Document:-
A/CN.4/55 and Add.1/Rev.1 & Add.2-6

Regime of Regime the High Seas – Comments by Governments on Draft Articles on the Continental Shelf and Related Subjects.

Topic:
Law of the sea - régime of the high seas

Extract from the Yearbook of the International Law Commission:-
1953 , vol. II

member of the tribunal. I think that a longer period should be allowed than the sixty days prescribed for the other cases, since an arbitral award on matters which must be presumed to be of capital importance cannot be left open to annulment indefinitely.

" Such is my opinion on the draft submitted for comment."

I repeat that the Institute approved this report, but it made one amendment. With regard to the withdrawal of an arbitrator, it took a stand between that of the draft and that of my report, preferring that the party which appointed the arbitrator should be allowed a certain period of time to replace him and that the remaining members of the tribunal should be empowered to act only if the replacement is not effected within that period.

It was also agreed that if any member of the Institute present at the meeting subsequently had any suggestion to make, he would forward it to the Ministry.

Annex II

Comments by Governments on the draft articles on the continental shelf and related subjects prepared by the International Law Commission at its third session in 1951 [20]

1. Belgium

Comments of the Government of Belgium transmitted by a note dated 1 March 1953 from the permanent delegation of Belgium to the United Nations

[*Original: French*]

The fact that a considerable number of countries have taken unilateral measures to regulate the exploration and exploitation of the submarine platform and of the epi-continental waters above that platform shows the desirability of determining the law of nations with regard to such exploitation.

The same importance attaches to the régime of territorial waters, the consideration of which was given priority by the International Law Commission.

The two problems have certain aspects in common.

A study of the International Law Commission's preliminary draf on the continental shelf and related subjects (A/1858) calls for the following comments:

The Belgian Government attaches great importance to articles 3, 4 and 5 of part I of the draft, because their purpose is to safeguard the freedom of the high seas.

It admits that this freedom cannot be absolute and that internationally accepted measures should be taken, both with regard to the exploitation of submarine wealth and with regard to fishing outside territorial waters.

It considers that international bodies should be appointed to delimit both submarine continental shelves and fishing zones in the high seas. These bodies should be advisory only and should endeavour to promote international agreements on the régimes to be set up. The Belgian Government is opposed to the proposal in part II, article 2, notes 3 and 5, of the draft. The bodies concerned cannot exercise legislative powers over States, which can be bound only by international conventions accepted by them.

The following further comments may be made with regard to the draft.

PART I

Article 1

Since the term " continental shelf " is rightly not used in its geological sense, it would seem better not to use it at all and to describe this zone by the term " submarine areas ".

This gives a better definition of the scope of the article, for it does not apply to the waters which cover these areas and over which no State can exercise an exclusive right.

If these areas are delimited with reference to the depth at which the exploitation of the natural resources of the sea-bed and the subsoil is possible, up to a maximum depth of 200 metres, the nature of the submarine areas will be adequately defined.

Article 2

It is essential to maintain the definition of the control and jurisdiction exercised by the riparian State, namely, that such control and jurisdiction should be exercised exclusively with a view to the exploration and exploitation of the submarine areas. Any idea of sovereignty must be rejected.

Articles 3, 4 and 5

These articles, which lay down freedom of navigation, fisheries, airspace and the establishment of submarine cables, must be retained, otherwise, the principle of control and jurisdiction over submarine areas will not be acceptable.

Article 6

The meaning of the words " must not result in substantial interference with navigation or fishing " should be defined. Although the exploitation of the subsoil might not interfere with fishing, or with the activities of fishermen, it might reduce or even completely destroy certain species of fish in the localities concerned.

The International Law Commission's proposal might be taken as a basis for discussion. It seems to mean that exploitation would be permitted only if it did not interfere with navigation and fishing, obstruct the traffic on maritime routes, and pollute or disturb fisheries.

As at present worded, article 6 may give the impression that no previous notification is required from the State which begins exploration or exploitation. This question should be clarified and some authority should be designated with power to decide whether the conditions of article 6 have been observed and to refuse permission if necessary.

The safety zones (article 6, paragraph 2) should be delimited in the article itself, to avoid any infringement of freedom of navigation and fishing.

Article 7

Legal provisions should be laid down as a basis for arbitration and for possible recourse to the International Court of Justice in connexion with disputes on the delimitation of the respective submarine areas of two neighbouring countries.

In the absence of an agreement on delimitation between the countries concerned, the submarine areas of two neighbouring States might be delimited by the prolongation of the line separating their territorial waters, and those of two States separated by water, by the median line between the two coasts.

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

PART II

Article 1

It should be understood that no measure for regulating and controlling fishing on the high seas adopted unilaterally by one State can be invoked against the fishermen of another State. Any regulation contrary to this principle, which is the corollary of that of the freedom of the high seas, is inadmissible.

Article 2

As has been said above, it is useful to appoint advisory international bodies. Nevertheless, in view of the variety of the problems which arise in some fishing areas, it does not seem advisable to assign these advisory powers to a single body. It would be desirable to consult regional bodies or councils. In the case of Europe, such matters might be referred to the International Council for the Exploration of the Sea.

Article 3

Each government should adhere strictly to the principle of the freedom of the high seas and understand that it can only reserve fishing for its nationals in its own territorial waters. Sedentary fisheries cannot constitute an exception to this principle, except in cases where a certain part of the high seas has in fact been used for such fishing for a long time and such use has not been formally and persistently opposed by other States, which might have valid objections in view of their geographic situation. Even so, such fishing should be carried on in such a way as to interfere as little as possible with the principle of the freedom of the high seas (Gidel).

Article 4

It is essential to define in this article the base line from which the twelve-mile limit is to be measured. This base line should be that recognized for determining the limits of territorial waters. The question of base lines should be dealt with in an international agreement after the problem of territorial waters has itself been studied.

2. Brazil

Letter from the permanent delegation of Brazil to the United Nations

[*5 March 1952*]

The Brazilian Government, by Decree No. 28.840, of 8 November 1950, proclaimed its control and jurisdiction over the continental shelf, considered as an extension of the national territory. The Decree does not establish any specific delimitation of the continental shelf. The right of free navigation on the superjacent waters is expressly recognized by the Act of the Brazilian Government.

After carefully studying the work accomplished by the International Law Commission, my Government wishes to praise the Commission for the thoroughness and quality of the research it undertook on such a new and controversial matter, where customary law and international practice are still lacking. The Brazilian Government accepts, in principle, the conclusions reached by the International Law Commission, embodied in the draft articles, and regards them as a very valuable contribution for the future definition of the international régime of the continental shelf. Although in general agreement with the Commission, we beg leave to comment on two points which my Government considers of paramount importance.

In regard to article 1, my Government feels that the Commission should further explore the possibility of establishing, at least on a provisional basis, a more precise limit for the continental shelf. As a matter of fact, the International Law Commission itself recognized in paragraph 198 of the report covering its second session (A/1316) that "the area over which such a right of control and jurisdiction might be exercised should be limited".

Regarding article 2, the Brazilian Government feels that the word "exclusive" should be inserted before the word "purpose". This would avoid possible doubts and would give better expression to the points of view of the members of the Commission, as stated in paragraph 1 of the commentaries to the same article. If the members of the Commission felt that the "control and jurisdiction over the continental shelf should be exercised *solely* for the purpose stated" we can see no objection to inserting the word "exclusive" in the phraseology of the article.

Apart from those two points, the Brazilian Government, as stated above, finds itself in agreement with the draft articles prepared by the International Law Commission, reserving the right to present any further comments and to propose any other modifications to the text it may deem fit when the matter will be ready for discussion at the General Assembly.

3. Chile

Comments of the Government of Chile, transmitted by a letter dated 8 April 1952 from the permanent delegation of Chile to the United Nations

[*Original: Spanish*]

The Government of Chile congratulates the Commission on having prepared draft articles on the highly specialized subject of the continental shelf.

This Government, however, feels bound to object to some of the provisions of these draft articles, particularly in regard to:

(1) The legal concept of the continental shelf;

(2) The nature of the rights which may be exercised by a State over the submarine shelf adjacent to its territory;

(3) The legal status of the waters overlying the seabed and subsoil; and

(4) Subjects related to the continental shelf.

1. Legal concept of the continental shelf

Geographically and geologically, the expression "continental shelf" is generally taken to mean the submarine area contiguous to the national territory, lying at a depth of not more than 100 fathoms (185 to 200 metres), and forming a single morphological and geological unit with the continent.

Is it therefore necessary to make the recognition of a coastal State's rights depend upon the existence of a continental shelf as understood and defined by geology? In other words, are States with abruptly shelving coastlines, without a gently sloping shelf descending, sometimes almost imperceptibly, to a depth of 200 metres, to be excluded from all jurisdiction over the sea-bed and subsoil bordering upon their deep-sea water?

These doubtful points of theory have been cleared up in the draft articles prepared by the United Nations International Law Commission.

According to article 1 of the draft, ". . . the term 'continental shelf' refers to the sea-bed and subsoil of

the submarine areas contiguous to the coast, but outside the area of territorial waters, where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil. "

The depth limit of 200 metres has been eliminated from the definition and replaced by the modern legal idea that the sea-bed and subsoil may be exploited.

As the commentary on article 1 so properly remarks, technical developments in the near future might make it possible to exploit intensively the natural resources of the sea-bed and subsoil, whatever the depth of the superjacent waters.

The origin of the International Law Commission's article may be found in the Commission's 1950 report, the relevant passage of which reads as follows:

> " The Commission took the view that a littoral State could exercise control and jurisdiction over the sea-bed and subsoil of the submarine areas situated outside its territorial waters with a view to exploring and exploiting the natural resources there. The area over which such a right of control and jurisdiction might be exercised should be limited; but, where the depth of the waters permitted exploitation, it should not necessarily depend on the existence of a continental shelf. The Commission considered that it would be unjust to countries having no continental shelf if the granting of the right in question were made dependent on the existence of such a shelf."

(United Nations: Report of the International Law Commission; *Official Records of the General Assembly, Fifth Session, Supplement No. 12* (A/1316), New York, 1950, page 22.)

According to the authoritative opinion of Mr. J. P. A. François, the Netherlands jurist, acceptance of the geological conception of the continental shelf would mean inequality amongst States and unfair discrimination against a State whose continental shelf did not go beyond the limits of its territorial waters.

The International Law Commission's conclusions on this point appear to the Chilean Government to be correct and acceptable, for geology, while it may influence law to some extent, cannot impose principles upon it.

2. Rights of a State over the adjacent submarine shelf

The International Law Commission would not grant the coastal State full sovereignty, but only a limited and special form of jurisdiction, over this very special area.

Article 2 of the draft provides that " The continental shelf is subject to the exercise by the coastal State of control and jurisdiction *for the purpose of exploring it* and *exploiting its natural resources.* "

Apparently the Commission refrained from using the word " sovereignty " in order to avoid the implications of its acceptance on the status of the superjacent waters.

The conclusions of the International Law Commission on this point are unrealistic and are out of harmony with the usual international practice.

The Governments of Mexico, Argentina, Chile, Peru, Costa Rica, Guatemala, Honduras, El Salvador, Nicaragua, Brazil and Ecuador have all, at different times, made unilateral statements of their positions on this matter, declaring categorically that their rights over the submarine shelf contiguous to their national territory amount to more than mere " control " or " jurisdiction ", and are proper to or inherent in sovereignty and dominion.

Thus the Chilean Official Statement of 23 June 1947 declares that " The Government of Chile confirms and proclaims its *national sovereignty* over all the continental shelf adjacent to the continental and island coasts of its national territory, whatever may be their depth below the sea, and claims by consequence all the natural riches which exist on the said shelf, both in and under it, known or to be discovered. "

(Memoria del Ministerio de Relationes Exteriores, 1947, page 204.)

Similar concepts are expressed in the statements issued by the other American Governments just mentioned.

There are various reasons to justify sovereignty and dominion over the continental shelf as this is now understood.

In the first place, this area is actually an extension and a part of the national territory; it should therefore be subject to the sovereignty of the State of whose territory it is an under-sea extension in the same way as the rest of that territory.

As Mr. Miguel Ruelas so justly remarks, the continental shelf belongs to the coastal State, because generally the rivers of that State have brought down the rich deposits which cover the coastal area of the shelf (See Miguel Ruelas, " *La Cornisa Continental Territorial* ". *Revista de Derecho Internacional*, year IX, Vol. XVII, January-June 1930, page 130).

In the second place, the security and the right of self-preservation of the coastal State have some importance. These fundamental rights include the right of a State to dispose of and use its national territory in all possible ways.

To deny a coastal State the right of sovereignty and jurisdiction over the continental shelf is equivalent to denying it part of the national territory with which, as an international entity, it came into being. In other words, that State will be deprived of a source of wealth which, sooner or later, given the natural rate of growth of all communities, it will wish to use and dispose of as owner.

The right of self-preservation has another aspect, namely, the action necessary to repel aggression and to avert imminent danger.

The claim by a nation that its continental shelf should be subject to its exclusive sovereignty, dominion and jurisdiction lessens that danger and the probability of disputes between nations.

A strong foreign nation, desiring to exploit actually or ostensibly the resources in the waters adjacent to the territorial waters of a State might set up installations or other appropriate equipment which would not only decrease the natural resources in a way prejudicial to the coastal State, but also positively threaten the security and territorial integrity of that coastal State.

In the third place, fisheries are still a vital necessity and an element of the problem, since if the deep-sea fishing grounds, which are usually over those areas, are left at the mercy of the first comer, the species will be depleted.

Finally, Chile is so situated geographically that both the waters and the submarine areas in question are absolutely necessary to its survival.

Furthermore, the theory of the extension of sovereignty over the continental shelf and the superjacent waters is confirmed by international practice.

For all these reasons the Government of Chile feels obliged to reject article 2 of the draft and to suggest that the principle that *sovereignty, dominion and jurisdiction over the continental shelf are vested* ipso jure *in the coastal State* should be confirmed.

3. Legal status of waters overlying the sea-bed and subsoil

Under the draft prepared by the United Nations International Law Commission the waters overlying the continental shelf have the legal status of high seas, with all its consequences. Surface navigation and fishing rights can therefore only be restricted to the degree absolutely necessary for exploring and exploiting the resources of the sea-bed and subsoil.

With regard to installations constructed on the high seas for the purposes already indicated, the Commission considers that safety zones may be established round them but should not be classed as territorial waters.

The subject is dealt with in articles 3, 4, 5 and 6 of the draft. Under these articles the rights which may be exercised by the coastal State over the waters overlying the sea-bed and subsoil of the continental shelf do not conform exactly to the concept of sovereignty. If the theory propounded by the International Law Commission is accepted, the coastal State will have only very partial and special jurisdiction over the high seas — i.e., it will be entitled to exercise only control and supervision.

The principles accepted by the International Law Commission lead to a manifest contradiction; whereas, as we have already suggested here, the continental shelf should be subject to sovereignty, i.e., to the total jurisdiction of the State whose territory extends beneath the sea. Thus the sea-bed and subsoil would be subject to the dominion and sovereignty of the coastal State, while over the superjacent waters that State would only exercise restricted rights of an economic and administrative nature, which might well give rise to conflicts of jurisdiction.

These principles should therefore be brought into line with a realistic rule or system which would safeguard the rights of the coastal State.

Whenever a rule is needed to settle disputes between nations, jurisprudence produces one which, under the test of time, is confirmed if satisfactory and amended or superseded if not.

In this belief the Government of Chile would reject articles 3, 4, 5 and 6 and propose their replacement by a new provision proclaiming that *the sovereignty of a coastal State extends to its continental shelf and to the superjacent high seas*, subject to the limitations imposed by international law to ensure the innocent and peaceful passage of the ships of all nations and the establishment and maintenance of submarine cables.

This theory of sovereignty, adopted by the Government of Chile, appears to be borne out by the practice of certain States. The Governments of Argentina, Chile, Peru, Costa Rica, Honduras and Nicaragua, in proclamations dated respectively 11 October 1946, 23 June 1947, 1 August 1947, 27 July 1948, 28 January 1950 and 1 November 1950, have categorically claimed the sovereignty of their States over the continental shelf adjacent to their coasts and over the superjacent waters to the extent required to guarantee to those States ownership of the resources therein contained.

4. Subjects related to the continental shelf

A. *Resources of the sea and sedentary fisheries*

The problem of the continental shelf is closely linked with that of the conservation of resources of the sea. The International Law Commission has accordingly prepared three articles based on the former practice of international law by which, as a corollary to the freedom of the seas, no State could reserve to itself absolutely and as against all other nations a monopoly of hunting and fishing in any part of the " free " or " high " seas.

That used to be the international law or rule, but the principle of the freedom of the seas must be reexamined in the light of the present facts.

The seas are in reality dominated, used, and — it may almost be said — possessed by States maintaining powerful navies, fishing and merchant fleets, bases, supply ports, docks and shipyards. The nationals of those States are the only persons who fully enjoy all the privileges of the " freedom of the seas ".

Such a state of affairs has a direct bearing on the area of the territorial sea, as it would not suit the major sea Powers to have the territorial waters, where international custom has recognized the exclusive right of the coastal State to fish and hunt, increased in area.

It is a well-known fact that fishing fleets under the direct control of the great sea Powers engage in activities prejudicial to the States bordering upon the Pacific coast.

The American community could not remain indifferent to such acts, and since 1945 there has grown up the practice of protecting, conserving, regulating and supervising the operation of fishing and hunting, in order to prevent the diminution or exhaustion, by illicit activities such as those mentioned, of the considerable resources of the seas of those areas, which are indispensable to the well-being and progress of the American peoples.

On 28 September 1945, the President of the United States of America formulated a new doctrine when he issued a proclamation accompanied by an executive order, declaring the right of his country to establish fisheries conservation zones in the high seas areas contiguous to the coasts of the United States, either exclusively or in agreement with other States concerned.

In an Official Declaration dated 23 June 1947, the President of Chile, on the basis of existing doctrine and of similar measures taken by Mexico and Argentina, laid down the following:

" 2. The Government of Chile confirms and proclaims its national sovereignty over the seas adjacent to its coasts whatever may be their depths, and within the limits necessary to reserve, protect, conserve and exploit the natural resources of whatever nature found on, within and below the said seas, placing within the control of the Government especially all fisheries and hunting activities with the object of preventing the exploitation of natural riches of this kind to the detriment of the inhabitants of Chile and to prevent the spoiling or destruction of those riches to the detriment of the country and the American continent.

" 3. The demarcation of the protection zones for hunting and deep sea fishing in the continental and island seas under the control of the Government of Chile will be made in virtue of this declaration of sovereignty at any moment which the Government may consider convenient, such demarcation to be ratified, amplified or modified in any way to conform with the knowledge, discoveries, studies and interests of Chile as required in the future. Protection and control are hereby declared immediately over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 sea miles from the coasts of Chilean territory. This demarcation will be calculated to include the Chilean islands, indicating a maritime zone contiguous to the coasts of those islands, projected parallel to those islands at a distance of 200 sea miles around their coasts.

" 4. The present declaration of sovereignty does not disregard the similar legitimate rights of other States on a basis of reciprocity, nor does it affect the

rights of free navigation on the high seas." (*Memoria del Ministerio de Relaciones Exteriores*, 1947, page 203.)

Other countries followed our example — Peru in 1947, Costa Rica in 1948, and El Salvador and Honduras in 1950 — using in their declarations on the subject terms very similar in form and content to those in the Chilean proclamation. All this is ground enough for saying that the doctrine that the State may establish exclusive zones of control and protection of maritime fishing and hunting in areas of the high seas contiguous to its territory known as "continental seas or waters" has become part of the American international system.

The Government of Ecuador promulgated on 22 February 1951 a Maritime Fishing and Hunting Act, article 2 of which extends the territorial seas to a distance of twelve sea miles outward, subject to any future definition of the term jurisdictional waters of the Republic of Ecuador (see *Registro Oficial*, year III, No. 747, page 6149).

If we turn from the practice of States to recently concluded multilateral treaties, we find the same tendency to limit hunting and fishing on the high seas.

Article 9 of the Treaty of Peace with Japan obliges that country to conclude agreements regulating and limiting fishing on the high seas.

For these reasons the Government of Chile is obliged to scrutinize articles 1, 2 and 3 of part II of the draft prepared by the United Nations International Law Commission, and believes that there should be a reaffirmation of the right to establish an exclusive hunting and fishing zone 200 sea miles wide.

This measure, which the Chilean Government supports, is based on the following reasons: (1) the special configuration of the submarine shelf along the coasts of Chile; (2) the exploitation of the fisheries, which are of vital concern to Chile; (3) the inadequacy of three miles of territorial sea for protecting the fishing industry and preventing destruction of marine life; and (4) the improper jurisdiction exercised in the past and present by certain foreign vessels over Chilean fishermen, whose living comes mainly from the sea.

B. *Contiguous zones*

By the term "adjacent zone" or "contiguous zone", international law recognizes the existence of a maritime belt or area between the high seas and the territorial waters over which a coastal State may exercise certain limited rights of a generally administrative nature relating to sanitary and customs control, safety of navigation and the protection of fishing.

Its legal nature should not be confused with that of the territorial sea, which is a part of the territory of the coastal State and therefore subject to its sovereignty. The total jurisdiction of the coastal State is exercised over the territorial sea, but it has only partial and special powers over the contiguous zone.

In the draft prepared by the United Nations International Law Commission the contiguous zone appears as a belt of the high seas, contiguous to the territorial sea, over which the coastal State may exercise the control necessary to prevent infringement within its territory or territorial waters of its customs or sanitary regulations and any attack on its security by foreign vessels. According to article 4 of the draft, the breadth of the zone may not exceed twelve nautical miles measured from the coast, a much less favourable provision than that of the draft prepared in 1929 at Harvard University, in which the contiguous zone may be of any width. (Draft of Convention on Territorial Waters, article 20; the text appears in *Supplement to the American Journal of International Law*, volume 23, April 1929, page 245.)

Moreover, how can these twelve miles be reconciled with the vast extent of ocean prescribed in article 4 of the Inter-American Treaty of Reciprocal Assistance, an area of sea classified by doctrine as a contiguous zone?

The limit adopted by the International Law Commission seems contrary to the new tendency in international law not to give the zone an exact or well-defined limit but rather to consider the jurisdiction which the coastal State must exercise on the high seas.

The Government of Chile considers that the limit prescribed in article 4 of the International Law Commission's draft should not be established, but that the contiguous zone should be extended and broadened so that the coastal State may take the steps necessary to prevent, within its territory or territorial waters, infringement of its customs, fishing or sanitary regulations and attacks on its political or economic security by foreign vessels.

The Government of Chile believes that this zone should be at least 100 nautical miles measured from the coast.

4. DENMARK

Communication from the permanent delegation of Denmark to the United Nations

NOTE: By a *note verbale* to the Secretariat, dated 13 May 1952, the Permanent Delegation of Denmark to the United Nations transmitted the following "comments and viewpoints of Danish experts". The *note verbale* stated that "the Danish Government wishes to reserve its final position, until it has been given the opportunity to review the points of view of other countries as well as the formulation of the final result of the existing international co-operation in this matter".

The draft is considered a proper basis for negotiations on this subject. It is considered particularly valuable that it has succeeded in obviating the difficulties involved by the controversial question of the extent of territorial waters. By refraining from fixing any definite geographical limit to the extent of the shelf into the sea, differences of opinion have been precluded on that point. The avoidance of any reference to sovereignty in the established sense of the word is another useful aspect of the draft which refers only to an exclusive right to exploration and exploitation without involving, for instance, the question of the status of such areas during conditions of war and neutrality. The Danish authorities would find it appropriate that the right of the coastal State as set out in part I, article 2, be expressly characterized as an exclusive right since that would preclude any idea of expansion of the territory of the State concerned.

The media through which the draft thus reaches a practicable arrangement cannot, however, be considered a final solution to the problems as far as Denmark is concerned. In the Baltic, where there is no deep sea, the system outlined in the draft will necessitate agreements with the other Baltic Powers, and such agreements are likely to encounter difficulties and may perhaps prove impracticable. On the west coast of Denmark, the application of the principle of control and jurisdiction as far as possibilities of exploitation exist might also lead to conflicts of interest with other countries.

The draft, therefore, gives occasion for certain comments involving questions of principle as well as various individual aspects:

For the special conditions existing off the Danish coasts, part I, article 7, prescribes that two or more States to whose territories the same continental shelf is contiguous shall establish boundaries by agreement;

failing agreement, the parties are under obligation to have boundaries fixed by arbitration, involving — according to the commentaries — a possible recourse to the International Court of Justice.

This alternative, however, is not practicable in all cases. In the first place, not all States would be willing to abide by a solution of that nature; more particularly, some of the countries which would be involved by the areas in question are known to be opposed thereto as a matter of principle. But even when the question is to be referred to arbitration or to a court, a solution would seem unlikely, unless the treaty itself already contained certain directives or guiding principles, since these problems involve entirely new aspects which can hardly be decided according to existing legal or political principles. In this connexion, the commentaries admittedly refer to a decision *ex aequo et bono* by which the court may, to some extent, disregard existing law or the fact that the existing law contains no definite rules or guiding principles. Nevertheless, this expression has certain bearings upon a legal or a general moral evaluation, but provides no guidance for decision of entirely new technical problems or political pretentions.

Hence, the Danish authorities would find it desirable that the treaty itself should provide for a body composed of experts which could submit proposals for such delimitations, possibly with some form of appeal or recourse to arbitration or to a court. This body might consist of, for instance, three non-partisan expert members, one appointed by the Security Council of the United Nations, one by the General Assembly, and one by the President of the International Court of Justice.

The decisions of this body should be reached on the bases of directives laid down in the treaty. Should a State interested in the decision find that such directives had not been complied with, or that the decision was otherwise unreasonable, it should be entitled to refer that question to a court of arbitration established by the parties or, failing this, to the International Court of Justice which should have authority to decide the aspects specifically mentioned in the treaty, and possibly to refer the matter back to the expert body for reconsideration if the circumstances were found to warrant such action.

In regard to the directives mentioned above, the commentaries already refer to the median line, and where this line is applicable, such reference is fully approved by Denmark. Cases may occur, however, where a median line is not directly applicable, for instance, because the interests in the exploitation of the shelf are more or less at right angles to each other; in such cases reference could be made to a solution according to the bisector.

Furthermore, it is felt desirable that the points of view referred to on page 71 of the rapporteur's second report were expressly incorporated into the treaty, namely, the reference to a line perpendicular to the coast drawn from the point at which the frontier between the territorial waters of the two countries reaches the high seas. If such a boundary between the two territorial waters of two countries has previously been fixed according to a line of demarcation which can be prolonged towards the high seas, such prolongation should be indicated as the starting point for the line of demarcation also on the continental shelf.

However, in some cases an area may have to be divided between three or more countries. In such cases reference may be made to planes forming the locus to the points which are closer to one of the countries than to any of the others.

Such directives or guiding principles would establish a basis for a solution in cases where agreement among the interested countries could not be reached, while the absence of such principles may entail differences of opinion and disputes which the draft intends to obviate.

Having regard to the basic principles of the draft in connexion with the above comments, the Danish authorities have prepared the enclosed sketch [21] of a division of the shelf contiguous to the Danish coasts facing the North Sea and the Baltic and the waters between them. This sketch is primarily based on the boundaries fixed on 3 September 1921 between Danish and German territorial waters east and west of Jutland, and the boundary fixed by agreement of 30 January 1932 between Danish and Swedish waters in the Sound and the prolongation of these lines combined with the median line, where the latter is applicable, and otherwise based on planes forming the locus of points closer to Denmark than to any other country involved. The sketch might serve as an illustration of a division under concrete conditions calling for special solution; the principles outlined may also be applicable to analogous cases in other geographical areas.

Concerning the actual exploitation of the sea-bed and the subsoil, part I, article 5, expressly states that the new arrangement shall not prevent the laying and maintenance of submarine cables by other States. It is assumed that this provision refers to cables not only for telecommunication but also for transmission of power and the like. The Danish authorities are in full agreement with this provision. With the present formulation it may be doubtful, however, which of the two interests shall be overriding or, in other words, whether a State may be required to move the cable or, vice versa, whether a cable can be laid even where this is at variance with an exploitation intended by the coastal State. It would seem natural here to distinguish between cables already existing, in which case a removal, if any, should probably entail a compensation for the expenses incidental to such removal, and to the laying of new cables which should be effected in such a way as not to interfere with steps for exploitation of the sea-bed already taken by the coastal State. Also where other installations are involved which have already been placed by other States, for instance, the mooring of lightships and the like, some regard should be had to arrangements existing already.

On the other hand, the commentaries indicate that this provision shall not be extended to pipelines, which is probably intended to mean the laying of new pipelines. However, other types of installations may be placed on the sea-bed and, in the view of the Danish authorities, it would therefore be desirable to have it expressly established that the exclusive right recognized for the coastal State (see the remarks to part A, article 2 above) shall cover any other exploitation of the sea-bed and the subsoil, with submarine cables as the only exception, for instance the right to cultivation (algae and other marine plants), establishment and maintenance of permanent installations for exploitation of the sea-bed, including the fixing of permanent stakes and other fishing devices, stone-gathering and pearl-fishing on the sea-bed, etc., so that other States could not in any case, apart from submarine cables, use the sea-bed or the subsoil without the consent of the coastal State, with the explicit recognition that the exclusive right comprises all such forms of exploitation.

With respect to part II, articles 1 and 2, the following comments may be made:

The Danish authorities take a favourable view of the efforts expressed in these articles to provide possibilities for the conservation and control of fishing on the high seas in such geographical areas where adequate preservation and control have not been established already. Moreover, it is acknowledged that, in areas where only few

[21] Not reproduced.

countries take part in fishing, such countries have a primary interest in the enforcement of provisions of this nature. It is felt, however, that such States should not be in a position where they could use the initiative that would have to be left to them for these purposes to establish priority for their own fishermen to the exclusion of fishermen from other countries who might later wish to take part in such fishing activities. Such priority would, in fact, be feasible even if the arrangement formally placed all countries taking part in such fishing on an equal footing, if for instance the permissible fishing methods did not have the same value to fishermen of other countries — or could not be used at all. (In this connexion, reference is made to the procedures which in some cases have rendered illusory the application of the most-favoured-nation clause). Hence, it would be essential to clarify the issue as to when and under what conditions any countries arriving later should be entitled to participation in the establishment of new regulations in order that, if agreement cannot be reached, such countries should not have to be governed by previously adopted provisions for an indefinite period. It is therefore suggested that procedures should be established for application if provisions for preservation and control have already been adopted by a certain number of countries for a geographical area in which other countries later wish to take part in the fishing activities and consider the provisions already established to be at variance with their interests, or consider the control applied to be inadequate.

In regard to the international body referred to in article 2, the Danish authorities wish to point out that it has been charged with two different tasks, viz., to make regulations where interested States are unable to agree among themselves, and to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them.

In the former respect it is pointed out that Denmark is in agreement with the principle of an international regulation of fisheries in cases of disagreement among the interested parties, but a final attitude to the draft proposal cannot be decided upon until the composition and organization of the proposed body is known in greater detail. It should be noted, however, that such regulation could, to a large extent, probably be undertaken by existing international agencies such as the International Council for the Exploration of the Sea.

In regard to the unction of the body referred to in article 2, in respect of investigations, it should also be noted that in the opinion of the Danish authorities the existing international bodies, such as the International Council for the Exploration of the Sea, have functioned satisfactorily and that their activities have provided valuable experience and practical working methods; hence, it would not be desirable at the present time to replace existing bodies by one single international body. The Danish authorities therefore propose that the body referred to in article 2 should conduct its investigations in consultation with the existing international bodies and in geographical areas where such investigations are not already being carried out by existing international bodies.

In regard to part II, article 3, the Danish authorities refer to their comments on part II, article 1, and point out that it would be natural for coastal States to have an exclusive right to place permanent installations for sedentary fisheries in that part of the high seas that is contiguous to the territorial waters of such State, analogous to the exclusive right of coastal States to place installations for exploitation of the coastal State's part of the continental shelf as stated above. It would also be desirable to ensure free navigation by adding a provision to the effect that sedentary fisheries must not result in substantial interference with navigation, cfr. a similar provision in part I, article 6, concerning the exploration and exploitation of the continental shelf.

The commentaries of the International Law Commission define sedentary fisheries as fishing activities carried out by means of stakes embedded in the sea-floor. Such stakes, it is presumed, are placed during the fishing season and then removed, whereas the establishment of permanent installations, as already mentioned, should be reserved for the coastal State. Sedentary fisheries, it is noted, can be undertaken also by devices other than stakes, e.g., buoys and anchors.

The following comments refer to part II, article 4 of the draft proposal:

The Danish authorities appreciate the potential need for establishment of contiguous zones adjacent to territorial waters where a coastal State may exercise the control necessary to prevent the infringement, within its territory, of customs, fiscal or sanitary regulations. The limit of twelve miles from the coast fixed for such zones is also acceptable to the Danish authorities.

It has been noted with satisfaction that no extension of territorial waters is involved.

Some concern is felt, however, about the absence of a specific definition of the nature of the control in question, since this may lead to abuse by the institution of meticulous control measures on navigation and fisheries where such control is not required to prevent infringement of customs, fiscal and sanitary regulations. Abuses of this type might, in point of fact, be tantamount to an expansion of territorial waters.

The Danish authorities feel, therefore, that contiguous zones should not be established unilaterally by a coastal State, but only by treaties between the interested States.

5. Ecuador

Comments of the Government of Ecuador transmitted by a note verbale *dated 30 January 1952 from the permanent delegation of Ecuador to the United Nations*

[*Original: Spanish*]

The Government of Ecuador has the honour to express the following views:

Article 1: The concept of the continental shelf or continental platform, as contained in this article, is qualified by two conditions: that the shelf be outside the area of territorial waters, and that it admit of the exploitation of the sea-bed and subsoil.

This concept is not entirely in accord with articles 1 and 2 of the Legislative Decree of 6 November 1950 approved by the National Congress of Ecuador, which does not subject the continental shelf to these two conditions. Our continental shelf, which is limited to submerged land contiguous to continental territory where the depth of the superjacent waters does not exceed 200 metres, lies partly within and partly beyond the area of territorial waters. Nor does its existence depend simply upon whether the depth of the superjacent waters admits exploitation of the natural resources of the sea-bed and subsoil, as stipulated in the International Law Commission's formula. The Act says simply that the continental shelf or platform contiguous to Ecuadorean coasts, " and all or any part of the wealth it contains, belong to the State . . . " The Commission will only recognize the continental shelf if its natural resources can be exploited; in Ecuadorean law the right of exploitation is inherent in the recognition of the State's jurisdiction over the shelf.

Article 2 limits the coastal State's jurisdiction over the continental shelf to the sole purpose of exploiting its

natural resources. Although our law begins by laying down that the Ecuadorean State "shall exercise the right of use (*aprovechamiento*) and control to the extent necessary to ensure the conservation of the said property and the control and protection of the fisheries appertaining thereto", it does not limit the State's jurisdiction to the exploration and exploitation of the shelf's natural resources.

Article 3: The Commission regards the waters covering the continental shelf as high seas. It is bound to do so, for by its definition the continental shelf is outside the area of territorial waters. However, under our law the superjacent waters may be high seas in some cases and territorial waters in others.

Article 4 deals with the legal status of the airspace above the superjacent waters of the continental shelf. As a logical consequence of the preceding article, the Commission regards that airspace as free. However, from article 2 of the Legislative Decree of 6 November 1950 and from our Constitution it follows that the airspace over the superjacent waters of the continental shelf may be free in some cases and territorial in others.

Article 5 entitles the coastal State to lay and maintain submarine cables on the continental shelf in virtue of its jurisdiction over the shelf. We have no comparable provision in our law on the subject, but clearly Ecuador may do any act and take any measures whatsoever within the confines of its own territory, which includes the continental shelf where the superjacent water is not more than 200 metres deep.

Article 6 indicates that freedom of navigation and fishing must not be hampered by exploration of the continental shelf and exploitation of its natural resources. There is no comparable provision in our law, but it is easily gathered that where the Ecuadorean continental shelf extends beyond territorial waters, the principle in the Civil Code that fishing in the sea is free prevails. Where the Ecuadorean shelf ends within the area of territorial waters, the matter is governed by the principle in the Civil Code that only Ecuadoreans and aliens domiciled in Ecuador may fish in territorial waters, and by the provisions of the Sea Fishing and Hunting Act relating to foreign vessels.

The relevant provisions of that Act are as follows:

FISHING BY FOREIGN VESSELS

Article 20. No foreign fishing vessel may enter Ecuadorean territorial waters unless carrying a certificate, a fishing permit and the other necessary documents.

Article 21. Certificates and fishing permits shall be obtainable only from the regular (*de carrera*) consulate of Ecuador having jurisdiction over the applicant vessel's port of departure, or, where no regular consulate has jurisdiction over the port of departure, from the regular consulate nearest to the vessel's course.

Fishing documents shall be issued after payment of the duties and fees prescribed in the relevant Acts and regulations and subject to a full and unconditional written undertaking by the applicant to abide by the provisions of those Acts and regulations.

Article 22. Any foreign vessel wishing to engage in commercial fishing in territorial waters or to purchase fish must register beforehand at the Ecuadorean consulate prescribed in the preceding article.

Fishing certificates shall be valid from the date of issue until 31 December the same year.

Article 23. A vessel in Ecuadorean waters wishing to continue to fish after the expiry of its fishing permit may obtain a permit by wireless. Application may be made only to the Ecuadorean consulate that issued the original permit, and the wireless message granting the permit shall import all the wording of a written permit.

A fishing vessel on the high seas wishing to fish in Ecuadorean waters may aplply for a fishing permit by wierless, provided that it has already secured a certificate from the proper consulate and obtains the fishing permit before entering Ecuadorean waters. Otherwise it shall be deemed to be trespassing.

Article 24. A fishing permit shall be valid for a single voyage, that is to say from the moment of issue until the vessel enters port to dispose of its catch or transhipps the catch to another vessel.

Article 25. A fishing permit shall be valid for

(*a*) One hundred days, if the vessel obtained it from an Ecuadorean consulate in California or the Gulf of Mexico;

(*b*) Eighty days, if the vessel obtained it from an Ecuadorean consulate in Central or South America;

(*c*) Eighty-five days, if issued by wireless from an Ecuadorean consulate in California or the Gulf of Mexico; and

(*d*) Seventy-five days, if issued by wireless from an Ecuadorean consulate in Central or South America.

A vessel prevented from fishing by *force majeure* or fortuitous circumstances duly substantiated may, if no fish are aboard, obtain without paying a further fee an extension of its fishing permit for a period equal to the one expired.

Article 26. A catch may be transhipped only in the cases specified in the regulations made under this Act.

Article 27. An Ecuadorean consulate issuing fishing documents in accordance with the provisions of this Act shall forward to the Ministries of National Economy, National Defence, and Foreign Affairs, the Treasury and the Comptroller-General's Department a monthly return of fishing developments together with the statistical information required by the regulations made under this Act, and shall retain a copy thereof on file.

Article 28. Any foreign fishing vessel engaged in commercial fishing or coming to purchase fish from Ecuadorean fishermen shall pay in United States dollars the following fishing duties and fees:

(*a*) For the certificate:

	$
Swordfish	200
Tunny	200
Shark	200
Cod	100

(*b*) For the permit, per net registered ton:

	$
Swordfish	20
Tunny	12
Shark	12
Cod	8
Cod fillets	24

Commercial freighters calling at Ecuadorean ports shall pay only the ordinary export duties on fish taken aboard for their own account or that of another.

Article 29. Vessels coming to fish for sport shall pay the sum of one United States dollar (gold) per gross ton for each visit plus the usual consular fees, but must apply to the proper consul for a special permit.

Fishing permits for scientific purposes shall be issued free of charge upon application to the Director of the Department of Fishing and Hunting.

Article 7 prescribes how two States having territories to which the same continental shelf is contiguous shall

establish boundaries. As there is no express provision in our law governing this situation, we should be entitled to establish such boundaries by bilateral treaty.

Related subjects. Resources of the sea. Articles 1 and 2. These articles refer to the competence of States whose nationals are engaged in fishing in any area of the high seas to regulate and control fishing activities in such an area; and to the competence of a permanent international body to conduct investigations of the world's fishing areas and the methods employed in exploiting them.

Because our Civil Code recognizes the principle that fishing in the sea is free, there are no provisions comparable to the Commission's draft articles 1 and 2 in either the Legislative Decree of 6 November 1950 or the Sea Fishing and Hunting Act and Regulations. The same comment may be made on article 3, which authorizes States to regulate the establishment of fishing communities in areas of the high seas contiguous to territorial waters.

Article 4. This article authorizes a coastal State to exercise the control necessary to prevent the infringement, within its territory or territorial waters, of its customs or fiscal regulations.

The right to police for national security and fiscal purposes was established by our Civil Code and Maritime Police Code for a distance of four marine leagues, but the Legislative Decree of 6 November 1950 set the area of maritime control and policing at twelve nautical miles, i.e., the minimum for territorial waters. The area of maritime control and policing may be extended by virtue of such international treaties as the Treaty of Mutual Assistance.

6. Egypt

Comments of the Government of Egypt transmitted by a note verbale *of 5 March 1953 from the permanent delegation of Egypt to the United Nations*

[*Original: French*]
[*February 1953*]

The Egyptian Government has examined with great interest the draft articles on the continental shelf and related subjects prepared by the International Law Commission at its third session in 1951. While, in view of the importance and complexity of the problems involved, it wishes to reserve its final position, it feels able to make the following comments at this juncture:

(1) In the first place, the Egyptian Government wishes to commend the International Law Commission for its report on the question, which constitutes a valuable contribution to the codification of maritime law.

(2) As regards part I — Continental Shelf: the Egyptian Government considers that the definition of the continental shelf given in article 1 is clearly inadequate. Although the difficulties referred to by the Commission in this connexion are real, it should be possible and would be desirable to have a more concrete definition of the continental shelf. The proposal for the use of a specific depth —to be determined in the light of the circumstances — might serve as a basis, subject to any subsequent technical developments which might make it possible to exploit the resources of the sea-bed at a greater depth and which might therefore necessitate a revision of the definition.

(3) The Egyptian Government further considers that the concept of " control and jurisdiction for the purpose of exploring (the continental shelf) and exploiting its natural resources " contained in article 2 might be replaced by the well-known concept of " sovereignty " which there is no good reason for rejecting, and which presents definite advantages from the point of view of practical interpretation. The continental shelf would simply be subject to the sovereignty of the coastal State. There is no reason to fear that the concept of sovereignty would be criticized on the grounds that it might give rise to an extension of the power and control of the coastal State, since articles 3, 4 and 5, which the Egyptian Government supports in principle, seem to offer assurances which could logically be accepted.

(4) Article 6, which is in the nature of a regulation, is acceptable. It should, however, be pointed out that the " reasonable distances " referred to in paragraph 2 should be left to be determined by each government.

(5) As regards 7, the Egyption Government considers it reasonable and eminently desirable that two or more States to whose territories the same continental shelf is contiguous should establish boundaries in the area of the continental shelf by agreement. With reference to comment No. 1 on the article, in which the word arbitration is used in the widest sense, including even arbitration *ex aequo et bono*, we would draw attention to the advantage of working out a set of rules to be applied in delimiting the zones of each State on the continental shelf in areas where this is necessary owing to the failure of the parties to reach an agreement. These rules might serve asan objective basis for any agreements which might be concluded between States.

(6) As regards part II — Related subjects: the Egyptian Government is unable at present to express an opinion on the question of the resources of the sea and sedentary fisheries dealt with in the first three articles of that part, the articles being at present under consideration by the competent authorities. As regards article 4, however, which relates to contiguous zones, the Egyptian Government wishes to make the most express reservations concerning the limitation of control on the adjacent high seas both as regards the purpose of such control and the provision that it should not be exercised more than twelve miles from the coast. Needless to say, the curent trend is to extend the limits of territorial waters. If article 4 were adopted in its present form it would simply mean the abolition of contiguous zones.

7. France

Comments of the Government of France transmitted by a letter dated 3 October 1952 from the Ministry for Foreign Affairs of France

[*Original: French*]

The French Government would like first of all to pay a tribute to the International Law Commission for its efforts in studying a new and controversial topic which is not as yet covered by international rules. It feels that the draft articles constitute a really useful working paper and a notable step towards the reconciliation of the divergent views which still prevail in this area of international maritime law. To their credit, the draft articles neither challenge the principle of the freedom of the seas, which must continue to be the basic rule, nor do they question the régime of territorial waters.

PART I. CONTINENTAL SHELF

1. *Definition.* The Commission defines the continental shelf as the area " outside the arca of territorial waters, where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil " (article 1). The Commission intentionally refrains from adopting a fixed limit in terms of the depth of the superjacent waters.

Although the definition admittedly avoids the drawback of instability, it appears to suffer from the defect of vagueness. It is arguable that it might be better to contemplate a specified depth-limit of, say, 300 metres,

to avoid having to change it too soon. A fixed limit would have the further advantage of ruling out any dispute concerning such vague concepts as the ability of the coastal State to exploit the natural resources or the period within which it should be in a position to do so.

2. *Legal status.* The provisions of draft article 2 give the coastal State " control " and " jurisdiction " over the martime area defined as the continental shelf. One may wonder whether the distinction drawn by the Commission between the notion of " control and jurisdiction " and that of sovereignty is a real one. The legal consequence of the monopoly of exploitation vested in the coastal State will be the exercise of effective, though limited, sovereignty over the continental shelf and this sovereignty will be a fact even though the actual term is not employed.

Article 6 stipulates that " the exploration of the continental shelf and the exploitation of its natural resources must not result in substantial interference with navigation or fishing ".

This wording calls for a number of comments:

(*a*) It would seem useful to make it clear also that the exploitation of the continental shelf should not have the effect of reducing fish production, for example, by causing the local disappearance or the general depletion of certain species.

(*b*) The question necessarily arises who will have the power — and when — to judge whether the action taken by the coastal State is, in effect, likely or not likely to interfere with navigation or fishing. The draft article in no way specifies what authority would be competent to refuse permission or to declare an action prohibited, or how serious the interference must be before such a decision becomes a necessity.

(*c*) Finally, the ability to exploit under article 6 *ipso facto* seems to imply the ability to instal pipelines. Perhaps it would be better to say so in so many words.

Note 4 to article 6, paragraph 2, refers to the possibility of establishing " narrow safety zones " extending for perhaps five hundred metres around the installations. If and when discussions are held concerning the determination of the width of such zones, care should be taken to avoid any infringement of the freedom of navigation and fishing through the establishment of such contiguous zones.

PART II. RELATED SUBJECTS

The main preoccupation of the draft articles in this part is to ensure better protection for the natural resources of the sea. These articles are divided into three groups: resources of the sea, sedentary fisheries and contiguous zones.

The proposals concerning the related subjects admittedly contain clearer provisions than those concerning the exploitation of the natural resources of the sea-bed and subsoil. No doubt this is accounted for by the fact that the question is not a new one and that it was possible to rely on the various studies which had preceded the preparation of the international conventions concluded in the past for regulating fishing on the high seas. Nevertheless, some of the proposed provisions are still not beyond criticism.

1. *Resources of the sea*

Article 1 gives each State the right to regulate fishing in any area if its nationals are engaged in fishing in that area, subject to the proviso that the measures to be taken shall be taken " in concert " if several States are involved. This is a proposition which is based on general and internationally accepted principles and which has been acted upon on previous occasions. It follows that no unilateral measure by one of the States concerned may be pleaded against the nationals of another State. The same observation applies to the situation, also covered by article 1, where the area in question is within one hundred miles of the territorial waters of a coastal State.

Article 2 provides for the possibility of establishing a permanent international body with competence not only to conduct investigations of fisheries but also to make regulations for conservatory measures to be applied by the States whose nationals are engaged in fishing in any particular area where the States concerned are unable to agree among themselves. In the French Government's view it would be desirable to establish such a body, with powers to take regulatory, technical and economic decisions. However, there are two observations to be made in this connexion.

(1) Obviously, if practicable general regulations are to be worked out, one must envisage the contingency that one of the States might find itself in disagreement with the others. It may be recalled that when the International Convention for the Northwest Atlantic Fisheries of 3 February 1949 was being drafted, some thought was given already then to the establishment of a body of this kind to deal with all questions relating to the maintenance of the level of the stocks of fish covered by the Convention. However, as there was some opposition on this point, the Convention merely provided for the establishment of a qualified body to submit proposals for the approval of the various governments concerned. That is a first step which should perhaps be judged in the light of the experience gained before it is planned to establish an international body with powers of decision, such as that described in the draft article.

(2) It should also be pointed out that the system recommended can be useful only in so far as it includes all the interested States, for the non-participation of any one of them can prevent the proposed measures from materializing.

2. *Sedentary fisheries*

(1) Attention should be drawn to the vagueness of article 3, so far as the definition of the term " sedentary fisheries " is concerned. The note to this article merely states that the term means fisheries which should be regarded as sedentary because of the species caught or the equipment used. It would be absolutely necessary to delimit the scope of this definition more particularly.

(2) It should be noted that while a non-coastal State may maintain and exploit the fisheries in question on an equal footing with a coastal State, it has to be " permitted " to do so. This stipulation obviously places it in an inferior position with respect to the coastal State and deprives it of the freedom of action it enjoyed previously over a part of the high seas.

3. *Contiguous zones*

Article 4 has the merit of establishing a uniform limit for the zone within which a coastal State may exercise control and might therefore be useful in putting an end to many uncertainties. The French Government would therefore be prepared to give it consideration, subject to the proviso that the grant of the right of control to a coastal State can on no account be held to constitute an extension of that State's sovereignty beyond its territorial waters.

This proviso leads to another as a necessary corollary: the proposed article will only be acceptable if it is supplemented by fixing the limits of territorial waters in

such a way that the power to fix them is not left to the discretion of the States concerned. The French Government feels therefore that, with respect to this fundamental point, the work of the Commission must be completed and that any attempt to make regulations governing the so-called contiguous zones presupposes that the limits of territorial waters have been fixed.

The French Government wishes to offer one final comment which relates both to the provisions dealing with the continental shelf and to those concerning the related subjects. It is to be noted that while provision is made for a system of general regulatory and policing measures, no mention is made of the conditions which are to govern the supervision of these measures. Yet the question of supervision raises a good many difficulties of a national and international character (practical methods for exercising it, financial costs, apportionment of financial responsibility, etc.) and it is difficult to take a position on any of the articles in question until some further particulars, with explanations, concerning this general problem are obtained.

8. Iceland

Communication from the Ministry for Foreign Affairs of Iceland

[*5 May 1952*]

The Ministry of Foreign Affairs of Iceland presents its compliments to His Excellency, the Secretary-General of the United Nations and has the honour to refer to the Legal Department's note of 28 November 1951 (LEG 292/1/07) inviting the comments of the Government of Iceland upon document A/CN.4/49, containing the International Law Commission's draft articles on the continental shelf and related subjects.

The Government of Iceland has studied the draft articles referred to and has the honour to submit the following comments dealing mainly with jurisdiction over fisheries:

1. The Commission defines the term "continental shelf" as referring to the sea-bed and subsoil of the submarine areas contiguous to the coast but outside the area of territorial waters, etc. (part I, article 1). It then says that the continental shelf is subject to the exercise by the coastal State of control and jurisdiction for the purpose of exploring it and exploiting its natural resources (part I, article 2) and that the exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the legal status of the superjacent waters as high seas (part I, article 3).

The Commission also says that on the high seas adjacent to its territorial waters, a coastal State may exercise the control necessary to prevent the infringement, within its territory or territorial waters of its customs, fiscal or sanitary regulations (part II, article 4). On the other hand, fishing activities on the high seas (i.e., outside territorial waters) are to be regulated through agreements among the States concerned. Also, an international body should be set up and be empowered to make regulations for conservatory measures to be applied by the States whose nationals are engaged in fishing in any particular area where the States concerned are unable to agree among themselves (part II, articles 1-2). It is specifically stated that in no circumstances may an area be closed to nationals of other States wishing to engage in fishing activities (part II, article 1).

The Icelandic Government is unable to agree with these views. At the General Assembly of the United Nations, in 1949, the Icelandic delegation pointed out that it would not be sufficient for the Commission to study the régime of the high seas as proposed by the Commission itself and that it would be necessary for it to study also the other side of the problem, i.e., the question where the high seas started, or, in other words, the régime of territorial waters. In that way the entire problem, including the problem of contiguous zones, would be covered. The Commission has not yet circulated its report on the question of territorial waters. Nevertheless, in its report on the régime of the high seas it seems to have prejudged the issue. For in part I, article 1, of its draft, the Commission seems to have taken for granted that the "continental shelf", as defined by it, is situated outside territorial waters. And how far do territorial waters extend? The Commission does not say.

2. The views of the Icelandic Government with regard to fisheries jurisdiction can be described on the basis of its own experience, as follows:

Investigations in Iceland have quite clearly shown that the country rests on a platform or continental shelf whose outlines follow those of the coast itself (see provisional map, p. 252) whereupon the depths of the real high seas follow. On this platform invaluable fishing banks and spawning grounds are found upon whose preservation the survival of the Icelandic people depends. The country itself is barren and almost all necessities have to be imported and financed through the export of fisheries products. It can truly be said that the coastal fishing grounds are the *conditio sine qua non* of the Icelandic people for they make the country habitable. The Icelandic Government considers itself entitled and indeed bound to take all necessary steps on a unilateral basis to preserve these resources and is doing so as shown by the attached documents. It considers that it is unrealistic that foreigners can be prevented from pumping oil from the continental shelf but that they cannot in the same manner be prevented from destroying other resources which are based on the same sea-bed.

3. The Government of Iceland does not maintain that the same rule should necessarily apply in all countries. It feels rather that each case should be studied separately and that the coastal State could, within a reasonable distance from its coasts, determine the necessary measures for the protection of its coastal fisheries in view of economic, geographic, biological and other relevant considerations.

ANNEX I TO COMMENTS BY THE GOVERNMENT OF ICELAND

Law concerning the scientific conservation of the continental shelf fisheries, dated 5 April 1948

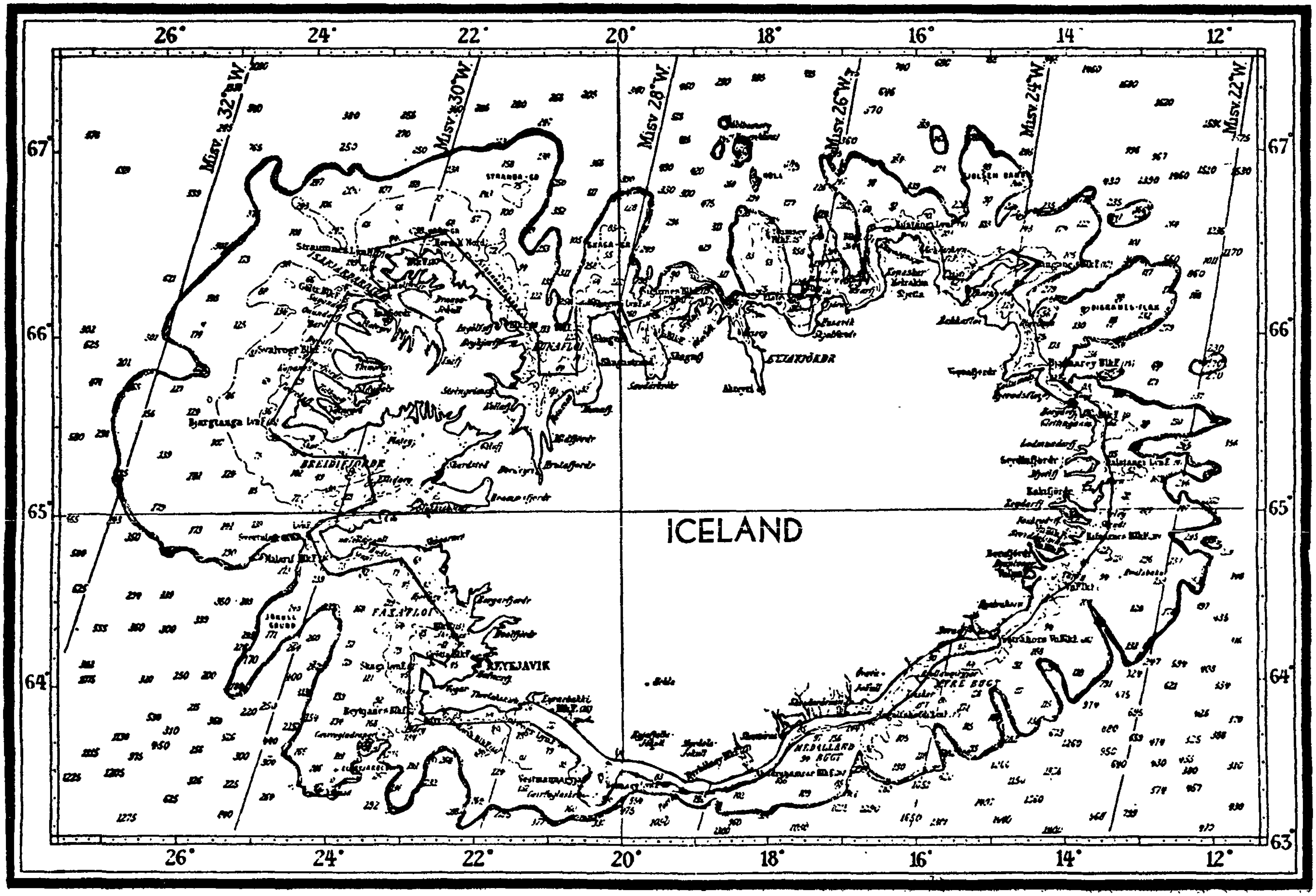
(*Translation*)

The President of Iceland proclaims: The *Althing* has passed the present law which is hereby approved and confirmed:

Article 1

The Ministry of Fisheries shall issue regulations establishing explicitly bounded conservation zones within the limits of the continental shelf of Iceland; wherein all fisheries shall be subject to Icelandic rules and control; Provided that the conservation measures now in effect shall in no way be reduced. The Ministry shall further issue the necessary regulations for the protection of the fishing grounds within the said zones. The Fiskifelag Islands (Fisheries Society) and the Atvinnudeild Haskela Islands (University of Iceland Industrial Research Laboratories) shall be consulted prior to the promulgation of the said regulations.

The regulations shall be revised in the light of scientific research.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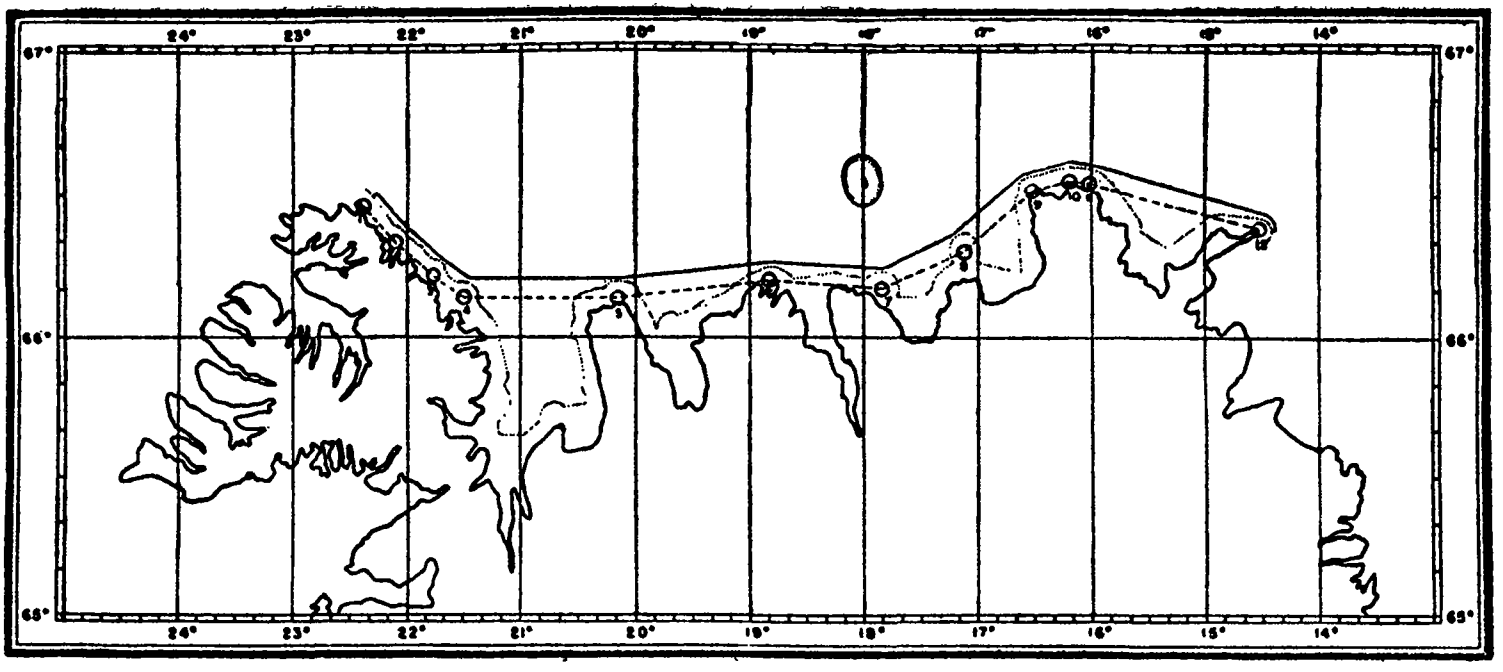
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Article 2

The regulations promulgated under article 1 of the present law shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party.

Article 3

Violations of the regulations issued under article 1 shall be punishable by fines from kr. 1,000 to kr. 100,000 as specified in the regulations.

Article 4

The Ministry of Fisheries shall, to the extent practicable, participate in international scientific research in the interest of fisheries conservation.

Article 5

This law shall take effect immediately.

Done in Reykjavik, 5 April 1948.

(*Signed*) Sveinn Bjornsson
President of Iceland
Johann P. Josefsson

Reasons for the law of 5 April 1948 (submitted to the Icelandic Parliament)

It is well known that the economy of Iceland depends almost entirely on fishing in the vicinity of its coasts. For this reason, the population of Iceland has followed the progressive impoverishment of fishing grounds with anxiety. Formerly, when fishing equipment was far less efficient than it is today, the question appeared in a different light, and the right of providing for exclusive rights of fishing by Iceland itself in the vicinity of her coasts extended much further than is admitted by the practice generally adopted since 1900. It seems obvious, however, that measures to protect fisheries ought to be extended in proportion to the growing efficiency of fishing equipment.

Most coastal States which engage in fishing have long recognized the need to take positive steps to prevent overexploitation resulting in a complete exhaustion of fishing grounds. Nevertheless, there is no agreement on the manner in which such steps should be taken. The States concerned may be divided into two categories. On the one hand, there are the countries whose interest in fishing in the vicinity of foreign coasts is greater than their interest in fishing in the vicinity of their own coasts. While recognizing that it is impossible not to take steps to mitigate the total exhaustion of fishing grounds, these States are nevertheless generally of opinion that unilateral regulations by littoral States must be limited as far as possible. They have also insisted vigourously that such measures can only be taken by virtue of international agreements.

On the other hand, there are the countries which engage in fishing mainly in the vicinity of their own coasts. The latter have recognized to a growing extent that the responsibility of ensuring the protection of fishing grounds in accordance with thef indings of scientific research is, above all, that of the littoral State. For this reason, several countries belonging to the latter category have, each for its own purposes, made legislative provision to this end the more so as international negotiations undertaken with a view to settling these matters have not been crowned with success, except in the rather rare cases where neighbouring nations were concerned with the defence of common interests. There is no doubt that measures of protection and prohibition can be taken better and more naturally by means of international agreements in relation to the open sea, i.e., in relation to the great oceans. But different considerations apply to waters in the vicinity of coasts.

In so far as the sovereignty of States over fishing grounds is concerned, two methods have been adopted. Certain States have proceeded to a determination of their territorial frontiers, especially for fishing purposes. Others, on the other hand, have left the question of the territorial frontier in abeyance and have contented themselves with asserting their exclusive right over fisheries independently of such a frontier. Of these two methods, the second seems to be the more natural, having regard to the fact that certain considerations arising from the idea of the " territorial frontier " have no bearing upon the question of an exclusive right to fishing, and that there are therefore serious drawbacks in considering the two questions together.

When States established theit sovereignty over fishing zones in the vicinity of their coasts they adopted greatly varying limits; in the majority of cases, they adopted a specified number of nautical miles: three miles, four miles, six miles or twelve kilometres, etc. It would appear, however, to be more natural to follow the example of those States which have determined the limit of their fisheries in accordance with the contour of the continental shelf along their coasts. The continental shelf of Iceland is very clearly marked, and it is therefore natural to take it as a basis. This is the reason why this solution has been adopted in the present draft law.

Commentary on article 1. Two kinds of provisions are concerned: on the one hand, the delimitation of the waters within which the measures of protection and prohibition of fishing should be applied, i.e., the waters which are deemed not to extend beyond the continental shelf; and, on the other hand, the measures of protection and prohibition of fishing which should be applied within these waters. In so far as the enactment of measures to assure the protection of stocks of fish is concerned, the views of marine biologists will have to be taken into consideration, not only as regards fishing grounds and methods of fishing, but also as regards the seasons during which fishing shall be open, and the quantities of fish which may be caught.

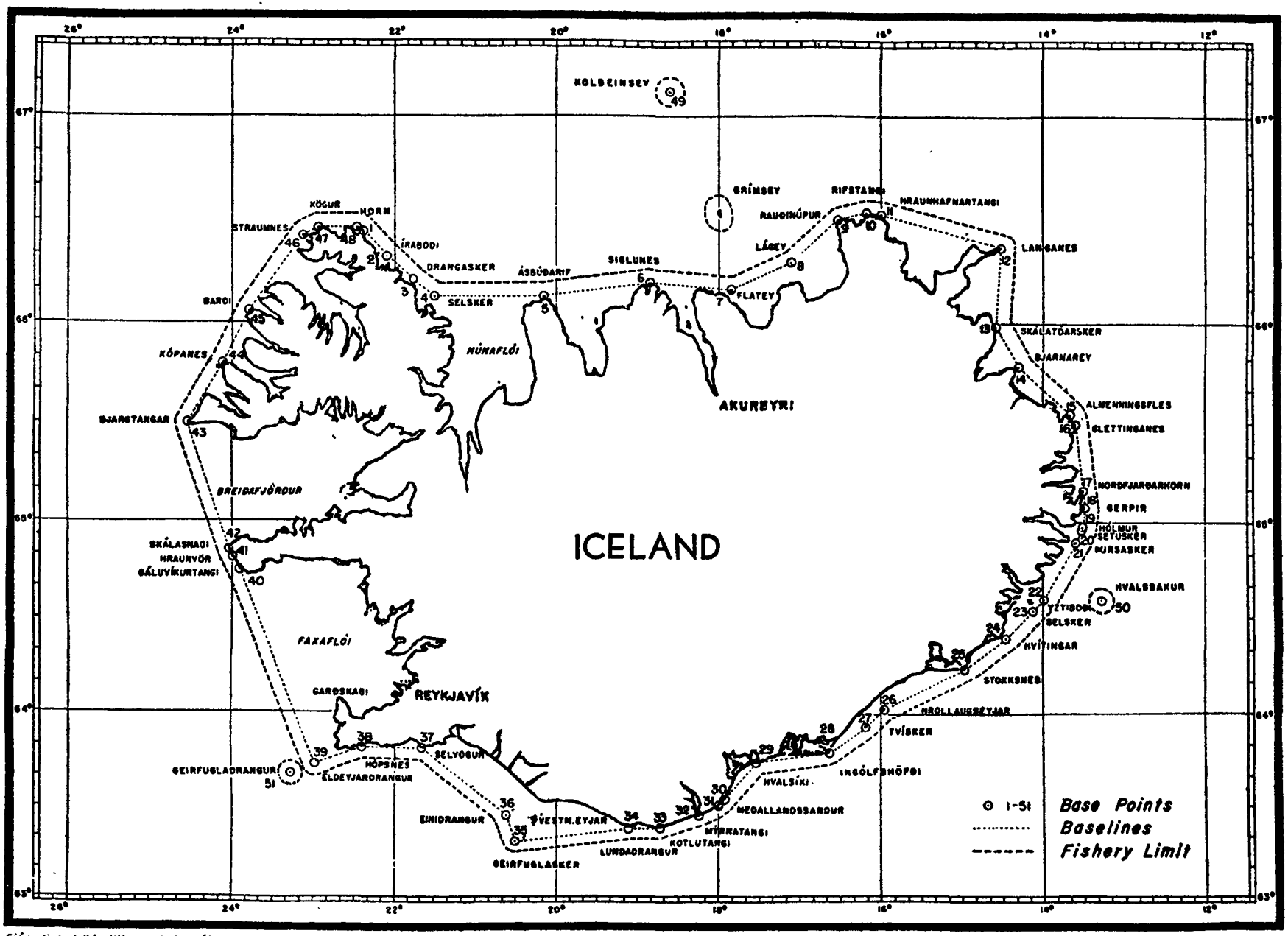
At present, the limit of the continental shelf may be considered as being established precisely at a depth of 100 fathoms. It will, however, be necessary to carry out the most careful investigations in order to establish whether this limit should be determined at a different depth.

Commentary on article 2. The provisions of this article have a bearing upon the following agreements: the Agreement between Denmark and the United Kingdom, of 24 June 1901, and the International Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, of 23 March 1937. Should the provisions contained in this draft law appear to be incompatible with these agreements, they would not, of course, be applied against the States signatories to the said agreements, as long as these agreements remain in force.

Commentary on article 3. The amount of the fines will be assessed with due regard to the relative importance of the measures of prohibition which may have been infringed.

Commentary on article 4. On 17 August 1946, the International Council for the Exploration of the Sea recommended that measures be taken to prohibit fishing in the Faxafloi. It goes without saying that Iceland will take part, to the fullest possible extent, in any initiative of this kind in relation to her own coasts as well as others. She has already given proof of her interest in these problems, in particular by taking part in international oceanographic reserach.

Article 5. This article does not call for comment.



Sjómælingadeild Vita- og hafnamáleskrifstofunnar

ANNEX II TO COMMENTS BY THE GOVERNMENT OF ICELAND

Regulations concerning the conservation of fishing banks off the north coast of Iceland

(Translation)

Section 1

All trawling and Danish seine-netting ave prohibited in the area from Horn to Langanes inside four nautical miles from a basic line drawn between the outermost points of the coast, islands and rocks; in bays, the basic line is drawn across the opening of the bay.

The basic line shall be drawn directly through the following points, the conservation line being a parallel line four nautical miles seawards:

1.	Horn	66° 27′4 N., 22° 24′5 W.
2.	Irabodi	66° 19′8 N., 22° 06′5 W.
3.	Drangasker	66° 14′3 N., 21° 48′6 W.
4.	Selsker	66° 07′3 N., 21° 31′2 W.
5.	Asbūoarif	66° 08′1 N., 20° 11′2 W.
6.	Siglunes	66° 11′9 N., 18° 50′1 W.
7.	Flatey	66° 10′3 N., 17° 50′5 W.
8.	Lāgey	66° 17′8 N., 17° 07′0 W.
9.	Raudinūpur	66° 30′7 N., 16° 32′5 W.
10.	Rifstangi	66° 32′3 N., 16° 11′9 W.
11.	Hraunhafnartangi	66° 32′3 N., 14° 01′6 W.
12.	Langanes	66° 22′6 N., 14° 32′0 W.

The western part of the conservation area is bounded by a line drawn due north-east from Rani in Hornbjarg and the eastern part by a line drawn due east from Langanestā.

Also, a four-mile zone shall be drawn from the outermost points and rocks of the island of Grimsey (Cf. map. p. 255).

Section 2

In the area defined in section 1 only Icelandic citizens may fish for herring and for such fisheries Icelandic vessels shall be used, cf. Act No. 33 of 19 June 1922 concerning fishing in territorial waters.

Section 3

Fishing operators, cf. section 2, who intend to engage in summer herring fisheries off the north coast during the period from 1 June to 1 October shall apply for permission to the Ministry of Fisheries before I June 1950, and before 15 May each succeeding year and specify in their applications the vessels and the type of fishing gear to be used.

If the Ministry of Fisheries envisages the possibility of overfishing, the Ministry at the beginning of the herring season or later may limit the number of fishing vessels and the maximum catch of each individual vessel.

Fisheries statistics shall be forwarted to the Fiskifélag Islands (Fisheries Society of Iceland) in the manner prescribed in Act No. 55 of 27 June 1941, concerning catch and fisheries reports.

Section 4

The provisions of these regulations do not interfere with the freedom of navigation, provided that the fishing gear is stowed in the manner prescribed in Act No. 33 of 19 June 1922.

Section 5

The enforcement of these regulations shall at all times be in conformity with international agreements to which Iceland is a party.

Section 6

Infractions of these regulations and rules and notices published in pursuance thereof shall be punishable by fines from kr. 100 to 100,000 However, penalties provided for in prevailing laws prohibiting trawlidg nan Danish seine-netting shall remain in force in all areas to which they have hitherto been applicable.

Section 7

These regulations shall enter into force on 1 June 1950.

These regulations are hereby promulgated in accordance with Law No. 44 of 5 April 1948 concerning the scientific conservation of the continental shelf fishing banks.

Ministry of Fisheries, 22 April 1950

(Signed) Olafur Thors
(Signed) Gunnlaugur E. Briem

ANNEX III TO COMMENTS BY THE GOVERNMENT OF ICELAND

Regulations concerning conservation of fisheries off the Icelandic coasts

Article 1

All trawling and Danish seine-netting ave prohibited off the Icelandic coasts inside a line which is drawn four nautical miles from the outermost points of the coasts, islands and rocks and across the opening of bays.

The line shall be drawn by drawing straight base lines between the following points, and then a parallel line four nautical miles seawards:

1.	Horn	66° 27′4 N., 22° 24′5 W.
2.	Irabodi	66° 19′8 N., 22° 06′5 W.
3.	Drangasker	66° 14′3 N., 21° 48′6 W.
4.	Selsker	66° 07′3 N., 21° 31′2 W.
5.	Asbūdarif	66° 08′1 N., 20° 11′2 W.
6.	Siglunes	66° 11′9 N., 18° 50′1 W.
7.	Flatey	66° 10′3 N., 17° 50′5 W.
8.	Lagey	66° 17′8 N., 17° 07′0 W.
9.	Raudinupūr	66° 30′7 N., 16° 32′5 W.
10.	Rifstangi	66° 32′3 N., 16° 11′9 W.
11.	Hraunhafnartangi	66° 32′3 N., 16° 01′6 W.
12.	Langanes	66° 22′6 N., 14° 32′0 W.
13.	Skālatōarsker	65° 59′7 N., 14° 37′5 W.
14.	Bjarnarey	65° 47′1 N., 14° 18′3 W.
15.	Almenningsfles	65° 33′1 N., 13° 40′6 W.
16.	Glettinganes	65° 30′6 N., 13° 46′4 W.
17.	Nordfjardarhorn	65° 10′0 N., 13° 31′0 W.
18.	Gerpir	65° 04′7 N., 13° 29′8 W.
19.	Holmur	64° 58′9 N., 13° 30′7 W.
20.	Setusker	64° 57′7 N., 13° 31′6 W.
21.	Dursasker	64° 54′1 N., 13° 36′9 W.
22.	Yztiboï	64° 35′2 N., 14° 01′6 W.
23.	Selsker	64° 32′8 N., 14° 07′1 W.
24.	Hvitingar	64° 23′8 N., 14° 28′1 W.
25.	Stokksnes	64° 14′1 N., 14° 58′5 W.
26.	Hrollaugseyjar	64° 01′7 N., 15° 58′8 W.
27.	Tvisker	63° 55′6 N., 16° 11′4 W.
28.	Ingōlfshöfoï	63° 47′8 N., 16° 38′6 W.
29.	Hvalsíki	63° 44′1 N., 17° 33′7 W.
40.	Medallandssandur I	63° 32′4 N., 17° 56′0 W.
31.	Medallandssandur II	63° 30′6 N., 18° 00′0 W.
32.	Myrnatangi	63° 27′4 N., 18° 12′0 W.
33.	Kōtlutangi	63° 23′4 N., 18° 43′0 W.
34.	Lundadrangur	63° 23′5 N., 19° 07′6 W.
35.	Geirfuglasker	63° 19′0 N., 20° 30′1 W.
36.	Einidrangur	63° 27′4 N., 20° 37′2 W.
37.	Selvogur	63° 49′2 N., 21° 39′4 W.
38.	Hōpsnes	63° 49′3 N., 22° 24′6 W.
39.	Eldeyjardrangur	63° 43′8 N., 22° 59′6 W.
40.	Gāluvikurtangi	64° 44′9 N., 23° 55′2 W.
41.	Hraunvör	64° 49′6 N., 24° 01′0 W.
42.	Skālasnagi	64° 51′2 N., 24° 02′7 W.
43.	Bjargtangar	65° 30′2 N., 24° 32′3 W.
44.	Kōpanes	65° 48′3 N., 24° 06′3 W.
45.	Baroï	66° 03′7 N., 23° 47′6 W.
46.	Straumnes	66° 25′7 N., 23° 08′5 W.
47.	Kögur	66° 28′3 N., 22° 55′8 W.
58.	Horn	66° 27′9 N., 22° 28′5 W.

Also, a four-mile zone shall be drawn around he following:

49. Kolbeinsey	67° 07'5 N., 18° 36'0 W.
50. Hvalsbajur	64° 35'8 N., 13° 16'7 W.
51. Geirfugladrangur.....	63° 40'6 N., 23° 17'3 W.

Finally, a four-mile zone shall be drawn from the outermost points and rocks of the island of Grimsey (see map, p. 255).

Article 2

In the area defined in article 1 any other foreign fishing activities shall be prohibited in accordance with the provisions of Law No. 33 of 19 June 1922 concerning fishing in territorial waters.

Article 3

Fisheries statistics shall be forwarded to the Fiskifélag Islands (Fisheries Society of Iceland) in the manner prescribed in Law No. 55 of 27 June 1941 concerning catch and fisheries reports.

If the Ministry of Industries envisages the possibility of overfishing the Ministry may limit the number of fishing vessels and the maximum catch of each vessel.

Article 4

Fishing operators who intend to engage in summer herring fisheries off the north coast during the period from 1 June to 1 October, shall apply for permission to the Ministry of Industries before 15 May each year, and specify in their applications the vessels to be used and the type of fishing gear used.

Article 5

Violations of the provisions of these regulations shall be subject to the penalties provided for by Law No. 5 of 8 May 1920, concerning prohibition against trawling, Law No. 45 of 13 June 1937, concerning prohibition against Danish seine-netting in territorial waters, Law No. 33 of 19 June 1922, concerning fishing in territorial waters, as amended, or, if the provisions of the said laws do not apply, to fines from kr. 1,000. to 100,000.

Article 6

These regulations supersede regulations No. 46 of 22 April 1950, concerning the conservation of fisheries off the north coast.

Article 7

These regulations become effective on 15 May 1952.

These regulations are hereby promulgated in accordance with Law No. 44 of 5 April 1948, concerning the scientific conservation of the continental shelf fisheries, as amended by Provisional Law No. 37 of 19 March 1952.

Ministry of Industries, Reykjavik, 19 March 1952.

(*Signed*) Olafur THORS
(*Signed*) Gunnlaugur E. BRIEM

9. ISRAEL

Comments of the Government of Israel transmitted by a note verbale *dated 17 March 1952 from the permanent delegation of Israel to the United Nations*

The Ministry for Foreign Affairs presents its compliments to the Secretary-General of the United Nations and with reference to his note No. LEG. 292/1/07 dated 28 November 1951 has the honour to submit the following comments on the draft articles on the continental shelf and related subjects prepared by the International Law Commission (A/CN.4/49). In accordance with that letter, it is noted that these draft articles are being given the publicity referred to in article 16, paragraph (*g*), of the Statute of the International Law Commission, and that governments are being invited to submit their comments as envisaged in paragraph (*h*) thereof. In connexion with this the following comments are made. Paragraph (*h*) envisages that governments shall submit their comments within " a reasonable time " and the Secretary-General's note dated 28 November 1951 invites such comments to be submitted by 1 March 1952. In the opinion of the Government of Israel the time limit fixed by the Secretary-General is too short, having regard not only for the importance and complexity of the issues involved, but also for the fact that although document A/CN.4/49 is itself dated 31 July 1951, it has only recently been formally circulated to governments. For this reason, and, moreover, having regard to the fact that under paragraphs (*i*) and (*j*) of article 16 of the Statute further action will undoubtedly be completed by the International Law Commission, the observations contained in this note are tentative only, the Government of Israel reserving its full right to submit further observations and if necessary to modify its point of view in the future discussions on this important subject.

2. It is observed that in its first session the International Law Commission selected the régime of the high seas as a topic for codification (see A/925, paragraph 20), a decision duly noted by the General Assembly in its resolution 374 (IV) of 6 December 1949. Progress reports on the work in this connexion were made by the Commission in its reports on its second (A/1316, part VI, chapter III) and third (A/1858, chapter VII) sessions, always in connexion with the work of codification. The note of the Secretary-General set forth at the head of the printed version of document A/CN.4/49 also refers to codification. Yet the document itself is circulated with reference to article 16 of the Statute of the International Law Commission, which relates to the progressive development of international law. Having regard for the definitions of " progressive development " and " codification " contained in article 15 of the Statute of the International Law Commission, the Government of Israel is of opinion that that aspect of the law of the high seas which relates to the continental shelf is more susceptible to progressive development than to codification. On the other hand, it has less definite views as to the more appropriate treatment for the matters contained in part II of document A/CN.4/49. True, the manner in which the Commission has treated them is rather that of progressive development than that of codification, and there are doubtless many reasons why this should be preferred. But having regard for the contents of the three reports submitted by the International Law Commission to the General Assembly and for the terms of resolution 374 (IV), the Government is constrained to note with surprise that it is now asked to submit its comments from the point of view of progressive development, and not from that of codification. This absence of clarity is the more to be regretted having regard for the valuable preliminary work which has been performed in this sphere by the International Law Commission and its special rapporteur, Professor François, as well as by the Secretariat.

3. In this connexion a suggestion on future procedure is ventured. It seems evident that in due course the articles now being considered will have to be integrated into a more comprehensive text, which will be largely codificatory. For example, all the matters discussed in document A/CN.4/49 in point of fact will stand in direct relationship with the manner, yet to be indicated by the Commission, for the determination of what it

calls " Territorial Waters ", and it is difficult to assess the full import of the draft articles now under discussion in isolation. Furthermore, the recent judgement of the International Court of Justice in the *Anglo-Norvegian Fisheries* Case (I.C.J. Reports 1951, page 116) also requires very careful study in order to determine its precise impact both upon the *lex lata* and upon the *lex ferenda* proposed by the Commission. In studying the whole of this branch of the law, legitimate considerations of national interest and difficult political, military, economic, legal and sociological aspects will have to be weighed and reconciled with one another. All this will require time, and the final result will gain for the time thus spent. For this reason it is suggested that the International Law Commission consider deferring further consideration of the draft articles contained in document A/CN.4/49 and the comments of governments thereon for the time being, and concentrate on completing its work of codification on the law of the high seas and territorial waters. In this connexion, it can be noted that the Commission itself regards it necessary to perform its work in phases (A/1316, paragraph 193). The Government of Israel finds itself in agreement with this approach, but believes that ultimately the whole work of the Commission on these two topics will have to be discussed as a single phase, either in the General Assembly itself or in a specially convened diplomatic conference.

For these reasons, then, the Government of Israel will in this note set forth its views on the problem of the continental shelf from the point of view of the progressive development of international law; that is to say, it will indicate what, in its opinion, should be the fundamental basis of a draft convention on a subject which has not yet been regulated by international law, or in regard to which the law has not been sufficiently developed in the practice of States.

4. The Government of Israel is inclined to agree with the suggestion advanced by the International Law Commission in draft article 1 of part I of document A/CN.4/49, that the legal definition of the concept of the continental shelf should be divorced from the geological and scientific definition. That being so, the Commission's reasons for retaining the term " continental shelf " are not seen to be convincing, and a phrase such as " submarine areas " is considered preferable. The science of the law has to work hand-in-hand with the physical sciences, for it is the application of these that makes possible the exploitation of the natural resources of the sea-bed and subsoil from which the legal interest in the matter derives. We are here dealing with a new sphere of human activity in which both the lawyer and the scientist are taking their first steps. They must work in harmony and mutual understanding, and the use by the lawyer and the scientist of identical terminology with differing connotation may lead in the future to serious misunderstandings and even disputes, and retard the healthy development of the law.

5. The Government of Israel is unable to agree to the theoretical basis for draft article 2 which, in its view, seems to deviate to too great an extent from what are the existing principles of law governing the bed and subsoil of the sea. The starting point for the progressive development of the law is found in the proposition that the bed of the sea is traditionally regarded as *res nullius*, if not as territory incapable of being acquired by any occupier. Recent technological developments have now made possible the exploitation, not only of the bed of the sea but also of the subsoil of the submarine areas. However, such exploitation is possible only by means of technical devices installed on the territory of the coastal State to which the submarine areas are contiguous. The decisive factor on which the law must be based is the essential element of contiguity. In the present state of technical development, then, it is believed that it would be more correct to reword the basic principle explained above and indicate that the bed of the sea is to be regarded as *res nullius* capable of being acquired, not by the first occupier whoever he might be, but only by the coastal State to which the submarine areas concerned are contiguous, provided, of course, that the coastal State has the necessary intention to effect such acquisition. If it is not at present possessed of such intention, then the law should recognize that it may have an exclusive right, which it can exercise when it so desires, to acquire such areas, and that any actions by any other State prejudicial to such right must be regarded as a legal nullity governed by the rule *ex turpi causa non oritur jus*. The formulation of draft article 2 is thus seen to be unduly restrictive on two counts. In the first place, it is not clear what is the precise implication of the phrase " control and jurisdiction ". In fact, and from the legal point of view, this control and jurisdiction seem to be indistinguishable from sovereignty, particularly having regard for what might be termed the non-terrestrial manifestations of sovereignty (air-space and territorial waters). Yet the phrase " control and jurisdiction " may be capable of conveying an impression of something less or different from sovereignty. It is doubtful if it would be possible to assure a satisfactory legal basis for the exploration and exploitation of the natural resources of the continental shelf unless it is recognized that the coastal State is capable of exercising full rights of sovereignty over it, and not merely what may be lesser and somewhat ambiguous rights of control and jurisdiction. In the second place, the limitation on the purposes for which these rights may be used as proposed by the International Law Commission, namely, exploration and exploitation, seems to be somewhat unduly restrictive. The coastal State may desire to exercise rights of sovereignty in other directions. One example, which springs to mind, is that of protection against abuse of rights by third States, as well as for purposes of defence. The coastal State might not be able for the time being to undertake the exploration or exploitation of the continental shelf for a variety of reasons, including such reasons as an immediate lack of the necessary financial resources, considerations of national economic policy, which may regard such exploration or exploitation as being for the present undesirable, and so forth. States finding themselves in such a position should none the less be able to acquire, by extending their sovereignty over the appropriate areas, the possibility of exploring and exploiting them at some future date, as well as the opportunity of preventing their exploration and exploitation by other States.

6. The Government of Israel finds itself in agreement with the principle underlying draft articles 3 and 4, which in its view would be equally applicable were draft article 2 to be modified in the direction indicated in the previous paragraph of this note. Similarly, the Government of Israel has no comments to make regarding draft article 5, and draft article 6 (1). Nevertheless it is believed that the text of draft article 6 (1) may convey the notion that in some way or other rights of navigation and fishing are superior to, and have priority over, the rights of the coastal State to construct and maintain installations. This may be undesirable, for obviously the locations of the installations and their maintenance are dependent upon physical features over which the coastal State cannot exercise full control, and the facts of nature may make it necessary for the coastal State to cause substantial interference with navigation or fishing. The subject with which we are dealing contains a large element of speculation as regards future developments, and undue rigidity in the fixing of legal norms

at this early stage may not be considered advantageous. The real problem is to reconcile the new conceptions with the old and not to subordinate the new to the old. Admittedly, this problem requires international regulation, which may be achieved either by an international convention or by allowing rules of customary law to develop. In either case the present discussions are likely to have a decisive influence on future developments, and this requires very careful analysis of the real problems calling for solutions.

7. In the view of the Government of Israel the formulation of draft article 6 (2) is defective in that it confuses the two distinct elements of territorial waters and protection of the installations. From the theoretical aspect it would appear to be desirable to establish that the installations do not have the status of islands from the point of view of delimiting the territorial waters of the coastal State, if it is understood by this that the coastal State is not to be able artificially to increase the general width of its own belt of territorial waters as measured from the low water mark or other defined base line, solely by means of constructing a chain or chains of such installations extending from the coast into the high seas. But to deduce from this desirable theoretical proposition that the installations themselves cannot have their own territorial waters seems to involve a *non sequitur*. Clearly the problem of the defence and security of the installations, both those emerging through the sea and those permanently under the surface of the sea, will be a difficult one, and the radius of 500 metres suggested by the Commission in its comment to the draft article seems not to have taken into account all the problems involved in this delicate aspect.

8. With regard to draft article 7, the Government of Israel is at one with the Commission on the desirability of neighbouring States agreeing between themselves as to the boundaries of their respective areas of continental shelf. Such agreements would have the legal effect of establishing a *lex specialis* in force between the parties to them. However, the expression of such a desire would appear to be more appropriate to a *voeu* to be emitted by the General Assembly or the diplomatic conference which will give final consideration to the draft convention as a whole. It is not so clear that it is a correct manner of approaching the problem of codification or progressive development of international law to include in the draft articles under discussion a *pactum de contrahendo* couched in such general terms, the legal value of which is questionable. In the same line of thought it is difficult to acquiesce at this stage in a proposal put forward, it is assumed, *de lege ferenda*, that States should agree in advance to submit certain disagreements to arbitration or judicial settlement *ex aequo et bono*. There are two main objections to this proposal in the form in which it has been put. In the first place, an agreement to proceed to arbitration or judicial settlement whether or not *ex aequo et bono*, should be placed in a general compromissory clause and then stand in a certain defined relation with the whole draft convention — and it will be recalled that in the view of the Government of Israel the draft articles here being discussed can in the last resort only be satisfactorily considered within their context in a more comprehensive draft convention relating to the status of the high seas. Secondly, and more important, it is not a necessary consequence of the draft articles actually contained in document A/CN.4/49 and the commentary thereon that even at this stage it is not possible to establish some general principles of law regarding the determination of boundaries of areas of continental shelf. The general principles of law relating to the settlement of territorial claims are relatively well developed, at all events in so far as concerns land territory, and it is felt that a document possessing a law-declaring or law-creating character such as the draft articles should proceed from a more positive attitude towards established principles of law. At least it should proceed from an examination into the problem of how far these established principles can be regarded as having application to the matter here being discussed. States have in the past shown little propensity to proceed to arbitration or judicial settlement *ex aequo et bono* in preference to such mode of settlement of disputes based on strict law, and it seems reasonable to express grave doubts as to whether the proposal of the International Law Commission is in accord, either with the manifest tendencies of States or with the tasks actually imposed upon the Commission in relation to the codification and progressive development of international law.

9. In the light of its general views as to the manner in which the International Law Commission has performed this phase of its task, as described in paragraph 2 above, the Government of Israel has considered very carefully whether and to what extent it is in a position to submit any comments on the draft articles contained in part II (related subjects) of document A/CN.4/49. With regret it has come to the conclusion that this is not possible at this stage, because of the absence of clarity as to whether these draft articles are being submitted as part of the Commission's work of codification or as part of its work of progressive development of international law. Clearly the type of comment that can usefully be made depends upon the nature of the work being performed by the International Law Commission in connexion with the topic. However, the Government of Israel finds it necessary to reserve its rights to submit further comments at a later stage.

10. Netherlands

Comments of the Government of the Netherlands transmitted by a letter dated 24 March 1952 from the permanent delegation of the Netherlands to the United Nations

[*Original: French*]

The Netherlands Government has been very interested to note the draft articles on the continental shelf and related subjects prepared by the International Law Commission . . .

The Netherlands Government approves of the International Law Commission's decision to study this subject. In this Government's opinion it is absolutely essential that rules of international law should be established on this subject so as to put an end to the present practice by which States issue regulations unilaterally.

The Netherlands Government endorses the principles underlying the rules proposed by the International Law Commission. Needless to say, the country of Grotius attaches particular importance to the principle of the freedom of the seas. Nevertheless the Netherlands Government is aware that these principles cannot be applied in such a way as to impede a development of law which should be considered beneficial to the whole community of nations.

The Netherlands Government is pleased to note that the Commission's draft maintains the principle of the freedom of the seas, particularly as regards navigation and fishing.

As regards the exploitation of the sea-bed and the subsoil, the draft gives adjacent States the right to exercise jurisdiction and control. The Netherlands Government is prepared to support this system.

Although in theory it might perhaps have been preferable to give jurisdiction over these submarine areas to the international community as a whole, the Nether-

lands Government feels that the practical difficulties of doing so would prove insuperable. Such a system would indeed make it impossible to exploit submarine resources properly in the interests of mankind.

On the other hand, the Netherlands Government would like to suggest that an international body should be established to control and advise on the progressive exploitation of the submarine areas, so as to promote the most effective use of these resources in the general interest.

The Government supports the suggestion that the International Law Commission should deal separately with the exploitation of the subsoil of the continental shelf and with fishing rights in the superjacent waters. The Netherlands Government considers that in this respect the maintenance of the freedom of the seas would benefit the whole community of States, and it is very firmly opposed to any attempt to claim exclusive fishing rights beyond the limits of territorial waters. Nevertheless, the Government does consider it necessary to take steps for the protection of fishing in the areas outside as well as within territorial waters. Indeed, the Government believes that the only way to check the ever-increasing attempts to reserve stretches of the high seas to the coastal State is to establish equally effective measures for the protection of fisheries outside territorial waters. The best way of achieving this would be through an international agreement reached by means of special conventions. Accordingly, every effort should be made to conclude such conventions as soon as possible. Even so, States will be able to evade all obligations simply by refusing to participate in such conventions. The Government is very interested to note the International Law Commission's suggestion that an international body should be set up to make, when necessary, rules binding on States. The Government considers that the subject should be given all the attention it undoubtedly deserves, since this is the only possible way of finding an effective solution to the problem.

The Government supports the idea that contiguous zones should be established for customs, fiscal and sanitary purposes.

Having made these general observations, the Netherlands Government need only comment briefly on the actual wording of the articles.

PART I

Continental shelf

Article 1

Although the Netherlands Government has no serious objection to this article, it wonders whether a limit of 200 metres in depth would not place the law on a surer foundation and prevent unlimited expansion in the future.

Article 2

It might perhaps be useful to emphasize that this article deals only with the " mineral resources " of the continental shelf. The same comment applies to the first sentence of the first paragraph of article 6. See also note 1 under article 3 of part II.

Article 6

The Netherlands Government wishes to emphasize from the outset that in the drafting of this article the interests of navigation should take precedence. The expression " substantial interference with navigation " is rather vague and the article does not state who shall be the judge. The article should include detailed provisions on notifications and warnings, and should in particular specify to whom the notifications are to be addressed. A penalty should be established for failure to observe such provisions. In any event there should be a guarantee that the notification would always be given before the installations were constructed. In addition, in order to protect navigation, special rules should be made to govern the equipment of the installations. Finally, a limit should be fixed for the safety zones, in view of the tendency of certain States to demand very extensive zones for security purposes.

Article 7

The Netherlands Government wishes to emphasize the advantage of an international system to regulate the delimitation of the continental shelf between adjacent States and States separated by a stretch of sea. It is not sufficient simply to express the hope that such States will reach agreement on the subject. Compulsory arbitration, as provided for in the article, might prove very useful, but it would very definitely be advisable to lay down specific rules of law upon which arbitrators could base their decisions.

PART II

Related subjects

Article 1

In connexion with this article also, the Netherlands Government wishes to point out that no effective solution of the problem will ever be achieved if the regulation and control of fishing in the waters above the continental shelf depends on agreement among all the States concerned, especially if — as the articles states — any newcomer will be entitled to participate in making the regulations. Here again arbitration is essential, but specific rules must be established to guide arbitrators. Clearly, therefore, it is necessary to set up a permanent international body, as is stated in article 2.

In certain respects, agencies like the Inter-governmental Maritime Consultative Organization, which are already projected, might be able to help.

Article 3

The term " sedentary fisheries " should be clearly defined.

The provision that the regulation will not affect the general status of the areas as high seas is, strictly speaking, superfluous. In any case its inclusion could not lead to an argument *a contrario* affecting contiguous zones, for which no such provision has been inserted.

Article 4

It should be stated explicity that control may be exercised on ships entering the zone as well as on those leaving it. Similarly, it should be clearly understood that control over immigration and emigration is covered by the term " custom . . . regulations ". Finally, the article should mention not only the purpose of preventing the infringement of customs regulations, but also the desirability of punishing such infringement.

11. Norway

Comments of the Government of Norway transmitted by a letter dated 3 March 1952 from the permanent delegation of Norway to the United Nations

The problems which are dealt with in the draft articles are both important and complicated. The present comments are intended to be a contribution to the solution of some of these problems. They do not necessarily represent the final conclusions of the Norwegian Government.

GENERAL REMARKS

The draft articles make a sharp distinction between the rights of the coastal State over the resources of the sea-bed and subsoil on the one hand and of its rights over the fishery resources of the superjacent waters on the other. But are there any reasons for making such a sharp distinction? The commentaries of the draft articles do not explain in a convincing way why this should be necessary.

In paragraph 4 of the commentaries to part I, article 2, it is stated that if the continental shelf was to be regarded as *res nullius*, that might lead to chaos. It is possible that the free exploitation of the resources of the continental shelf outside the limits of territorial waters might in some cases lead to chaotic or at any rate undesirable conditions, but the same may be said of the free exploitation of the resources of the superjacent waters. Unregulated fishing may create conflicts between different fishermen. It will often expose anchored fishing gear (nets or long lines) to the danger of being destroyed by the trawlers. It will also in many cases lead to overfishing. There are good reasons why the exploitation of the resources of the sea as well as the exploitation of the resources of the sea-bed and the subsoil should be regulated and controlled. It is not clear why the control and jurisdiction should be left to the coastal State in the case of the exploitation of the resources of the continental shelf, while a quite different procedure is recommended when it comes to fisheries. It might in particular be questioned whether the coastal States should be entitled to a monopoly of the resources of the continental shelf. The exploitation of the resources of the sea-bed and subsoil might very well be regulated by the coastal State without excluding non-nationals.

The International Law Commission has stated in paragraph 6 of the commentaries to part I, article 2, that it has not attempted to base on customary law the right of the coastal State to exercise control and jurisdiction for the purpose of exploring and exploiting the natural resources of the continental shelf. As we are here faced not with a restatement or clarification of existing international law but with the question of whether new rules should be established, great caution seems to be desirable. No innovation should be made before the problems involved have all been carefully considered and discussed by all interested States.

Apart from drawing the distinction between the resources of the continental shelf and those of the sea, the draft articles also make another distinction. They put sedentary fisheries in a position which differs from that of other fisheries. This distinction does not seem to be warranted. This will be further explained below in the comments to part II, article 3.

PART I. THE CONTINENTAL SHELF

As it is stated above, it is not at all certain that it will be appropriate to establish a particular set of rules for the continental shelf. It has, however, been thought that it might be useful nevertheless to submit comments on some of the draft articles of part I.

Article 1 gives a definition of the term " continental shelf ". This definition may be adequate as long as one is dealing with the continental shelves of countries bordering on the great oceans. But when several countries are contiguous to one shallow sea, the definition seems inadequate. In article 7 an attempt is made to solve the difficulty by stating that when two or more States are contiguous to the same continental shelf, they should establish borders in the area of the continental shelf by agreement. It is further said that, failing agreement, the parties are under the obligation to have the border fixed by arbitration. In the present state of international affairs it is hardly wise to give States a right of control and jurisdiction over the continental shelf, while at the same time leaving the fixation of boundaries to agreement or failing that, arbitration. If great interests are at stake, an agreement may be impossible to reach, and not all States can then be expected to be willing to submit the case to arbitration. In the commentaries to article 7 it is stated that it is not feasible to lay down rules which the States should follow for the drawing of boundaries. However, if the coastal States are to have a right over the continental shelf, some principles for drawing the boundaries must be laid down. One possibility would for instance be that each State should have jurisdiction over that part of the continental shelf which is nearer to its own territory (including internal waters but excluding the territorial belt) than to the territory of any other State. Disputes as to how the principles should be applied would have to be settled by the International Court of *Justice or by arbitration.*

In article 1 it is said that the term " continental shelf " refers to the sea-bed and subsoil of the submarine areas contiguous to the coast. What is precisely meant with the expression contiguous to the coast ? There may be a stretch of deep water near the coast and areas of shallow waters further out. This is for instance the case outside the coast of Norway. Along the coast of southern and western Norway stretches a long and rather narrow belt of deep water. On the outer side of that narrow belt the North Sea as a whole is rather shallow with depths inferior to 200 metres. It would obviously be most unfair if Denmark, Germany, the Netherlands and the United Kingdom should share between shem the whole North Sea, while Norway should be excluded because of the above-mentioned belt of deep water. If there are to be any rules governing the continental shelf, article 1 ought to be redrafted so that it is beyond doubt that the term " continental shelf " refers to the sea-bed and subsoil of the submarine areas lying off the coast, even if these submarine areas are separated from the coast by stretches of deep waters. The best thing would probably be not to use the term " continental shelf ". In paragraph 1 of the commentaries to part I, article 1, it is stated that the term " continental shelf " as used in article 1 parts from the geological concept of that term. If it is necessary to give coastal States a right of control and jurisdiction for the purpose of exploring and exploiting the natural resources of the sea-bed and subsoil, the best thing would probably be to limit that right to a contiguous zone of a fixed breadth. It would be necessary to have provisions stating how the boundaries between the contiguous zones of several States should be drawn when the zones overlap.

Article 2 of part I of the draft articles seems to imply that the coastal State might exercise control and jurisdiction over the continental shelf in such a way as to exclude foreigners. As it has already been pointed out above, it is doubtful whether it is really necessary to give such a monopoly to nationals of the coastal State.

PART II. RELATED SUBJECTS

According to the existing rules of international law, a State is free to regulate and control the fishing activities of its own nationals on the high seas. Where the nationals of several States are engaged in fishing activities in an area, the States concerned may of course conclude an agreement between themselves in which they provide for measures binding on their respective nationals.

It is not clear whether article 1 of part II adds anything to these rules apart from the provision that a coastal

State is entitled to take part in any system of regulation within 100 miles of its territorial waters even though its nationals do not carry on fishing in the area. The last sentence of article 1 seems, however, to indicate that one or more States may, in certain circumstances, take measures which are binding on the nationals of other States, provided no area is closed to them. The second sentence of the article, on the other hand, says that if the nationals of several States are engaged in an area, measures are to be taken by those States in concert. This seems to exclude the possibility of applying any measures to nationals of States which have not taken the measures in question, either alone or in concert with other States. Have the authors of the draft articles meant that if the nationals of a State fish only occasionally in an area they should be bound by measures taken by those States whose fishermen fish regularly in the same area, although their own State has not acceded to the measures? Or was it their intention to say that when all those States whose nationals fish in an area agree on certain measures, these measures should be binding on newcomers from other States?

The exact meaning of article 1 should be explained. In any case the article seems to require re-drafting, so as to become more clear, if it should not be left out altogether.

There exists in several areas a great danger of overfishing. In some areas, indeed, conservation measures are long overdue. The purpose of article 2 of part II therefore deserves great sympathy. It is doubtful, however, whether this article represents the best solution of the problem. It might prove very difficult, at any rate at the present time, to reach agreement among all interested States about the creation of the proposed permanent international body. Furthermore, an international body would probably not be the best agency for dealing with the various problems arising in different parts of the world. The most adequate means of reaching practical results in a not too distant future would be to continue to negotiate agreements between the interested States for the regulation of fisheries in particular areas. If such a procedure were to be followed, ir would not be necessary to wait for the agreement of all fishing nations in the world, and it would also be possible to make agreements suited for the particular requirements of the different fishing areas.

According to paragraph 5 of the commentaries to part II, article 2, the International Law Commission has discussed a proposal that the coastal State should be empowered to lay down conservation regulations to be applied in a zone contiguous to its territorial waters. This idea might be given further consideration. It is possible — although not certain — that one ought to create contiguous zones in which the coastal States should have the right to regulate and control the exploitation of the resources of the sea as well as of the sea-bed and subsoil without, however, having the right to exclude foreigners from taking part in such exploitation. One ought of course in such a case to specify what sort of regulations are permitted in order to prevent the coastal States from making any abuse of their rights.

As already mentioned, it is difficult to understand why so-called sedentary fisheries should be treated in a different way than other fisheries. According to paragraph 1 of the commentaries to part II, article 3, the proposals in that article refer to fisheries regarded as sedentary because of the species caught or the equipment used, e.g., stakes embedded in the sea floor. The catching of fishes swimming in the sea requires regulations no less than the catching of species living on the bottom of the sea. The risk of overfishing exists in both cases. And conflicts between fishermen might arise whether they fish for species on the bottom or for species swimming between the bottom and the surface of the sea. When stakes are embedded in the sea floor, some regulation might be required to prevent the stakes being run over or damaged, but when nets or lines are anchored, the same need for regulation exists. The problems with which we are faced are how to prevent overfishing, conflicts between fishermen and destruction or damage to the equipment used by them. The solution of these problems would not be furthered by making a distinction between " sedentary " and other fisheries.

The proposals put forward in part II, article 4, seem reasonable. Some clarification, however, is needed on two points.

It ought to be made quite clear that the term " customs regulations " does not only mean regulations concerning import and export duties, but also all other regulations concerning the exportation and importation of goods.

The word " coast " at the end of the article might lead to misunderstandings. Some people may interpret it as meaning the line where land ends and water begins. Others would find it more natural to interpret the word " coast " as including the seaward limit of the interior waters. It is suggested that the word " coast " be replaced by the expression " base lines from which the breadth of the territorial waters are reckoned ". This would be a practical solution. It is indeed impossible to draw a line twelve miles at sea which follows all the sinuosities of an irregular coastline. Norway makes use of straight base lines drawn between the outermost points on land or on the island fringe (*skjaergard*) in the general direction of the coast. The judgement which the International Court of Justice delivered in the *Anglo-Norwegian Fisheries* case on 18 December 1951 made it clear that the Norwegian base lines system was not contrary to international law.

The contiguous zone which is proposed in article 4 must be distinguished from the contiguous zones which have been mentioned above and in which the coastal State might have the right to control the exploitation of the resources of the sea and of the sea-bed and subsoil. There is no reason why the contiguous zones which different States have established for customs, fiscal and sanitary purposes should not overlap. Such overlapping would render it easier to prevent smuggling. If contiguous zones should be established for the regulation of the exploitation of the natural resources of the sea and of the sea-bed and subsoil, such contiguous zones must of course never overlap.

12. Philippines

Letter from the permanent mission of the Philippines to the United Nations

[*10 March 1952*]

I have the honour . . . to reproduce herewith the following comments of the Philippine Government on the draft articles pertaining to the continental shelf and other related subjects:

In general, the text of the draft articles and commentaries thereon are well drawn and well elucidated. The following comments on the various draft articles are submitted by the Bureau of Fisheries:

I. *Part I, article 1*

Philippine territorial waters, in accordance with the privisions of Act 4003, as amended, are waters within the international treaty limits (Treaty of Paris of 10 December 1898; Treaty concluded at Washington between the United States and Spain on 7 November 1900; Agreement between the United States and the United Kingdom of 2 January 1930). The extension inside Philippine territorial waters of the Bornean shelf (in the geological

sense) cannot therefore be considered continental shelf under this article but a submarine area inside Philippine territorial waters, and therefore subject to the sovereignty of the Republic of the Philippines.

II. *Part II, article 2*

At present there is established in the South-western Pacific an international body, known as the Indo-Pacific Fisheries Council, under the auspices of the Food and Agriculture Organization of the United Nations. Is this Council considered, under this article, a permanent international body upon which competence may be conferred ? In the case of States not being able to agree among themselves, it may be stated that the Agreement which is the charter of this international body does not contain any provision referring to settlement of conflicts between member countries.

Regarding commentary No. 3 under the same article, this question is raised: In so conferring competence to the United Nations Food and Agriculture Organization or any of its regional councils, for instance, on matters regarding fishery disputes between coastal States, could this competence be honoured and its decision accepted as a judicial decision by the International Court of Justice ? It is felt that conflicts may be referred to the International Court of Justice for decision and the power to make regulations or conservatory measures left to the Food and Agriculture Organization or its regional councils.

III. *Part II, article 3*

It is desired that a clearer definition of the term " sedentary fisheries " be made. It is not definite whether fisheries for sponges, commercial shells, such as trochas, gold-lip pearl shells, black-lip pearl shells, etcetera, found on sea bottoms are considered as sedentary fisheries in the sense of this article. With reference to fishing gear, it is not also known whether fishing appliances placed or anchored on sea bottoms, as fish traps (weirs), fish pots, anchored floating traps and submarine trap nets are considered sedentary.

13. Sweden

Letter from the Ministry for Foreign Affairs of Sweden

[*Original: French*]
[*30 May 1952*]

The draft articles on the continental shelf and related subjects prepared by the International Law Commission have been examined with the greatest interest by the Swedish Government: the draft was communicated to it by the Secretary-General in a letter dated 28 November 1951, which also asked for the Swedish Government's opinion.

This is a topic to which much attention has been devoted in recent years. Certain countries have made all kinds of claims varying in extent and differing in substance, based on various arguments, and these have involved departures from the rules of law hitherto accepted as part of the régime of the high seas. Such claims are bound to cause a great deal of uncertainty in a matter which is important for international communications and to entail the risk of disputes between States. It is undoubtedly desirable that generally acceptable international rules on this subject should be adopted. The Swedish Government was therefore glad to observe that among the questions being studied by the International Law Commission with a view to the codification of international law on this subject, priority has been given to the régime of the high seas.

The foregoing remarks refer especially to claims made by certain States in respect of submarine areas and in some cases also of a stretch of water extending well beyond territorial limits. It is true that in the past it has sometimes been proposed that a coastal State should acquire control of fishing above the continental shelf, but nothing has ever come of such proposals. In certain particular instances, moreover, coastal States have exercised sovereignty over sedentary fisheries (pearl and oyster beds), but such cases, for which there is historical support, may be regarded as exceptions. The claims to control of the continental shelf and superjacent waters made after the Second World War must be considered as entirely new and, in the opinion of the Swedish Government, as having no foundation in existing international law. The Swedish Government was interested to note that in its comments on article 2 of the draft, the International Law Commission gives negative answers to the questions whether the continental shelf can be occupied and whether claims to sovereignty over it have any basis in international customary law. On the other hand, the Commission states that " the principle of the continental shelf is based upon general principles of law which serve the present-day needs of the international community ". The Swedish Government is unable to reconcile these two views. Moreover, the Commission gives no particulars of the " general principles of law " to which it refers.

The Swedish Government feels bound to regard any proposal to grant rights over the continental shelf to coastal States as being *de lege ferenda* and considers that such a proposal could only be put into effect by an international convention providing for certain concessions to coastal States which are in a position to exploit the continental shelf. The conclusion of such a convention is a matter of expediency. It would depend on whether the reasons for granting such rights to coastal States were strong enough to persuade other States to accept a corresponding limitation of the rights they now enjoy by virtue of the principle of freedom of the seas.

The chief reason advanced for giving coastal States some degree of control and jurisdiction over the continental shelf is that exploitation of its natural resources would thus be made possible. The resources in question are for the most part minerals in general and petroleum in particular. It is necessary to grant control and even monopoly rights over the exploitation of these natural resources to coastal States, in order to prevent the development of chaotic conditions which would render any exploitation impossible. The world's need of those resources, especially petrol, should therefore be a sufficient reason for granting certain concessions to the coastal States even though this would entail sacrifices by other States.

The Swedish Government is prepared to admit that there is some justification for this argument. But if such concessions are granted to coastal States, it should be stipulated that their scope should not be wider than is absolutely necessary to achieve the aim in view, and that the rights now enjoyed by all States under the principle of freedom of the seas, especially rights of navigation and fishing in free waters, should be preserved and protected as far as possible.

On the basis of these considerations, the Swedish Government is of opinion that the provisions concerning the continental shelf proposed by the International Law Commission, as contained in part I of the draft, are fairly satisfactory in several respects.

In article 1, the Commission gives a definition of the continental shelf and points out that the geological concept of this term is unsuitable as a basis for the draft. It seems true to say that for purposes of regulation, the essential point is that the superjacent waters should be shallow enough to admit of exploitation of the natural resources of the sea-bed and subsoil, and not that the sea-bed should form a " plateau " or " shelf ". This

being so, the Swedish Government feels that it might be preferable to use some term other than " continental shelf ", for instance " submarine areas ".

Article 2 states that " the continental shelf is subject to the exercise by the coastal State of control and jurisdiction for the purpose of exploring it and exploiting its natural resources ". The Swedish Government thinks it proper that the rights of coastal States in respect of the continental shelf should be confined to the purposes stated. The claims to sovereignty, even over wide stretches of water extending far beyond the coast, which have been made by certain States, would thus be rejected. In the opinion of the Swedish Government, these claims are certainly not consistent with existing international law. It also follows that where there is no exploration or exploitation, the costal State has no rights over the continental shelf, except the right to prevent its exploration or exploitation by others. It should be expressly stated that " natural resources " are understood to mean mineral resources, in order to show that fishing is not included. Moreover, " sedentary fisheries " are dealt with in another article of the draft.

The Swedish Government approves of the provisions of articles 3 and 4, namely, that the exercise by a coastal State of control and jurisdiction ofer the continental shelf must not affect the legal status of the superjacent waters or of the airspace above them.

The Swedish Government considers that the proposed provisions of article 6 are likely to cause some anxiety, since they appear to encroach, to some extent, on the principle of freedom of the seas. As already pointed out above, the granting of rights over the continental shelf to coastal States should be conditional upon the rights of navigation and fishing in free waters, which belong to all States, being restricted as little as possible. The Swedish Government cannot help feeling that this stipulation has not been adequately formulated in the proposed text of article 6. To say that " the exploration of the continental shelf and the exploitation of its natural resources must not result in substantial interference with navigation or fishing " does not appear to provide a guarantee in this matter. Precise rules should be drawn up concerning notification and warnings, particularly in regard to the question of the parties to be notified. In any case, it will be necessary to ensure that notice is given before installations are constructed. With a view to the safety of shipping, it will also be necessary to draw up rules on the equipment of installations. An obligation to pay compensation for damage resulting from negligence or carelessness on the part of the exploiter should also be created.

The Swedish Government considers that in some respects the most strikingly novel feature of the draft is the provision in article 6, paragraph 2, regarding the establishment of safety zones around installations. This provision undoubtedly departs from existing rules of law on the freedom of the seas. It may be asked whether coastal States will acquire the right to stop and punish ships entering navigable waters to which they now have an undisputed right of access. The provision on safety zones should give details both of their nature and of their extent. In its comments, the Commission states that a radius of 500 metres would generally be sufficient. If that is so, this figure should be included in the text of the future convention.

In article 7 of the draft, the Commission deals with the need for boundaries between areas of the continental shelf belonging to States to whose territories the same continental shelf is contiguous. It may be expected that the fact of granting coastal States a monopoly of exploitation of the natural resources of the continental shelf will give rise to disputes between the States concerned. In such cases submission to arbitration should presumably be compulsory. The Swedish Government is not convinced of the advisability of arbitration *ex aequo et bono*. It is most desirable that rules of law on which arbitrators can base their decisions should be drawn up. Practice between States and previous arbitration cases may possibly provide useful material for the drafting of such rules of law. In this connexion, the Swedish Government wishes to draw attention to The Hague Arbitral Award of 1909 on the Maritime Frontier between Sweden and Norway.

In part II of its draft, the Commission deals, under the heading " Related subjects ", with various questions concerning the régime of the high seas.

Articles 1 and 2 relate to measures for conservation of the resources of the sea. The Swedish Government considers this a difficult but important task. Under present conditions there is great danger of these resources being destroyed by over-intensive fishing and hunting. The difficulty is that even if a convention on measures for the protection of marine fauna were concluded between the States mainly interested, it would not be binding on non-acceding States. As international law now stands, it is hard to see how this difficulty could be overcome. A coastal State clearly has no right to prohibit or regulate fishing beyond the limits of its territorial waters. The methods proposed by the Commission, which appears to be that a general convention should empower the States mainly concerned to take measures binding on other States as well, may perhaps be practicable. Here, it must be clearly laid down that such measures may in no case result, either directly or indirectly, in the exclusion of nationals of other States from participation in fishing or hunting. From this point of view an international body, to which complaints could be submitted regarding the measures taken, appears to be essential.

Article 3 deals with " sedentary fisheries ". The Swedish Government has already outlined its views on this matter. There are probably certain sedentary fisheries (pearl and oyster beds) over which coastal States have exercised exclusive sovereignty *de facto* for a long time. This is a matter of special cases rather than a general rule. In such cases, where the rights of a coastal State have a historical foundation, the basic principles of international law would hardly permit them to be impaired by a convention concluded in our time. It seems scarcely necessary to discuss this question, except perhaps with a view to formulating a reservation of such rights to be inserted in article 1 of part II. A special article on sedentary fisheries would then be unnecessary.

In article 4, the Commission deals with the question of a contiguous zone beyond territorial waters, within which a coastal State would have the right to exercise " the control necessary to prevent the infringment . . . of its customs, fiscal or sanitary regulations ". As we know, this question has been keenly debated, especially at The Hague Conference of 1930, when a number of States laid claim to contiguous zones of this kind. These claims were no doubt made *de lege ferenda* rather than by virtue of the existing law. The Swedish Government is aware that certain States have established contiguous zones, particularly for customs control, by unilateral legislative action. But it has grave doubts as to whether a coastal State has the right to exercise control over foreign ships outside its territorial waters, without the consent of the country to which such ships belong. These doubts are confirmed by the fact that States desiring to exercise such control have often thought fit to conclude treaties to secure this right. Reference may here be made to the so-called " liquor treaties " concluded by the United States in 1924-1926 and the treaty concluded at Helsinki in 1925 between the coastal States on the Baltic Sea.

Moreover, this question is so closely bound up with that of the extent of territorial waters, which is already on the Commission's work programme, that it would seem advisable to deal with the two topics at the same time.

Generally speaking, all the subjects dealt with in the Commission's draft raise the same problem: it is difficult to form a final opinion on them before knowing how the question of the extent of territorial waters is to be settled internationally. In this connexion, the Swedish Government wishes to stress its view that none of the interests which the draft is designed to safeguard, be it the exploitation of the resources of the continental shelf, the conservation of the recources of the sea or any other interest, should serve as a pretext for extending territorial waters beyond the traditionally accepted limits.

14. Syria

Letter from the Minister for Foreign Affairs of Syria
[*Original: French*]
[*20 July 1052*]

In reply to your letter No. LEG.292/1/07 of 28 November 1951, in which you were good enough to ask for the comments of the Syrian Government on the draft articles on the continental shelf and related subjects which the International Law Commission was requested to prepare, I have the honour to inform you that these articles have been approved, in principle, by the competent authorities of Syria.

Moreover, in view of the importance to Syria of the problem of preserving the resources of the sea, the proposal contained in part II, article 2 of the abovementioned draft, concerning the establishment of a permanent international body to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them, has been favourably received.

15. Union of South Africa

Comments of the Government of the Union of South Africa transmitted by a note verbale *dated 27 August 1952 from the permanent delegation of the Union of South Africa to the United Nations*

PART I. THE CONTINENTAL SHELF

Article 1

The Union Government feel that the definition of the continental shelf as " the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of territorial waters, where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil ", is too elastic. If the test is to the be " exploitability " of the sea-bed and subsoil then it seems clear that with the advance of technical proficiency in working at increasing depths, the boundaries of the continental shelf must be subject to continual revision. This would tend to import into the law an element of uncertainty which would be inimical to the orderly development and exploitation of the continental shelf.

On the other hand, the Union Government recognize that a rigid definition of the continental shelf in terms of the depth of the superjacent waters may also be unsatisfactory in that whatever depth is decided upon must be arbitrary and may in the course of time, and through the advance of technical knowledge, cease to bear any relation to the needs and capacities of the littoral State. In the circumstances, the Union Government would prefer to see the continental shelf defined in terms of a maximum depth of 200 metres; but feel that provision should be made for reviewing this depth at some future date, should technical considerations render such a review necessary.

Article 2

The Union Government would prefer to see the word " sovereignty " used in place of the phrase " control and jurisdiction for the purpose of exploiting . . . " in the Commission's draft. There appears to be no good reason for distinguishing between the nature of the right which a State possesses in relation to territorial waters and the right now in process of being recognized in relation to the continental shelf. Moreover, the phrase used in the Commission's draft is ambiguous, since the words " control ", " exploring ", " exploiting " and " natural resources " are all open to interpretation. The word " sovereignty ", on the other hand, has a clear connotation in international law and appears to describe very adequately the relationship which the littoral State will bear to the continental shelf.

The right of foreign States to lay cables on the continental shelf is safeguarded in the draft articles and will not, therefore, be affected by the exercise of sovereignty in other respects.

Articles 3-5 inclusive

The Union Government concur.

Article 6

The Union Government are inclined to favour express provisions for a safety zone of 500 metres round installations on the continental shelf. It is felt that the phrase " reasonable distance " is uncertain and may give rise to disputes.

Article 7

While entertaining no very strong views on the relative merits of arbitration and judicial settlement of disputes which may arise from the inability of littoral States to agree upon boundaries in the area of the continental shelf, the Union Government would prefer an express stipulation in favour of the latter. It is felt that judicial settlement of disputes which may arise is more likely to contribute to the orderly development of international law than is the creation of a network of *ad hoc* arbitral awards based upon political rather than legal considerations.

PART II. RELATED SUBJECTS

Resources of the sea

Article 1

The Union Government concur with the first, second and fourth sentences of the draft article, but consider that the third sentence, which reads " If any part of an area is situated within 100 miles of the territorial waters of a coastal State, that State is entitled to take part on an equal footing in any system of regulation, even though its nationals do not carry in fishing in the area ", is superfluous and contains an implied derogation from the principle of the freedom of the high seas. It flows necessarily from this principle that it is contrary to international law to prevent or even regulate fishing by the nationals of a foreign state in any area of the high seas, except with thc agreement of that State.

Article 2

The Union Government concur with the body of the draft article but are strongly opposed to the suggestion contained in note 5 of the comments, which is to the effect that, pending the establishment of a permanent international body coastal States should be empowered to lay down conservatory regulations in a zone contiguous to their territorial waters. The Union Government consider that to permit coastal States to enforce conservatory regulations against the nationals of other States outside the limit of territorial waters, and without the consent of those States, would be to allow a serious derogation from the freedom of the high seas.

The Union Government consider that apart from the Food and Agriculture Organization mentioned in paragraph 3, the International Council for the Exploration of the Seas (ICES) should also be consulted.

Sedentary fisheries

Article 3

The Union Government concur.

Contiguous zones

Article 4

The Union Government regard the article as being reasonable provided that it is strictly interpreted. The control and jurisdiction of the littoral State for the purpose of this article should not go beyond what is necessary to prevent the infringement, within its territorial waters, of customs, fiscal or sanitary regulations; and in no case should it be exercised beyond the twelve-mile limit.

16. United Kingdom of Great Britain and Northern Ireland

Comments of the Government of the United Kingdom transmitted by a letter dated 2 June 1952 from the permanent delegation of the United Kingdom to the United Nations

In the opinion of Her Majesty's Government the draft articles on the continental shelf and related subjects contained as an annex to chapter VII (Regime of the High Seas) of the report of the International Law Commission covering its third session, are a credit to the Commission and a valuable contribution towards the codification of the law of the sea. Her Majesty's Government's comments on the draft articles are annexed, but a few general observations are given below. Her Majesty's Government note that at its second session the Commission decided to proceed to the codification of the law of the sea by stages and that at its third session it decided to initiate work on the régime of territorial waters. In the opinion of Her Majesty's Government, the questions of the régime of the high seas and of the régime of territorial waters have now tended to become interconnected, that at this stage of the Commission's work, it is not possible for governments to express more than tentative comments. Her Majesty's Government will await, however, with very great interest the Commission's report on the régime of territorial waters and hope to be able to offer more extended comments thereafter.

Her Majesty's Government also noted hat at its second session the Commission thought it could, for the time being, leave aside all those subjects falling for study by other United Nations organs or by the specialized agencies. Her Majesty's Government consider this was a wise decision as enabling the Commission generally to concentrate on the task of codifying the existing law, whilst leaving to other United Nations organs or the specialized agencies the task of initiating studies in matters not yet regulated by international law, such as fishery conservation outside territorial waters and pollution.

As Her Majesty's Government understand it, it is the task of the Commission to " codify " the régime of the high seas. " Codification " was defined by the Committee on the Progressive Development of International Law and its Codification as meaning " the more precise formulation and systematization of the law in areas where there has been extensive State practice, precedent and doctrine " (A/AC.10/51).

In the opinion of Her Majesty's Government, State practice in regard to the subjects treated by the Commission has, notwithstanding certain gaps, been sufficiently developed to justify the attempt to prepare a code. While they must observe that, in their view, some of the rules adumbrated by the Commission in its draft are not at present rules of customary international law, Her Majesty's Government do not propose to criticise them destructively on this account. Where, however, it appears that the rule suggested is based on so little practice as to amount to a mere recommendation, it is indicated in the annex whether or not Her Majesty's Government consider the recommendation acceptable in principle, whilst reserving the right to reconsider the matter in the light of the replies of other governments.

ANNEX TO THE COMMENTS BY THE GOVERNMENT OF THE UNITED KINGDOM

PART I

Article 1

Suggested amendment: Delete " where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil " and substitute " as far as the 100-fathom line ".

Comment. Her Majesty's Government agrees that, whatever the precise geological meaning of the term " continental shelf ", this term should continue to be used in international law to cover those submarine areas over which the coastal State (which may be an island as well as a State forming part of a " continent ") is entitled to exercise sovereignty.

Her Majesty's Government consider, however, that the definition adopted by the Commission of " continental shelf " in the legal sense is too vague and is susceptible of abuse.

The formula " Where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil " might easily provoke international disputes. Just as in the case of the superjacent waters it became necessary to establish a fixed limit of distance for the extent of the territorial sea, so in the case of the sea-bed and subsoil it is essential from the practical point of view to establish a fixed limit of depth for the extent of the continental shelf under the sovereignty of the coastal State.

Her Majesty's Government consider that State practice is sufficiently uniform to justify fixing this limit at the 100-fathom line. Consequently, in the view of Her Majesty's Government, every State is entitled to exercise sovereignty over the sea-bed and subsoil off its coasts as far as the first point at which the depth of the water becomes 100 fathoms, regardless of the fact whether this sea-bed and subsoil constitute a continental shelf in the geological sense or not.

Her Majesty's Government sympathize with the desire of the Commission to establish a more flexible limit, so as not to preclude the possibility of exploitation, when that becomes technically feasible, beyond the 100-fathom line. In their view, however, the 100-fathom line is likely to be sufficient for all practical purposes for some time to come and, if practical considerations ever necessitated a greater depth, the matter could be reconsidered later. Although a flexible limit might have some advantage, it would seem preferable on balance to secure as soon as possible international agreement on a fixed depth. Her Majesty's Government might be prepared to consider 200 metres as an alternative to 100 fathoms[22]

[22] The advantage of the 100-fathom line is, however, that it is shown on most ocean-going charts, whereas the 200-metre line is not shown on these charts.

but they wish to place on record their opposition to any system which would allot the continental shelf to coastal States on the basis of distance rather than depth and which would allot to coastal States submerged plateaux (themselves possibly less than 100 fathoms below the water) separated from the coast by a channel more than 100 fathoms deep. In the opinion of Her Majesty's Government, such submerged plateaux are either *res communis* capable of acquisition by prescription or *res nullius* capable of occupation and exploitation by any State according to the normal law of occupation. Her Majesty's Government regard as illegal certain claims that have been made over the continental shelf on the basis of distance rather than depth.

Article 2

Her Majesty's Government would prefer to say that "the continental shelf is subject to the sovereignty of the coastal State". In the opinion of Her Majesty's Government there is no sufficient reason for substituting for the familiar concept of "sovereignty" the new and undefined expression "control and jurisdiction", even though the two expressions are probably intended to have the same meaning. If the expression "sovereignty" were used, these would be no doubt that a crime committed in a tunnel under the continental shelf would come within the jurisdiction of the coastal State; if the expression "control and jurisdiction for the purpose of exploring the continental shelf and exploiting its natural resources" were used, there might be some doubt in this point.

In the opinion of Her Majesty's Government the rights of the coastal State over the continental shelf are of the same nature as its rights over its land territory, and it would be desirable to state this precisely in the draft.

Her Majesty's Government agree that it is for the time being impracticable to develop submarine areas internationally; that the continental shelf is not *res nullius*; and that the right to exercise sovereignty over the continental shelf is independent of the concept of occupation.

Article 3

Her Majesty's Government are entirely in favour of this article and would not be prepared to accept any convention on the continental shelf which did not contain such an article.

Article 4

As for article 3.

Article 5

As for article 3.

Her Majesty's Government agree that the pipeline question need not be considered for the time being.

Article 6

Her Majesty's Government agree in principle to this article. They believe, however, that the Commission's recommendation of a 500-metre navigational safety zone should be written into the body of the article in place of the rather vague formula "to reasonable distances".

Article 7

While attaching great importance to the principle that international disputes should be settled by judicial methods, Her Majesty's Government are unable to agree to this article in its present form. In particular they cannot accept the recommendation that States should be under an obligation to submit such disputes to arbitration *ex aequo et bono*. They consider that such disputes should be solved by "judicial settlement" rather than by "arbitration in the widest sense" and they consider that the Commission might draw up a system of rules to regulate the division of the continental shelf in congested areas in cases where it has been impossible to reach agreement. These rules might form the basis of treaties between States, and in any case, provided they took account of international practice to date, they would be of the greatest value to international judicial tribunals seized of disputes of this type.

PART II

Article 1

Her Majesty's Government are in general sympathy with the objects of this article. In their view, the first, second and fourth sentences contain statements of existing international law, whilst the third sentence is a recommendation *de lege ferenda*. Whilst they understand the reasons for which the Commission put forward this recommendation, Her Majesty's Government nevertheless consider it superfluous and probably unworkable in practice. It is implicit in the very notion of the high seas — as the Commission realized in drafting the fourth sentence of the article — that it is contrary to international law to prevent or even to regulate fishing by the nationals of a foreign State in any area of the high seas except with the agreement of that State. From this basic principle it follows, in the opinion of Her Majesty's Government, that any State which claims an interest in the fishing in a particular area of the high seas is entitled to take part on an equal footing in any system of regulating the fishing in that area, whether it is more or less than 100 miles away from that area and whether its nationals are or are not at present engaged in fishing in that particular area.

Article 2

Her Majesty's Government agree that the question of setting up a permanent international body to conduct investigations of the world's fisheries is within the competence of the Food and Agriculture Organization and that pollution is within the competence of the Economic and Social Council and will eventually be dealt with by the Inter-governmental Maritime Consultative Organization.

Her Majesty's Government wish to place on record their emphatic opposition to the proposal contained in note 5. In the opinion of Her Majesty's Government no State has the right to enforce conservation measures against the fishing vessels of other States outside its territorial waters except by international agreement. Unilaterally declared conservation zones outside territorial waters are illegal as being in contravention of the principle of the freedom of the seas.

Article 3

As stated in the comments on article 1 of part II, Her Majesty's Government consider that, as a matter of general principle, no State is entitled to regulate fishing by the nationals of other States in areas of the high seas except by agreement with the States concerned. In their opinion, however, international law recognizes an exception to this general rule in cases where the coastal State has acquired, on the basis of prescription, sovereignty over sedentary fisheries lying on the sea-bed which have long been carried on exclusively by its nationals, even though the area where the sedentary fisheries are carried on may be outside territorial waters. The legal basis underlying prescriptive claims of this type was examined by Sir Cecil Hurst in a well-known article entitled, "Whose is the bed of the sea?" (*British Year Book of International Law*, 1923-24, page 34), in which the learned author concluded that these claims are valid provided they conform to certain conditions, namely:

(i) The coastal State must have exercised effective occupation of, and jurisdiction over, the sedentary fisheries on the sea-bed for a long period.

(ii) There must be no interference with freedom of navigation in the waters above the sea-bed.

(iii) There must be no interference with the right to catch swimming fish in the waters above the sea-bed.

Her Majesty's Government consider that the law was correctly stated by Sir Cecil Hurst in the above article and they are in entire agreement with the author's conclusion that " the claim to the exclusive ownership of a portion of the bed of the sea and to the wealth which it produces in the form of pearl, oysters, chanks, coral, sponges or other *fructus* of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public to fish in the high seas ".

In drafting this article, the Commission would appear on the whole to have shown a similar agreement with the conclusions of Sir Cecil Hurst. Her Majesty's Government note, however, that the Commission would make the right to regulate sedentary fisheries outside territorial waters subject to the requirement that non-nationals be " permitted to participate in the fishing activities on an equal footing with nationals ". In the opinion of Her Majesty's Government, it depends on the historical facts of each case whether or not non-nationals are permitted to participate in the fishing activities on an equal footing with nationals. Where the coastal State has in the past permitted non-nationals to participate in the fishing, then there is no right to exclude such non-nationals in the future; where, however, the coastal State has in the past reserved the fishing exclusively for its own nationals, then non-nationals have no right under international law to participate in the fishing in the future. Further, it may be a nice doctrinal point whether a State, which has (*a*) a title by prescription to sedentary fisheries lying on the sea-bed, has also (*b*) a title to the surface of the sea-bed on which the sedentary fisheries lie. The distinction, if there is one at all, between (*a*) and (*b*) must be a fine one, yet it seems that this distinction is the basis of the distinction which the Commission makes in note 1 between sedentary fisheries on the one hand and the continental shelf on the other hand. In any case the basic distinction must be that between the sea-bed (sedentary fisheries or continental shelf) over which the coastal State is entitled in appropriate circumstances to full sovereignty and the superjacent waters over which the coastal State is not entitled in any circumstances to sovereignty. The Commission has (in articles 3 and 4 of part I) emphasized this distinction in the case of the continental shelf; it does not appear, however, to have stressed it with due clarity in the case of the sedentary fisheries.

Article 4

It has hitherto been the policy of Her Majesty's Government to oppose any claims to the exercise of jurisdiction outside territorial waters. Many countries have, however, claimed to exercise jurisdiction for certain limited purposes beyond territorial limits. For the most part these purposes have related to the enforcement of customs, fiscal or sanitary regulations only and the jurisdiction has been exercised within modest limits, generally within a " contiguous zone " not more than twelve miles from the coast. Her Majesty's Government have not themselves found it necessary to claim a contiguous zone, and wish to place on record their emphatic opposition as a matter of principle to any increase, beyond limits already recognized, in the exercise of jurisdiction by coastal States over the waters off their coasts, whether such increase takes the form of the extension of territorial waters of the exercise of wider forms of jurisdiction outside territorial waters. Her Majesty's Government are satisfied, however, that on the basis of established practice, the article proposed by the Commission is acceptable provided that:

(i) Jurisdiction within the contiguous zone is restricted to customs, fiscal or sanitary regulations only.

(ii) Such jurisdiction is not exercised more than twelve miles from the coast.

(iii) This article is read in conjunction with another article stating that the territorial waters of a State shall not extend more than three miles from the coast unless in any particular case a State has an existing historic title to a wider belt.

Her Majesty's Government would observe that the term " coast " is ambiguous. The Commission should declare whether it is the physical coast-line that is envisaged or the political coast-line — i.e., the base line from which the territorial sea is delimited.

17. United States of America

Comments of the Government of the United States of America transmitted by a note verbale *dated 29 May 1952 from the permanent mission of the United States to the United Nations*

The Acting Representative of the United States of America to the United Nations . . . has the honor to refer to note LEG. 292/1/07, dated 28 November 1951, from the Office in Charge of the Legal Department, concerning the request of the International Law Commission for comments on the draft articles on the continental shelf and related subjects.

The Acting Representative of the United States has the honor to inform the Secretary-General that it is the understanding of this Government that the purpose of these comments is to facilitate reconsideration of the draft by the Commission prior to the preparation of a final document. For this purpose, the Government of the United States is in general agreement with the principles which appear to inspire the draft articles of part I, Continental Shelf, but has the following suggestions to make.

This Government is under the impression that the draft articles in part I, Continental Shelf, intend to establish in favor of the coastal State an exclusive right to the exploration of the continental shelf and the exploitation of its resources. This Government wonders, accordingly, whether it would not be advisable to make it clear at least in the commentaries, that control and jurisdiction for the purpose indicated in the draft articles mean in fact an exclusive, but functional, right to explore and exploit. It is also the view of this Government that article 5 does not carry out precisely enough its purpose which, as stated in the commentary, is to bar the coastal State from excluding the laying or maintenance of submarine cables. As it stands, article 5 appears to imply that the coastal State may do so if the measures resulting in such exclusion are reasonable. The matter, it is believed, deserves clarification.

In addition, this Government does not believe that it is advisable to limit the scope of judicial arbitration by defining it as arbitration *ex aequo et bono*, as suggested in the commentary to article 7.

The Government of the United States is not prepared to submit comments at this time on part II, Related subjects, and will endeavor to communicate them to the Commission at a later date.

18. Yugoslavia

Comments of the Government of Yugoslavia transmitted by a letter dated 11 March 1952 from the permanent mission of Yugoslavia to the United Nations

As a principle, the Government of the Federal People's Republic of Yugoslavia accepts the idea of establishing the " continental " shelf under which the coastal States

would have certain specified rights and duties. It also expressesits recognition to the International Law Commission for its endeavours in this regard. As to the details, however, the Government of the Federal People's Republic of Yugoslavia does not agree with some provisions of the said draft and wishes to make the following suggestions.

PART I. CONTINENTAL SHELF

The Yugoslav Government considers that the solution of these problems as regards the continental shelf would be founded on a much more sound basis if this question were to be settled simultaneously with a uniform delimitation of marginal waters which compose the notion of coastal sea, i.e., of interior waters and territorial waters. This is because the question of width of each kind of marginal waters has not been settled uniformly as yet, and because a further area, i.e., the continental shelf, is now being added to these already unprecise borders (which are a source of frequent misunderstandings and protests).

Article 1

The Yugoslav Government does not share the opinion of the Commission laid down on point 7 of its commentary to article 1. Considering the rapid technical progress in the world it is evident that the technical possibilities of exploitation of the sea-bed and subsoil will grow very rapidly and the limit of the continental shelf, mentioned in article 1, will continually be shifted to greater depths in the high seas, hence, it will never be certain to what distance from the coast the continental shelf of a State extends. In order to give its full "*raison d'être*" to article 1 of the Commission's draft, it would be necessary to learn up to what depth the extraction of oil is possible today. (This is important because of article 7 of the draft, where a division of the continental shelf under mutual agreement is provided). However, we are not certain of this. At present it seems that this is possible only in depths up to 29 metres, but we understand that in the United States of America an equipment has been developed enabling extraction even in a depth of 300 metres. Tomorrow, maybe, devices will be found to extract oil in depths of 1,000 metres.

From the aforementioned it is evident that article 1, due to its lack of precision, can lead to misunderstandings among neighbouring countries. Hence, the Yugoslav Government considers as far more acceptable the proposition of Mr. El Khouri (who proposed a minimum boundary "X" miles from the coast, regardless of the depth, and a maximum boundary "X" metres of depth regardless of the distance from the coast), than article 1 of the draft. Therefore, the Yugoslav Government insists that the boundary of the continental shelf should be changed in the manner to determine as continental shelves all areas of sea-bed and subsoil covered by water not deeper than 200 metres.

Article 2

No objections.

Articles 3 and 4

Since these two articles cover the same subject, the Yugoslav Government considers that they should be joined into one article with two paragraphs. The second paragraph, dealing with the infringement of the legal status of the airspace above the continental shelf, should be amended as follows:

"... subject to the right of the coastal state defined by article 6, paragraph 2."

Overflying below a certain height should be prohibited, in order to protect the already existing installations.

Article 5

No objections. Laying of pipelines should be prohibited.

Article 6

No objections. We agree with point 4 of the commentary to this article, with the remark that a safety zone over the installation to a height of 500 metres should be provided.

Article 7

Here the Yugoslav Government makes two observations. First, if article 1 of this draft remains unchanged, article 7 is inadmissible. Since neighbouring countries do not know to what distance their continental shelves can extend, because technical possibilities of extraction of oil will be different in two countries not equally industrially developed, they will not be able to establish the boundaries mentioned in article 7. Second, the Yugo's Government considers the geometric middle the best way to apply in establishing boundaries, and it proposes to amend article 7 in this sense.

PART II. RELATED SUBJECTS

A. *Resources of the sea*

As a principle, the Yugoslav Government accepts the draft articles 1 and 2 with the following observations:

(*a*) Articles 1 and 2 are too concise and they therefore require numerous comments, which actually have been successfully prepared by the Commission. Therefore, in consideration of the Commission's remarks Nos. 2-5 to article 2 of the draft, the Yugoslav Government proposes that two or three additional articles should be drafted on the basis of these comments, in order to include the observations of the Commission.

(*b*) Considering that FAO is already dealing with these and similar problems, the Yugoslav Government insists that FAO should be the respective international body mentioned in article 2, in the form that this body has already been constituted within the said organization, consisting of a number of FAO members.

B. *Sedentary fisheries*

Article 3

No objections.

C. *Contiguous zones*

Article 4

The Yugoslav Government cannot at all agree with the formulation of this article, because it takes no account of the legitimate defensive rights of the coastal States. The establishment of this zone without authorizing the coastal State to protect the security of its shores in strictly limited and exactly specified scopes, is untenable in the view of the Yugoslav Government. This question and the *pro et contra* reasons have been thoroughly discussed at The Hague Codification Conference in 1930, so that it would be unnecessary to repeat them now.

Article 4 should, therefore, read as follows:

"On the high seas adjacent to its territorial waters, a coastal State may exercise the control necessary to prevent the infringement, within its territory or territorial waters, either of its customs, fiscal and sanitary regulation, or its security laws. Such control shall not be exercised further than twelve miles from the outer limit of its interior waters."

In view of the fact that interior waters, which otherwise are under the full sovereignty of the coastal State, are considered as an integrant part of its land, there is no difference between the Commission's and the Yugoslav proposal for the delimitation of this zone. The Yugoslav proposal is only more concise and will avoid arbitrary interpretations concerning the edge of the contiguous zone.