shelf should be regarded as a right of priority, or a preferential right, but not as a right incident to its sovereignty.

18. Mr. CARL STABEL (Norway) said that certain of the provisions contained in section III of the International Law Commission's draft were closely connected with those of other sections — for example, that dealing with the territorial sea. The rights over the continental shelf were bound up with the question of the breadth of the territorial sea. If the latter were to be altered by the Conference, the change would affect the provisions governing the continental shelf.

19. The problem of the continental shelf chiefly concerned the exploitation of oil resources, and since oil was of international interest, some international recognition of the problem was desirable. The crucial question was: should a universal regulation, which would have to be flexible and simple, grant the coastal State exclusive rights, or should it merely give the coastal State authority to regulate exploitation, at the same time granting the rights of exploitation to all States equally?

20. Although the conception of the continental shelf in the International Law Commission's draft was not based strictly on geological considerations, it had been greatly influenced by them. It was true that geological considerations provided a useful guide in some instances, but that was not the case invariably. Many difficulties

might arise. For example, under article 72, States had to establish their respective claims over the same piece of continental shelf, which might, in some cases, be less than 200 metres in depth in all parts. Depth of water was thus not a sufficient criterion in every case. One advantage of basing a definition of the continental shelf on geological considerations was that it set a limit to claims made by States. However, that limit had been abandoned in draft article 67, which provided for the extension of the limit beyond a depth of 200 metres to a distance which was unascertainable and hence potentially controversial.

21. The starting point in any definition should be the principle of the freedom of the high seas, and every limitation of that freedom was to be regretted. That view was partly recognized, for it was generally agreed that the rights of the coastal State over the continental shelf would not extend to the superjacent waters (article 69). He suggested that, if coastal States were to have exclusive rights of exploitation in the continental shelf, the limitation of their rights might perhaps be based not on the configuration of the seabed or the depth of the water, but on the distance from the coast. He felt that such a solution, if accepted by States, would not weaken the principles of the Commission's draft and, in the light of the principle of state equality, would be fairer. His delegation considered that the idea of sovereignty over the continental shelf should not appear in the text, and therefore could not accept the text of article 68. The resources of the continental shelf over which coastal States had rights should be defined, and should perhaps be restricted to mineral resources. The overriding factor in the delimitation of the continental shelf was the breadth of the territorial sea.

22. Mr. CARBAJAL (Uruguay) said that some objections had been voiced to the use of the words "sovereign rights" in article 68. He did not, however, share those objections, since it was clear that the expression referred only to the exploration and exploitation of the natural resources of the continental shelf. The sovereignty of the coastal State over the continental shelf was a consequence of the progress of science. States needed to exploit the resources of their continental shelf, and only by the exercise of sovereignty could the conditions of *animus possidendis* and *aprehensio*, which in law were the hallmarks of possession, be fulfilled. Such sovereignty should include rights of jurisdiction and administration, since they were implicit in sovereignty.

23. He did not agree that the natural resources of the continental shelf should mean solely the resources of the seabed and subsoil. It was scientifically and legally illogical to accept the principle of sovereignty over the seabed and at the same time to insist on the absolute freedom of the superjacent waters. The seabed stood in the same relation to such waters as a country's territory did to the superjacent air space and since, if article 68 were adopted, States would shortly be given complete sovereignty over the seabed of the continental shelf, such sovereignty should automatically extend to the superjacent waters. The principle of the freedom of navigation on the high seas should not be used as an argument to hold up the progress of scientific exploration of the seabed. Uruguay, while claiming complete sovereignty over the seabed, subsoil and superjacent waters of the

continental shelf, would respect the freedom of the high seas and the right of others to lay and maintain submarine cables on the shelf.

24. Mr. RUBIO (Panama) said that at the Conference of the Inter-American Council of Jurists and the Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters", held in 1956 at Mexico City and Ciudad Trujillo respectively his delegation had repeatedly pressed for a precise definition of the continental shelf in keeping with scientific knowledge and, in particular, with submarine geology. In the light of the views expressed in recent years by a number of technical bodies such as the International Committee on the Nomenclature of Ocean Bottom Features, his delegation considered that the term "continental base" would be more accurate than "continental shelf", for the former referred to the continental shelf and the continental slope. More than a question of terminology was involved, for if the expression "continental base" were used it might be possible to delimit the extent of the shelf. The International Law Commission had suggested a limit of 200 metres, or a line up to which the depth of the superjacent waters admitted of the exploitation of the natural resources of the continental shelf. If such a definition were accepted for legal purposes it might well be that, if in twenty-five years' time technological progress should make it possible to exploit resources at depths of more than 3,000 metres, some State would claim that that area was not a part of the continental shelf. Article 71 provided that the exploitation of the natural resources of the continental shelf must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea. Some reference should have been made in that article to the freedom of disinterested scientific research. On the occasion of the current International Geophysical Year he felt that the Committee might well look into the problems relating to scientific research.

The meeting rose at 5.25 p.m.

FIFTH MEETING

Friday, 7 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 (articles 67 to 73) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. KRISPIS (GREECE), MR. MOUTON (NETHERLANDS) AND THE MARQUIS DE MIRAFLORES (SPAIN)

1. Mr. KRISPIS (Greece) said that the term "continental shelf" did not occur in literature on international law published before President Truman's proclamation of 28 September 1945. It was a new term relating to a concept which, in the opinion of the Greek delegation, did not belong to existing international law but rather to the realm of theory. He cited a number of authorities,

including the International Court of Justice, in support of that view.

2. The Greek delegation did not consider that the institution of the continental shelf was regulated by customary rules of international law. Some ten years' practice — which might, moreover, be described as inconsistent or even casual — could not be thought to constitute the long usage which was one of the prerequisites of the existence of an international customary rule ; and other factors, including the opposition of certain major States to the concept of the continental shelf, had prevented the formation of such a rule based on general acceptance. In considering the International Law Commission's articles on the continental shelf, the Fourth Committee was, then, encouraging the progressive development of international law within the meaning of Article 13 of the United Nations Charter.

3. Some provisions of the articles before the Fourth Committee were concerned more with future possibilities than with existing facts. For example, article 67 spoke of " a depth of 200 metres . . . or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources " ; yet the existing limit of exploitation was determined by technical factors at less than 100 metres. Similarly, the position which the less developed States adopted with regard to the continental shelf was prompted more by the wish to protect themselves against possible future incursions by other States than by any immediate intention to exploit the continental shelf.

4. The definition of the continental shelf given in article 67 was extremely flexible. The very use of the term " continental shelf ", which had been borrowed from geology, was vague and might prove misleading. Moreover, the wording of the article did not make it clear that the two criteria established — that of a depth of 200 metres and that of possible exploitation — were separate and independent of each other ; the text might be misconstrued as suggesting that the latter criterion was a mere corollary of the first. Nor was it very clear what exactly was meant by the words " exploitation of the natural resources ". It would be preferable, in his delegation's opinion, to establish the outer limit of the continental shelf on the basis of depth alone, the test of possible exploitation being left out of account altogether.

5. Commenting on article 68, he remarked that the words " exploring and exploiting " seemed to cover all the uses which could possibly be made of the continental shelf. If that was indeed the meaning of the article, more specific language should be used. The words " natural resources " should be deleted or replaced by " mineral resources ", since the expression " continental shelf " meant only the seabed and subsoil of a particular submarine area and should on no account be used to denote the superjacent waters, which were governed by the principle of freedom of the high seas. Living resources, such as fish, belonged to the sea ; the seabed and subsoil could not contain resources other than mineral resources ; on the other hand, the seabed was only a mathematical demarcation surface between the sea and the continental shelf comprising, strictly speaking, only the subsoil. Accordingly, the Greek delegation maintained that fisheries, including sedentary fisheries, should be ex-

cluded from any regulations governing the continental shelf ; the same observation applied, of course, to navigation.

6. The words " sovereign rights " in article 68 were ambiguous, since they were directly followed by a limitation of those rights. It was difficult to see how that limitation would operate in practice if a monopoly over the continental shelf were, in effect, granted to the coastal State. The right of the coastal State to make full use of the continental shelf would have to be recognized, and that right would fall within the meaning of state sovereignty.

7. The Greek delegation would formally propose amendments to certain other articles at a later stage. For example, in article 71, paragraph 1, the words " any unjustifiable interference " should be replaced by " the least possible interference " ;¹ and in article 71, paragraph 2, the reasonable distance referred to should, if possible, be specified.

8. Subject to the foregoing remarks and to developments in the course of the debate, the Greek delegation would support the creation of the new legal institution of the continental shelf on two further conditions. One was that a new provision should be added to the effect that the rights of States with regard to the continental shelf would not enter into effect prior to the issuance of a public proclamation which would, of course, have to be realistic and consistent with the convention to be adopted at the current conference. The other was that the provisions of article 73 were retained. Indeed, the Greek delegation shared the view expressed by the Netherlands Government (A/CONF.13/5, section 18, comments on article 73) and other governments that it would be desirable to include provisions regarding the settlement of disputes with respect to all articles in any convention or conventions to be concluded on the law of the sea.

9. He added, lastly, that the most correct manner of dealing with the question of the continental shelf would be to embody the provisions relating thereto in a separate instrument.

10. Mr. MOUTON (Netherlands) said that his delegation greatly appreciated the work of the International Law Commission and was in general agreement with the articles relating to the important subject of the continental shelf. However, since the draft articles gave the coastal State what amounted to a monopoly, its rights should be clearly limited.

11. There were two different methods of exploiting the natural resources of the continental shelf. The first involved the use of fixed or floating installations which might interfere with shipping and fisheries, and that type of exploitation could be limited by a depth line ; however, it might be preferable to specify a depth line of 550 metres, rather than 200 metres, as being nearer to the deepest edge of the continental shelf, and more likely to result in an agreement which could remain unaltered for a long period.

12. The other type of exploitation, tunnelling or directional drilling from the mainland or from islands, did not interfere with shipping or fisheries and hence did

¹ Proposal subsequently circulated as document A/CONF.13/C.4/L.54.

not call for any limitation other than what was necessary to delimit the boundaries between two States, bordering on the same shelf, whose coasts were adjacent to or opposite each other. That form of exploitation was not subject to any legal limitation by reference to the depth of the superjacent waters.

13. He considered that, as a precaution against misunderstanding, the term "natural resources" needed definition. His delegation would submit certain amendments in due course.

14. The Netherlands Government agreed with the International Law Commission's view that the waters above the continental shelf were high seas.

15. There appeared to be some overlapping between article 61, paragraph 2, and article 70; it should be possible to deal with the subject either under section I, sub-section C (Submarines, cables and pipelines) or under section III (The continental shelf).

16. The phrase "unjustifiable interference" in article 71, paragraph 1, was too vague; he stressed that in the balancing of the various interests involved the interests of navigation should take precedence.

17. The safety zones referred to in paragraph 2 of the same article should be clearly defined, and his delegation would submit amendments² proposing a safety zone of a radius of fifty metres around single installations, from which all ships except exploitation craft would be barred as a fire-prevention measure, and a further provision concerning groups of installations built at distances of less than one mile from each other under which it would be compulsory for the coastal State to give due notice of such groups and of additions to them, to mark them on all charts and to provide them with suitable identifying lights and fog signals. All vessels except exploitation craft and ships of less than 500 registered tons would be forbidden to enter the area occupied by such groups of installations.

18. The Netherlands Government gave its full support to article 73, and was in favour of extending the provision contained therein to cover disputes relating to any of the draft articles.

19. The Marquis de MIRAFLORES (Spain) said that, despite its long coast-line, his country had only a narrow continental shelf. Hence, it was not some selfish interest, but the wish to contribute to the formulation of rules acceptable to all States which governed his delegation's position. He hoped that the Conference would not let slip the opportunity for establishing the new concept of the continental shelf as part of international law. Statements already made at the Conference showed the importance which governments attached to the subject.

20. Because the concept was new, it was important to define it clearly. He agreed with the representative of Panama, who, at the 4th meeting, had stated that the term "continental base" was to be preferred to "continental shelf". Article 67 should define the limits of the continental shelf on the basis of specific criteria, taking account of all submarine zones that formed a geological unit with the coast.

21. He believed it would be better to avoid using such

expressions as "sovereignty" or "jurisdiction and control" and references to the sea as a *res nullius*; rather, the draft provisions should describe the coastal State as the sole owner of the right to explore and exploit the natural resources of the continental shelf. The rights in question should be regulated in terms respecting the principle of the freedom of the seas, which had so largely helped to spread civilisation throughout the world and to create the community of nations. The same principle, applied to outer space, would open new horizons for mankind. References to that principle and the consequent rights of maritime and aerial navigation, fishing and the laying of cables, should be included in the final text. It should also be specified that the natural resources to be exploited by the coastal State were restricted to mineral resources, as the International Law Commission had originally suggested.

22. The Spanish Government would favour the idea of including a reference to a safety zone or a radius of 500 metres, or some similar specific and reasonable extent around installations employed in the exploration and exploitation of the resources of the continental shelf.

23. Spain supported article 73, since it did not exclude peaceful means of settlement other than submission to the International Court.

24. He would make detailed comments at a later stage and propose amendments where suitable.

The meeting rose at 4.15 p.m.

SIXTH MEETING

Monday, 10 March 1958, at 10.45 a.m.

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

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 67 to 73) (A/3159) (continued)

General debate (continued)

STATEMENTS BY MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY), MR. ARREGLADO (PHILIPPINES) AND MR. CACCIAPUOTI (UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION)

1. Mr. PFEIFFER (Federal Republic of Germany), while expressing his government's warm appreciation of the valuable work done by the International Law Commission, said that the purpose of the memorandum (A/CONF.13/C.4/L.1) which his delegation had submitted on the exploration and exploitation of the subsoil of the high seas was to propose a system in closer accord with the principles that the International Law Commission had so vigorously affirmed in various passages in its reports, more specially in relation to the freedom of the high seas as defined in article 27. Freedom to explore or exploit the subsoil of the high seas should be included among the other freedoms established by that article. That freedom had always existed potentially, but it had only recently acquired practical importance as a result of technological discoveries.

2. His delegation welcomed that development, for it believed the exploitation of the subsoil of the sea to be

² Proposal subsequently circulated as document A/CONF.13/C.4/L.22.