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Situation, Documents, and Commentary on Recent Developments in the International Law of the Sea

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The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
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BIBLIOGRAPHICAL NOTE

The purpose of this note is to cite a number of references for possible use in connection with the documents reproduced in the remainder of PART II of this volume. No attempt has been made to be exhaustive in listing these citations and only those of the most general interest are included. References have generally been restricted to ones published in the English language and to those most likely to be found in libraries accessible to naval officers. Generally excluded are articles appearing in the Department of State Bulletin. Such articles are, however, often of great value and the semi-annual index of the Bulletin can be consulted for pertinent citations. Articles dealing with a specific country will be mentioned under that country in SECTION VI, infra, as will be the references to the views of individual countries appearing in International Law Commission documents.

Two recent monographs are especially helpful: Riesenfeld, *Protection of Coastal Fisheries under International Law* (1942) and Leonard, *International Regulation of Fisheries* (1944).


1. NOTE. The final report of the International Law Commission on the Law of the Sea was completed at its eighth session in Geneva (1956). The Report of the Commission on its eighth session was first printed in A/CN.4/104, English, the original being in French. It has been reprinted, with necessary corrections, in General Assembly, Official Records, Eleventh Session, Supplement No. 9 (A/3159). The text of this latter English translation of the articles on the Law of the Sea is reproduced in full below from A/3159. Selected commentaries to some of the articles are reproduced thereafter. In accordance with past practice, the Report has been published in full in the January, 1957 issue of the American Journal of International Law (51 A.J.I.L. 154).  

The Report was presented to the General Assembly for consideration at its eleventh session in the fall of 1956. The Report is of great importance and deserves the most careful study. The Commission recommended that it be submitted to an international diplomatic conference for possible adoption in one or more international conventions. The General Assembly accepted the recommendation, and the conference will commence 24 February 1958 at Geneva, Switzerland. It is expected to last nine weeks. The special rapporteur on the law of the sea was J.P.A. François of the Netherlands, a member of the Commission. Mr. François submitted numerous drafts on the regime of the high seas and of the territorial sea. Drafts on the high seas are contained in A/CN.4/17 (First Report); A/CN.4/42 (Second Report); A/CN.4/51 (Third Report); A/CN.4/60 (Fourth Report); A/CN.4/69 (Fifth Report); A/CN.4/79 (Sixth Report); and A/CN.4/103 (Supplementary Report). Drafts on the territorial sea are contained in A/CN.4/53 (First Report); A/CN.4/61, and Add. 1, and Add. 1/Corr. 1 (Second Report and annex with report of experts); A/CN.40/77 (Third Report); and A/CN.4/93 (amendments to regime of territorial sea proposed by François). A final report by François on the high seas and territorial sea is contained in A/CN.4/97, and Add. 1, 2, and 3. There is a bibliography on the regime of the high seas in A/CN.4/26, and a valuable memorandum by the Secretariat on the law of the sea in A/CN.4/32, the authorship of which has been attributed to Gidel.  

Earlier reports of the International Law Commission dealing with the regime of the sea may be found in A/1316, pages 21–22; A/1585, page 16 and pages 17–20; A/2163, page 12; A/2456, pages 12–19; A/2693, pages 12–21; and A/2934, pages 2–22. Comments of governments on the various drafts are referred to under the individual country, infra. Other expressions
of the views of governments may be found in the summary records of the Commission, and in the proceedings of the Sixth Committee of the General Assembly.


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Articles Concerning the Law of the Sea

Part I

TERRITORIAL SEA

Section I: General

JURIDICAL STATUS OF THE TERRITORIAL SEA

ARTICLE 1

1. The sovereignty of a State extends to a belt of sea adjacent to its coast, described as the territorial sea.

2. This sovereignty is exercised subject to the conditions prescribed in these articles and by other rules of international law.

JURIDICAL STATUS OF THE AIR SPACE OVER THE TERRITORIAL SEA AND OF ITS BED AND SUBSOIL

ARTICLE 2

The sovereignty of a coastal State extends also to the air space over the territorial sea as well as to its bed and subsoil.
Section II. Limits of the Territorial Sea

BREADTH OF THE TERRITORIAL SEA

ARTICLE 3

1. The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.

2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.

3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less.

4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference.

NORMAL BASELINE

ARTICLE 4

Subject to the provisions of article 5 and to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the low-water line along the coast, as marked on large-scale charts officially recognized by the coastal State.

STRAIGHT BASELINE

ARTICLE 5

1. Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.

2. The coastal State shall give due publicity to the straight baselines drawn by it.

3. Where the establishment of a straight baseline has the effect
of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic.

**Outer Limit of the Territorial Sea**

**Article 6**

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

**Bays**

**Article 7**

1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

4. The foregoing provisions shall not apply to so-called "historic" bays or in any cases where the straight baseline system provided for in article 5 is applied.

**Ports**

**Article 8**

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.
ROADSTEADS

ARTICLE 9

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must give due publicity to the limits of such roadsteads.

ISLANDS

ARTICLE 10

Every island has its own territorial sea. An island is an area of land, surrounded by water, which in normal circumstances is permanently above high-water mark.

DRYING ROCKS AND DRYING SHOALS

ARTICLE 11

Drying rocks and drying shoals which are wholly or partly within the territorial sea, as measured from the mainland or an island, may be taken as points of departure for measuring the extension of the territorial sea.

DELIMITATION OF THE TERRITORIAL SEA IN STRAITS AND OFF OTHER OPPOSITE COASTS

ARTICLE 12

1. The boundary of the territorial sea between two States, the coasts of which are opposite each other at a distance less than the extent of the belts of territorial sea adjacent to the two coasts, shall be fixed by agreement between those States. Failing such agreement and unless another boundary line is justified by special circumstances, the boundary is the median line every point of which is equidistant from the nearest points on the baselines from which the breadths of the territorial seas of the two States are measured.

2. If the distance between the two States exceeds the extent of the two belts of territorial sea, the waters lying between the two belts shall form part of the high seas. Nevertheless, if, as a consequence of this delimitation an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may, by agreement between the coastal States, be deemed to be part of the territorial sea.
3. The first sentence of the preceding paragraph shall be applicable to cases where both coasts belong to one and the same coastal State. If, as a consequence of this delimitation, an area of the sea not more than two miles in breadth should be entirely enclosed within the territorial sea, that area may be declared by the coastal State to form part of its territorial sea.

4. The line of demarcation shall be marked on the officially recognized large-scale charts.

**Delimitation of the Territorial Sea at the Mouth of a River**

**Article 13**

1. If a river flows directly into the sea, the territorial sea shall be measured from a line drawn *inter fauces terrarum* across the mouth of the river.

2. If the river flows into an estuary the coasts of which belong to a single State, article 7 shall apply.

**Delimitation of the Territorial Sea of Two Adjacent States**

**Article 14**

1. The boundary of the territorial sea between two adjacent States shall be determined by agreement between them. In the absence of such agreement, and unless another boundary line is justified by special circumstances, the boundary is drawn by application of the principle of equidistance from the nearest points on the baseline from which the breadth of the territorial sea of each country is measured.

2. The boundary line shall be marked on the officially recognized large-scale charts.

**Section III: Right of Innocent Passage**

**Sub-section A: General Rules**

**Meaning of the Right of Innocent Passage**

**Article 15**

1. Subject to the provisions of the present rules, ships of all States shall enjoy the right of innocent passage through the territorial sea.

2. Passage means navigation through the territorial sea for
the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

3. Passage is innocent so long as the ship does not use the territorial sea for committing any acts prejudicial to the security of the coastal State or contrary to the present rules, or to other rules of international law.

4. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

5. Submarines are required to navigate on the surface.

DUTIES OF THE COASTAL STATE

ARTICLE 16

1. The coastal State must not hamper innocent passage through the territorial sea. It is required to use the means at its disposal to ensure respect for innocent passage through the territorial sea and must not allow the said sea to be used for acts contrary to the rights of other States.

2. The coastal State is required to give due publicity to any dangers to navigation of which it has knowledge.

RIGHTS OF PROTECTION OF THE COASTAL STATE

ARTICLE 17

1. The coastal State may take the necessary steps in its territorial sea to protect itself against any act prejudicial to its security or to such other of its interests as it is authorized to protect under the present rules and other rules of international law.

2. In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which the admission of those ships to those waters is subject.

3. The coastal State may suspend temporarily in definite areas of its territorial sea the exercise of the right of passage if it should deem such suspension essential for the protection of the rights referred to in paragraph 1. Should it take such action, it is bound to give due publicity to the suspension.

4. There must be no suspension of the innocent passage of foreign ships through straits normally used for international navigation between two parts of the high seas.
DUTIES OF FOREIGN SHIPS DURING THEIR PASSAGE

ARTICLE 18

Foreign ships exercising the right of passage shall comply with the laws and regulations enacted by the coastal State in conformity with the present rules and other rules of international law and, in particular, with the laws and regulations relating to transport and navigation.

Sub-section B: Merchant Ships

CHARGES TO BE LEVIED UPON FOREIGN SHIPS

ARTICLE 19

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may only be levied upon a foreign ship passing through the territorial sea as payment for specific services rendered to the ship.

ARREST ON BOARD A FOREIGN SHIP

ARTICLE 20

1. A coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation by reason of any crime committed on board the ship during its passage, save only in the following cases:

   (a) If the consequences of the crime extend beyond the ship; or

   (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

   (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship lying in its territorial sea or passing through the territorial sea after leaving internal waters.

3. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.
Arrest of Ships for the Purpose of Exercising Civil Jurisdiction

Article 21

1. A coastal State may not arrest or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. A coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving the internal waters.

Sub-section C: Government Ships Other Than Warships

Government Ships Operated for Commercial Purposes

Article 22

The rules contained in sub-sections A and B shall also apply to government ships operated for commercial purposes.

Government Ships Operated for Non-Commercial Purposes

Article 23

The rules contained in sub-section A shall apply to government ships operated for non-commercial purposes.

Sub-section D: Warships

Passage

Article 24

The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification. Normally it shall grant innocent passage subject to the observance of the provisions of articles 17 and 18.
Non-observance of the Regulations

Article 25

If any warship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which may be brought to its notice, the coastal State may require the warship to leave the territorial sea.

Part II

High Seas

Section I: General Régime

Definition of the High Seas

Article 26

1. The term "high seas" means all parts of the sea that are not included in the territorial sea, as contemplated by Part I, or in the internal waters of a State.

2. Waters within the baseline of the territorial sea are considered "internal waters".

Freedom of the High Seas

Article 27

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, inter alia:

(1) Freedom of navigation;
(2) Freedom of fishing;
(3) Freedom to lay submarine cables and pipelines;
(4) Freedom to fly over the high seas.

Sub-section A: Navigation

The Right of Navigation

Article 28

Every State has the right to sail ships under its flag on the high seas.
Nationality of Ships

Article 29

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship.

2. A merchant ship's right to fly the flag of a State is evidenced by documents issued by the authorities of the State of the flag.

Status of Ships

Article 30

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

Ships Sailing under Two Flags

Article 31

A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Immunity of Warships

Article 32

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.
IMMUNITY OF OTHER GOVERNMENT SHIPS

ARTICLE 33

For all purposes connected with the exercise of powers on the high seas by States other than the flag State, ships owned or operated by a State and used only on government service, whether commercial or non-commercial, shall be assimilated to and shall have the same immunity as warships.

SAFETY OF NAVIGATION

ARTICLE 34

1. Every State is required to issue for ships under its jurisdiction regulations to ensure safety at sea with regard inter alia to:

   (a) The use of signals, the maintenance of communications and the prevention of collisions;

   (b) The crew which must be adequate to the needs of the ship and enjoy reasonable labour conditions;

   (c) The construction, equipment and seaworthiness of the ship.

2. In issuing such regulations, each State is required to observe internationally accepted standards. It shall take the necessary measures to secure observance of the regulations.

PENAL JURISDICTION IN MATTERS OF COLLISION

ARTICLE 35

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which the accused person is a national.

2. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

DUTY TO RENDER ASSISTANCE

ARTICLE 36

Every State shall require the master of a ship sailing under its
flag, in so far as he can do so without serious danger to the ship, the crew or the passengers.

(a) To render assistance to any person found at sea in danger of being lost;
(b) To proceed with all speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;
(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

SLAVE TRADE

ARTICLE 37

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its colours, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its colours, shall ipso facto be free.

PIRACY

ARTICLE 38

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

ARTICLE 39

Piracy consists in any of the following acts:

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
   (a) On the high seas, against another ship or against persons or property on board such a ship;
   (b) Against a ship, persons or property in a place outside the jurisdiction of any State;
(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
(3) Any act of incitement or of intentional facilitation of an act described in sub-paragraph (1) or sub-paragraph (2) of this article.
ARTICLE 40

The acts of piracy, as defined in article 39, committed by a government ship or a government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private vessel.

ARTICLE 41

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 39. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

ARTICLE 42

A ship or aircraft may retain its national character although it has become a pirate ship or aircraft. The retention or loss of national character is determined by the law of the State from which the national character was originally derived.

ARTICLE 43

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

ARTICLE 44

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

ARTICLE 45

A seizure on account of piracy may only be carried out by warships or military aircraft.

RIGHT OF VISIT

ARTICLE 46

1. Except where acts of interference derive from powers con-
ferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or
(b) That while in the maritime zones treated as suspect in the international conventions for the abolition of the slave trade, the ship is engaged in that trade; or
(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's title to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

RIGHT OF HOT PURSUIT

ARTICLE 47

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship is within the internal waters or the territorial sea of the pursuing State, and may only be continued outside the territorial sea if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea receives the order to stop, the ship giving the order should likewise be within the territorial sea. If the foreign ship is within a contiguous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by bearings, sextant angles or other like means, that the ship pursued or one of its boats is within the limits of the territorial sea or, as the case may be, within the contiguous zone. The pursuit may only be commenced after a visual
or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft:
   (a) The provisions of paragraphs 1 to 3 of the present article shall apply mutatis mutandis;
   (b) The aircraft giving the order to stop must itself actively pursue the ship until a ship of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an enquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

**Pollution of the High Seas**

**Article 48**

1. Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

2. Every State shall draw up regulations to prevent pollution of the seas from the dumping of radioactive waste.

3. All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or air space above, resulting from experiments or activities with radioactive materials or other harmful agents.

**Sub-section B: Fishing**

**Right to Fish**

**Article 49**

All States have the right for their nationals to engage in fishing on the high seas, subject to their treaty obligations and to the
provisions contained in the following articles concerning conservation of the living resources of the high seas.

**Conservation of the Living Resources of the High Seas**

**Article 50**

As employed in the present articles, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products.

**Article 51**

A State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged shall adopt measures for regulating and controlling fishing activities in that area when necessary for the purpose of the conservation of the living resources of the high seas.

**Article 52**

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other marine resources in any area of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such sources.

2. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57.

**Article 53**

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other marine resources in the same area, the conservation measures adopted shall be applicable to them.

2. If these other States do not accept the measures so adopted and if no agreement can be reached within a reasonable period of time, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

**Article 54**

1. A coastal State has a special interest in the maintenance of
the productivity of the living resources in any area of the high seas adjacent to its territorial sea.

2. A coastal State is entitled to take part on an equal footing in any system of research and regulation in that area, even though its nationals do not carry on fishing there.

3. If the States concerned do not reach agreement within a reasonable period of time, any of the parties may initiate the procedure contemplated by article 57.

**Article 55**

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with the other States concerned have not led to an agreement within a reasonable period of time.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:
   
   (a) That scientific evidence shows that there is an urgent need for measures of conservation;
   
   (b) That the measures adopted are based on appropriate scientific findings;
   
   (c) That such measures do not discriminate against foreign fishermen.

3. If these measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the arbitral decision.

**Article 56**

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State whose nationals are engaged in fishing there to take the necessary measures of conservation.

2. If no agreement is reached within a reasonable period, such State may initiate the procedure contemplated by article 57.

**Article 57**

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be
submitted for settlement to an arbitral commission of seven members, unless the parties agree to seek a solution by another method of peaceful settlement.

2. Except as provided in paragraph 3, two members of the arbitral commission shall be named by the State or States on the one side of the dispute, and two members shall be named by the State or States contending to the contrary, but only one of the members nominated by each side may be a national of a State on that side. The remaining three members, one of who shall be designated as chairman, shall be named by agreement between the States in dispute. Failing agreement they shall, upon the request of any State party, be nominated by the Secretary-General of the United Nations after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization, from nationals of countries not parties to the dispute. If, within a period of three months from the date of the request for arbitration, there shall be a failure by those on either side in the dispute to name any member, such member or members shall, upon the request of any party, be named, after such consultation, by the Secretary-General of the United Nations. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

3. If the parties to the dispute fall into more than two opposing groups, the arbitral commission shall, at the request of any of the parties, be appointed by the Secretary-General of the United Nations, after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization, from amongst well qualified persons specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

4. Except as herein provided the arbitral commission shall determine its own procedure. It shall also determine how the costs and expenses shall be divided between the parties.

5. The arbitral commission shall in all cases be constituted within three months from the date of the original request and shall render its decision within a further period of five months unless it decides, in case of necessity, to extend that time limit.

**Article 58**

1. The arbitral commission shall, in the case of measures unilaterally adopted by coastal States, apply the criteria listed in
paragraph 2 of article 55. In other cases it shall apply these
criteria according to the circumstances of each case.

2. The arbitral commission may decide that pending its award
the measures in dispute shall not be applied.

**Article 59**

The decisions of the arbitral commission shall be binding on the
States concerned. If the decision is accompanied by any recom-
mendations, they shall receive the greatest possible consideration.

**Fisheries Conducted by Means of Equipment Embedded
in the Floor of the Sea**

**Article 60**

The regulation of fisheries conducted by means of equipment
embedded in the floor of the sea in areas of the high seas adjacent
to the territorial sea of a State, may be undertaken by that State
where such fisheries have long been maintained and conducted by
its nationals, provided that non-nationals are permitted to par-
ticipate in such activities on an equal footing with nationals. Such
regulations will not, however, affect the general status of the areas
as high seas.

**Sub-section C: Submarine Cables And Pipelines**

**Article 61**

1. All States shall be entitled to lay telegraph, telephone or high-
voltage power cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the
exploration of the continental shelf and the exploitation of its
natural resources, the coastal State may not impede the laying
or maintenance of such cables or pipelines.

**Article 62**

Every State shall take the necessary legislative measures to
provide that the breaking or injury of a submarine cable beneath
the high seas done wilfully or through culpable negligence, in such
a manner as to be liable to interrupt or obstruct telegraphic or
telephonic communications, and similarly the breaking or injury
of a submarine high-voltage power cable or pipeline, shall be a
punishable offence. This provision shall not apply to any break or
injury caused by persons who acted merely with the legitimate
object of saving their lives or their ships, after having taken all
necessary precautions to avoid such break or injury.
ARTICLE 63
Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost.

ARTICLE 64
Every State shall regulate trawling so as to ensure that all the fishing gear used shall be so constructed and maintained as to reduce to the minimum any danger of fouling submarine cables or pipelines.

ARTICLE 65
Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Section II: Contiguous Zone

ARTICLE 66
1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to
   (a) Prevent infringement of its customs, fiscal or sanitary regulations within its territory or territorial sea;
   (b) Punish infringement of the above regulations committed within its territory or territorial sea.
2. The contiguous zone may not extend beyond 12 miles from the baseline from which the breadth of the territorial sea is measured.

Section III: Continental Shelf

ARTICLE 67
For the purposes of these articles, the term “continental shelf” is used as referring to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres (approximately 100 fathoms) or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.
ARTICLE 68

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources.

ARTICLE 69

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

ARTICLE 70

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables on the continental shelf.

ARTICLE 71

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.

2. Subject to the provisions of paragraphs 1 and 5 of this article, the coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources, and to establish safety zones at a reasonable distance around such installations and take in those zones measures necessary for their protection.

3. Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

4. Due notice must be given of any such installations constructed, and permanent means for giving warning of their presence must be maintained.

5. Neither the installations themselves, nor the said safety zones around them may be established in narrow channels or where interference may be caused in recognized sea lanes essential to international navigation.

ARTICLE 72

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of
agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the baselines from which the breadth of the territorial sea of each country is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the baselines from which the breadth of the territorial sea of each of the two countries is measured.

ARTICLE 73

Any disputes that may arise between States concerning the interpretation or application of articles 67–72 shall be submitted to the International Court of Justice at the request of any of the parties, unless they agree on another method of peaceful settlement.


Note. Published in the report containing Articles concerning the Law of the Sea (A/3159) are the International Law Commission's commentaries on each of the articles. These commentaries also appear in an earlier version in A/CN.4/104 at pages 37–133. The commentaries listed below, taken from A/CN.4/104, have been selected because of their particular bearing on the subject matter of this book. In addition, an excerpt from the introductory material contained therein is also reprinted. The footnotes have been renumbered for use herein.

a. Excerpt from Introduction—(c) Law of the Sea
b. Commentary to Article 3 (Breadth of the territorial sea)
c. Commentary to Article 4 (Normal base line)
d. Commentary to Article 5 (Straight base line)
e. Commentary to Article 7 (Bays)
f. Commentary to Article 10 (Islands)
g. Commentary to Article 15 (Meaning of the right of innocent passage)
h. Commentary to Article 17 (Rights of protection of the coastal state)
i. Commentary to Article 24 (Passage)
j. Commentary to Article 27 (Freedom of the high seas)
k. Commentary to Article 49 (Right to fish) including note on Conservation of the living resources of the high seas
l. Commentary to Article 58 (Criteria for Fisheries Arbitral Commission)
m. Commentary to Article 66 (Contiguous Zone)
n. Introductory Note on the Continental Shelf
o. Commentary to Article 71 (Rights and limitations concerning the Continental Shelf)
p. Commentary to Article 73 (Settlement of disputes over Continental Shelf)
a. EXCERPT FROM INTRODUCTION TO REPORT—

(c) LAW OF THE SEA

22. In pursuance of General Assembly resolution 899 (IX) of 14 December 1954, the Commission has grouped together systematically all the rules it has adopted concerning the high seas, the territorial sea, the continental shelf, the contiguous zone and the conservation of the living resources of the sea. In consequence of this re-arrangement the Commission has had to make certain changes in the texts adopted.

23. The final report on the subject is in two parts, the first dealing with the territorial sea and the second with the high seas. The second part is divided into three sections: (1) general regime of the high seas; (2) contiguous zone; (3) continental shelf. Each article is accompanied by a commentary.

24. The Commission wishes to preface the text of the articles adopted by certain observations as to the way in which it considers that practical effect should be given to these rules.

25. When the International Law Commission was set up, it was thought that the Commission's work might have two different aspects: on the one hand "the codification of international law" or, in the words of article 15 of the Commission's statute, "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine": and on the other hand, "the progressive development of international law" or "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States."

26. In preparing its rules on the law of the sea, the Commission has become convinced that, in this domain at any rate, the distinction established in the Statute between those two activities can with difficulty be maintained. Not only may there be wide differences of opinion as to whether a subject is already "sufficiently developed in practice", but also several of the provisions adopted by the Commission, based on a "recognized principle of international law", have been framed in such a way as to place them in the "progressive development" category. Although it tried at first to specify which articles fell into one and which into the other category, the Commission has had to abandon the attempt, as several do not wholly belong to either.
27. In these circumstances, in order to give effect to the project as a whole, it will be necessary to have recourse to conventional means.

28. The Commission therefore recommends, in conformity with article 23, paragraph 1 (d) of its Statute, that the General Assembly should summon an international conference of plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate.

29. The Commission is of the opinion that the conference should deal with the various parts of the law of the sea covered by the present report. Judging from its own experience, the Commission considers—and the comments of governments have confirmed this view—that the various sections of the law of the sea hold together, and are so closely inter-dependent that it would be extremely difficult to deal with only one part and leave the others aside.

30. The Commission considers that such a conference has been adequately prepared for by the work the Commission has done. The fact that there have been fairly substantial differences of opinion on certain points should not be regarded as a reason for putting off such a conference. There has been widespread regret that the attitude of governments after the Hague Codification Conference of 1930 in allowing the disagreement over the breadth of the territorial sea to dissuade them from any attempt at concluding a convention on the points on which agreement had been reached. The Commission expresses the hope that this mistake will not be repeated.

31. In recommending confirmation of the proposed rules as indicated in paragraph 22, the Commission has not had to concern itself with the question of the relationship between the proposed rules and existing conventions. The answer to that question must be found in the general rules of international law and the provisions drawn up by the proposed international conference.

32. The Commission also wishes to make two other observations, which apply to the whole draft:

1. The draft regulates the law of the sea in time of peace only.
2. The term "mile" means nautical mile (1,852 metres) reckoned at sixty to one degree of latitude.

33. The text of the articles concerning the law of the sea, as
adopted by the Commission, (1) and the Commission's commentary to the articles are reproduced below.

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b. COMMENTARY TO ARTICLE 3

(1) At its seventh session the Commission had adopted certain guiding principles concerning the limits of the territorial sea, but before drafting the final text of an article on this subject, it had wished to see the comments of governments.

(2) First of all, the Commission had recognized that international practice was not uniform as regards the traditional limitation of the territorial sea to three miles. In the opinion of the Commission, that was an incontrovertible fact.

(3) Next the Commission had stated that international law did not justify an extension of the territorial sea beyond twelve miles. In its opinion, such an extension infringed the principle of the freedom of the seas, and was therefore contrary to international law.

(4) Finally the Commission had stated that it took no decision as to the breadth of the territorial sea up to the limit of twelve miles. Some members held that as the rule fixing the breadth at three miles had been widely applied in the past and was still maintained by a number of important maritime States, it should, in the absence of any other rule of equal authority, be regarded as recognized by international law and binding on all States. That view was not supported by the majority of the Commission; at its seventh session, however, the Commission did not succeed in reach-

(1) Sir Gerald Fitzmaurice (United Kingdom) expressed his dissent from (1) the final paragraph of the commentary to article 3, in so far as it might suggest that the breadth of the territorial sea was not governed by any existing rule of international law; (2) article 24, in so far as it made the right of innocent passage of warships subject to prior notification or authorization. He recorded an abstention on those parts of article 47 (right of hot pursuit) and the commentary thereto, that related to the question of hot pursuit from within a contiguous zone.

Mr. Krylov (U.S.S.R.) was not able to vote for articles 3 (breadth of the territorial sea), 22 (government ships operated for commercial purposes), article 39 (piracy), 57 (compulsory arbitration) and 73 (compulsory jurisdiction). Mr. Zourek (Czechoslovakia), while having voted for the draft articles relating to the law of the sea as a whole, does not accept, for reasons indicated during the discussions, articles 3 (breadth of the territorial sea), and 22 (government ships operated for commercial purposes). He also maintained his reservations regarding article 7 (bays). He remains opposed to articles 57, 59 and 73 relating to compulsory arbitration; he maintains his reservations regarding the definition of piracy as defined in article 39 and does not accept the commentary relating to that article.
ing agreement on any other limit. The extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized by the Commission as a breach of international law. Such an extension would be valid for any other State which did not object to it, and a fortiori for any State which recognized it tacitly or by treaty, or was a party to a judicial or arbitral decision recognizing the extension. A claim to a territorial sea not exceeding twelve miles in breadth could be sustained erga omnes by any State, if based on historic rights. But, subject to such cases, the Commission by a small majority declined to question the right of other States not to recognize an extension of the territorial sea beyond the three-mile limit.

(5) At its eighth session, the Commission resumed its study of this problem in the light of the comments by governments. Those comments showed a wide diversity of opinion, and the same diversity was noted within the Commission. Several proposals were made; they are referred to below in the order in which they were put to the vote. Some members were of the opinion that it was for each coastal State, in the exercise of its sovereign powers, to fix the breadth of its territorial sea. They considered that in all cases where the delimitation of the territorial sea was justified by the real needs of the coastal State, the breadth of the territorial sea was in conformity with international law; this would cover the case of those States which had fixed the breadth at between three and twelve miles. Another opinion was that the Commission should recognize that international practice was not uniform as regards limitation of the territorial sea to three miles, but would not authorize an extension of the territorial sea beyond twelve miles. On the other hand every State would have the right to extend its jurisdiction up to twelve miles. A third opinion was that the Commission should recognize that every coastal State was entitled to a territorial sea of a breadth of at least three, but not exceeding twelve miles. If, within those limits, the breadth was not determined by long usage, it should not exceed what was necessary for satisfying the justifiable interests of the State, taking into account also the interests of the other States in maintaining the freedom of the high seas and the breadth generally applied in the region. In case of a dispute, the question should, at the request of either of the parties, be referred to the International Court of Justice. A fourth opinion was reflected in a proposal to state that the breadth of the territorial sea could be determined by the coastal State in accordance with its economic and strategic needs within the limits of three and twelve miles, subject to recognition by States maintaining a narrower belt,
According to a fifth opinion and proposal, the breadth of the territorial sea would be three miles, but a greater breadth should be recognized if based on customary law. Furthermore, any State might fix the breadth of its territorial sea at a higher figure than three miles, but such an extension could not be claimed against States which had not recognized it or had not adopted an equal or greater breadth. In no case could the breadth of the territorial sea exceed twelve miles.

(6) None of these proposals managed to secure a majority in the Commission, which, while recognizing that it differs in form from the other articles, finally accepted, by a majority vote, the text included in these regulations as article 3.

(7) The Commission noted that the right to fix the limit of the territorial sea at three miles was not disputed. It states that international law does not permit that limit to be extended beyond twelve miles. As regards the right to fix the limit at between three and up to twelve miles, the Commission was obliged to note that international practice was far from uniform. Since several States have established a breadth of between three and up to twelve miles, while others are not prepared to recognize such extensions, the Commission was unable to take a decision on the subject, and expressed the opinion that the question should be decided by an international conference of plenipotentiaries.

(8) It follows from the foregoing that the Commission came out clearly against claims to extend the territorial sea to a breadth which, in its view, jeopardizes the principle that has governed maritime law since Grotius, namely, the freedom of the high seas. On the other hand, the Commission did not succeed in fixing the limit between three and up to twelve miles.

(9) The Commission considered the possibility of adopting a rule that all disputes concerning the breadth of the territorial sea should be submitted to the compulsory jurisdiction of the International Court of Justice. The majority of the Commission, however, were unwilling to ask the Court to undertake the settlement of disputes on a subject regarding which the international community had not yet succeeded in formulating a rule of law. It did not wish to delegate an essentially legislative function to a judicial organ which, moreover, cannot render decisions binding on States other than the parties. For those reasons it considered that the question should be referred to the proposed conference.

c. COMMENTARY TO ARTICLE 4

(1) The Commission was of the opinion that, according to the international law in force, the extent of the territorial sea is
measured either from the low-water line along the coast, or, in the circumstances envisaged in article 5, from straight baselines independent of the low-water mark. This is how the Commission interprets the judgment of the International Court of Justice rendered on 10 December 1951 in the Fisheries Case between the United Kingdom and Norway.  

(2) The traditional expression “low-water mark” may have different meanings; there is no uniform standard by which States in practice determine this line. The Commission considers that it is permissible to adopt as the base line the low-water mark as indicated on large-scale charts officially recognized by the coastal State. The Commission is of the opinion that the omission of detailed provisions such as were prepared by the 1930 Codification Conference is hardly likely to induce governments to shift the low-water lines on their charts unreasonably.

d. COMMENTARY TO ARTICLE 5

(1) The International Court of Justice, in its decision regarding the Fisheries Case between the United Kingdom and Norway, considered that where the coast is deeply indented or cut into, or where it is bordered on an insular formation such as the Skjaergaard in Norway, the baseline becomes independent of the low-water mark and can only be determined by means of a geometric construction. The Court said:

“In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast line to be followed in all its sinuosities; nor can one speak of exceptions when contemplating so rugged a coast in detail. Such a coast, viewed as a whole, calls for the application of a different method. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such a rugged coast. The rule would disappear under the exceptions. . . .

“The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight baselines method and that they have not encountered objections of principle

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2 International Court of Justice, Reports, 1951, p. 116.
by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters."

(2) The Commission interpreted the Court's judgment, which was delivered on the point in question by a majority of 10 votes to 2, as expressing the law in force; it accordingly drafted the article on the basis of this judgment. It felt, however, that certain rules advocated by the group of experts who met at The Hague in 1953 (see introduction to chapter II, paragraph 17 above) might serve to round off the criteria adopted by the Court. Consequently, at its sixth session, it inserted the following supplementary rules in the second paragraph of the article:

“As a general rule, the maximum permissible length for a straight baseline shall be ten miles. Such baselines may be drawn, when justified according to paragraph 1, between headlands of the coastline or between any such headland and an island less than five miles from the coast, or between such islands. Longer straight baselines may, however, be drawn provided that no point on such lines is more than five miles from the coast. Baselines shall not be drawn to and from drying rocks and shoals.”

Some governments raised objections to this second paragraph, arguing that the maximum length of ten miles for baselines and the maximum distance from the coast of five miles seemed arbitrary and, moreover, not in conformity with the Court's decision. Against this certain members of the Commission pointed out that the Commission had drafted these provisions for application “as a general rule” and that it would always be possible to depart from them if special circumstances justified doing so. In the opinion of those members, the criteria laid down by the Court were not sufficiently precise for general application. However, at its seventh session in 1955, after further study of the question the Commission decided, by a majority, that the second paragraph should be deleted so as not to make the provisions of the first paragraph too mechanical. Only the final sentence was kept and added to the first paragraph.

3 Ibid., pp. 129 and 130. The first paragraph of the quotation is a new translation by the Registry of the Court [Ed.]
(4) At this same session, the Commission made a number of changes designed to bring the text even more closely into line with the Court's judgment in the above-mentioned Fisheries Case. In particular it inserted in the first sentence the words: "or where this is justified by economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage." Some governments stated in their comments on the 1955 text that they could not support the insertion of "economic interests" in the first sentence of the article. In their opinion, this reference to economic interests was based on a misinterpretation of the Court's judgment. The interests taken into account in the judgment were considered solely in the light of the historical and geographical factors involved and should not constitute a justification in themselves. The application of the straight baseline system should be justified in principle on other grounds before purely local economic considerations could justify a particular way of drawing the lines.

(5) Although this interpretation of the judgment was not supported by all the members, the great majority of the Commission endorsed this view at the eighth session, and the article was recast in that sense.

(6) The question arose whether in waters which become internal waters when the straight baseline system is applied the right of passage should not be granted in the same way as in the territorial sea. Stated in such general terms, this argument was not approved by the majority of the Commission. The Commission was however prepared to recognize that if a State wished to make a fresh delimitation of its territorial sea according to the straight baseline principle, thus including in its internal waters parts of the high seas or of the territorial sea that had previously been waters through which international traffic passed, other nations could not be deprived of the right of passage in those waters. Paragraph 3 of the article is designed to safeguard that right.

(7) Straight baselines may be drawn only between points situated on the territory of a single State. An agreement between two States under which such baselines were drawn along the coast and connecting points situated on the territories of different States, would not be enforceable against other States.

(8) Straight baselines may be drawn to islands situated in the immediate vicinity of the coast, but not to drying rocks and drying shoals. Only rocks or shoals permanently above sea level may be used for this purpose. Otherwise the distance between the baselines and the coast might be extended more than is required to fulfil the purpose for which the straight baseline method is applied,
and, in addition, it would not be possible at high tide to sight the points of departure of the baselines.

e. COMMENTARY TO ARTICLE 7

(1) The first paragraph, which is taken from the report of the committee of experts mentioned above, lays down the conditions that must be satisfied by an indentation or curve in order to be regarded as a bay. In adopting this provision, the Commission repaired the omission to which attention had already been drawn by The Hague Codification Conference of 1930 and which the International Court of Justice again points out in its judgment in the Fisheries Case. Such an explanation was necessary in order to prevent the system of straight baselines from being applied to coasts whose configuration does not justify it, on the pretext of applying the rules for bays.

(2) If, as a result of the presence of islands, an indentation whose features as a "bay" have to be established has more than one mouth, the total length of the lines drawn across all the different mouths will be regarded as the width of the bay. Here, the Commission's intention was to indicate that the presence of islands at the mouth of an indentation tends to link it more closely to the mainland, and this consideration may justify some alteration in the ratio between the width and the penetration of the indentation. In such a case an indentation which, if it had no islands at its mouth, would not fulfill the necessary conditions, is to be recognized as a bay. Nevertheless, islands at the mouth of a bay cannot be considered as "closing" the bay if the ordinary sea route passes between them and the coast.

(3) The Commission discussed at length the question of the conditions under which the waters of a bay can be regarded as internal waters. The majority considered that it was not sufficient to lay down that the waters must be closely linked to the land domain by reason of the depth of penetration of the bay into the mainland, or otherwise by its configuration, or by reason of the utility the bay might have from the point of view of the economic needs of the country. These criteria lack legal precision.

(4) The majority of the Commission took the view that the maximum length of the closing line must be stated in figures and that a limitation based on geographical or other considerations, which would necessarily be vague, would not suffice. It considered, however, that the limit should be more than ten miles. Although not prepared to establish a direct relationship between the length of the closing line and the breadth of the territorial sea—such a relationship was formally denied by certain members of the Com-
mission—it felt bound to take some account of tendencies to extend the breadth of the territorial sea by lengthening the closing line of bays. As an experiment the Commission suggested, at its seventh session, a distance of twenty-five miles; thus, the length of the closing line would be slightly more than twice the permissible maximum breadth of the territorial sea as laid down in paragraph 2 of article 3. Since, firstly, historic bays, some of which are wider than twenty-five miles, would not come under the article and since, secondly, the provision contained in paragraph 1 of the article concerning the characteristics of a bay was calculated to prevent abuse, it seemed not unlikely that some extension of the closing line would be more readily accepted than an extension of the breadth of the territorial sea in general. At the seventh session, the majority of the Commission rejected a proposal that the length of the closing line should be set at twice the breadth of the territorial sea, primarily because it considered such a delimitation unacceptable to States that have adopted a breadth of three or four miles for their territorial sea. At its eighth session the Commission again examined this question in the light of replies from governments. The proposal to extend the closing line to twenty-five miles had found little support; a number of governments stated that, in their view, such an extension was excessive. By a majority, the Commission decided to reduce the twenty-five miles figure, proposed in 1955 to fifteen miles. While appreciating that a line of ten miles had been recognized by several governments and established by international conventions, the Commission took account of the fact that the origin of the ten-mile line dates back to a time when the breadth of the territorial sea was much more commonly fixed at three miles than it is now. In view of the tendency to increase the breadth of the territorial sea, the majority in the Commission thought that an extension of the closing line to fifteen miles would be justified and sufficient.

(5) If the mouth of a bay is more than fifteen miles wide, the closing line will be drawn within the bay at the point nearest to the sea where the width does not exceed that distance. Where more than one line of fifteen miles in length can be drawn, the closing line will be so selected as to enclose the maximum water area within the bay. The Commission believes that other methods proposed for drawing this line give rise to uncertainties that will be avoided by adopting the above method, which is that proposed by the above-mentioned committee of experts.

(6) Paragraph 4 states that the foregoing provisions shall not apply to "historic" bays.

(7) The Commission felt bound to propose only rules applicable
to bays the coasts of which belong to a single State. As regards other bays, the Commission has not sufficient data at its disposal concerning the number of cases involved or the regulations at present applicable to them.

f. COMMENTARY TO ARTICLE 10

(1) This article applies both to islands situated in the high seas and to islands situated in the territorial sea. In the case of the latter, their own territorial sea will partly coincide with the territorial sea of the mainland. The presence of the island will create a bulge in the outer limit of the territorial sea of the mainland. The same idea can be expressed in the following form: islands, wholly or partly situated in the territorial sea, shall be taken into consideration in determining the outer limit of the territorial sea.

(2) An island is understood to be any area of land surrounded by water which, except in abnormal circumstances, is permanently above the high-water mark. Consequently, the following are not considered islands and have no territorial sea:

(i) Elevations which are above water at low tide only. Even if an installation is built on such an elevation and is itself permanently above water—a lighthouse, for example—the elevation is not an "island" as understood in this article;

(ii) Technical installations built on the sea-bed, such as installations used for the exploitation of the continental shelf (see article 71). The Commission nevertheless proposed that a safety zone around such installations should be recognized in view of their extreme vulnerability. It does not consider that a similar measure is required in the case of lighthouses.

(3) The Commission had intended to follow up this article with a provision concerning groups of islands. Like The Hague Conference for the Codification of International Law of 1930, the Commission was unable to overcome the difficulties involved. The problem is singularly complicated by the different forms it takes in different archipelagos. The Commission was prevented from stating an opinion, not only by disagreement on the breadth of the territorial sea, but also by lack of technical information on the subject. It recognizes the importance of this question and hopes that if an international conference subsequently studies the proposed rules it will give attention to it.

(4) The Commission points out, for purposes of information, that article 5 may be applicable to groups of islands lying off the coast.
g. COMMENTARY TO ARTICLE 15

(1) This article lays down that ships of all States including fishing boats have the right of innocent passage through the territorial sea. It reiterates a principle recognized by international law and confirmed by the 1930 Codification Conference.

(2) According to paragraph 2 the general rule recommended for ships passing through the territorial sea is equally applicable to ships proceeding to or from ports. In the latter cases, however, certain restrictions are necessary: these are mentioned in article 20, paragraph 2 and article 21, paragraph 3.

(3) For the right in question to be claimable, passage must in fact be innocent. It will not be innocent if the ship commits any of the acts referred to in paragraph 3. This paragraph follows the lines of that included in article 5 of the rules proposed by Sub-Committee II of the 1930 Codification Conference. The Commission considered that "fiscal interests of the State"—a term which, according to the 1930 comments, should be interpreted very broadly as including all matters relating to customs and to import, export and transit prohibitions—could be regarded as being included in the more general expression used in paragraph 3. The term covers inter alia questions relating to customs and health as well as the interests enumerated in the comment to article 18.

(4) Paragraph 3 contains only general criteria and does not go into details. There was therefore no need to mention the case—to which attention has been specially drawn—of ships using the territorial sea for the express purpose of defeating import and export controls and contravening the customs regulations of the coastal State ("hovering ships"). The Commission considers, however, that passage undertaken for this purpose cannot be regarded as innocent.

(5) Under the 1955 draft, the provision in paragraph 5 was inserted only in the sub-section on warships. It has been transferred to the general sub-section in order to make it equally applicable to commercial submarines, if these ships are ever re-introduced.

h. COMMENTARY TO ARTICLE 17

(1) This article recognizes the right of the coastal State to verify the innocent character of the passage, if need should arise, and to take the necessary steps to protect itself against any act prejudicial to its security or to such other of its interests as it is authorized to protect under the present rules and other rules of international law. The Second Committee of the 1930 Codification
Conference used the expression "public order" in this context. The Commission prefers to avoid this expression, which is open to various interpretations.

(2) In exceptional cases a temporary suspension of the right of passage is permissible if compelling reasons connected with general security require it. Although it is arguable that this power was in any case implied in paragraph 1 of the article, the Commission considered it desirable to mention it expressly in a third paragraph which specifies that only a temporary suspension in definite areas is permissible. The Commission is of the opinion that the article states the international law in force.

(3) The Commission also included a clause formally prohibiting interference with passage through straits used for navigation between two parts of the high seas. The expression "straits used for international navigation between two parts of the high seas" was suggested by the decision of the International Court of Justice in the Corfu Channel Case. The Commission, however, was of the opinion that it would be in conformity with the Court's decision to insert the word "normally" before the word "used".

(4) The question was asked what would be the legal position of straits forming part of the territorial sea of one or more States and constituting the sole means of access to a port of another State. The Commission considers that this case could be assimilated to that of a bay whose inner part and entrance from the high seas belong to different States. As the Commission felt bound to confine itself to proposing rules applicable to bays, wholly belonging to a single coastal State, it also reserved consideration of the above-mentioned case.

i. COMMENTARY TO ARTICLE 24

(1) At its sixth session in 1954, the Commission took the view that passage should be granted to warships without prior authorization or notification. At its seventh session in 1955, after noting the comments of certain governments and reviewing the question, the Commission felt obliged to amend this article so as to stress the right of the coastal State to make the right of passage of warships through the territorial sea subject to previous authorization or notification. Where previous authorization is required, it should not normally be subject to conditions other than those laid down for merchant ships in articles 17 and 18. In certain parts of the territorial sea, or in certain special circumstances, the coastal State may, however, deem it necessary to limit the right of passage more strictly in the case of warships than in that of
merchant ships. The 1955 article provides a clearer recognition of this right than the 1954 text.

(2) The Commission reconsidered this matter at its eighth session, in the light of the comments of certain governments, which pointed out that in practice passage was effected without formality and without objection on the part of coastal States. The majority of the Commission, however, saw no reason to change its view. While it is true that a larger number of States do not require previous authorization or notification, the Commission can only welcome this attitude, which displays a laudable respect for the principle of freedom of communications, but this does not mean that a State would not be entitled to require such notification or authorization if it deemed it necessary to take this precautionary measure. Since it admits that the passage of warships through the territorial sea of another State can be considered by that State as a threat to its security, and is aware that a number of States do require previous notification or authorization, the Commission is not in a position to dispute the right of States to take such a measure. But so long as a State has not enacted—and duly published—a restriction upon the right of passage of foreign warships through its territorial sea, such ships may pass through those waters without previous notification or authorization provided that they do not lie in them or put in at a port. In these latter cases previous authorization—except in cases of putting in through stress of weather—is always required. The Commission did not consider it necessary to insert an express stipulation to this effect since article 15, paragraph 4, applies equally to warships.

(3) The right of the coastal State to restrict passage is more limited in the case of passage through straits. The International Court of Justice in its judgment of 9 April 1949 in the Corfu Channel Case says:

“It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is innocent. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace.”

4 I.C.J., Reports, 1949, p. 28.
(4) The Commission relied on that judgment of the Court when inserting in the 1955 draft, a second paragraph worded as follows:

"It may not interfere in any way with innocent passage through straits normally used for international navigation between two parts of the high seas."

It was pointed out at the eighth session that this second paragraph was unnecessary, as paragraph 4 of article 17, which forms part of sub-section A entitled "General Rules", was applicable to warships. The majority of the Commission supported the view that the second paragraph of the article included in 1955 was not strictly necessary. In deleting this paragraph the Commission, in order to avoid any misunderstanding on the subject, nevertheless wishes to state that article 24, in conjunction with paragraph 4 of article 17, must be interpreted to mean that the coastal State may not interfere in any way with the innocent passage of warships through straits normally used for international navigation between two parts of the high seas; hence the coastal State may not make the passage of warships through such straits subject to any previous authorization or notification.

(5) The article does not affect the rights of States under a convention governing passage through the straits to which it refers.

j. COMMENTARY TO ARTICLE 27

(1) The principle generally accepted in international law that the high seas are open to all nations governs the whole regulation of the subject. No State may subject any part of the high seas to its sovereignty; hence no State may exercise jurisdiction over any such stretch of water. States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States. Freedom to fly over the high seas is expressly mentioned in this article because the Commission considers that it follows directly from the principle of the freedom of the sea; the Commission has, however, refrained from formulating rules on air navigation, since the task it set itself in the present phase of its work is confined to the codification and development of the law of the sea.

(2) The list of freedoms of the high seas contained in this article is not restrictive. The Commission has merely specified four of the main freedoms, but it is aware that there are other freedoms, such as freedom to undertake scientific research on the high seas—a freedom limited only by the general principle stated in the third sentence of the first paragraph of the commentary to
the present article. The Commission has not made specific mention of the freedom to explore or exploit the subsoil of the high seas. It considered that apart from the case of the exploitation or exploration of the soil or subsoil of a continental shelf—a case dealt with separately in Section III below—such exploitation had not yet assumed sufficient practical importance to justify special regulation.

(3) Nor did the Commission make any express pronouncement on the freedom to undertake nuclear weapon tests on the high seas. In this connexion the general principle enunciated in the third sentence of this comment is applicable. In addition, the Commission draws attention to article 48, paragraphs 2 and 3, of these articles. The Commission did not however wish to prejudge the findings of the Scientific Committee set up under General Assembly Resolution 913 (X) of 3 December 1955 to study the effects of atomic radiation.

(4) The term "submarine cables" applies not only to telegraph and telephone cables, but also to high-voltage power cables.

(5) Any freedom that is to be exercised in the interests of all entitled to enjoy it, must be regulated. Hence, the law of the high seas contains certain rules, most of them already recognized in positive international law, which are designed, not to limit or restrict the freedom of the high seas, but to safeguard its exercise in the interests of the entire international community. These rules concern particularly:

(1) The right of States to exercise their sovereignty on board ships flying their flag;
(2) The exercise of certain policing rights;
(3) The rights of States relative to the conservation of the living resources of the high seas;
(4) The institution by coastal States of a zone contiguous to their shores for the purpose of exercising certain well-defined rights;
(5) The rights of coastal States with regard to the continental shelf.

(6) These matters form the subject of the present articles.

k. COMMENTARY TO ARTICLE 49

(1) This article confirms the principle of the right to fish on the high seas. The Commission admitted no exceptions to that principle in the parts of the high seas covering the continental shelf, save as regards sedentary fisheries and fisheries carried on by means of equipment embedded in the sea floor (see article 60).
Nor did it recognize the right to establish a zone contiguous to the coasts where fishing could be exclusively reserved to the nationals of the coastal State. The principle of the freedom of the seas does not, however, preclude regulations governing the conservation of the living resources of the high seas, as recommended by the Commission in articles 50-59. States may still conclude conventions for the regulation of fishing but the treaty obligations arising out of such conventions are, of course, binding only on the signatory States.

(2) In articles 49, 51, 52, 53, 54 and 56 the term “nationals” denotes fishing boats having the nationality of the State concerned, irrespective of the nationality of the members of their crews.

Conservation of the Living Resources of the High Seas

(1) At its third session, in 1951, the Commission provisionally adopted, under the title of “Resources of the Sea”, articles relating to the conservation of the living resources of the sea. This question was discussed in conjunction with the continental shelf, because certain claims to sovereignty over the waters covering the continental shelf arise, at lease in part, out of the coastal State’s desire to give effective protection to the living resources of the sea adjacent to its shores.

(2) At its fifth session, in 1953, the Commission reviewed the articles adopted in 1951 in the light of the comments made by certain governments, and thereafter adopted a set of draft articles reproduced in its report on the work of its fifth session.6

(3) In adopting these articles, the Commission adhered to the provisional draft of the articles formulated in 1951. It recognized that the existing law on the subject provided no adequate protection of marine fauna against waste or extermination. The above-mentioned report states that the resulting position constitutes, in the first instance, a danger to the food supply of the world. Also, in so far as it renders the coastal State or the States directly interested helpless against wasteful and predatory exploitation of fisheries by foreign nationals, it constitutes an inducement to the State or States in question to resort to unilateral measures of self-protection, which are sometimes at variance with the law as it stands at present, because they result in the total exclusion of foreign nationals.

(4) The articles adopted by the Commission in 1953 were intended to provide the basis for a solution of the difficulties inherent

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in the existing situation. If the nationals of one State only were engaged in fishing in the areas in question, that State could fully achieve the desired object by adopting appropriate legislation and enforcing its observance. If nationals of several States were engaged in fishing in a given area, the concurrence of those States was essential; article 1 of the Commission’s draft provided therefore that the States concerned would prescribe the necessary measures by agreement. Article 3 of the draft was intended to provide effectively for the contingency of the interested States being unable to reach agreement. It provided that States would be under a duty to accept as binding any system of regulation of fisheries in any area of the high seas which an international authority, to be created within the framework of the United Nations, prescribed as being essential for the purpose of protecting the fishing resources of that area against waste or extermination.

(5) The General Assembly, at its ninth session (resolution 900 (IX) of 14 December 1954), recognized the great importance of the question of the conservation of the living resources of the sea in connexion with the work of the International Law Commission on the regime of the high seas. It decided to convene an international technical conference at the headquarters of the United Nations Food and Agriculture Organization in Rome on 18 April 1955 to study the technical and scientific aspects of the problem of the international conservation of the living resources of the sea. The report of the Conference was to be referred to the International Law Commission “as a further technical contribution to be taken into account in its study of the questions to be dealt with in the final report which it is to prepare pursuant to resolution 899 (IX) of 14 December 1954”.

(6) At its seventh session, in 1955, the International Law Commission took note of the report of the Conference with great interest. Mr. García Amador, then Vice-Chairman of the Commission, who had represented the Cuban Government and acted as Deputy Chairman at the Rome Conference, submitted to the Commission a series of draft articles, prefaced by a preamble, to replace the articles approved by the Commission in 1953.

(7) The Commission made a careful study of these draft articles and found them generally acceptable, although it introduced certain amendments.

(Paragraph 8 omitted—See A/2934, pages 13–14.)

(9) The articles are also included as articles 25–33 in the draft text on the régime of the high seas adopted by the Commission at that session. Articles 25, 26 and 27 broadly reproduce the principles laid down in the first two articles of the 1953 text. The idea of an international body with legislative powers was dropped and replaced by that of compulsory arbitration in case of dispute. (Article 31).

(10) From the beginning of its work, the Commission has considered the question whether the position of coastal States as regards measures for the conservation of the living resources in parts of the high seas adjacent to their coasts did not call for some form of recognition by other States. A proposal was submitted in 1951 to the effect that a coastal State should be empowered to lay down conservatory regulations to be applied in such zones, provided any disputes arising out of the application of the regulations were submitted to arbitration. Votes being equally divided on this proposal, the Committee decided to mention it in its report without sponsoring it. The Commission did not include such a provision in its 1953 draft.

(11) At the 1955 Rome Conference, the tendency to make coastal States responsible for controlling zones adjacent to their coasts and applying in them measures of conservation consistent with the general technical principles adopted by the Conference, was again in evidence, and the same idea underlay the proposal submitted to the Commission by Mr. Garcia-Amador at the seventh session. The granting of special rights to coastal States on the ground of their special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to their coasts was linked in that proposal with the obligation to resort to arbitration if the exercise of those rights gave rise to objection by other interested States.

(12) At its seventh session, the Commission adopted two articles,—28 and 29—designed to protect the special interests of coastal States. The first of these articles stated that a coastal State having a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coasts is entitled to take part on an equal footing in any system of research and regulation in that area, even though its nationals do not carry on fishing there. The second article stipulated that a coastal State having a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its coasts may adopt unilaterally whatever measures of conservation are appropriate in the area where this interest exists, provided that negotiations with the other States concerned
have not led to an agreement within a reasonable period of time and also subject to the provisions of paragraph 2 of article 29. The two articles provided for compulsory arbitration in the event of differences of opinion between the States concerned.

(13) These two articles in particular gave rise to further discussion in the Commission at its eighth session.

(14) Some members were of the opinion that these articles did not adequately protect the interests of coastal States. They argued that the coastal State, by the mere fact of being coastal, possesses a special interest in maintaining the productivity of the living resources in a part of the area adjacent to its coasts. In their view, this opinion, which was in any case already contained in the preamble to the articles in the annex to chapter II of the report on the work of the seventh session, should be clearly expressed in the draft. This opinion was shared by the majority of the Commission, and articles 28 and 29 were recast. The "special" character of the interest of the coastal State should be interpreted in the sense that the interest exists by reason of the sole fact of the geographical situation. However, the Commission did not wish to imply that the "special" interest of the coastal State would take precedence per se over the interests of the other States concerned.

(15) Unlike the 1953 draft, the articles in question contain no express limitation of the breadth of the zone where the coastal State may claim its rights. The fact that the coastal State's right is based on its special interest in maintaining the living resources, implies that any extension of this zone beyond the limits within which such an interest may be supposed to exist would exceed the purpose of the provision.

(16) At its earlier sessions the Commission had used the expression "area of the high seas contiguous to its coasts", and the same term was used by the Rome Conference. At its eighth session the Commission, wishing to avoid any confusion with the "contiguous zone" provided for under article 66 of the present articles, replaced the term "contiguous" in the articles concerning the protection of the living resources of the sea, by "adjacent". This modification does not imply any change in the meaning of the rules adopted.

(17) The insertion of a compulsory arbitration clause was opposed by some members of the Commission at both the seventh and eighth sessions. They expressed the opinion that the Commission, whose task was the codification of law, should not concern itself with safeguards for the application of the rules. In any case, it would be impossible to do so at the present stage, and the
study of the question would have to be deferred to later sessions. Other members were of opinion that it would be sufficient, as regards disputes arising from the interpretation and application of the articles concerned, to refer to existing provisions imposing on States an obligation to seek a settlement by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, reference to regional bodies, or other peaceful means, and they made a proposal to insert a provision on this subject in the draft.

(18) The majority of the Commission did not share this view. Without claiming that all rules prepared by the Commission should be accompanied by compulsory jurisdiction or arbitration clauses, it felt that in proposing for States rights over the high seas going beyond existing international law, the Commission could not rely upon the due functioning of the general rules for the peaceful settlement of disputes, but would have to create effective safeguards for the settlement of disputes by an impartial authority. Hence the majority of the Commission did not wish merely to grant States the rights in question and leave the matter of the settlement of disputes open for future consideration. While recognizing that the settlement of disputes must be sought by the means indicated in the general rule proposed by certain members, it felt that in this matter it would not be enough to have a general clause of that kind which did not guarantee that, if necessary, disputes would in fact be submitted to an impartial authority for decision. For this reason, the majority of the Commission accepted the idea of compulsory arbitration, the procedure for which is laid down in article 57.

(19) The 1953 proposal to establish a central authority with legislative powers was not adopted; on the other hand, consideration was given to the possibility of setting up a permanent international body within the framework of the United Nations, with the status of a specialized agency, to be responsible not only for making technical and scientific studies of problems concerning the protection and use of living resources of the sea, but also for settling disputes between States on this subject. The Commission is of the opinion that the establishment of an international study commission is worthy of close attention. It considers, however, that in view of the diversity of the interests which may be involved in such disputes, the idea of ad hoc arbitral commissions would have more chance of being carried into practice in the near future than that of a central judicial authority.

(20) Before concluding these introductory remarks the Commission wishes to reiterate its opinion that the proposed measures will fail in an important part of their purpose if they do not help
to smooth out the difficulties arising out of exaggerated claims in regard to the extension of the territorial sea or other claims to jurisdiction over areas of the high seas, and thus safeguard the principle of the freedom of the seas.

I. COMMENTARY TO ARTICLE 58

(1) Paragraph 1 mentions the criteria on which the arbitral commission’s decision should be based. In the case of article 55, the criteria are of course those listed in that article. But these criteria do not wholly apply in the other cases. It seems desirable to give the arbitral commission some discretion in regard to the criteria to be applied in these cases. Subject to this remark, the Commission wishes to formulate the following guiding principles:

(i) Common to all the determinations are the requirements:
   (a) That scientific findings shall demonstrate the necessity of conservation measures to make possible the optimum sustainable productivity of the stock or stocks of fish;
   (b) That the measures do not discriminate against foreign fishermen.

(ii) Common to articles 52, 53, 54 and 55 is the requirement: That the specific measures shall be based on scientific findings and appropriate for the purpose. In determining appropriateness, the elements of effectiveness and practicability are to be considered as well as the relation between the expected benefits, in terms of maintained and increased productivity, and the cost of application and enforcement of the proposed measures.

(iii) In the case of article 56, the State requesting the fishing State to take necessary measures of conservation would be a non-adjacent and non-fishing State. Such a State would be concerned only with the continued productivity of the resources. Therefore, the matter to be determined would be the adequacy of the overall conservation programme.

(iv) Article 55 contains a criterion which is not included in the other articles: that of the urgency of action. Recourse to unilateral regulation by the coastal State prior to arbitration of the dispute can only be regarded as justified when the delay caused by arbitration would seriously threaten the continued productivity of the resources.

m. COMMENTARY TO ARTICLE 66

(1) International law accords States the right to exercise preventive or protective control for certain purposes over a belt of the high seas contiguous to their territorial sea. It is, of course, understood that this power of control does not change the legal
status of the waters over which it is exercised. These waters are and remain a part of the high seas and are not subject to the sovereignty of the coastal State, which can exercise over them only such rights as are conferred on it by the present rules or are derived from international treaties.

(2) Many States have adopted the principle that in the contiguous zone the coastal State may exercise customs control in order to prevent attempted infringements of its customs and police regulations within its territory or territorial sea, and to punish infringements of those regulations committed within its territory or territorial sea. The Commission considered that it would be impossible to deny to States the exercise of such rights.

(3) Although the number of States which claim rights over the contiguous zone for the purpose of applying sanitary regulations is fairly small, the Commission considers that, in view of the connexion between customs and sanitary regulations, such rights should also be recognized for sanitary regulations.

(4) The Commission did not recognize special security rights in the contiguous zone. It considered that the extreme vagueness of the term "security" would open the way for abuses and that the granting of such rights was not necessary. The enforcement of customs and sanitary regulations will be sufficient in most cases to safeguard the security of the State. In so far as measures of self-defence against an imminent and direct threat to the security of the State are concerned, the Commission refers to the general principles of international law and the Charter of the United Nations.

(5) Nor was the Commission willing to recognize any exclusive right of the coastal State to engage in fishing in the contiguous zone. The Preparatory Committee of the Hague Codification Conference found, in 1930, that the replies from governments offered no prospect of an agreement to extend the exclusive fishing rights of the coastal State beyond the territorial sea. The Commission considered that in that respect the position has not changed.

(6) The Commission examined the question whether the same attitude should be adopted with regard to proposals to grant the coastal State the right to take whatever measures it considered necessary for the conservation of the living resources of the sea in the contiguous zone. The majority of the Commission were unwilling to accept such a claim. They argued, first, that measures of this kind applying only to the relatively small area of the contiguous zone would be of little practical value and, secondly, that having provided for the regulation of the conservation of living resources in a special part of the present draft, it would
be inadvisable to open the way for a duplication of these rules by different provisions designed to regulate the same matters in the contiguous zone only. Since the contiguous zone is a part of the high seas, the rules concerning conservation of the living resources of the sea apply to it.

(7) The Commission did not maintain its decision of the previous year to grant the coastal State, within the contiguous zone, a right of control in respect of immigration. In its report on the work of its fifth session the Commission commented on this provision as follows:

“It is understood that the term 'customs regulations' as used in the article refers not only to regulations concerning import and export duties but also to other regulations concerning the exportation and importation of goods. In addition, the Commission thought it necessary to amplify the formulation previously adopted by referring expressly to immigration, a term which is also intended to include emigration.”

Reconsidering this decision, the majority of the Commission took the view that the interests of the coastal State do not require an extension of the right of control to immigration and emigration. It considered that such control could and should be exercised in the territory of the coastal State and that there was no need to grant it special rights for this purpose in the contiguous zone.

(8) The Commission considered the case of areas of the sea situated off the junction of two or more adjacent States, where the exercise of rights in the contiguous zone by one State would not leave any free access to the ports of another State except through that zone. The Commission, recognizing that in such cases the exercise of rights in the contiguous zone by one State may unjustifiably obstruct traffic to or from a port of another State, considered that in the case referred to it would be necessary for the two States to conclude a prior agreement on the exercise of rights in the contiguous zone. In view of the exceptional nature of the case, however, the Commission did not consider it necessary to include a formal rule to this effect.

(9) The Commission considers that the breadth of the contiguous zone cannot exceed twelve nautical miles from the coast, the figure adopted by the Preparatory Committee of the Hague Codification Conference (1930). Until such time as there is unanimity in regard to the breadth of the territorial sea, the zone should be measured from the coast and not from the outer limit
of the territorial sea. States which have claimed extensive territorial waters have in fact less need of a contiguous zone than those which have been more modest in their delimitation.

(10) The Commission thought it advisable to clarify the expression "from the coast" by stating that the zone is measured from the base-line from which the breadth of the territorial sea is measured.

(11) The exercise by the coastal State of the rights enunciated in this article does not affect the legal status of the air space above the contiguous zone. The question whether the establishment of such an air control zone could be contemplated is outside the scope of these rules of the law of the sea.

n. INTRODUCTORY NOTE TO SECTION III: THE CONTINENTAL SHELF

(1) At its third session, held in 1951, the Commission adopted draft articles on the continental shelf with accompanying comments. After the third session, the special rapporteur re-examined these articles in the light of comments received from the governments of 18 countries. The comments of these governments are reproduced in Annex II to the report on the fifth session. In March 1953, the special rapporteur submitted a further report on the subject (A/CN.4/60) which was examined by the Commission at its fifth session. The Commission adopted draft articles, which it re-examined at its eighth session, in the context of the other sections of the rules of the law of the sea. This examination did not give rise to any major changes, except with regard to the delimitation of the continental shelf (see article 67).

(2) The Commission accepted the idea that the coastal State may exercise control and jurisdiction over the continental shelf, with the proviso that such control and jurisdiction shall be exercised solely for the purpose of exploiting its resources; and it rejected any claim to sovereignty or jurisdiction over the superjacent waters.

(3) In some circles it is thought that the exploitation of the natural resources of submarine areas should be entrusted, not to coastal States, but to agencies of the international community generally. In present circumstances, however, such internationalization would meet with insurmountable practical difficulties, and would not ensure the effective exploitation of natural resources necessary to meet the needs of mankind.

(4) The Commission is aware that exploration and exploitation

of the seabed and subsoil, which involves the exercise of control and jurisdiction by the coastal State, may affect the freedom of the seas, particularly in respect of navigation. Nevertheless, this cannot be a sufficient reason for obstructing a development which, in the opinion of the Commission, can be to the benefit of all mankind. The necessary steps must be taken to ensure that this development affects the freedom of the seas no more than is absolutely unavoidable, since that freedom is of paramount importance to the international community. The Commission thought it possible to combine the needs of the exploitation of the seabed and subsoil with the requirement that the sea itself must remain open to all nations for navigation and fishing. With these considerations in mind, the Commission drafted the following articles.

**o. COMMENTARY TO ARTICLE 71**

(1) While article 69 lays down in general terms the basic principle of the unaltered legal status of the superjacent sea and the air above it, article 71 applies that basic principle to the main manifestations of the freedom of the seas, namely, freedom of navigation and of fishing. Paragraph 1 of this article lays down that the exploration of the continental shelf must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea. It will be noted, however, that what the article prohibits is not any kind of interference, but only unjustifiable interference. The manner and the significance of that qualification were the subject of prolonged discussion in the Commission. The progressive development of international law, which takes place against the background of established rules, must often result in the modification of those rules by reference to new interests or needs. The extent of that modification must be determined by the relative importance of the needs and interests involved. To lay down, therefore, that the exploration and exploitation of the continental shelf must never result in any interference whatsoever with navigation and fishing might result in many cases in rendering somewhat nominal both the sovereign rights of exploration and exploitation and the very purpose of the articles as adopted. The case is clearly one of assessment of the relative importance of the interests involved. Interference, even if substantial, with navigation and fishing might, in some cases, be justified. On the other hand, interference even on an insignificant scale would be unjustified if unrelated to reasonably conceived requirements of exploration and exploitation of the continental shelf. While, in the first instance, the coastal State must be the judge of the reasonableness—or the justification
of the measures adopted, in case of dispute the matter must be settled on the basis of article 73, which governs the settlement of all disputes regarding the interpretation or application of the articles.

(2) With regard to the conservation of the living resources of the sea, everything possible should be done to prevent damage by exploitation of the subsoil, seismic exploration in connexion with oil prospecting, and leaks from pipelines.

(3) Paragraphs 2 to 5 relate to the installations necessary for the exploration and exploitation of the continental shelf, as well as to safety zones around such installations and the measures necessary to protect them. These provisions, too, are subject to the overriding prohibition of unjustified interference. Although the Commission did not consider it essential to specify the size of the safety zones, it believes that generally speaking a maximum radius of 500 metres is sufficient for the purpose.

(4) Interested parties, i.e. not only government but also groups interested in navigation and fishing, should be duly notified of the construction of installations, so that these may be marked on charts. In any case, the installations should be equipped with warning devices (lights, audible signals, radar, buoys, etc.).

(5) There is, in principle, no duty to disclose in advance plans relating to contemplated construction of installations. However, in cases where the actual construction of provisional installations is likely to interfere with navigation, due means of warning must be maintained, in the same way as in the case of installations already completed, and as far as possible due notice must be given. If installations are abandoned or disused they must be entirely removed.

(6) With regard to the general status of installations, it has been thought useful to lay down expressly in paragraph 3 of this article, that they do not possess the status of islands and that the coastal State is not entitled to claim for installations any territorial waters of their own or to treat them as relevant for the delimitation of territorial waters. In particular, they cannot be taken into consideration for the purpose of determining the baseline. On the other hand, the installations are under the jurisdiction of the coastal State for the purpose of maintaining order and of the civil and criminal competence of its courts.

(7) While, generally, the Commission, by formulating the test of unjustifiable interference, thought it advisable to eliminate any semblance of rigidity in adapting the existing principle of the freedom of the sea to what is essentially a novel situation, it
thought it desirable to rule out expressly any right of interference with navigation in certain areas of the sea. These areas are defined in paragraph 5 of this article as narrow channels or recognized sea lanes essential to international navigation. They are understood to include straits in the ordinary sense of the word. The importance of these areas for the purpose of international navigation is such as to preclude, in conformity with the tests of equivalence and relative importance of the interests involved, the construction of installations or the maintenance of safety zones therein, even if such installations or zones are necessary for the exploration or exploitation of the continental shelf.

p. COMMENTARY TO ARTICLE 73

(1) The text of the draft as adopted at the fifth session contained a general arbitration clause providing that any disputes which might arise between States concerning the interpretation or application of the articles should be submitted to arbitration at the request of any of the parties.

(2) At its eighth session the Commission amended this article to provide that disputes should be settled by the parties by a method agreed between them. Failing such agreement, each of the parties would have the right to submit the dispute to the International Court of Justice.

(3) The majority of the Commission considered that a clause providing for compulsory arbitration would not be of much practical value unless the Commission at the same time laid down the procedure to be followed, as in the case of disputes relating to conservation of the living resources of the sea. It was pointed out, however, that in the present context the disputes would not be of an extremely technical character as in the case of the conservation of the living resources of the sea. It was therefore considered that arbitration could be replaced by reference to the International Court of Justice.

(4) The Commission did not agree with certain members who were opposed to the insertion in the draft of a clause on compulsory arbitration or jurisdiction, on the ground that there was no reason to impose on States one only of the various means provided by existing international law, and particularly by article 33 of the United Nations Charter, for the pacific settlement of international disputes. These members also pointed out that the insertion of such a clause would make the draft unacceptable to a great many States. The majority of the Commission nevertheless considered such a clause to be necessary. The articles on the
continental shelf are the result of an attempt to reconcile the recognized principles of international law applicable to the régime of the high seas, with recognition of the rights of the coastal State over the continental shelf. Relying, as it must, on the continual necessity to assess the importance of the interests at stake on either side, this compromise solution must allow for some power of discretion. Thus, it will often be necessary to rely on a subjective assessment—with the resultant possibilities of disagreement—to determine whether, in the terms of article 45 paragraph 1, the measures taken by the coastal State to explore and exploit the continental shelf result in "unjustifiable" interference with navigation or fishing; whether, as is laid down in paragraph 2 of that article, the safety zones established by the coastal State do not exceed a "reasonable" distance around the installation; whether, in the terms of paragraph 5 of the article, a sea lane is "recognized" and whether it is "essential to international navigation"; finally, whether the coastal State, when preventing the laying of submarine cables or pipelines, is really acting in the spirit of article 44, which only authorises such action when it comes within the scope of "reasonable" measures for the exploration and exploitation of the continental shelf. If it is not kept within the limits of respect for law and is not impartially complied with, the new regime of the continental shelf may endanger the higher principle of the freedom of the seas. Consequently, it seems essential that States which disagree concerning the exploration and exploitation of the continental shelf should be required to submit any dispute arising on this subject to an impartial authority. For this reason the majority of the Commission thought it necessary to include the clause in question. It is incumbent on the parties to decide the manner in which they wish to settle their differences; if the parties are unable to reach agreement on the manner of settlement, however, either party may refer the matter to the International Court of Justice.


1. Note. The International Technical Conference held in Rome in April-May, 1955 was called by the Secretary-General of the United Nations at the request of the General Assembly. The Report was referred to the International Law Commission of the United Nations in order that it might be taken into account during the Commission’s work on the law of the sea. United Nations General Assembly Resolution 900 (IX) requesting that this
Technical Conference be held is reproduced in the text of the Report of the Conference, A/Conf. 10/6, reprinted below. Technical papers presented at the Conference, containing valuable information with charts and maps, may be found in A/Conf. 10/7, January, 1956. This latter document has not been reproduced herein.


18 April to 10 May 1955, Rome
(A/Conf. 10/6, July, 1955)

I. INTRODUCTION

1. The General Assembly on 14 December 1954 adopted resolution 900 (IX), which reads as follows:

The General Assembly,

Considering that the International Law Commission has proposed for the consideration of the General Assembly draft articles ¹ covering certain basic aspects of the international regulation of fisheries, and considering also that that Commission has not yet concluded its study of related questions,

Having regard to the fact that the problem of the international conservation of fisheries involves matters of a technical character which require consideration on a wide international basis by qualified experts,

Being of the opinion that an international technical conference should be held in the near future to consider the problems of fishery conservation and make recommendations thereon,

Recalling that, by resolution 798 (VIII) of 7 December 1953, the General Assembly, having regard to the fact that the problems relating to the high seas, territorial waters, contiguous zones, the continental shelf and the superjacent waters are closely linked together juridically as well as physically, decided, consequently, not to deal with any aspect of those topics until all the problems involved had been studied by the International Law Commission and reported upon by it to the General Assembly,

Having regard to the fact that the technical studies relating to the conservation, protection and regulation of fisheries and other resources of the sea are also closely linked to the solution of the problems mentioned in the preceding paragraph,

1. Requests that Secretary-General to convene an international technical conference at the headquarters of the Food and Agriculture Organization of the United Nations on 18 April 1955 to study the problem of the international conservation of the living resources of the sea and to make appropriate scientific and technical recommendations which shall take into account the principles of the present resolution and shall not prejudge the related problems awaiting consideration by the General Assembly;

2. Invites all States Members of the United Nations and States members of the specialized agencies to participate in the Conference and to include among their representatives individual experts competent in the field of fishery conservation and regulation;

3. Invites the interested specialized agencies and inter-governmental organizations concerned with problems of the international conservation of the living resources of the sea, to send observers to the Conference;

4. Requests the Secretary-General to arrange for the necessary staff and facilities which would be required for the Conference, it being understood that the technical services of Governments of Member States and the technical and secretarial services of the Food and Agriculture Organization shall be utilized as fully as practicable in the arrangements for such a conference;

5. Requests the Secretary-General to circulate the report of the Conference for information to the Governments of all States invited to participate in the Conference;

6. Decides to refer the report of the said scientific and technical Conference to the International Law Commission as a further technical contribution to be taken into account in its study of the questions to be dealt with in the final report which it is to prepare pursuant to resolution 899 (IX) of 14 December 1954.

2. In pursuance of the above resolution, the International Technical Conference on the Conservation of the Living Resources of the Sea convened at the headquarters of the Food and Agriculture Organization of the United Nations on 18 April 1955. It held twenty-four plenary meetings and concluded its work on 10 May 1955.

3. The Governments of the following forty-five States sent representatives:
4. The Governments of the following six States sent observers: Bolivia, Ceylon, Dominican Republic, Romania, Thailand and Venezuela.

5. The Food and Agriculture Organization of the United Nations and the United Nations Educational, Scientific and Cultural Organization were represented by observers.

6. The following inter-governmental fishery organizations were represented by observers:

General Fisheries Council for the Mediterranean
Indo-Pacific Fisheries Council
Inter-American Tropical Tuna Commission
International Commission for the Northwest Atlantic Fisheries
International Council for the Exploration of the Sea
International North Pacific Fisheries Commission
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission
International Whaling Commission
Permanent Commission for the Exploitation and Conservation of the Maritime Resources of the South Pacific
Permanent Commission under the 1946 Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish

[Paragraphs 7-14 omitted.]

* * *
15. The result of the deliberations of the Conference is summarized in the following sections of the report. Reservations of the delegations of Chile and Peru to sections VI and VII of the report and reservation of the delegation of Ecuador to all sections of the report appear in annex A.

II. OBJECTIVES OF FISHERY CONSERVATION

16. Conservation is essential in the development of a rational exploitation of the living resources of the seas. Consequently, conservation measures should be applied when scientific evidence shows that fishing activity adversely affects the magnitude and composition of the resources or that such effects are likely.

17. The immediate aim of conservation of living marine resources is to conduct fishing activities so as to increase, or at least to maintain, the average sustainable yield of products in desirable form. At the same time, wherever possible, scientifically sound positive measures should be taken to improve the resources.

18. The principal objective of conservation of the living resources of the seas is to obtain the optimum sustainable yield so as to secure a maximum supply of food and other marine products. When formulating conservation programmes, account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast.2

III. TYPES OF SCIENTIFIC INFORMATION REQUIRED FOR A FISHERY CONSERVATION PROGRAMME

19. Effective conservation of any resource of the sea requires scientific information, based on statistical records of the amount and kind of fishing and of resulting catches, and on integrated research on the biology and conditions of existence of the resource. It is therefore essential that any nation engaging in sea fishing collect adequate statistical records of fishing effort and catch; it should also conduct pertinent biological and other investigations, to serve as a basis for ensuring the conservation of the resource being exploited. Since both the determination of the need for conservation measures and the selection of adequate and effective measures often depend on having data over a long period of time, it is most desirable that adequate records be collected, and biological and other research be conducted, from the beginning of the development of a fishery.

2 At its 19th plenary meeting on 5 May, the Conference decided, by a vote of 18 against 17, with 8 abstentions, to include this sentence in its report: see A/CONF.10/SR19.
20. Scientific information is required in order to provide answers, for a given fishery resource, to the following problems:

(a) Whether regulation of the amount, manner of kind of fishing may be expected to produce desirable changes in the amount of the catch or its quality (It is important to determine whether the amount, manner and kind of fishing are such that regulation would maintain or improve the quantity or quality of the sustainable catch, because only in this case is the application of regulatory measures indicated. In order to make such a determination it is often necessary to consider also the fluctuations in the fish population resulting from the effects of environmental factors unconnected with amount, manner or kind of fishing);

(b) If conservation measures are indicated, the particular measures to be adopted to produce the effects desired;

(c) The measures, other than control of amount, manner or kind of fishing, to be undertaken to improve the quantity or quality of the catch.

21. The scientific information required will include some or all of the following types:

(a) Extent of separation of the fishery resource into independent or semi-independent populations, which constitute the natural biological units of the resource to be dealt with by a conservation programme;

(b) Magnitude and geographic ranges of the populations constituting the resource, as a basis for effective investigation and regulation, since these need to be applied over whatever sea areas are occupied by the populations to be conserved;

(c) Pertinent facts respecting the life history (such as growth, mortality rates, migration, recruitment, etc.), ecology, behaviour and population dynamics of the species constituting the resource, including fluctuations in abundance and variations in distribution and behaviour which are due to changes in the biotic and abiotic factors of the environment, and which are independent of the amount of fishing, and including the inter-relationships of the community of organisms of which the exploited species forms a part;

(d) Effects of the amount, manner and kind of fishing on the resource and on the quantity and quality of the sustainable average catch to be obtained from it;

(e) Relationships of the resource to other species which are members of the same ecological community and are being exploited simultaneously by the same fishing equipment.

22. The degree of elaboration of the scientific investigations required to solve the conservation problems presented by particular
resources, or in particular areas of the sea, is extremely variable. In some cases quite simple investigations will be adequate to determine the need for application of conservation measures, and to indicate appropriate measures to be applied. In other cases very detailed and extensive investigations will be necessary. The requirements of each case must be determined on scientific evidence.

IV. TYPES OF CONSERVATION MEASURES APPLICABLE IN A CONSERVATION PROGRAMME

23. Several general types of measures may be applied in a conservation programme, under each of which there are several specific types of measures which may be used, depending on the nature of the resource and the way in which it is harvested:

(a) Regulation of the amount of fishing to maintain or to increase the average sustainable catch, by
   (i) Directly limiting the amount of the total catch by fixing a maximum annual catch;
   (ii) Indirectly limiting the amount of the catch by closed seasons and closed areas, or by the limitation of fishing gear and ancillary equipment;

(b) Protection of sizes of fish, the conservation of which will result in a greater average catch or a more desirable quality, by
   (i) Regulation of fishing gear to achieve differential capture of specified sizes;
   (ii) Prohibition of landing of fish below a specified size, and requiring their return to the sea alive, if this is technically practicable;
   (iii) Prohibition of fishing in areas where, or seasons when, small fish predominate;

(c) Regulations designed to assure adequate recruitment:
   (i) Control of the amount of fishing by any of the means indicated under (a) above to ensure adequate spawning stock;
   (ii) Differential harvesting of different sizes of fish, by any of the means indicated under (b) above to lower the fishing rate on immature fish;
   (iii) Prohibition of fishing in spawning areas or during spawning seasons;
   (iv) Preservation and improvement of spawning grounds;
   (v) Differential harvesting of sexes to achieve a desirable sex ratio in the population (This type of measure is not generally applicable, but has been applied to some crustacea, mammals and fishes);

(d) Measures for improvement and increase of marine resources:
(i) Artificial propagation;
(ii) Transplantation of organisms from one biogeographical area to another, with due precaution against adverse effects;
(iii) Transplantation of young to better environmental conditions.

24. The determination of which of these measures should be applied in a given conservation programme will depend on the details of the life history, ecology, population dynamics and behaviour of the species constituting the resource and on the technical nature of the fishing. The efficient application of conservation measures requires adequate prior scientific investigation of these matters. Recommendations for regulations should be made only on the basis of such investigations.

V. PRINCIPAL SPECIFIC INTERNATIONAL FISHERY CONSERVATION PROBLEMS OF THE WORLD FOR THE RESOLUTION OF WHICH INTERNATIONAL MEASURES AND PROCEDURES HAVE BEEN INSTITUTED

25. In various regions of the world, agreed international measures and procedures have been instituted for the resolution of specific international fishery conservation problems. This section of the report reviews the existing international conservation organizations in the North Atlantic, South Atlantic, Mediterranean, Indo-Pacific, North Pacific and South Pacific regions and in the Antarctic Ocean and other whaling areas. It also states the principles which have been developed in the formation of these various organizations.

Review of Existing International Conservation Organizations

26. International arrangements for the conservation of particular resources, or for the conservation of resources in a particular area, have been made in many parts of the world. While some of these arrangements provide only for required research, others provide also for the recommendation and/or application of conservation measures. There is a total of eleven such councils and conventions involving forty-two different States. Some of the States are members of more than one council or convention so that membership of the eleven organizations totals seventy-eight.³

³ See A/CONF. 10/L 4 Rev. 1, included in the supplement to this report. [Omitted.]
North Atlantic

27. The International Council for the Exploration of the Sea, established in 1902, provides for the coordination of the scientific research of most countries in northern and western Europe on the fish stocks of the North Sea and the Baltic and those in the North-East Atlantic and the Greenland waters. Membership is open to all nations having an interest in the area.

28. The 1946 Convention for the Regulation of Meshes of Fishing Nets and the Size Limits of Fish is an arrangement among thirteen nations of Europe for the application of specific conservation measures. These measures are based on the scientific advice of the International Council for the Exploration of the Sea, which is given through a liaison committee appointed by the Council.

29. Canada, Newfoundland, the United States and France organized the North American Council on Fishery Investigations, which was active from 1920 to 1938, to co-ordinate their scientific research in the North-West Atlantic, operating on the pattern of the International Council for the Exploration of the Sea. This North American Council provided a background for the subsequent establishment of the International Convention for the North-West Atlantic Fisheries.

30. The International Convention for the North-West Atlantic Fisheries, which came into force in 1950, relates to the sea fisheries of the North-West Atlantic Ocean, and is open to all nations who participate in the fisheries of this region and to the adjacent coastal States. Since some nations are not concerned with problems in the entire region, it is divided into sub-areas, within which the investigation and conservation of the fish resources are the concern of panels consisting of representatives of interested States, that is, States fishing in the sub-area and States adjacent to it. The Commission established under the Convention develops the necessary programmes and co-ordinates the research which is done by member Governments. Recommendations for regulations are made by the Commission on the basis of proposals from the appropriate panels, and become effective for a given sub-area when accepted by the government members of the panel for such sub-areas.

South Atlantic

31. There are no international arrangements in this area, except for whaling, discussed separately below.
Mediterranean

32. The International Commission for the Scientific Exploration of the Mediterranean was organized in 1919. Its function is to co-ordinate the scientific research in this sea, both oceanographical and biological, but without particular reference to fisheries.

33. The General Fisheries Council for the Mediterranean, organized in 1952, and sponsored by the Food and Agriculture Organization of the United Nations (FAO), is an association of Mediterranean States for the purpose of co-ordinating research and development activities related to the fisheries of this sea. It has at present eleven members. There is a liaison committee between this Council and the International Commission founded in 1919.

Indo-Pacific

34. The Indo-Pacific Fisheries Council is another FAO-sponsored Council, for the co-ordination of research, conservation and development of the fisheries (both inland and marine) of this region. It was founded in 1949 and is open to all nations of the region; it has at present sixteen members.

North Pacific

35. The Fur Seal Treaty of 1911 between Japan, Russia, Canada and the United States is the earliest example of a convention for the conservation of a single resource. This Convention, which has resulted in the rebuilding and management of the fur seal herds of the North Pacific, provided particularly for the cessation of pelagic sealing. Although the treaty was terminated in 1941, following the withdrawal of Japan, the United States and Canada have continued the management of the herds in the eastern North Pacific, and the Soviet Union has continued to manage those to the west. Negotiation of a new convention is expected in the near future.

36. The International Pacific Halibut Convention, negotiated between the United States and Canada in 1923, established a Commission which, with its own research staff, undertook the necessary investigations of their halibut fisheries in the North-West Pacific. In 1930 the Commission was given authority to regulate the fishing on the basis of its scientific findings, as well as to continue the research necessary for a continuing conservation programme, to make possible the attainment of the maximum sustainable catch.

37. The International Sockeye Salmon Convention of 1937,
between the United States and Canada, provided for a Commission which, with its own research staff, should investigate the sockeye salmon spawning in the Fraser River watershed. After some years of investigation the Commission recommended the construction of certain fishways, and after eight years of such investigations had authority to regulate and to take action to conserve and rebuild those salmon populations. It is now in its eighteenth year of operation and currently conducts both research and management of the fishery.

38. The International North Pacific Fisheries Convention was recently negotiated between Japan, Canada, and the United States and entered into force in 1953. It is concerned with stocks of fish in the convention area under substantial exploitation by two or more contracting parties. It does not include salmon stocks of the North-West Pacific since neither Canada nor the United States fish such stocks. Research is conducted by the national research agencies, which are co-ordinated by the Commission established by the Convention, but the Commission may employ its own scientific staff if necessary. Decisions and recommendations for regulations are confined to the contracting countries engaged in the exploitation of a given stock on a substantial scale. Under this Convention, States which have not engaged in substantial exploitation of certain stocks of fish agree to abstain from fishing those stocks where it can be shown that all the following conditions are satisfied: (a) more intensive exploitation will not provide a substantial increase in yield, (b) the stock is under conservation regulation and (c) is subject to extensive scientific study designed to discover whether the stock is being fully utilized, and what conditions are necessary for maintaining its maximum sustained productivity.

39. The Inter-American Tropical Tuna Convention, operating in the tropical and sub-tropical eastern Pacific, was negotiated in 1949 between Costa Rica and the United States to obtain scientific information respecting the tunas and tuna bait-fishes in the tropical and sub-tropical eastern Pacific, required as a basis for maintaining the populations of those fishes at levels which will permit maximum sustainable catches. The treaty is open to adherence by all nations having an interest in the fishery. Panama adhered in 1953. The Commission established by this Convention conducts scientific investigations with its own staff, and makes conservation recommendations based on the research results.

South Pacific

40. The Permanent Commission for the Exploitation and Con-
sservation of the Maritime Resources of the South Pacific, which
was inaugurated in 1954 between Peru, Ecuador and Chile, has
broad terms of reference. It proposes to: (a) unify fishing and
whaling regulations of the three countries, (b) promote scientific
investigations, (c) compile statistics and exchange information
with other agencies and (d) co-ordinate the work of the three
countries in all matters pertaining to the conservation of the living
resources of the sea.

Antarctic and other whaling areas

41. The International Convention of 1946 for the Regulation of
Whaling, to which seventeen nations now adhere, established in
1949 a Commission which co-ordinates and reviews research of
member Governments, reviews and evaluates scientific findings,
and makes conservation regulations on the basis of those findings.
It is concerned with the conservation of whales in all areas where
whaling is conducted.

42. The Permanent Commission for the Exploitation and Con-
servation of the Maritime Resources of the South Pacific, men-
tioned above, regulates whaling and the conservation of whales
in the South-East Pacific.

Principles of International Conservation Organizations

43. The older research and management conventions operating
with permanent commissions have been highly successful in
restoring and maintaining the productivity of international re-
sources. In general, the newer conventions are making encouraging
progress in this direction. Experience in the international con-
servation of living marine resources reflected in the foregoing
organizations has led increasingly to the incorporation in con-
servation conventions of certain basic provisions in the application
of conservation programmes. The more important of such pro-
visions are:

(a) A sufficiently large geographical area within which
research and regulation are to be carried out to encompass the
entire range of the populations constituting the resource or
resources with which the convention is concerned;

(b) All interested nations, both the fishing nations and the
adjacent coastal States, are included in the international organiza-
tions responsible for conservation of a given resource, or in a
given region;

(c) Adequate scientific research, carefully evaluated as out-
lined in sections III and IV of this report, for determining the
need for conservation measures, and the formulation of the particular measures to be applied;

(d) Continuing research and review;

(e) Where international organizations are granted regulatory powers, these powers are sufficiently broad to ensure the full application of all suitable conservation measures which have been arrived at on the basis of adequate scientific investigations;

(f) Facilities for adjusting and revising the convention to meet changing conditions in the fishery and to take advantage of advancing technical and scientific knowledge;

(g) Clear rules conveying the rights and duties of the member States, the conservation measures to be recommended, the functions of the commissions set up under the convention, and the authority, of these commissions to regulate or recommend regulations, and how these recommendations shall be handled;

(h) Facilities to obtain advice from the interested public, through advisory committees or otherwise, regarding the applicability and practicability of management programmes, and measures and facilities to inform the public concerning the work of the commission, its objectives and accomplishments.

VI. APPLICABILITY OF EXISTING TYPES OF INTERNATIONAL CONSERVATION MEASURES AND PROCEDURES TO OTHER INTERNATIONAL FISHERY CONSERVATION PROBLEMS

Problems of the Coastal State—Extent of Interest and Responsibility

44. Two trends of thought became apparent during the Conference, as to the place of coastal States in the matter of conservation. All agreed that conservation measures adequate both from the technical and scientific points of view should, where needed, be introduced in the areas in question in order to prevent all those in the various countries who are concerned with the fisheries from causing a decrease in the sustainable yield of the resources.

45. According to one group, however, the coastal State has a special interest in the measures of conservation to be applied. Within this group, the points of view expressed concerning the rights and duties of the coastal State covered a wide range. These varied from the proposal which was accepted by the Conference and appears in section II, paragraph 3, of this report, that the coastal State be regarded as having a special interest in the conservation of the living resources of the sea adjacent to its
coasts, to the proposal that the coastal State alone should be entrusted with control and conservation measures in areas near its coast, with no necessary limitation except that the measures should be in accord with the general principles of a technical character adopted at the Conference, and should be based on the maintenance of the existing ecological system in a given maritime zone. The view was also expressed that, in considering the application of conservation measures, the people nearest to, and dependent on, the resources for food should be given first consideration. These views result from the argument that the coastal State has a special interest and responsibility for the conservation of the biological wealth near its shores and that it is in consequence the best qualified to be entrusted with the task of conservation.

46. It was also emphasized in the discussions in this connexion that the special interests of the coastal State should be regarded as related to the resources or stocks which the States concerned aim to conserve through efforts which they make, or through the various measures which they may take, as for example the development of fisheries by artificial means, such as acclimatization, the improvement of the natural environment of the fishery, etc.

47. According to the other group, the coastal State should refrain from adopting any conservation measures for high seas fisheries applicable to the nationals of other countries, without the agreement of the other States concerned. This view proceeds from the consideration that conservation measures should be based on scientific and technical evidence, that the coastal State is not necessarily better qualified than other States concerned to assess scientific truth, and that all States concerned should be entitled to supply pertinent scientific evidence and to have it considered on an equal footing, with a view to formulating adequate conservation measures.

48. In the plenary meeting of 7 May a proposal concerning the situation of the coastal State was presented by the delegations of Cuba and Mexico.⁴ The Conference on this occasion declared itself (by a vote of 21 to 20 with 3 abstentions) not competent to deal with this proposal. The vote was taken on the motion by the delegation of Norway that the Cuban-Mexican proposal was outside the scope of the Conference.⁵

49. *Existing procedures.* Many of the present fishery conservation conventions may be adhered to by any interested State. This

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⁵ The discussion is recorded in A/CONF.10/SR.21.
provides an opportunity for the coastal State to participate in the work and decisions of the commission operating under the convention. The International Conference for the Northwest Atlantic Fisheries, particularly, provides that each contracting party with coastline adjacent to a sub-area may be represented on the panel for that sub-area, whether or not it fishes in that sub-area.

Problems Relating to the Operation of Conventions, Including Procedures of Operation

50. Failure of all States concerned to participate in the preparation, negotiation and establishment of international fishery conservation conventions impedes or limits progress in achieving the objectives of conservation. Furthermore, commissions functioning under such conventions are handicapped in their operation when all States concerned do not participate in the scientific research and investigation undertaken with a view to achieving the objectives of the convention.

51. The commissions are also handicapped if the conventions do not clearly and fully define the rights and duties of the member countries and do not contain precise stipulations both as to the procedures and the conservation measures to be recommended and applied. This includes definition of the duties and authority of the commissions with respect to the kinds and application of conservation measures, or with respect to the recommendation of such measures. It was also considered that the commissions cannot be most effective and expeditious in progressing towards their objectives unless they are given considerable latitude as to the specific conservation measures which they may apply or recommend for application. Too severe a limitation of their authority can result in a reduction in their effectiveness and delay in achieving results.

52. Existing procedures. Some present conventions are so framed that new measures can be adopted at any time when necessary for achieving the desired objectives.

53. Some are open-ended so that any concerned State may adhere; other conventions include all of the countries engaged in the exploitation of the fish stock or stocks covered by the conventions. These conventions, in addition, generally specify clearly the competence of the commissions for which they provide, and include rules for their operation. The majority of the conventions give their commissions considerable latitude with respect to determination of the specific conservation measures which they may use.
Biological or Geographic Coverage of Conventions

54. Lack of co-operation by any State participating in fishing on the stocks of fish or in the areas covered by the conventions may result in the conventions becoming ineffective. Scientific evidence clearly demonstrates that effective conservation management of a stock of fish cannot be achieved unless all States engaged in substantial exploitation of that stock come within the management system.

55. Existing procedures. Present conventions generally cover:
(a) One or more stocks of marine species, which can be separately identified and suitably regulated; or
(b) A specified area, in cases where the identification of stocks mentioned in the preceding paragraph is impossible in practice, because of the interdependence of several species or for any other reason.

Problems Involved in Reaching Agreement on Conservation Measures and Procedures

56. Failure to reach agreement on the conclusion to be drawn from a given set of data has sometimes resulted in conservation programmes being inadequate or ineffective.

57. In most instances, disputes can, of course, be settled by the bodies set up by the convention to co-ordinate and direct the conservation measures to be adopted. The utility of such bodies is beyond question, but their role is necessarily limited to the purposes for which they were set up. There may be occasional disagreements in such bodies which prevent or impede the development and implementation of an effective conservation system. Such disagreements might be roughly grouped into three general categories: (a) concerning questions of a legal or juridical nature; (b) concerning questions of a scientific and technical character; (c) concerning other questions.

58. Existing procedures. Problems covered in category (a) can be handled in the first instance through diplomatic channels and then if necessary by recourse to existing international juridical procedures.

59. One method of handling a problem in category (b) was included in the North Pacific Fisheries Convention. This Convention provides that in the event the Commission operating under the Convention fails, in a reasonable period of time, to reach agreement on the conclusions from certain research work, bearing upon a problem of special importance, the question shall be referred to a committee of competent and neutral (impartial)
scientists selected by the contracting parties. The majority decision of the committee determines the recommendations to be made by the Commission.

**Problems Created by New Entrants into a Fishery Under Conservation Management**

60. An established conservation programme can be made ineffective by the participation of nationals of a State newly entering into the exploitation of the stock of fish, with no commitment to observe the regulations. Three aspects of this problem are considered.

**Case 1**

61. A special case exists where countries, through research, regulation of their own fishermen and other activities, have restored or developed or maintained stocks of fish so that their productivity is being maintained and utilized at levels reasonably approximating their maximum sustainable productivity, and where the continuance of this level of productivity depends upon such sustained research and regulation. Under these conditions, the participation of additional States in the exploitation of the resource will yield no increase in food to mankind, but will threaten the success of the conservation programme. Where opportunities exist for a country or countries to develop or restore the productivity of resources, and where such development or restoration by the harvesting State or States is necessary to maintain the productivity of resources, conditions should be made favorable for such action.

62. *Existing procedures.* The International North Pacific Fishery Commission provides a method for handling the special case mentioned above. It was recognized that new entrants in such fisheries threatened the continued success of the conservation programme. Under these circumstances the State or States not participating in fishing the stocks in question agreed to abstain from such fishing when the Commission determines that the stock reasonably satisfies all the following conditions:

(a) Evidence based upon scientific research indicates that more extensive exploitation of the stock will not provide a substantial increase in yield;

(b) The exploitation of the stock is limited or otherwise regulated for conservation purposes by each party substantially engaging in its exploitation; and

(c) The stock is the subject of extensive scientific study
designed to discover whether it is being fully utilized, and what conditions are necessary for maintaining its maximum sustained productivity. The Convention provides that, when these conditions are satisfied, the States which have not engaged in substantial exploitation of the stock will be recommended to abstain from fishing such stock, while the States engaged in substantial exploitation will continue to carry out the necessary conservation measures. Meanwhile, the abstaining States may participate in fishing other stocks of fish in the same area.

Case 2

63. A somewhat different case was discussed, involving new entrants into a fishery which a coastal State is regulating for conservation purposes, and when existing scientific evidence indicates the necessity of continuing such regulations for conservation purposes.

64. Existing procedures. In general this conservation problem can be handled if the new entrant should declare itself ready to observe the conservation regulations in force and undertake to co-operate with the other States concerned in carrying out the relevant programme of research and management.

Case 3

65. A variation of this problem exists where the intensive exploitation of offshore waters adjoining heavily fished inshore waters, by a new fishing operation initiated either by the coastal States or by another State, considerably affects the abundance of fish in the inshore waters.

66. Existing procedures. The conservation aspect of the problem is taken care of if the entire area in which the stocks are fished, including both the inshore and offshore portions, is included within a single conservation system and is subjected to conservation regulations adequate to maintain the maximum sustainable yield.

Problems of Effective Enforcement

67. Some conventions provide that joint regulations shall be enforced on fishermen only by officials of their own government.

68. Other conventions have special provisions for the enforcement of regulations. The North Pacific Halibut Convention, the Pacific Sockeye Salmon Convention and the North Pacific Fishery Convention provide that authorized officers of any Contracting Party may enforce on the high seas the regulations promulgated
by the Commission, with respect to the nationals of any Contracting Party, such nationals being then dealt with in their own country.

**Areas and Species Not Covered by Present Conservation Conventions**

69. Apart from those fisheries discussed in Section V, sea fisheries are at present not subject to international measures of conservation. Examples of such fisheries range from newly discovered resources in the initial phase of exploitation to continually worked fisheries which have begun to show signs of depletion. According to the nature of the problems associated with them, these fisheries could be grouped in four categories. Examples are here suggested which would probably fall within each category:

(a) Fisheries which have been newly or partially developed and which are capable of substantial expansion, for example, Mid-Pacific tunas;

(b) Old established fisheries which are apparently being fully exploited, but in the case of which scientific information is inadequate to suggest the need for conservation measures, for example, Rastrelliger (Indo-Pacific mackerel);

(c) Fisheries in separated or contiguous areas depending upon the same species, where further expansion of a particular fishery may result in depletion of others, for example, Sciaenid and Polynemid fisheries of the Arabian sea; Hilsa fisheries of the Bay of Bengal;

(d) Fisheries which are already showing signs of overfishing, requiring conservation measures at national and international levels, for example, in particular, North-West Pacific sockeye salmon.

70. The Inter-American Tropical Tuna Commission, already referred to, is an instance where an international conservation policy has already been formulated for the exploitation of a fishery of comparatively recent origin. Such early action has, however, been exceptional. In many cases several fisheries have been exploited for centuries, but the absence or inadequacy of statistics and other scientific data makes it difficult to suggest conservation measures (e.g., several Indo-Pacific fisheries). In such cases, especially in countries where the fishing industry is not sufficiently advanced, it would be very useful if the scientific facts listed in section III could be gathered on a continuing basis both at national levels and when necessary by co-operative research projects at international levels.
71. Fisheries under category (c) of paragraph 69 present special problems of conservation. In areas where two or more nations are engaged in fishing on what is basically the same resource, but by different methods, in different areas, in different environments, or on different age groups of the same species, management programmes can be worked out by agreement between the nations concerned. Where inshore fishing has been traditional, new problems are introduced by intensive offshore fishing either by new enterprises in the same country or by other countries having superior experience and equipment.

72. Category (d) of paragraph 69 includes fisheries of certain areas where intensive fishing has been taking place for many years. Conservation measures have been enforced by certain countries bordering these areas but there is no agreed policy of conservation or uniform method of enforcement by all the countries concerned, to keep the yield from these waters at the highest sustainable level. Closed seas and small gulfs, as well as other areas, may present conservation problems of vital interest to the countries in the immediate neighborhood.

73. Many areas of the oceans, although exploited by several countries, are still without any agencies for the study of conservation problems and the development of conservation measures by agreement. The material presented at the Conference does not appear adequate to make a full appraisal of these, but some of the areas requiring attention, and the fisheries concerned, are summarized in the following list:

<table>
<thead>
<tr>
<th>Area</th>
<th>Species</th>
</tr>
</thead>
<tbody>
<tr>
<td>North-West Pacific</td>
<td>Fur seal (Callorhinus ursinus)</td>
</tr>
<tr>
<td></td>
<td>Pacific salmon (Genus Oncorhynchus)</td>
</tr>
<tr>
<td></td>
<td>Herring (Clupea pallasii)</td>
</tr>
<tr>
<td></td>
<td>Sardine (Sardinops melanosticta)</td>
</tr>
<tr>
<td></td>
<td>Flat fishes (Several genera and many species)</td>
</tr>
<tr>
<td>South-East Pacific</td>
<td>Anchovies (Engraulis ringens)</td>
</tr>
<tr>
<td>Mediterranean</td>
<td>Trawl fisheries</td>
</tr>
<tr>
<td>North-East Atlantic</td>
<td>Herring (Clupea harengus)</td>
</tr>
<tr>
<td>Baltic</td>
<td>Plaice (Platichthys platessa)</td>
</tr>
<tr>
<td></td>
<td>Flounder (Pleuronectes flesus)</td>
</tr>
<tr>
<td></td>
<td>Salmon (Salmo solar)</td>
</tr>
<tr>
<td></td>
<td>Cod (Gadus callarias)</td>
</tr>
<tr>
<td>Arctic seas</td>
<td>Seals and other aquatic mammals (Phoca groenlandica, Cystophora cristata, Erignathus barbatus, Odobenus tosmaricus and others)</td>
</tr>
<tr>
<td>Various seas</td>
<td>Shrimp resources developed in recent years.</td>
</tr>
</tbody>
</table>

*This list covers only species mentioned in the Conference and is not to be considered as complete.*
VII. GENERAL CONCLUSIONS

74. The Conference notes with satisfaction conservation measures already carried out in certain regions and for certain species at the national and international level. International co-operation in research (including statistical investigation) and regulation in the conservation of living resources of the high seas is essential. The Conference considers that wherever necessary further conventions for these purposes should be negotiated.

75. The present system of international fishery regulation (conservation measures) is generally based on the geographical and biological distribution of the marine populations with which individual agreements are concerned. From the scientific and technical point of view this seems, in general, to be the best way to handle these problems. This system is based upon conventions signed by the nations concerned.

76. From the desire expressed during this Conference by all participating nations to co-operate in research, and from the guidance given by existing conventions, it appears that there are good prospects of establishing further conservation measures where and when necessary. Having regard to these considerations and the existing principles dealt with under Section V, “Principles of International Conservation Organizations,” the Conference considers that the following should be taken as the guiding principles in formulating conventions:

(a) A convention should cover either:

   (i) One or more stocks of marine animals capable of separate identification and regulation; or

   (ii) A defined area, taking into account scientific and technical factors, where, because of intermingling of stocks or for other reasons, research on and regulation of specific stocks as defined in (i) is impracticable;

(b) All States fishing the resource, and adjacent coastal States, should have opportunity of joining the convention and of participating in the consideration and discussion of regulatory measures;

(c) Conservation regulations introduced under a convention should be based on scientific research and investigation;

(d) All signatory States should so far as practicable participate directly or through the support of a joint research staff in scientific research and investigation carried out for purposes of the convention;

(e) All conventions should have clear rules regarding the
rights and duties of member nations, and clear operating pro-
cedures;

(f) Conventions should clearly specify the kinds or types of
measures which may be used in order to achieve their objectives;

(g) Conventions should provide for effective enforcement.

77. Nothing in these guiding principles is intended to limit the
opportunity of States to make agreements on such other fishery
matters as they may wish, or to limit the authority or responsi-
bilities of a State to regulate its fisheries on the high seas when
its nationals alone are involved.

78. The Conference considers that conventions, and the regu-
latory measures taken thereunder, should be adopted by agreement
among all interested countries. The Conference draws attention,
however, to the problems arising from disagreements among
States as to scientific and technical matters relating to fishery
conservation. Such disagreements may arise as to:

(a) The need for conservation measures or the nature of any
measures to be taken; and

(b) The need to prevent regulatory measures already adopted
by one State or by agreement among certain States from being
nullified by refusal on the part of other States, including those
newly participating in the fishery concerned, to observe such
measures.

79. A solution to such problems might be found through:

(a) Agreement among States to refer such disagreements to
the findings of suitably qualified and impartial experts chosen for
the special case by the parties concerned, with the subsequent
transmittal of the findings, if necessary, for the approval of the
parties concerned, and

(b) Agreement by all States fishing a stock of fish to accept
the responsibility to co-operate with other States concerned in
adequate programmes of conservation research and regulation.

80. The Conference recognizes that a problem is created when
the intensive exploitation of offshore waters adjoining heavily
fished inshore waters, by a new fishing operation initiated by
another State, considerably affects the abundance of fish in the
inshore waters. This conservation problem is taken care of when
the entire area is included in a conservation system involving the
concerned States, and is subject to conservation regulations ade-
quate to maintain the maximum sustainable yield. However, when
no such system exists, overfishing may occur before suitable
arrangements and regulations can be developed. Opinion in the
Conference was more or less evenly divided as to the responsibility
of the coastal State under such circumstances to institute a con-
ervation programme for the fisheries concerned, pending negotiations of suitable arrangements. This problem requires further study.

81. It was the consensus of the Conference that it was not competent to express any opinion as to the appropriate extent of the territorial sea, the extent of the jurisdiction of the coastal State over fisheries, or the legal status of the superjacent waters of the continental shelf.

82. The question of the special interests, rights, duties and responsibilities of coastal States in the matter of the conservation of the living resources of the sea was discussed in the Conference. The opinion of the Conference on these matters, and on the question as to whether the Conference was competent to consider them, was more or less evenly divided.

83. It is understood that any recitals or explanations of any treaties or other formal Acts to which any of the States represented at this Conference are parties are not to be considered as legal interpretations of such treaties or formal acts.

ANNEX A

Reservations of the Delegations of Chile, Ecuador and Peru

* * *

Statement by the Delegations of Peru and Chile

The delegations of Peru and Chile abstain from voting on the conclusions contained in sections VI and VII of the Final Report, because they consider that, in some respects, their content exceeds the competence of the Conference as defined in the convening resolution of 14 December 1954 of the General Assembly of the United Nations, and because in substance they mainly reflect the trend of thought of a group in the Conference which did not hold a decisive majority. In any case, the delegations of Peru and Chile maintain the primacy of the regulations on conservation of the living resources of the sea contained in their respective national legislations and in the international conventions to which they are parties.

The delegations of Peru and Chile request that this explanation of their vote should be recorded in the report of today's session and in the Final Report of the Conference.

Rome, 10 May 1955

Statement by the Delegation of Ecuador

The delegation of Ecuador places on record that it approves section VI of the Final Report on the understanding and with the
assurance that the said section is exclusively descriptive in character and merely describes the various views held in the Conference, without making recommendations or formulating resolutions of any kind. Such, indeed, was the intention of Sub-Committee III from which it originated, and which drafted and presented it, and the Chairman of that Sub-Committee so stated when he submitted the section for examination by the Conference. Moreover, a similar statement was made by the Chairman of the plenary session at which it was discussed.

The delegation of Ecuador, in giving its approval, likewise places on record its reservation that such approval expressly leaves unimpaired any relevant constitutional and legal dispositions adopted by the Republic of Ecuador, and any stipulations of the conventions to which it has acceded, and the unshakable attitude it has taken in defence both of the inalienable rights of coastal States and of their marine resources. It makes the same reservation with regard to Section VII of the Final Report of the Conference, and to all the other sections in the Report.

Rome, 10 May 1955.

C. Developments at Inter-American Conferences—1950–1956

1. INTRODUCTORY NOTE. There have been many interesting developments with respect to the continental shelf, territorial waters, and related questions both in national claims, treated infra, and at the several echelons of Inter-American Conferences, treated herein. The concerted action of Chile, Ecuador, and Peru on these matters is dealt with in the next succeeding section. The documentation of the Inter-American Conferences is itself extensive. Only the most significant documents have been chosen for reproduction here. For further study, if desired, a convenient source for developments and documentation in permanent form, and generally available in libraries, is the Inter-American Juridical Yearbook. Thus far, volumes have been published for 1948, 1949, 1950–51, and 1952–54 by the Pan American Union, Washington, D.C.

The study of these matters was inaugurated at the First Meeting of the Inter-American Council of Jurists at Rio de Janeiro in May of 1950. Resolution VII, adopted at that meeting, assigned to its Permanent Committee, the Inter-American Juridical Committee, the study, inter alia, of “System of Territorial Waters and Related Questions.” The Final Act of the First Meeting is printed at pages 289–309 of the Inter-American Juridical Yearbook, 1950–51. Resolution VII may be found at pages 299–304 thereof. Subsequent developments are shown by the documents that follow. In addition to these documents, the following references may be helpful in tracing the developments. The Report of the Executive Secretary of the Third Meeting of the Inter-American Council of Jurists at Mexico City is published as Pan American Union Document CIJ–30 (English) (1956). CIJ–24 (English) (1955) Handbook for the Third Meeting prepared by the Department of
International Law of the Pan American Union, contains a discussion of developments at pages 5–29, and a list of legislation in force at pages 101–103. A similar survey of developments is contained in Document 2 (English), Background Material on the Juridical Aspects of the Continental Shelf and Marine Waters, prepared as above, for the delegates to the Ciudad Trujillo Conference, 1956. CIJ–28 (Spanish) contains the discussion and documents covering territorial waters and related questions at the Third Meeting. The texts of various statements by the United States Representative are printed in English at pages 443, 464, and 485 thereof. A report of the Third Meeting giving the United States view of the proceedings and copies of the relevant resolutions adopted may be found in 34 Department of State Bulletin, pages 296–299 (February 20, 1956). A comprehensive account of the developments may also be found in A/CN.4/102, 12 April 1956, a report by the Secretary of the International Law Commission of the United Nations. See also, Young, “Pan American Discussions on Offshore Claims, “50 A.J.I.L. 909 (1956).

2. Draft Convention on Territorial Waters and Related Questions
(Inter-American Juridical Committee, Rio de Janeiro, July 30, 1952)

a. NOTE. The Inter-American Juridical Committee is the Permanent Committee of the Inter-American Council of Jurists. The Council was established pursuant to Article 57 of the Charter of the Organization of American States. The Charter is reprinted in N.W.C., I.L. Documents 1948–49, page 1. This Draft Convention, prepared by the Juridical Committee, is reprinted primarily to illustrate the extreme views advanced by certain Latin-American states. Hence, the Dissenting Opinion by the Delegates of Brazil, Colombia and the United States as well as the Statement of Reasons by the Majority have been omitted. The Dissenting Opinion criticized the majority on the substance of its proposals and on the ground that the procedure followed in this instance did not comply with the mandate extended to the Juridical Committee. The Draft Convention has no legal force and it was returned to the Juridical Committee for further study by Resolution XIX of the Second Meeting of the Inter-American Council of Jurists. For Resolution XIX, see the document immediately following the Draft Convention.

b. DRAFT CONVENTION ON TERRITORIAL WATERS AND RELATED QUESTIONS

ARTICLE 1. The signatory States recognize that present international law grants a littoral nation exclusive sovereignty over the soil, subsoil, and waters of its continental shelf, and the air space and stratosphere above it, and that this exclusive sovereignty is exercised with no requirement of real or virtual occupation.

ARTICLE 2. The signatory States likewise recognize the right of each of them to establish an area of protection, control, and economic exploitation, to a distance of two hundred nautical miles from the low-water mark along its coasts and those of its island
possessions, within which they may individually exercise military, administrative, and fiscal supervision over their respective territorial jurisdictions.

**ARTICLE 3.** When two or more continental shelves, or areas of protection and control, overlap, the States to which they belong shall limit the scope of their sovereignty or jurisdiction by mutual agreement or by submitting the question to the procedures established by the Parties for the settlement of international controversies.

**ARTICLE 4.** The principles of customary or treaty law heretofore recognized between the Parties with respect to territorial waters, and specifically those referring to the exploitation of natural resources and the rights of navigation, are applicable to the continental shelf.

**ARTICLE 5.** Taking into account the fact that the laws and practices of the signatory States show divergences with respect to the demarcation of the continental shelf and the area of protection, and with respect to the definition and scope of their rights thereover as regards the utilization thereof by another State, the Parties agree to study these matters jointly in order to obtain, as far as possible, a uniform system.

3. **Resolution XIX, “Territorial Waters and Related Questions”, of the Second Meeting of the Inter-American Council of Jurists (Buenos Aires, 1952) and Reservation of the United States Thereeto**

   a. **Note.** Resolution XIX is included in the Final Act of the Second Meeting of the Inter-American Council of Jurists (Buenos Aires, 1953) and may be found in *Pan American Union Document CIJ-17* (English) of 9 May 1953 at pages 52–54. The Reservation of the United States to Resolution XIX is contained in the above mentioned Final Act and is reprinted in CIJ-17, *supra*, at page 66. The Final Act is also reprinted in English in *Inter-American Juridical Yearbook*, 1952–1954 at pages 192–230. The documents quoted below appear in *Ibid.*, pages 221–222, and 228–229.

   b. **RESOLUTION XIX**

   **TERRITORIAL WATERS AND RELATED QUESTIONS**

   **WHEREAS:**

   Several American countries have adopted legislation and issued declarations announcing claim to their continental and island shelves, and to their adjacent waters;

   Without expressing, for the present, any opinion on the nature and scope of claims that riparian States may make to their continental and island shelves, and to their territorial waters,
it is an obvious fact that development of technical methods for exploring and exploiting the riches of these zones has had as a consequence the recognition by international law of the right of such States to protect, conserve, and promote these riches, as well as to ensure for themselves the use and benefit thereof;

A careful study must be made of the nature of the rights and of the extent to which claims to the continental and insular shelves and their adjacent waters may reach, taking into account the characteristics of the different zones of the Continent, for which it is appropriate to bear in mind the legislation of all American States on the subject, as well as their opinions, which should be obtained before arriving at a final decision;

It would be useful, in making the general study of these problems, in view of the political implications of the subject, to consider recommending to the Council of the Organization of American States that it convene a special Inter-American Conference for the purpose of enabling the States to come to agreement.

Resolution VII establishes that in studying the topic "System of Territorial Waters and Related Questions," the Permanent Committee shall proceed in accordance with the method provided in paragraph 2 of Article 2 of the plan adopted, which reads as follows:

"2. Without prejudice to the provisions of the foregoing paragraph, the Inter-American Juridical Committee may, on its own initiative, carry out such studies and work as it deems advisable for the purposes envisaged in this Plan. Nevertheless, in selecting the matters to suggest to the Council of Jurists for study, the Committee should base its decision on the following criteria or factors of evaluation:

(a) Considerations of urgency, necessity, and possibility of accomplishment, taking into account especially the information obtained from the American Governments in this regard;

(b) Opinions of professors and persons of recognized competence in the subject;

(c) Opinions of national or international societies and institutions, private or official, devoted to the study of international or comparative law;

(d) Opinions of other organizations with extensive practical experience in these activities. The reports of the Committee to the Council of Jurists suggesting
matters related to the aforementioned purposes shall present the conclusions reached in accordance with the foregoing bases."

The observance of Article 4 of the Plan contained in Resolution VII of the first meeting of this Council in 1950, reading as follows:

"1. In the case of studies relating to the development of international law, the Permanent Committee shall limit itself to writing decisions or reports on the questions studied.

2. Such decisions or reports shall be transmitted through the General Secretariat to the several Governments so that the latter may formulate their observations thereon within three months. After this period, the Committee shall draft a new decision or report to be presented to the Council of Jurists",

would have allowed this Second Meeting, had the Juridical Committee observed the procedure and stages set forth in that Plan, to have the necessary preparatory material to be able to reach accurate conclusions on this subject,

The Inter-American Council of Jurists

RESOLVES:

1. To return to the Inter-American Juridical Committee the subject of "System of Territorial Waters and Related Questions" referred to in clause a) under title I "Public International Law" of Resolution VII of 1950, for the continuation of its study, as provided in Article 2, paragraph 2, and in Article 4 of the said Resolution;

2. That in drafting its definitive report the Inter-American Juridical Committee shall also take into account the whereas clauses of the present Resolution;

3. To ask the Secretary General of the Organization of American States to invite the member States which have adopted, or in the future may adopt, special laws on the subject of the "System of Territorial Waters and Related Questions", to transmit the texts thereof, together with the corresponding geographical charts, to the Inter-American Juridical Committee, in order that it may make an analytical study thereof and study them in connection with the preparation of the report it is to render to this Council of Jurists, as provided by Article 4 of Resolution VII.

(Approved at the Fourth Plenary Session, May 8, 1953)
Reservation of the United States of America

The Delegation of the United States of America, in approving the Resolution on Territorial Waters and Related Questions, does so with an explicit reservation, placing on record: that the United States of America does not approve the second paragraph of the Considerations which treats, in its opinion, of subject-matter properly to be referred to the Inter-American Juridical Committee to be dealt with as a matter "relating to the development of international law", under Article 2, paragraph 2, and Article 4 of Resolution VII adopted in 1950 by the Council of Jurists at its First Meeting, articles which in the present Resolution are referred to as being applicable, especially in view of the fact that the paragraph has not been given scientific or juridical consideration by the Second Meeting of the Inter-American Council of Jurists and in view of the fact that it affirms as an existing right matter which is not clearly defined or settled in international law.

4. Resolution LXXXIV, "Conservation of Natural Resources: the Continental Shelf and Marine Waters", of the Tenth Inter-American Conference (Caracas, 1954)

a. Note. Resolution LXXXIV was approved at the Tenth Inter-American Conference (Caracas, 1954). It is printed as Appendix II to Document 2 (English), Background Material on the Juridical Aspects of the Continental Shelf and Marine Waters, at pages 25-26, prepared by the Department of International Law of the Pan American Union. Resolution LXXXIV provides, inter alia, for the convocation of a Specialized Conference by the Council of the Organization of American States "for the purpose of studying as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources * * *". This conference was held in Ciudad Trujillo in 1956. Resolutions adopted at Ciudad Trujillo appear, infra.

b. RESOLUTION LXXXIV

CONSERVATION OF NATURAL RESOURCES: THE CONTINENTAL SHELF AND MARINE WATERS

WHEREAS:

Progress in scientific research as well as technical progress have rendered possible the exploration and utilization of natural resources (biological, mineral, power, etc.) which exist in the oceanic waters, in strata submerged under the sea, and in the subsoil of the continental and insular shelf;

There is a geological continuity and physical unity between the insular and continental territory of each state and its respective submarine shelf, which forms a geographic unit with the adjoining land;

It is an obvious fact that technical development concerning the
means of exploration and exploitation of the wealth of the sub-
marine shelf and waters of the sea has resulted in the states' 
proclaiming the right to protect, conserve, and develop these 
resources as well as to ensure their use and benefit;

It is to the general interest to conserve such wealth and to 
utilize it properly for the benefit of the riparian state, the Con-
tinent, and the community of nations, as was recognized in the 
Economic Charter of the Americas and Resolution IX adopted at 
the Ninth International Conference of American States, held in 
Bogotá in 1948, which called to the attention of the American 
States the fact that the continued depletion of renewable natural 
resources is incompatible with the objective of a higher standard 
of living for the American peoples, since the progressive reduction 
of the potential supply of food and raw materials would eventually 
weaken the economies of the American republics; and

It is desirable to promote, in cooperation with all the states of 
the Continent, the development of scientific research in the field 
of oceanography,

The Tenth Inter-American Conference

REAFFIRMS:

1. The interest of the American States in the national declara-
tions or legislative acts that proclaim sovereignty, jurisdiction, 
control, or rights to exploitation or surveillance to a certain dis-
tance from the coast, of the submarine shelf and oceanic waters 
and the natural resources which may exist therein.

2. That the riparian states have a vital interest in the adoption 
of legal, administrative, and technical measures for the conserva-
tion and prudent utilization of the natural resources existing in, 
or that may be discovered in, the areas mentioned, for their own 
benefit and that of the Continent and the community of nations;

RESOLVES:

1. That the Council of the Organization of American States 
shall convocate a Specialized Conference in the year 1955 for the 
purpose of studying as a whole the different aspects of the 
 juridical and economic system governing the submarine shelf, 
oceanic waters, and their natural resources in the light of present-
day scientific knowledge.

2. That the Council request pertinent inter-American organiza-
tions to render necessary cooperation in the preparatory work 
that the said Specialized Conference requires; and

RECOMMENDS:

To the Council of the Organization of American States the 
study of the possibility of establishing in the Galapagos Islands,
in agreement with the Government of Ecuador, an Inter-American Oceanographic Institute which, in collaboration with other specialized organizations, shall give preferential attention to scientific research in oceanography in its several fields (geological, historical, static, dynamic, biological, and economic) with a view to obtaining, through the cooperation of all the Member States, a better understanding and utilization of the natural resources of oceanic waters, submerged strata, and the subsoil.

5. Resolution XIII, “Principles of Mexico on the Juridical Régime of the Sea”, With Statements and Reservations Thereto, of the Third Meeting of the Inter-American Council of Jurists (Mexico City, 1956)

a. NOTE. Resolution XIII, which was adopted by a vote of 15 to 1 (the United States), purported to be a Preparatory Study for the Specialized Conference subsequently held at Ciudad Trujillo, infra. The Statement and Reservation of the United States, also reprinted herein, records the grave objections which the United States had to this Resolution. Five States did not vote. The other Statements appended to Resolution XIII are reprinted for their intrinsic interest as well as for their indication of differing views despite the apparent overwhelming majority in favor of the Resolution. Resolution XIV, a companion Resolution not reprinted here, recommends the transmission of Resolution XIII, together with the minutes of the relevant meetings, as a Preparatory Study for the Specialized Conference of Ciudad Trujillo. Resolution XIII, and the Statements and Reservations thereto, reprinted below, are taken from the Final Act of the Third Meeting of the Inter-American Council of Jurists as published by the Pan American Union in Document CIJ–29 (English) at pages 36–38, and 50–59.

b. RESOLUTION XIII

PRINCIPLES OF MEXICO ON THE JURIDICAL REGIME OF THE SEA

WHEREAS:
The topic “System of Territorial Waters and Related Questions: Preparatory Study for the Specialized Inter-American Conference Provided for in Resolution LXXXIV of the Caracas Conference” was included by the Council of the Organization of American States on the agenda of this Third Meeting of the Inter-American Council of Jurists; and

Its conclusions on the subject are to be transmitted to the Specialized Conference soon to be held,

The Inter-American Council of Jurists

RECOGNIZES as the expression of the juridical conscience of the Continent, and as applicable between the American States, the following rules, among others; and

DECLARES that the acceptance of these principles does not imply and shall not have the effect of renouncing or prejudicing the
position maintained by the various countries of America on the question of how far territorial waters should extend.

A
TERRITORIAL WATERS

1. The distance of three miles as the limit of territorial waters is insufficient, and does not constitute a general rule of international law. Therefore, the enlargement of the zone of the sea traditionally called "territorial waters" is justifiable.

2. Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population, and its security and defense.

B
CONTINENTAL SHELF

The rights of the coastal State with respect to the seabed and subsoil of its continental shelf extend also to the natural resources found there, such as petroleum, hydrocarbons, mineral substances, and all marine, animal, and vegetable species that live in a constant physical and biological relationship with the shelf, not excluding the benthonic species.

C
CONSERVATION OF LIVING RESOURCES OF THE HIGH SEAS

1. Coastal States have the right to adopt, in accordance with scientific and technical principles, measures of conservation and supervision necessary for the protection of the living resources of the sea contiguous to their coasts, beyond territorial waters. Measures taken by a coastal State in such case shall not prejudice rights derived from international agreements to which it is a party, nor shall they discriminate against foreign fishermen.

2. Coastal States have, in addition, the right of exclusive exploitation of species closely related to the coast, the life of the country, or the needs of the coastal population, as in the case of species that develop in territorial waters and subsequently migrate to the high seas, or when the existence of certain species has an important relation to an industry or activity essential to the coastal country, or when the latter is carrying out important works that will result in the conservation or increase of the species.

D
BASE LINES

1. The breadth of territorial waters shall be measured, in prin-
ciple, from the low-water line along the coast, as marked on large-
scale marine charts officially recognized by the coastal State.

2. Coastal States may draw straight base lines that do not
follow the low-water line when circumstances require this method
because the coast is deeply indented or cut into, or because there
are islands in its immediate vicinity, or when such a method is
justified by the existence of economic interests peculiar to a
region of the coastal State. In any of these cases the method may
be employed of drawing a straight line connecting the outermost
points of the coast, islands, islets, keys, or reefs. The drawing of
such base lines must not depart to any appreciable extent from
the general direction of the coast, and the sea areas lying within
these lines must be sufficiently linked to the land domain.

3. Waters located within the base line shall be subject to the
régime of internal waters.

4. The coastal State shall give due publicity to the straight
base lines.

E

BAYS

1. A bay is a well-marked indentation whose penetration inland
in proportion to the width of its mouth is such that its waters are *inter fauces terrae*, constituting something more than a mere
curvature of the coast.

2. The line that encloses a bay shall be drawn between its
natural geographical entrance points where the indentation begins
to have the configuration of a bay.

3. Waters comprised within a bay shall be subject to the
juridical régime of internal waters if the surface thereof is equal
to or greater than that of a semicircle drawn by using the mouth
of the bay as a diameter.

4. If a bay has more than one entrance, this semicircle shall be
drawn on a line as long as the sum total of the length of the
different entrances. The area of the islands located within a bay
shall be included in the total area of the bay.

5. So-called "historical" bays shall be subject to the régime of
internal waters of the coastal State or States.

(Approved at the Fourth Plenary Session, February 3, 1956)

* * * * * * *

STATEMENTS AND RESERVATIONS

RESOLUTION XIII

Statement of Panama

The Delegation of Panama desires to record its hope that at the
forthcoming conference of Santo Domingo a formula will be achieved that is more conducive to inter-American unity than the one reached in the second point of Section A on territorial waters. The position of Panama on this point was expressed at the twelfth meeting of Committee I. We consider, in brief, that with respect to the extent of territorial waters two fundamental interests exist: first, that of the coastal State, and second, that of the international community. Panama, therefore, believes that the determination of territorial waters cannot lie within the discretion of only one of those interests, that of the coastal State; and, it hopes therefore that the Conference of Santo Domingo will find a formula more favorable to the maintenance of a balance between the two interests.

Statement of The Dominican Republic

The Delegation of the Dominican Republic has abstained from voting, as announced, because it believes that the Inter-American Council of Jurists has brought into consideration questions that have been specifically assigned to the Specialized Conference provided for by the Tenth Inter-American Conference of Caracas, in Resolution LXXXIV.

Statement of Cuba

In the preamble to the resolution an obvious legal contradiction is noted. In spite of the fact that it Recognizes that the principles contained therein are the "Expression of the juridical conscience of the Continent", and are "applicable between the American States", the Resolution Declares that "the acceptance of these principles does not imply and shall not have the effect of renouncing or prejudicing the position maintained by the various countries of America on the question of how far territorial waters should extend". What value or legal effect can a declaration of principles have when in the instrument itself it appears that their acceptance will not affect the individual position maintained by the various parties to the declaration?

A Territorial Waters

1. With respect to the traditional principle of the marine league, the statement is made, in absolute and categorical terms, that the distance of three miles as the limit of territorial waters "is insufficient", and that "therefore, the enlargement of the zone . . . is justifiable". However, the facts do not show that a greater width for territorial waters is always justified, that is, in every case,
since one fourth of the maritime States have not claimed for their territorial waters an extent greater than three miles. It would be one thing to admit that in certain cases a greater extent is justified, but it is quite another to maintain that the limit of three miles is insufficient for all States.

2. On the other hand, the State is authorized to establish (that is, to extend) "its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population, and its security and defense". Practically, this is tantamount to claiming that the question of the width of territorial waters comes within the internal competence of the State, which will decide, on a subjective basis, what limit it is "reasonable" to give its territorial waters. This ignores the fact that, when considering the appropriation in full sovereignty of a maritime zone that heretofore has been a part of the high seas, it is not alone the needs and interests of the coastal State that are involved. Also involved are the needs and interests of the international community and, in particular, those of States whose nationals have devoted themselves from time immemorial and without interruption to the exploitation of the zone of the high seas affected by the extension of the territorial waters of the coastal State. The International Court of Justice, in deciding the Anglo-Norwegian Fisheries case (1951), declared that the delimitation of territorial waters is not a question that falls within the internal and exclusive jurisdiction of the coastal State.

B

Continental Shelf

This part of the resolution contains a definition and an exhaustive enumeration of what should be understood by "natural resources" of the continental shelf. The Tenth Inter-American Conference (Caracas, 1954) requested the Specialized Conference to study "as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources in the light of present-day scientific knowledge"; and it requested the pertinent inter-American organizations (which would include the Inter-American Council of Jurists) to render necessary cooperation in the preparatory work that the said Specialized Conference requires. Instead of confining itself to declaring the nature of the rights of the coastal State with respect to the natural resources of the seabed and the subsoil of its continental shelf, the resolution defines and enumerates the
said resources, thus invading an area of knowledge totally foreign to the nature and functions of the Inter-American Council of Jurists. What value for the Specialized Conference could scientific concepts have that are formulated by a juridical body?

C

CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

1. The resolution recognizes the right of the coastal State to adopt the conservation measures necessary for the protection of the living resources of the high seas, the only limitations being that scientific and technical principles should be followed, that rights derived from international agreements to which the coastal State is a party may not be prejudiced and that such measures may not discriminate against foreign fishermen. On the contrary, the proposal presented by Cuba and Mexico to the International Technical Conference on the Conservation of the Living Resources of the Sea (Rome, 1955), and approved by a majority of the countries represented at this Meeting of Jurists, established still other limitations to the taking of this unilateral action by the coastal State. First, that action could only be taken when there was an imperative need to conserve such resources, Second, in the event of differences between the coastal State and other interested States, either as to the scientific and technical justification of the measures taken or as to their nature and scope, the proposal stated that such differences shall be decided by technical agencies of an international character. The proposal also stated that the nature and scope of the problems arising at present out of the conservation of the living resources of the sea clearly suggest the necessity of solving them primarily on the basis of international cooperation, through the concerted action of all States concerned. These ideas of the proposal were accepted by the International Law Commission of the United Nations and incorporated in its latest draft on the conservation of the living resources of the sea.

2. The second paragraph of section C of the resolution includes, in the idea of "conservation" of the living resources of the high seas, the "right of exclusive exploitation" of certain maritime species. Exclusive exploitation presupposes a juridical régime totally different from that of conservation, as was made perfectly clear in our discussions. But aside from this consideration, exclusive exploitation of the living resources of the sea has, up to now, been conceivable only within the territorial waters of the State, so that to speak of it in relation to species of the high seas pre-supposes the study and knowledge of scientific elements and
economic factors that have not been studied by the Council, which, considering its nature and its necessarily limited functions, is not in a position to make such a study.

In sum, the resolution of the Council presupposes an extension of its mandate, which amounts to an encroachment upon the assignment given to the Specialized Conference by the Caracas Conference. In a certain sense one might arrive at the conclusion that that Conference has to a great extent lost its reason for being held. This is a situation that will be difficult to understand, but much more difficult still will be the fact that a meeting of jurists has arrived at conclusions on subjects that are outside the competence of persons dedicated to the study of law. What objective validity can the opinion of the Inter-American Council of Jurists have on questions and problems concerning which it lacks scientific authority? This situation is doubly regrettable because of the fact that the resolution attempts to incorporate an idea of undeniable justice: that of the special interest of the coastal State in the exploitation and conservation of the riches of the sea. But in order to serve this justified purpose the resolution should have been limited to bringing together and expressing concepts and rules of the new international law of the sea, which have reconciled the recognition and protection of the interest of the coastal state with the recognition and protection of the general interest.

**Statement of Colombia**

The Delegation of Colombia has abstained from voting on the foregoing resolution for the following reasons:

First, because taken by itself it does not constitute the preparatory study requested for the Specialized Conference.

Second, because its preamble declares that the clauses of the resolution are "Applicable Rules" for the American States.

In accordance with fundamental principles of international law and with the constitutional system of the American countries, a rule is not applicable and contractually binding except when it is contained in a treaty duly approved and ratified. Simple resolutions cannot have that effect. This is still more evident in the present case because the Council of Jurists is a consultative organ.

The problem is especially serious for a country like Colombia, which has no special constitutional or legislative provisions on several of the questions referred to in the resolution. Consequently, it is not possible to admit that a mere resolution of a consultative organ decides questions that must be settled as a matter of sovereignty, at the proper time, by the competent constitutional or legal organs of each State.
Third, because point A-1 confuses two different problems: one of law, which is the validity or invalidity of the three-mile limit, and the other of fact or mere desirability, which is the insufficiency of that limit. Moreover, it is in contradiction to the general system established in point A-2.

Fourth, because point A-2, which establishes the rule that the coastal State is competent to establish its territorial waters within reasonable limits, taking into account certain circumstances, was voted against by the Colombian Delegation, inasmuch as our country believes that this matter should be settled by means of special or general agreements between States.

In this respect the Delegation notes with satisfaction that its point of view has in fact been rather extensively accepted within the Council. Because while point A-2 was approved by 15 affirmative votes, with 4 opposed and 2 abstentions, three Delegations that voted affirmatively, that is, Brazil, Venezuela, and Panama, subsequently made reservations recording their disagreement with the aforesaid point A-2; and the Delegation of Nicaragua made partial objections.

The Delegation of Colombia is in agreement with the provisions relative to the continental shelf and the recognition of the rights of coastal States to conserve, supervise, and protect the resources and riches of the sea. Naturally, it accepts those provisions as a statement of principles that the Council recommends, not as rules applicable by virtue of the resolution.

On the other hand, with respect to the resources and riches of the sea, the Delegation of Colombia would have wished to exclude from the rules certain technical points that should have been left for consideration by the Specialized Conference. In this regard, the Delegation of Brazil, in its reservation, makes certain concrete observations that are worthy of being studied.

Finally, the Delegation of Colombia calls attention to the fact that, at the meeting of Committee I held on February 1, one of its members set forth in full the opinions of the Delegation.

In general the Colombian Delegation does not believe that it is desirable to adopt definitive and binding positions until after the Specialized Conference of Ciudad Trujillo has taken place, and the next General Assembly of the United Nations is held. Any prior commitment might prevent those meetings, which do have authority in the matter, from the reaching of an agreement that would permit the juridical unity of the Continent on territorial waters, a unity for which Colombia will always work, faithful to its traditional spirit of American solidarity and fraternity.
Statement of Brazil

1. The Council of the OAS included topic I-a on the agenda of the Third Meeting of the Inter-American Council of Jurists, entitled “Territorial Waters and Related Questions”, in compliance with the provisions of Resolution LXXXIV of the Tenth Inter-American Conference, so that a preparatory study could be made to assist the work of the Specialized Conference that it had decided to call. This being the situation, the Delegation of Brazil considers that Resolution XIII of the Third Meeting of the Inter-American Council of Jurists is not definitive and represents, for the most part only a reaffirmation of principles emanating from doctrines and actual positions.

2. With respect to those principles, the Delegation of Brazil, in approving the draft resolution, formulates the following specific reservations:

3. As to point A-1, the Delegation of Brazil understands that the categorical statement that “the distance of three miles as the limit of territorial waters is insufficient” does not correspond to present reality in all cases. Moreover, in those cases in which it is shown that the width of the territorial waters of a coastal State is insufficient for its proper purposes, the recognition of the rights and powers of the coastal State over the contiguous zone may supplement it satisfactorily.

4. The Delegation of Brazil is of the opinion that the principle laid down in point A-2 places too much emphasis on the individual State, without consulting the interests of the international community in establishing the limits of the territorial waters of each State. The unilateral character of that principle would make it impossible to use it in working out a binding international rule, nor would it contribute to better relations among States.

5. With respect to section C of Resolution XIII, the Delegation of Brazil desires to point out that, under the general title of “Conservation of Living Resources of the High Seas” are included matters of a widely varying nature, such as the protection of the living resources of the open sea and the exclusive exploitation by the coastal State of certain species in which it has a special interest. Moreover, the principle stated in point C-1 has the same unilateral character to which we referred above, and likewise does not give proper consideration to the interests of the international community. In addition, the reservation at the end of paragraph C-1 is in conflict with the provision of point C-2, which reserves to the coastal State the exclusive right of exploitation of certain species, a rule that suffers from the same defects here pointed out.
With respect to such points, the Delegation of Brazil considers that the problem is essentially of an international nature, and that, therefore, the conciliation of divergent interests should be the object of agreements, or should be entrusted to proper international agencies.

6. The Delegation of Brazil is completely in agreement with the principle announced in section B, inasmuch as it recognizes as a rule of customary international law that the continental shelf is a part of the territory of the State to which it corresponds. Taking this view, the Brazilian Government has already determined that the Federal Union exercises rights of exclusive jurisdiction and dominion over the Brazilian continental shelf, reserving for itself also the exploitation and exploration of the natural wealth of its soil and subsoil. With regard to the waters that cover the shelf, the Brazil Government decided to continue in force the rules governing navigation, without prejudice to any rules that may later be established in that field, especially with reference to fishing.

Statement of Bolivia

Bolivia, a country that has been deprived of its maritime coast for 77 years, abstains, in harmony with its votes at previous international meetings, particularly at the Tenth Inter-American Conference of Caracas, from voting on questions having to do with the juridical régime of territorial waters, until such time as considerations of high international justice and the demands of inter-American understanding and good relations bring about an end to its land-locked situation.

Statement of Honduras

The Delegation of Honduras repeats its official position on the topic "System of Territorial Waters and Related Questions", recorded in its statement of January 28, which appears in the minutes of the eleventh meeting of Committee I.

Statement of Venezuela

The Delegation of Venezuela wishes to place on record that it has voted affirmatively on the Resolution on Territorial Waters and Related Questions in the sense that it establishes a basis for study by the Inter-American Specialized Conference; and in view of the fact that it states fundamental principles with which Venezuela is in agreement. The Delegation believes that upon being analyzed at that Conference these matters should be given special consideration.

This affirmative vote does not mean that the Delegation adheres
without qualification to the text of the resolution as it is written, and it implies only, as has been pointed out, the recognition of some of the principles announced.

With respect to territorial waters, it considers that the States have the right to extend them to reasonable limits, taking into account, besides the factors that have been mentioned, the principles that are at present recognized by international law and those that may be established in the future.

Also, Venezuela reaffirms the authority and jurisdiction that it exercises over the soil and subsoil of its continental shelf, and the right that it has to the conservation and exploitation of the natural resources there.

Statement of Guatemala

The Delegation of Guatemala, considering that Article 2 of Section D and Section E on Bays deserve greater and more detailed analysis, as well as due consideration of the applicable régimes, abstains from approving them, and states that the historic Bay of "Amatique" is subject to the exclusive sovereignty of Guatemala.

Statement and Reservation of the United States of America

For the reasons stated by the United States Representative during the sessions of Committee I, the United States voted against and records its opposition to the Resolution on Territorial Waters and Related Questions. Among the reasons indicated were the following:

That the Inter-American Council of Jurists has not had the benefit of the necessary preparatory studies on the part of its Permanent Committee which it has consistently recognized as indispensable to the formulation of sound conclusions on the subject;

That at this Meeting of the Council of Jurists, apart from a series of general statements by representatives of various countries, there has been virtually no study, analysis, or discussion of the substantive aspects of the Resolution;

That the Resolution contains pronouncements based on economic and scientific assumptions for which no support has been offered and which are debatable and which, in any event, cover matters within the competence of the Specialized Conference called for under Resolution LXXXIV of the Tenth Inter-American Conference;

That much of the Resolution is contrary to international law;
That the Resolution is completely oblivious of the interests and rights of States other than the adjacent coastal States in the conservation and utilization of marine resources and of the recognized need for international cooperation for the effective accomplishment of that common objective; and

That the Resolution is clearly designed to serve political purposes and therefore exceeds the competence of the Council of Jurists as a technical-juridical body.

In addition, the United States Delegation wishes to record the fact that when the Resolution, in the drafting of which the United States had no part, was submitted to Committee I, despite fundamental considerations raised by the United States and other delegations against the Resolution, there was no discussion of those considerations at the one and only session of the Committee held to debate the document.

Statement of Nicaragua

The Delegation of Nicaragua desires to place on record that its abstention from voting on the Draft Resolution on the System of Territorial Waters and Related Questions, approved at the Third Meeting of the Inter-American Council of Jurists, was based on this Delegation’s view that first consideration should be given to the conclusions that might be reached by the Specialized Conference of Ciudad Trujillo on the technical aspects and economic needs with respect to territorial waters and related questions, in order to make it possible to formulate juridical principles that would harmonize the different tendencies that might eventually constitute a rule of international law unanimously accepted throughout the Continent.


a. Note. The Resolution of Ciudad Trujillo, the latest Inter-American expression on the subject, is the most realistic in recording the lack of agreement that prevails. The appended Statements are reprinted also because of their value as a cross section of Inter-American opinion. The Resolution and the Statements are taken from the Final Act of Ciudad Trujillo, Conference and Organization Series No. 50, published by the Pan American Union, 1956.
b. RESOLUTION I

RESOLUTION OF CIUDAD TRUJILLO

The Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters",

CONSIDERING:

That the Council of the Organization of American States, in fulfillment of Resolution LXXXIV of the Tenth Inter-American Conference held in Caracas in March 1954, convoked this Inter-American Specialized Conference "for the purpose of studying as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources in the light of present-day scientific knowledge"; and

That the Conference has carried out the comprehensive study that was assigned to it,

--- I ---

RESOLVES:

To submit for consideration by the American states the following conclusions:

1. The sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas, adjacent to the coastal state, outside the area of the territorial sea, and to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil, appertain exclusively to that state and are subject to its jurisdiction and control.

2. Agreement does not exist among the states here represented with respect to the juridical régime of the waters which cover the said submarine areas, nor with respect to the problem of whether certain living resources belong to the sea-bed or to the superjacent waters.

3. Cooperation among states is of the utmost desirability to achieve the optimum sustainable yield of the living resources of the high seas, bearing in mind the continued productivity of all species.

4. Cooperation in the conservation of the living resources of the high seas may be achieved most effectively through agreements among the states directly interested in such resources.

5. In any event, the coastal state has a special interest in the continued productivity of the living resources of the high seas adjacent to its territorial sea.

6. Agreement does not exist among the states represented at this Conference either with respect to the nature and scope of the
special interest of the coastal state, or as to how the economic and social factors which such state or other interested states may invoke should be taken into account in evaluating the purposes of conservation programs.

7. There exists a diversity of positions among the states represented at this Conference with respect to the breadth of the territorial sea.

— II —

Therefore, this Conference does not express an opinion concerning the positions of the various participating states on the matters on which agreement has not been reached and

RECOMMENDS:
That the American states continue diligently with the consideration of the matters referred to in paragraphs 2, 6, and 7 of this resolution with a view to reaching adequate solutions.

* * * * * * * *

STATEMENTS OF THE DELEGATIONS

Brazil

The Delegation of Brazil understands that the conclusions and the recommendation resulting from the over-all study made by the Conference, which are contained in the "Resolution of Ciudad Trujillo", do not forejudge the nature of the common solutions the American states and the international community should find for the questions mentioned therein.

Mexico

Statement prepared by the Delegation of Mexico with respect to the "Resolution of Ciudad Trujillo", to set forth the position of Mexico, and also the interpretation and the scope that the aforesaid delegation gives to the contents of that document, concerning the matters on which there has been disagreement:

1. There is no general rule in international law setting the extent of the territorial sea.

2. Each state has the right to set the extent of its territorial sea within reasonable limits, taking into consideration both the pertinent geographical, geological, biological, economic, and social factors, and the needs of security and defense.

3. The foregoing principle makes it possible to determine the juridical régime of the waters superjacent to the continental shelf.

4. The rights of the coastal state over the continental shelf extend to all animal and vegetable species that live in a constant
relationship of physical and biological dependence with the shelf.

5. The coastal state has the right, if no agreement exists between the states concerned, to adopt the conservation and surveillance measures necessary for the protection of the living resources of the high seas adjacent to its coasts, on the basis of scientific data and applicable technical standards. The state will not act in such cases in an arbitrary or discriminatory manner.

6. The coastal state has, in specific cases, the right to the exclusive exploitation of the species closely related to the coast, to the life of the country, or to the needs of the coastal population.

The Delegation of Mexico likewise states that, since the Conference did not go on record with respect to the positions of the various participating states on the matters on which an agreement was not reached, the position of Mexico has not been in any way affected, and every aspect of that position remains unchanged, in all its force and integrity, as has been stated unilaterally, collectively, or in resolutions of inter-American organs, especially in Resolution XIII in the Final Act of the Third Meeting of the Inter-American Council of Jurists, entitled "Principles of Mexico on the Juridical Régime of the Sea".

Costa Rica, Chile, Ecuador, and Peru

The Delegations of Costa Rica, Chile, Ecuador, and Peru declare that they have voted affirmatively on the resolutions, agreements, and recommendations adopted at this Conference in the understanding that they do not alter in any way whatsoever their constitutional provisions, their national legislation, the agreements to which they are parties, or other collective international instruments they have approved.

Guatemala

The Delegation of Guatemala desires to insert in the record that the rights recognized in the "Resolution of Ciudad Trujillo" as appertaining to the coastal states include, with respect to Guatemala, the whole territory of British Honduras.

El Salvador

The Delegation of El Salvador has voted affirmatively on the "Resolution of Ciudad Trujillo" because this document does not prejudice the rights of El Salvador to the continental terrace adjacent to its coast and to its territorial sea, which, as is well known, extends to a distance of 200 nautical miles measured from the low-water line, without thereby affecting the freedom of navigation in accordance with the principles accepted by inter-
national law, as expressly stated in Article 7 of its Constitution.

Although it is not explicitly stated in the resolution, it is implicit in the first of its conclusions that the portion of the continental shelf or continental terrace covered by the territorial sea of a state forms part of its territory and is subject to the juridical régime of that territorial sea. With that understanding, the Delegation of El Salvador accepts paragraph 1 of the document as referring to the sea-bed and the subsoil of the continental shelf, continental and insular terrace, or other submarine areas adjacent to the coastal state, outside the area of the territorial sea.

In the opinion of the Delegation of El Salvador, when the aforesaid paragraph 1 states that the sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas appertain exclusively to the coastal state and are subject to its jurisdiction and control, the sovereignty of the state over such submarine areas is recognized, because the delegation understands that the exclusive proprietorship of such areas, together with the right to exercise jurisdiction and control thereover, make up without any question the concept of sovereignty—in other words, because the delegation cannot conceive those elements to be compatible with the exercise of an alien sovereignty.

With respect to natural resources, the position of El Salvador is the same as the one it maintained in Mexico, namely, that the rights of the coastal state, with respect to the sea-bed and subsoil of the continental shelf or continental terrace appertaining to it, extend also to the natural resources found there, such as petroleum, hydrocarbons, mineral substances, and all the marine species, animal and vegetable, that live in a constant physical and biological relationship with the shelf, not excluding the benthonic species.

El Salvador maintains its constitutional provision of 200 miles of territorial waters, without claiming thereby that the same extent should be adopted by all the American states, since, according to the principle recognized in Mexico, each state is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population and its security and defense.

In Part II, the resolution states that no opinion has been expressed concerning the positions of the various states participating in this Conference on the matters on which agreement has not been reached. These positions may be either individual or collective.

The Delegation of El Salvador, in voting for this resolution, did so in view of the fact that it represents the minimum area of agreement among all the American states on these problems, but
does not alter the individual or collective positions adopted by some of the states with respect to such problems.

Colombia

Colombia has been maintaining that the problems related to marine waters and the continental shelf should be subject to an agreement between the American states. This endeavor is not impossible, for if in other very difficult matters, such as that of nonintervention, the American states succeeded in overcoming their differences and so uniting their opinion that today no one discusses or objects to the matter, there is no reason why a similar understanding may not be reached in matters relating to marine spaces. For this reason, Colombia has refrained, of late, from adopting unilateral regulations, in the belief that they could wait until a common American solution was found. This is also why Colombia thought that this Conference would thoroughly study the aforementioned matters, in order to approve conclusions which would prove satisfactory to all the Continent.

In the praiseworthy desire to bring about a rapprochement among the various theses held by the American countries and to establish with precision what we might call areas of agreement and disagreement, the system of meetings of chairman of delegations was adopted. Under these circumstances, which did not make it possible to consider the proposals clause by clause, or to introduce others, the Delegation of Colombia refrained from suggesting several juridical formulas that it had studied.

Of course, Colombia accepts the "Resolution of Ciudad Trujillo", which is in accordance with the purpose of seeking and reaching unanimous solutions, points out with great pleasure the noble spirit of understanding that prevailed at the Conference, and emphasizes the importance of the policies adopted with respect to the continental shelf, international cooperation, and the special interest of the coastal state in the continuing productivity of the living resources of the high seas.

At the same time, the Delegation of Colombia expresses its sincere hope that the studies dealt with in the final part of the resolution will be continued as soon as possible. Perhaps the Council of the Organization of American States, on taking cognizance of this Final Act, might suggest a suitable way to have such studies made.

The Delegation of Colombia also notes that prompt agreement on certain topics that there was no opportunity to study might be reached later. Thus, for example, the adoption of standards for the delimitation of the continental shelves of neighboring states
does not appear to present insurmountable obstacles. Moreover, such standards would be highly beneficial, since they would prevent future controversies that might disturb inter-American relations, just as matters concerning land boundaries have disturbed them in the past. Likewise, the matter of the breadth of the territorial sea might be studied from new points of view. In this respect one might consider the study of systems that, disregarding that idea, would be directed toward protecting marine wealth, especially fisheries. The establishment of a wide area contiguous to the territorial sea, where the rights of the coastal state to regulate fishing without arbitrary discrimination would be recognized, might be one of such systems. By means of this method, the coastal state would be effectively protected, without having to link this protection to rules on the breadth of the territorial sea.

In view of the fact that a general agreement among the American states on all these problems may be delayed too long, Colombia will consider whether or not it is advisable to change its attitude of prudent waiting, and issue its own regulations on certain matters. Naturally, in so doing, if it should do so, it would not fail to bear in mind the conclusions of this Conference.

United States of America

In view of certain statements made by other delegations at the final plenary session of this Conference on March 27, or inserted in this Final Act, the Delegation of the United States of America wishes to record the following statements:

(a) The Government of the United States does not recognize a right on the part of a coastal state, as claimed by certain delegations, to exclusive control over the resources of the high seas. The United States maintains that, in accordance with international law, fishery regulations adopted by one state cannot be imposed on nationals of other states on the high seas except by agreement of the governments concerned. Moreover, the United States Delegation also wishes to record the fact that it made a specific proposal for the Conference which would, if adopted, effectively meet the conservation problem that would be posed in the event of failure of the interested states, including the coastal state, to reach agreement on the need for and application of conservation measures.

(b) The Government of the United States does not recognize that a state has competence to determine the breadth of its territorial sea apart from international law.

(c) The Delegation of the United States also wishes to call attention to the fact that broader consideration having been given
at this Conference than at any previous inter-American meeting to the various aspects of the subjects on its agenda, the present "Resolution of Ciudad Trujillo" constitutes the latest and most authoritative expression of the Organization of American States on the subjects discussed therein.

Cuba

The Delegation of Cuba has voted affirmatively on the Resolution [of Ciudad Trujillo] approved by the Conference for the following reasons:

1. The resolution recognizes the jurisdiction and control of the coastal state over the sea-bed and the subsoil of the continental shelf, the continental and insular terrace, and other submarine areas adjacent to that state beyond the limit of its territorial sea. In this sense, the resolution contains a principle of contemporary international law. Nevertheless, the recognition of this right does not in any way affect the status of high seas that the waters covering the sea-bed and subsoil of such submarine areas have and preserve. Likewise, the resolution does not forejudge whether specific living resources belong to the sea-bed or to the superjacent waters. In the opinion of the Delegation of Cuba, which coincides with that of the International Law Commission of the United Nations, the living resources that do not come under the classification of sedentary or fixed (sessile) fisheries, belong to the superjacent waters and are subject to the juridical régime of the latter.

2. In the matter of the conservation of the living resources of the high seas, the resolution reaffirms the principle that international cooperation is the standard or most appropriate means of achieving the purposes of conservation. The resolution expresses the disagreement that arose at the Conference with respect to the nature and scope of the special interest of the coastal state. In this respect, the Delegation of Cuba also shares, in principle, the concepts and rules contained in the draft text on the subject approved by the International Law Commission during its Seventh Session (1955), as stated in detail in the course of its deliberations.

3. The resolution also expresses the existing disagreement among the American states as regards the breadth of the territorial sea. In this respect, the Delegation of Cuba, in accordance with the opinion it has consistently upheld at all previous conferences, maintains that the question of the breadth and delimitation of the territorial sea is subject to the limitations of international law, and that it is not, therefore, a matter coming within the exclusive competence of the coastal state, as was declared by
the International Court of Justice in the recent Anglo-Norwegian case on fisheries. Among these limitations there is one that the Delegation of Cuba considers to be fundamental: that any extension of the territorial sea beyond the traditional limit, may not affect in any way whatsoever the historic fishing rights acquired by nationals of a third state, who uninterruptedly, from time immemorial, have devoted their lives to this activity in the area of the high seas that such an extension covers.

4. Finally, part II of the resolution, which has been the subject of interpretation by certain delegations, does not, in the opinion of the Delegation of Cuba, pose a problem of this kind. In effect, this part of the resolution does no more than state, in unequivocal and very precise words, that the first time that the American states have studied the problems relating to the utilization and conservation of the wealth of the sea, with a view to establishing an appropriate juridical régime—that is, in the light of all the scientific, technical, and economic factors involved, as charged by the Caracas Conference—they have expressly recognized the existence of disagreement with respect to paragraphs 2, 6, and 7 of the resolution, and that, because of that fact, they recommend that the study of such matters be continued with a view to reaching adequate solutions.

Panama

The Delegation of Panama, imbued with a high inter-American spirit, and without reservations, has taken an active part in the many informal meetings held to draft the document on the continental shelf and continental terrace, the living resources of the sea, and marine waters that we have just approved, a document that, as can be readily seen, is, with some important changes, the draft originally presented by the United States for consideration by our governments.

The Delegation of Panama believes that the unanimous approval of this instrument is a constructive step toward the affirmation of continental unity. We have arrived at affirmative formulas on the few points on which there was unanimous agreement, and we have postponed the solution of other matters with the frank recognition that there is a diversity of opinion or of interests that at present makes agreement without dissent impossible. This result is characteristic of the inter-American system, founded on respect for the opinion of each and every one of the Member States of our great regional community.

The Delegation of Panama hopes that our governments and peoples represented here will find in the near future suitable
solutions to the matters that they should continue to study until formulas that can be accepted unanimously are reached. To realize this aspiration, we count on the spirit of continental unity that inspires us all and on the full knowledge of the position of every American state on these matters, which has been at least one result of recent inter-American conferences or meetings.

Uruguay

The Delegation of Uruguay approves the "Resolution of Ciudad Trujillo" with the understanding that "the positions of the various participating states" upon which the Conference has not expressed an opinion, and those to which part II (1) refers, include both the positions taken by our delegation during this Conference and those that our country has maintained or may maintain before or after it.

Venezuela

At the beginning of this Conference, the Delegation of Venezuela issued a statement containing its points of view with respect to the topics on the agenda of this transcendental meeting of representatives of the American states. It was clearly stated therein that in taking part in the deliberations on the topics that were to be studied, Venezuela would be guided by a broad spirit of cooperation. Now that the Conference is coming to a close, the Delegation of Venezuela is pleased to affirm that it has never changed its conciliatory sentiments, which, moreover, were clearly and expressively displayed by the other delegations. In voting for the resolution, happily entitled "Resolution of Ciudad Trujillo", Venezuela understands that the particular interests of the states were reconciled in the interest of continental harmony; but this fact does not entail the abolition of the basic principles of sovereignty or forejudge in any way the criterion that might prevail in the solution of the points on which there has been no agreement as yet.

D. Chile-Ecuador-Peru Agreements, 1952–1955

1. INTRODUCTORY NOTE. These Agreements are so closely related to the Inter-American documents printed in the previous section that they are placed here for convenience of reference. The Agreements, insofar as they involve claims to a maritime zone, should be compared with the national claims printed infra. So far as the Agreements purport to deal with conservation of fisheries, they should be compared with the conservation agreements printed in the section immediately following.

In September-October of 1955, negotiations took place in Santiago, Chile, on fishery conservation problems of this area between the United States and Chile-Ecuador-Peru. No agreement was reached. The history of the
negotiations, documents presented, and the Final Communiqué are printed in *Santiago Negotiations on Fishery Conservation Problems*, unnumbered State Department publication (1955). The history of the negotiations included therein is taken from 33 *Department of State Bulletin*, p. 1025 (December 1955). According to this account, the negotiations broke down because of basic legal differences over the Chile-Ecuador-Peru claim to a 200 mile maritime zone. On May 13, 1955, the United States presented a note to the three countries proposing that the legal dispute should be referred to the International Court of Justice, and also proposing that negotiations on a fishery conservation agreement should be undertaken. In replying on June 3, 1955, the three countries stated they were not then prepared to consider submission of the legal controversy to the International Court, but were willing to enter into negotiations. The United States replied on July 9, 1955, agreeing to negotiations, and the Santiago Conference was the result. These Notes are not now available for publication. The summary of them given in the history of the negotiations makes clear that the United States has not acquiesced in these claims. Furthermore, as indicated in the section on National Claims, *infra*, Section VI, the United States has also protested against the individual claims to 200 miles made by Chile and Peru, as has the United Kingdom. Both the United States and the United Kingdom have also made protests to Ecuador on her national legislation.

It has been recently reported that the new President of Peru has accepted the proposal of Secretary of State Dulles that a South Pacific fisheries agreement be signed with the United States and other countries, and that in the agreement Peru would drop her 200 mile claim. *The New York Times*, 28 July 1956, Section I, Page 22, Cols 3-4. The agreement will be modeled after the North Pacific Fisheries Agreement, *infra*. Any such agreement would require the concurrence of Chile and Ecuador in view of the provisions in their agreements calling for a common position. The dispatch reports also that only the fleets of the signatory states will be permitted to fish in the South Pacific region subject to conservation restrictions. More recently, however, the three countries have reaffirmed their original position at fifth meeting of their permanent commissions. Costa Rica attended as an observer. *The New York Times*, 4 October 1957, page 45, col. 6.

2. Agreements ¹ Between Chile, Ecuador and Peru Signed at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Santiago, 18 August 1952

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a. DECLARATION ON THE MARITIME ZONE ²

1. Governments are bound to ensure for their peoples access to necessary food supplies and to furnish them with the means of developing their economy.

¹ Ratified by all the signatory States. According to the Final Act of the Third Meeting (Quito), *infra*, Costa Rica has adhered to the Declaration on the Maritime Zone.

2. It is therefore the duty of each Government to ensure the conservation and protection of its natural resources and to regulate the use thereof to the greatest possible advantage of its country.

3. Hence it is likewise the duty of each Government to prevent the said resources from being used outside the area of its jurisdiction so as to endanger their existence, integrity and conservation to the prejudice of peoples so situated geographically that their seas are irreplaceable sources of essential food and economic materials.

For the foregoing reasons the Governments of Chile, Ecuador and Peru, being resolved to preserve for and make available to their respective peoples the natural resources of the areas of sea adjacent to their coasts, hereby declare as follows:

(I) Owing to the geological and biological factors affecting the existence, conservation and development of the marine fauna and flora of the waters adjacent to the coasts of the declarant countries, the former extent of the territorial sea and contiguous zone is insufficient to permit of the conservation, development and use of those resources, to which the coastal countries are entitled.

(II) The Governments of Chile, Ecuador and Peru therefore proclaim as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast.

(III) Their sole jurisdiction and sovereignty over the zone thus described includes sole sovereignty and jurisdiction over the sea floor and subsoil thereof.

(IV) The zone of 200 nautical miles shall extend in every direction from any island or group of islands forming part of the territory of a declarant country. The maritime zone of an island or group of islands belonging to one declarant country and situated less than 200 nautical miles from the general maritime zone of another declarant country shall be bounded by the parallel of latitude drawn from the point at which the land frontier between the two countries reaches the sea.

(V) This Declaration shall not be construed as disregarding the necessary restrictions on the exercise of sovereignty and jurisdiction imposed by international law to permit the innocent and inoffensive passage of vessels of all nations through the zone aforesaid.

(VI) The Governments of Chile, Ecuador and Peru state that they intend to sign agreements or conventions to put into effect
the principles set forth in this Declaration and to establish general regulations for the control and protection of hunting and fishing in their respective maritime zones and the control and coordination of the use and working of all other natural products or resources of common interest present in the said waters.

b. ORGANIZATION OF THE STANDING COMMITTEE OF THE CONFERENCE ON THE USE AND CONSERVATION OF THE MARINE RESOURCES OF THE SOUTH PACIFIC

(1) To achieve the objects set forth in the Declaration of the Maritime Zone signed at this First Conference on the Use and Conservation of the Marine Resources of the South Pacific, the Governments of Chile, Ecuador and Peru agree to establish a Standing Committee composed of not more than three representatives of each. The Committee shall hold one ordinary meeting a year and any of the Governments may also convene special meetings.

The Standing Committee shall meet in accordance with a system of annual rotation, under a chairman appointed by the host Government.

(2) The Standing Committee shall establish Technical Offices to coordinate all action by the Parties in pursuance of the aims and objects of the Conference. These Offices shall not frame policy but shall merely assemble administrative, industrial, scientific, economic and statistical information relating to the objects of the Conference and circulate the same to the Parties in order to keep them duly and promptly informed. They shall likewise act as Secretariats of the Standing Committee.

(3) The Standing Committee shall carry out studies and adopt resolutions as hereinafter indicated with a view to the conservation and improved use of marine fauna and other resources, having regard to the interests of each contracting country.

The Standing Committee shall, with a view to the conservation of marine resources, standardize the regulations governing the hunting and fishing of common marine species of the contracting countries, and for this purpose shall have power—

(a) to determine protected species; open and closed seasons and areas of sea; fishing and hunting times, methods and equipment; and prohibited gear and methods; and to lay down general regulations for hunting and fishing;

(b) to study and propose to the Parties such measures as

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it considers suitable for the protection, defence, conservation and use of marine resources;

(c) to encourage scientific and technical study of and research into biological phenomena in the South Pacific;

(d) to prepare general statistics of the industrial use of marine resources by the Parties, and to suggest protective measures based on the study thereof;

(e) to deal with requests for advice on the protective measures based on study of the said statistics;

(f) to prepare the agenda and propose dates and sites for future plenary meetings of the Conference;

(g) to exchange scientific and technical information with other international or private organizations concerned with the study and protection of marine resources;

(h) to ensure that the fishing and hunting quotas fixed annually by each Party in the exercise of its exclusive rights do not endanger the preservation of the marine resources of the South Pacific;

(i) to settle all questions relating to its own operation, the organization of the Secretariats and Technical Offices, and procedural matters in general.

(4) Every resolution adopted by the Standing Committee shall have mandatory effect forthwith in each signatory State; provided that a resolution to which a signatory State lodges an objection within ninety days shall cease to have effect in that State until the objection has been withdrawn. In computing the said period of ninety days, a Government shall be deemed to have been notified of a resolution on the date of its adoption solely by the assent of that Government's representatives thereto. If the representatives of a country are not present, notice of an agreement shall be given in writing to the diplomatic representative of that country accredited to the country in which the Committee is sitting.

(5) The signatory Governments shall enforce the agreements of the Conference and the resolutions of the Standing Committee by imposing a system of legal penalties for breaches thereof committed within their jurisdiction. In the absence of appropriate statutory penalties they shall request the competent authorities to establish the same.

Notice of the imposition of any penalty under this provision shall be given to the Standing Committee through the competent Technical Office referred to in paragraph (2). Technical Offices shall keep complete and detailed registers of all charges and penalties,
(6) Any Party may denounce this agreement by giving one full calendar year’s notice of denunciation to the other Parties.

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c. JOINT DECLARATION ON FISHERY PROBLEMS IN THE SOUTH PACIFIC

The representatives of Chile, Ecuador and Peru to the First Conference on the Use and Conservation of the Marine Resources of the South Pacific,

CONSIDERING:

That the Governments of Chile, Ecuador and Peru are concerned at the danger caused by lack of protection to the conservation of fishery resources in the maritime zones under their jurisdiction and sovereignty;

That because of the progressive development of new methods and techniques, large areas of their waters are being fished more intensively, and that some fishery resources highly important to the food supply and irreplaceable as sources of industrial materials are in serious danger of exhaustion;

That the principal species of South Pacific fauna periodically migrate and appear at certain seasons off the western coast of South America;

That there is a need to establish and apply measures of protection and conservation with a view to the improvement of yield, to the advantage of the national food supply and economies of the signatory States;

That it is necessary to standardize fishery legislation, to regulate or prohibit the use of certain destructive forms and methods of fishing, and in general to establish practices conducing to the rational use of joint marine resources;

HEREBY AGREE AS FOLLOWS:

(1) To recommend the Governments here represented to establish on their coasts and ocean islands such marine biological stations as may be necessary for the study of the migration and reproduction of the species of greatest nutritive value, in order to prevent reduction of the stocks thereof;

(2) To coordinate national and international scientific research and to enlist the cooperation of fishery organizations with similar objects;

(3) To recommend the enactment of such regulations as may be necessary for the conservation of fishery resources in the maritime zones under their jurisdiction;

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(4) To recommend to the signatory Governments that licenses to fish in their maritime zones should be issued only for such fishing as does not impair the conservation of the species covered by the license and is intended to provide fish for domestic consumption or raw materials for domestic industry.

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d. REGULATIONS GOVERNING WHALING IN THE WATERS OF THE SOUTH PACIFIC.

WHEREAS

The representatives of Chile, Ecuador and Peru attending the First Conference on the Utilization and Conservation of the Marine Resources of the South Pacific are convinced of the urgent need to regulate whaling forthwith,

AND WHEREAS

It is the duty of each Government to ensure the conservation and protection of the stock of whales existing in the area of the South Pacific;

It is necessary to regulate the hunting of the said whales so as to prevent such intensive operations as might lead to the temporary or permanent extinction of that animal species, with consequent injury to the economies of the countries of the South Pacific;

The carrying on of this industry through land stations implies per se a restriction on whale-hunting owing to the immobility of such stations and to the limited radius of action of whale catchers;

Land stations carry on whaling operations more efficiently than factory ships, for, in addition to the fats, such stations also utilize the meat and bones of whales for the purpose of producing food-stuffs for human beings and animals;

NOW THEREFORE THE SAID REPRESENTATIVES HEREBY AGREE:

To constitute themselves a Provisional Standing Committee, and in that capacity make the following Regulations governing whaling:

ARTICLE 1. Whaling in the South Pacific, and more particularly in the maritime zones under the sovereignty or jurisdiction of the signatory States, whether carried on by land-based industries or by floating factories, shall be subject to the rules prescribed by the Conference, whose Standing Committee shall study and, in agreement with the Governments of the States aforesaid, decide

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upon any amendment which may be advisable for the purpose of the expansion or improvement of the industries or which (so far as it is not inconsistent with the provisions agreed upon by the Conference) is consequential upon some international commitment entered into hereafter.

ARTICLE 2. The authorities of the several States shall be responsible for the control of whaling, whether carried on by floating factories or from land stations, and for the enforcement of the provisions of these Regulations.

ARTICLE 3. For the purposes of the previous article, every whaling undertaking now existing or to be organized in the future must be entered in the special register kept by the Standing Committee; every such undertaking shall file a declaration specifying the number and position of its land stations, the number and category of the whaling units at its disposal, or the number and characteristics of the ships or vessels constituting the floating factory.

ARTICLE 4. Pelagic whaling shall not be carried on in the maritime zone under the jurisdiction or sovereignty of the signatory countries except under a permit issued by the Standing Committee, which shall prescribe the conditions governing the issue of such permits. Any such permit shall not be issued except by unanimous decision of the Standing Committee.

The signatory countries shall prescribe the penalties applicable to any person who fails to comply with this provision.

ARTICLE 5. The taking and treatment of whales by a land station shall not be carried on in the maritime zone under the sovereignty or jurisdiction of a Contracting State except by an undertaking thereunto authorized by the Government concerned pursuant to these Regulations.

ARTICLE 6. An offence under these Regulations committed by an undertaking established in a Contracting State shall be punished in accordance with the legislation in force in that State.

ARTICLE 7. The crew of a whale catcher or of a factory ship, and the technical staff employed at a land station, must be registered in a special register, kept for the purpose by the Standing Committee, in which the undertaking employing the crew or staff shall be specified.

ARTICLE 8. The taking and treatment of gray or right whales shall be permitted only in cases in which the meat and products derived from the said whales are intended exclusively for consumption by the public. In no case shall such whales measuring less than 10.7 metres be taken.
**ARTICLE 9.** It is forbidden to take suckling whales or calves or female whales which are accompanied by their young.

**ARTICLE 10.** Pelagic whaling for baleen whales shall be forbidden in the maritime zone under the jurisdiction or sovereignty of the States aforesaid.

**ARTICLE 11.** It is forbidden to take or treat whales measuring less than the following lengths:

- (a) blue whales 21.3 metres
- (b) fin whales 16.8 “
- (c) sei whales 12.2 “
- (d) humpback whales 10.6 “
- (e) sperm whales 10.7 “

**ARTICLE 12.** If the meat of whales is intended for use as human or animal food, the minimum sizes shall be reduced to the following (provision applicable to land stations):

- (a) 19.8 metres
- (b) 15.2 “
- (c) 10.7 “
- (d) 9.1 “

**ARTICLE 13.** Whales must be measured when at rest on deck or platform, as accurately as possible, by means of a steel tape measure which shall be stretched in a straight line parallel with the whale's body. The ends of the whale, for measurement purposes, shall be the point of the upper jaw and the notch between the tail flukes.

**ARTICLE 14.** Every whale taken shall be placed at the disposal of the treatment station within forty hours after its death.

**ARTICLE 15.** Every whale taken shall be delivered up and shall, except for the fins, be processed in its entirety, including the internal organs.

**ARTICLE 16.** It shall not be necessary to treat completely the carcass of a whale found abandoned.

**ARTICLE 17.** The contracts of employment of the skippers, crews and gunners of factory ships and whale catchers shall include provisions under which their remuneration shall depend upon the size, and not upon the number, of the whales taken. The remuneration of persons employed ashore shall depend upon the yield of their work. In no case shall a skipper, gunner or crew member of a whale catcher receive any remuneration for units taken in circumstances constituting a breach of these Regulations.

**ARTICLE 18.** Every whaling undertaking is under a specific duty to communicate in writing to the competent authority and
to the Standing Committee, not later than on the fifteenth day of each month, the following particulars relating to its whaling activities in the previous month.

(a) the number of whales of each species taken;
(b) the yield of oil, foods, fertilizers and other products derived therefrom;
(c) the species, sex and length of each whale, whether in calf, and the size and sex, if ascertainable, of the foetus;
(d) any other information which a skipper may directly observe concerning the calving grounds and migration routes of whales.

The competent authority of each country shall assemble all the above particulars and, supplementing the same with any other particulars which in its opinion are relevant to the whaling industry in that country, shall each year compile a complete report on the said industry and transmit a copy thereof to the Standing Committee not later than the last day of February in each year.

ARTICLE 19. Without prejudice to the provisions of articles 9, 11 and 12, the taking and treatment of sperm whales or cachalots by land stations shall not be subject to closed seasons or to a limitation of the catch.

ARTICLE 20. Not later than 31 August of each year, the signatory countries shall, after having considered their requirements, notify the Standing Committee of the number of blue-whale units which they propose to take during the ensuing calendar year, beginning on 1 January. In the light of the said notifications, the Standing Committee shall officially determine, not later than 30 September, the year's quota of baleen whales to be taken in the South Pacific.

ARTICLE 21. The year's quota of baleen whales to be taken shall be expressed in blue-whale units, the equivalent of which unit, by oil content, in other baleen whales is as follows:

One blue-whale unit equals 2 fin whales
One " " " " 2½ humpback whales
One " " " " 6 sei whales

ARTICLE 22. The skipper of a vessel engaged in the whaling industry shall be bound to notify the competent authorities immediately, by wireless, if he observes the presence of whale catchers or factory ships of foreign nationality in the waters subject to the jurisdiction of the Contracting States, and shall, in his message, report their position. He shall likewise report to the said authorities any message intercepted by him which originates
from a whaling vessel of foreign nationality and which affords grounds for suspecting that the vessel in question is engaged in whaling operations in the waters subject to the said jurisdiction.

He shall at the same time transmit a similar report to the Technical Offices of the Standing Committee.

ARTICLE 23. Each signatory Government undertakes to prevent whaling operations from being carried on in the waters subject to its jurisdiction in circumstances constituting a breach of the provisions of these Regulations.

ARTICLE 24. For the purposes of these Regulations, the following expressions shall have the meanings respectively assigned to them:

(a) “land station” means any factory or industrial establishment for the treatment of whales which is set up on the mainland or island shores of a particular country.

(b) “floating station” means any ship equipped to treat on board whales delivered to it, on condition that such ship moves on the sea, being either self-propelled or towed.

(c) “baleen whale” means any whale other than a toothed whale;

(d) “blue whale” means any whale known by the name of blue whale, Sibbald’s rorqual or sulphur bottom;

(e) “finback” means any whale known by the name of fin whale, herring whale or razorback;

(f) “sei whale” means any whale known by the name of Balaenoptera borealis or Rudolphi’s rorqual, and shall be deemed to include Balaenoptera brydei;

(g) “gray whale” means any whale also known by the name of California gray, devil fish, hard head or mussel digger;

(h) “humpback whale” means any whale known by the name of bunch, humpbacked whale, hump whale or hunchbacked whale;

(i) “right whale” means any whale known by the name of Pacific Arctic or Biscayan right whale, bowhead, great polar whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific whale, pigmy right whale, Southern pigmy right whale or Southern right whale;

(j) “sperm whale” means a toothed whale, cachalot, spermacet whale or pot whale;

(k) “Dauhval whale” means any unclaimed dead whale found floating with no signs of specific ownership;

(l) “quota” means the maximum number of units to be taken in the season of any one year.
3. Agreements 6 between Chile, Ecuador and Peru signed at the Second Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, Lima, 4 December 1954

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a. AGREEMENT SUPPLEMENTARY TO THE DECLARATION OF SOVEREIGNTY OVER THE MARITIME ZONE OF TWO HUNDRED MILES 7

The Governments of the Republic of Chile, Ecuador and Peru, in conformity with the provisions of Resolution X of 8 October 1954, signed at Santiago de Chile by the Standing Committee of the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific,

Having noted the proposals and recommendations approved in October of this year by the said Standing Committee,

Have appointed the following plenipotentiaries:

. . . . .

AND WHEREAS

Chile, Ecuador and Peru have proclaimed their sovereignty over the sea adjacent to the coasts of their respective countries to a distance of not less than two hundred nautical miles from the said coasts, the sea-bed and the subsoil of this maritime zone being included;

The Governments of Chile, Ecuador and Peru, at the First Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in 1952, expressed their intention of entering into agreements or conventions relating to the application of the principles governing that sovereignty, for the purpose in particular of regulating and protecting hunting and fisheries within their several maritime zones;

NOW THEREFORE THE SAID PLENIPOTENTIARIES HEREBY AGREE AS FOLLOWS:

1. Chile, Ecuador and Peru shall consult with one another for the purpose of upholding, in law, the principle of their sovereignty over the maritime zone to a distance of not less than two hundred

6 Ratified by Peru. According to the Final Act of the Third Meeting (Quito), infra, December, 1955, action on ratification is in process in the Ecuadorian and Chilean National Congresses.

nautical miles, including the sea-bed and the subsoil corresponding thereto. The term “nautical mile” means the equivalent of one 1,852.8 metres.

2. If any complaints or protests should be addressed to any of the Parties, or if proceedings should be instituted against a Party in a court of law or in an arbitral tribunal, whether possessing general or special jurisdiction, the contracting countries undertake to consult with one another concerning the case to be presented for the defence and furthermore bind themselves to co-operate fully with one another in the joint defence.

3. In the event of a violation of the said maritime zone by force, the State affected shall report the event immediately to the other Contracting Parties, for the purpose of determining what action minute of the arc measured on the Equator, or a distance of should be taken to safeguard the sovereignty which has been violated.

4. Each of the Contracting Parties undertakes not to enter into any agreements, arrangements or conventions which imply a diminution of the sovereignty over the said zone, though this provision shall not prejudice their rights to enter into agreements or to conclude contracts which do not conflict with the common rules laid down by the contracting countries.

5. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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b. AGREEMENT RELATING TO PENALTIES 8

1. If any person, whether a national or an alien and whether an individual or a body corporate, commits an offence against the regulations governing maritime fisheries and hunting which have been approved by the Conference, that person shall be liable to the penalties hereinafter prescribed.

2. Any such offence as aforesaid shall be punishable by the seizure of the product which is the object of the offence, in the condition in which it then is, without prejudice to the imposition of any or all of the following penalties:

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(a) a fine of one to five times the commercial value of the product of hunting or fishing obtained through the offence;
(b) an order prohibiting the person in question from fishing or hunting in the maritime zones or from entering the ports of the contracting countries for a period which shall not be less than six months or more than three years; and
(c) in the event of a repetition of the offence, the court shall in addition impose the fines mentioned in subsection (a) above, increased at its discretion to any sum not exceeding the commercial value of the vessel or vessels which committed the offence. It may also make an order under subsection (b) providing for a prohibition to be in effect for double the period mentioned in the said subsection.

3. The vessel or vessels which committed the offence shall be under attachment pending trial, as security for the payment of the fines, unless the court has accepted some other form of security. The vessel in question shall remain answerable even in the event of a change in its nationality, ownership or management.

This provision shall apply also to any costs or disbursements which may have been occasioned, and the sum due by reason thereof shall constitute a prior charge.

4. The managing owner of the vessel and the captain or master shall be jointly liable for offences. Notices shall be served on the captain or master, who shall be deemed to be the authorized agent of the owner so long as the latter does not designate some other person to act on his behalf.

5. The court shall place at the disposal of the Standing Committee the entire cash proceeds of the fines recovered or seizures made in pursuance of these provisions relating to penalties. The Committee shall distribute these proceeds in equal shares among the Contracting Parties, subject to a deduction of 10 per cent representing receipts to be applied towards its budget.

6. In each contracting country a special court shall be constituted to try cases involving such offences and to impose the appropriate penalties. This court shall, in the several countries, be constituted in the following manner:
(a) in Chile, it shall be composed of the President of the Court of Appeal of Valparaiso, who shall act as president, the Superintendent of Customs and the Director of Coastal Areas and Merchant Marine;
(b) in Ecuador, it shall be composed of the President of the High Court of Guayaquil, who shall act as president, the Director-General of Customs and the Officer Commanding the Naval District; and
(c) in Peru, it shall be composed of the President of the High Court of Lima, who shall act as president, the Superintendent-General of Customs, and the Director of Port Authorities.

In the event of absence or impediment, any member of these courts shall be replaced by the person designated as his substitute by the law of the particular country.

7. The offences referred to in these provisions shall be tried and punished by the court of the country which effected the capture of the offender.

8. The Standing Committee is hereby empowered to propose to the several countries the rules to be observed by the courts in dealing with and adjudicating cases. Until these rules become operative, each country shall apply the provisions of municipal law.

9. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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C. AGREEMENT RELATING TO MEASURES OF SUPERVISION AND CONTROL IN THE MARITIME ZONES OF THE SIGNATORY COUNTRIES

1. It shall be the function of each signatory country to supervise and control the exploitation of the resources in its maritime zone by the use of such organs and means as it considers necessary.

2. The supervision and control referred to in section 1 shall be exercised by each country exclusively in the waters under its jurisdiction. Nevertheless, the ships or aircraft of a signatory country may enter the maritime zone of another signatory country, without requiring special authorization, in any case in which that other country expressly requests its co-operation.

3. The ships or aircraft of each of the signatory countries shall report to the authority designated in every such country the fullest particulars concerning the position, identification and occupation of the fishing or hunting vessels sighted by them in the course of their patrols. Any messages transmitted by telecommunications for this purpose shall be exempt from charges, dues and taxes. Each country shall make regulations for the purpose of giving effect to these provisions.

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4. With a view to making supervision more effective, the technical agencies shall establish a rapid and efficient system for the exchange of information among the signatory countries.

5. Any person shall be empowered to report to the competent maritime authorities the presence of vessels engaged in the clandestine exploitation of maritime resources within the maritime zone.

6. The consuls of the signatory countries shall keep their Governments constantly informed of the preparation, departure, passage, arrival and provisioning of, and other particulars relating to all the whaling or fishing expeditions which leave or pass through the ports where the said consuls are stationed and the real or apparent destination of which is the waters of the South Pacific.

7. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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d. AGREEMENT RELATING TO THE ISSUE OF PERMITS FOR THE EXPLOITATION OF THE MARITIME RESOURCES OF THE SOUTH PACIFIC

1. It shall not be lawful for any person, whether an individual or body corporate to engage in hunting or fishing, the extraction of vegetable products or in any other form of exploitation of resources existing in the waters of the South Pacific within the maritime zone, unless that person has first obtained the required permit.

2. The issue of permits authorizing foreign vessels not employed by national companies, to operate in the maritime zone shall be governed by the terms of this Agreement and shall be contingent upon a favourable report by the technical agencies of each country.

Any permit for the fishing or hunting of species which are subject to international quotas shall be issued by the countries concerned, subject, however, to strict observance of the quotas fixed by the Standing Committee at its annual meeting, or in default of such meeting, by the Secretariat with the unanimous approval of the Standing Committee.

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Pelagic whaling shall not be carried on in the maritime zone under the jurisdiction or sovereignty of the signatory countries except under a permit issued by the Standing Committee, which shall prescribe the conditions governing the issue of such permits. Any such permit shall not be issued except by unanimous decision of the Standing Committee.

3. The issue of a permit binds the applicant to observe the rules relating to the conservation of the species referred to in the relevant regulations and in the orders made by the contracting countries; and also to furnish security in an amount to be determined in each particular case.

4. Each permit shall specify the nature of the operations which may be carried on, the number of the species which the holder may fish or hunt, the area of sea in which he may operate, the opening and closing dates of his operations, the port at which the inspector or inspectors responsible for supervision are to be taken on board, the amount of the fees and the security which has been determined and any other conditions considered desirable for the purpose of securing compliance with the relevant regulations, including authorization to use the telecommunications service.

5. Applicants shall state at what port in any one of the countries they intend to call for the purpose of taking on board the inspectors who will ensure compliance with the relevant regulations. The costs of the services of these inspectors shall be chargeable to the applicant, with the exception of the inspectors' salaries, which shall be paid by the Government concerned.

In the discharge of their duties, the inspectors shall see to it that all the conditions are observed and shall keep a complete record of the operations.

6. Permits for national-flag vessels, or for foreign-flag vessels employed by national companies, whether engaged in fishing or hunting, authorizing them to operate in waters within the exclusive jurisdiction of any of the countries, shall continue to be issued by the competent authority in accordance with the domestic regulations in force and in conformity with the Conventions relating to the protection of maritime resources, without prejudice to the provisions of section 2, second subsection. The issue of such authorizations shall be reported to the Secretariat for the information of all the Parties.

7. Draft administrative and other regulations necessary for the proper application of this Agreement shall be prepared by the Secretariat within six months. The draft or drafts shall be submitted to the Standing Committee for approval but may be applied provisionally until that approval has been obtained.
8. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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e. AGREEMENT RELATING TO THE REGULAR ANNUAL MEETING OF THE STANDING COMMITTEE ¹¹

1. The Standing Committee shall meet annually at an appropriate date to determine the quota of sperm whales which may be hunted by foreign pelagic whaling expeditions during the whaling season from 1 July to 30 June of the following year.

2. At the said meeting the Standing Committee shall also determine the amount of the fees chargeable during the year for the issue of permits to foreign pelagic whaling expeditions. The standing Committee shall deposit the proceeds of those fees, which are the joint property of the signatory countries, in a single bank, and shall apply them to the exclusive purpose of establishing such marine biology stations as may be necessary, first preference being given to the establishment of one such station at an appropriate point in the Galapagos Islands, other stations being established later at suitable points in the South Pacific. After this first need has been satisfied, the balance shall be applied to the purpose of promoting studies and research the object of which is to improve the production, conservation and utilization of the maritime resources of the South Pacific.

3. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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f. AGREEMENT RELATING TO A SPECIAL MARITIME FRONTIER ZONE ¹²

AND WHEREAS

Experience has shown that innocent and inadvertent violations


of the maritime frontier between adjacent States occur frequently because small vessels manned by crews with insufficient knowledge of navigation or not equipped with the necessary instruments have difficulty in determining accurately their position on the high seas;

The application of penalties in such cases always produces ill-feeling in the fishermen and friction between the countries concerned, which may affect adversely the spirit of co-operation and unity which should at all times prevail among the countries signatories to the instruments signed at Santiago; and

It is desirable to avoid the occurrence of such unintentional infringements, the consequences of which affect principally the fishermen;

NOW THEREFORE THE SAID PLENIPOTENTIARIES HEREBY AGREE AS FOLLOWS:

1. A special zone is hereby established, at a distance of 12 miles from the coast, extending to a breadth of 10 nautical miles on either side of the parallel which constitutes the maritime boundary between the two countries.

2. The accidental presence in the said zone of a vessel of either of the adjacent countries, which is a vessel of the nature described in the paragraph beginning with the words “Experience has shown” in the preamble hereto, shall not be considered to be a violation of the waters of the maritime zone, though this provision shall not be construed as recognizing any right to engage, with deliberate intent, in hunting or fishing in the said special zone.

3. Fishing or hunting within the zone of 12 nautical miles from the coast shall be reserved exclusively to the nationals of each country.

4. All the provisions of this Agreement shall be deemed to be an integral and supplementary part of, and not in any way to abrogate, the resolutions and decisions adopted at the Conference on the Exploitation and Conservation of the Maritime Resources of the South Pacific, held at Santiago de Chile in August 1952.

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4. Final Act of the Third Meeting of the Permanent Committee of the Conference on Exploitation and Conservation of the Maritime Resources of the South Pacific (Quito), December 1955. (Excerpts)

a. Note. According to this Final Act, previous meetings of the Permanent Committee were held in Santiago, October 1954, and in Lima, March 1955. Records of these earlier conferences were not available. The Resolutions and
Regulations here reproduced were adopted and approved, respectively, by the Third Meeting. Translation by the Department of State.

b. RESOLUTION ON THE QUOTA OF WHALEBONE WHALES TO BE HUNTED BY LAND STATIONS (RESOLUTION VIII)

In view of the provisions of Article 20 of the Regulations approved in 1952 on maritime hunting activities in South Pacific waters, and considering the small number of whalebone whales hunted by land stations of the South Pacific countries, as the statistics prove,

IT IS RESOLVED:

Not to set quotas for the hunting of whalebone whales by land stations for the seasons that will end June 30, 1957, national land stations consequently being free to hunt whalebone whales during that period under the conditions specified by the Regulations in force.

c. RESOLUTION ON QUOTAS FOR THE PELAGIC HUNTING OF SPERM WHALES (RESOLUTION IX)

In view of the provisions of Article 4 of the Regulations for Maritime Hunting Activities, approved in 1952; Article 2 of the Agreement on the Granting of Permits, approved in 1954; and Articles 1 and 2 of the Agreement on Regular Annual Meetings of the Permanent Committee, approved in 1954,

IT IS RESOLVED:

1. To fix a quota of 2,100 sperm whales for pelagic hunting for the season beginning July 1, 1956, and ending June 30, 1957;
2. To fix a quota for the current season ending June 30, 1956, of an amount proportionate to the number specified in the preceding clause, in relation to the time in which the authorizations granted are in effect;
3. To fix as the fees to be paid by pelagic hunting enterprises those that result from the application of Article 27 of the Regulations on permits for exploitation of the resources of the South Pacific, approved in 1955.

d. REGULATIONS ON PERMITS FOR EXPLOITATION OF THE RESOURCES OF THE SOUTH PACIFIC

Title I

General Provisions

Article 1. No natural or juristic person may engage in fishing
or hunting activities or any other exploitation of the resources existing in the maritime zone of Chile, Ecuador, or Peru without previously obtaining the appropriate permit.

**ARTICLE 2.** Issuance of the permit in all cases obligates the applicant to comply with the rules of conservation of the respective marine species or resources in accordance with the regulations and provisions in force in the country to which the maritime zone in which the activities will be carried on belongs.

**ARTICLE 3.** Permits shall be of three kinds: (a) Permits for exploitation of mineral or other resources; (b) permits for marine fishing; and (c) permits for whaling.

**TITLE II**

**PERMITS FOR EXPLOITATION OF MINERAL RESOURCES**

**ARTICLE 4.** All applications for permits to exploit mineral resources found in the maritime zone must be submitted to the appropriate authority of the country in which the exploitation is to be carried out.

These permits must conform to the legislative provisions of the country and shall be processed and issued pursuant thereto.

**ARTICLE 5.** When the permit has been issued, the appropriate authority shall so inform the General Secretariat of the Permanent Committee for the Conservation and Exploitation of the Maritime Resources of the South Pacific, through the respective National Technical Secretariat.

**TITLE III**

**PERMITS FOR MARINE FISHING**

**ARTICLE 6.** Applications for marine fishing permits shall be submitted to the appropriate authority of the country in whose maritime zone the activities are to be carried out.

**ARTICLE 7.** Applications for fishing permits for vessels of national registry or vessels of foreign registry working for national companies must contain the data required by the pertinent national legislation.

**ARTICLE 8.** Applications for fishing permits for vessels of foreign registry not working for national companies must state the following, in addition to the requirements of the preceding Article: the nature of the activities, amount of the species which the applicant intends to fish, with an indication of the period of time and the maritime zone in which he wishes to operate, date on which it is desired to begin the activities, their period of duration, and port of embarkation of the inspection authorities.

**ARTICLE 9.** In order that the provisions adopted by the Per-
manent Committee with respect to international quotas may be complied with, the Technical Secretariat of the Committee in each country shall give written notice of the said quotas to the appropriate authorities as soon as they are fixed by definitive resolution of the Committee.

**ARTICLE 10.** Permits requested by vessels of foreign registry not working for national companies shall be decided upon by the appropriate authorities of the country concerned in accordance with the information supplied by its technical agencies.

**ARTICLE 11.** Permits for fishing in the maritime zone must comply with national legislation. Those issued to vessels of foreign registry not working for national companies must in all cases state the following: nature of the activities, amount of the species which the party concerned may fish, the maritime zone where operations will take place, date of beginning and end of the period allowed for the activities, the port where the inspectors charged with control will embark, when this is judged to be necessary; authorization for use of telecommunications service; and such other conditions as are deemed desirable to ensure compliance with pertinent regulations.

**ARTICLE 12.** Notice of all fishing permits issued must be given by the appropriate authority to the General Secretariat of the Permanent Committee through the National Technical Secretariat.

**Title IV**

**Permits for Whaling**

**ARTICLE 13.** Permits for whaling in the maritime zone of the South Pacific are of two kinds: first, permits for land stations; second, permits for pelagic hunting of sperm whales.

Land stations are understood to be those industrial installations for the handling and processing of captured whales which are established on the mainland of the continent or on natural islands. Pelagic hunting of whales is understood to be that activity which utilizes floating factory ships, regardless of whether they operate at sea or are anchored.

**Section 1**

**Whaling Permits for Land Stations**

**ARTICLE 14.** Permits for the hunting and processing of whales by land stations shall be issued by the respective national authority. These permits shall be governed by the legislation of the issuing country and by the regulations for maritime hunting activities of 1952, as approved by the First Conference of Santiago, Chile.

Land stations which national authorities may in future authorize
for installation must be located not less than 250 nautical miles from the nearest national land station.

**Article 15.** Land stations authorized under the foregoing Article must conform to the quotas for the hunting of whalebone whales determined by the Permanent Committee pursuant to Articles 20 and 21 of the Regulations for Maritime Hunting Activities, of 1952.

The Permanent Committee shall determine the quotas for the hunting of whalebone whales by land stations at the same regular meeting at which pelagic hunting quotas are fixed pursuant to Article 27.

**Section 2**

**Permits for Pelagic Hunting of Sperm Whales**

**Article 16.** National or foreign enterprises interested in engaging in pelagic hunting of sperm whales in the maritime zones of Chile, Ecuador, or Peru must have the permission of the Permanent Committee, granted by unanimity.

Permits issued under this Article shall not be transferable.

**Article 17.** Pelagic hunting permits issued by the Permanent Committee shall expressly reserve the hunting in a zone included between the parallels located 200 nautical miles north and south of the point at which any land station is based.

**Article 18.** Pelagic hunting shall be restricted to sperm whales of the size and conditions specified in existing regulations of the International Whaling Commission for this type of activity.

The provisions of this Article are without prejudice to the application in all other respects of the Regulations for Maritime Hunting Activities, of 1952.

**Article 19.** The Permanent Committee shall invite representatives of interested enterprises or the consuls of the countries to which they belong, to attend the meeting which the said Committee holds for the purpose of issuing permits and allotting pelagic hunting quotas.

The General Secretariat shall announce, by notices published in good time in newspapers of Oslo, . . . , Lima, Quito, and Santiago, the quota set for pelagic hunting of sperm whales in the maritime zone of the South Pacific, the date for submission of applications by the interested companies, date and place for holding the meeting of the Permanent Committee that is to make the decisions, and a general invitation to the interested parties to attend it, personally or through their representatives.

**Article 20.** The applications submitted by the interested parties must contain the data required according to the provisions
of Article 22 of these Regulations. In addition, compliance with Articles 3 and 7 of the Regulations on Maritime Hunting Activities, of 1952, must be shown.

**ARTICLE 21.** The Permanent Committee shall decide on the permit applications submitted, dividing the quota into allotments among various interested enterprises or granting it in its entirety to a single one.

**ARTICLE 22.** The permit granted by the Permanent Committee must state the following in each case: name and particulars of the enterprise; name of the factory ship or ships and place of registration; number of hunters; quota of sperm whales for which hunting is authorized; maritime zone of operation; date of beginning and end of the period granted for the activities; port of embarkation of the inspectors charged with control; fees to be paid by the enterprise for the permit; authorization for use of telecommunications; and such other conditions as are deemed desirable to ensure compliance with the pertinent regulations.

When the permit is granted, the representative of the authorized enterprise and the Secretary General of the Permanent Committee shall sign a document in triplicate, containing all the details of the authorization given. A marine map showing the various hunting areas and also the reserve zones stipulated in Article 17 shall form an integral part of that document.

**ARTICLE 23.** Enterprises authorized to engage in pelagic hunting may begin their activities on any date they consider convenient, within the established periods. They must give the General Secretariat, in writing, fifteen days in advance, notice of the date for beginning their operations and of the date on which they will be in the inspectors' port of embarkation.

**ARTICLE 24.** Enterprises that engage in pelagic hunting must communicate the following details to the General Secretariat of the Permanent Committee:

(a) Number of sperm whales taken;

(b) Yield of oil, edible products, and other products obtained;

(c) Sex and dimensions of the whales; state of pregnancy and sex and dimensions of the foetus;

(d) Any information that may be obtained regarding places and routes of the migration and reproduction of whales.

**ARTICLE 25.** The whale hunting quota authorized by each permit must be reached in uninterrupted activities from the date when operations begin to the date on which the quota is filled or the permit expires.

**ARTICLE 26.** Before making use of the pelagic hunting permit, the authorized national or foreign enterprise must pay to the
General Secretariat of the Permanent Committee the full amount of the fees applying thereto.

All funds received from this source shall be deposited in a single bank to the account of the Permanent Committee, for use for the purposes specified in Article 2 of the Agreement on the Regular Annual Meeting, signed in 1954.

**ARTICLE 27.** In order to comply with the provisions of the aforesaid Agreement on the Annual Meeting of the Permanent Committee, the said Committee shall fix at its regular meetings the annual quota of sperm whales that may be hunted in the maritime zones of the South Pacific by national or foreign pelagic (hunting) enterprises in the hunting season between July 1 and June 30 of the following year. The annual quota shall be divided into three equal subquotas, one for Chile, one for Ecuador, and one for Peru, and under no circumstances may a larger number than that authorized be taken in the maritime zone of any country.

In fixing the quota, the Committee shall take into account the statistics on sperm whale hunting compiled both by land stations and by pelagic [hunting] enterprises.

In no case may the annual pelagic hunting quota be such as to constitute a danger to the conservation of sperm whales in line with available scientific, technical, and statistical information.

**ARTICLE 28.** At the same Annual Meeting at which the pelagic hunting quota is fixed, the Permanent Committee shall also determine the fees to be collected during the respective annual season for the issuance of permits to national or foreign enterprises.

The Permanent Committee shall determine the amount of the fees on the basis of the tonnage of sperm oil obtained from the authorized pelagic hunting and 10 per cent of the world price for sperm oil, c.i.f. European ports, on the date the permit is granted.

Calculations shall be based on a fixed yield of 3,500 kilograms of oil for each sperm whale authorized.

**ARTICLE 29.** National pelagic hunting enterprises that furnish oil for consumption in their own country, within the quota assigned to them, shall be exempt from payment of the fees specified in Article 28, for the amount of oil brought into that country.

**ARTICLE 30.** For the purposes of the agreements and regulations in force in the South Pacific maritime zone, a national pelagic hunting enterprise is understood to be one that meets the following requirements, as a minimum:

(a) It must be located in one of the South Pacific countries and established in accordance with the legislation of that country; and
(b) It must own a factory ship or factory ships for pelagic hunting.

As an exception and for one time only, an enterprise may be considered a national enterprise if, although not owning a factory ship, it has in force a rental contract for a factory ship, with an agreement for purchase of the ship within an unextendable maximum period of one year.

ARTICLE 31. The provisions of Section 2 of Title IV are in agreement with the statements of the representatives of Chile, Ecuador, and Peru at the International Technical Conference on the Conservation of the living Resources of the Sea, held in Rome in 1955, at which the Permanent Committee of the South Pacific was recognized as an organization similar to but independent of the International Whaling Commission, in so far as whaling in the South Pacific maritime zone is concerned.

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5. Enforcement—Judgment (Opinion) of Peruvian Port Officer (1954)

a. Note. In the background of the Santiago negotiations, referred to supra, were two serious incidents involving vessels fishing in the claimed maritime zones and resulting in the seizure of the vessels and the imposition of fines by the coastal authorities. On March 27, 1955, Ecuador seized two American flag fishing vessels 14 to 25 miles west of the Island of Santa Clara off the Ecuadorian coast, and seriously wounded an American seaman by gunfire. Despite protest by the United States, fines of more than $49,000 were imposed on the two vessels.

In November, 1954, five whaling vessels owned by A.S. Onassis and flying the Panamanian flag were seized by Peruvian naval and air units. Two were captured 160 miles off the Peruvian coast, two were attacked 300 miles off the coast, and the factory vessel was attacked 364 miles off the coast, according to information furnished by Panama to the Organization of American States. The five vessels were held until fines of 3 million dollars were paid. Lloyd's of London held 90% and United States insurers held 10% of the risk. Panama, the United Kingdom and the United States all protested to Peru. The foregoing account of the two incidents is taken from Phleger, "Some Recent Developments Affecting the Regime of the High Seas", "32 Department of State Bulletin (Jan.-June 1955) p. 934, at p. 937. The opinion of the Peruvian Port Authority in the case is reprinted below, and gives the Peruvian version of the facts. The Peruvian Port Authorities and National Mercantile Marine Regulations (approved by Presidential Decree No. 21, effective 1 January 1952), on which the proceedings were based, provides in Article 36 a right of appeal, within 24 hours after the fine is paid, to the Directorate of Port Authorities. Other pertinent articles of Presidential Decree No. 21 are referred to in the opinion.

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b. JUDGMENT OF THE PORT OFFICER OF PAITA, PERU, IMPOSING A FINE OF U.S. $3,000,000

(Translation by Rosa Amada Segarra from Enrique García-Sayan, Notas sobre la Soberanía Marítima del Perú—Defensa de las doscientas millas de mar peruana ante las recientes transgresiones (Lima, 1955))

PAITA, 26 November, 1954

These summary proceedings were instituted on the 17th of this month against Captains Sofus Sauger, Willi Schlatermunel, Juel Eugbreton, Bjarne Anderson and Wilhelm Reichert, of the ships Olympic Victor, Olympic Lightning, Olympic Fighter, Olympic Conquerer and Olympic Challenger, for breach respectively of articles 731, 740, 742, 743 and 764 of the Port Authorities and National Merchant Marine Regulations approved by Supreme Decree No. 21 of 31 October 1951 and commencing on 1 January 1952.

On information received by the Government that a whaling fleet under the orders of Captain Wilhelm Reichert of the Olympic Challenger was whaling in Peruvian territorial waters without first having obtained permission, and killing whales in breach of the international and national regulations made for the preservation of those marine resources, ships of the Peruvian Navy intercepted and arrested the two whalers Olympic Victor and Olympic Lightning; nine other whalers made off, and the Olympic Fighter, Olympic Conquerer and Olympic Challenger were arrested later. These facts have been fully proved by the reports and maps, exhibited to the court, giving the positions and sightings and movements of the ships of the Peruvian Navy.

WHEREAS:

1. In this case none of the masters responsible for the offence the subject of these proceedings asked permission of the Supreme Government to hunt either in coastal or in deep waters.

2. The total company of all the arrested ships was 354 men, of whom 348 are German, 2 Norwegian, 1 British, 1 Chilean, 1 Canadian and 1 Greek. The crew list of the Olympic Challenger contains the name of Mr. Antonio Isaza in the post of Inspector, nationality Panamanian. None of the captains was able to exhibit the documents required to be carried by the Port Authorities Regulations and the ordinary law: such as the ship's log, engine-room log or charts, nor the whaling register or whaling schedule. This fact constitutes the strongest evidence of the unlawfulness of the operations which they were carrying out. Captain Wilhelm Reichert testified on page 5 that he threw those books into the sea in the belief that Panama and Peru were at war. This statement
was improbable, not only because of its intrinsic extravagance but also because his ship was equipped with radio and other means of communication through which he was in constant touch with the stations of his superiors. This ingenuous excuse must therefore be rejected.

3. It has been proved that the position of 11 whalers—that is, practically the whole whaling fleet—was ascertained by the ships of the Peruvian Navy, which detected and sighted them in a position exactly 110 miles from the Peruvian coast. The ships Olympic Victor and Olympic Lightning were captured at a distance of exactly 126 miles from the Peruvian coast, and the ships Olympic Fighter, Olympic Conqueror and Olympic Challenger were intercepted later when they took to flight.

4. From the reports of the commanding officers of the ships of the squadron and from the declarations put in evidence, it appears that the whalers were first ordered to stop but did not do so until the order was supported by the measures of enforcement preliminary to the methods usually employed in these cases. These warning measures caused neither damage to the ships nor casualties among their crews.

5. It has also been proved that the arrested ships and those which made off had operated within Peruvian territorial waters and had taken between 2,500 and 3,000 whales. This was admitted in the depositions put in evidence, starting at page 3. It was necessary for the required manoeuvre that the Olympic Challenger should be close to the catchers. This was corroborated by the depositions of members of the crew. The fact that the Olympic Challenger was captured outside the 200-mile limit does not weaken that evidence in any way, for those depositions show that when the mother-ship received word of the capture of the first two of the ships just mentioned she proceeded continuously for 24 hours at high speed with special precautions, so that she was able to leave the zone and reach the point from which she was obliged to return and be impounded in this port. The Olympic Challenger was the ship which directed the catchers and gave them their bearings, and received and processed the catch taken within the 200-mile limit: about 6,800 tons of whale oil was found in her tanks.

6. Hunting and fishing in territorial waters is permitted only to Peruvian nationals and to aliens domiciled in the Republic, by article 731 of the Port Authorities Regulations. Foreign vessels are not permitted to fish in territorial waters. Whaling and the commercial utilization of its products are industries which may be carried on by any citizen of the nation or by any alien domiciled
in Peru subject to the provisions of the existing statutes and regulations. Individuals and commercial undertakings intending to engage in these industries are required to apply to the Supreme Government for a license to do so; and for whaling it is necessary to apply for a special concession under articles 740, 742 and 743 of the Port Authorities and National Merchant Marine Regulations. The captains and agents of the arrested ships had acted in full knowledge of the declaration of the maritime zone published by Peru, Chile and Ecuador in 1952, but none of them had obtained such a licence or special concession.

7. The Supreme Decree of 1 August 1947, considering that it is necessary that the State protect, maintain and establish a control of fisheries and other natural resources found in the continental waters which cover the submarine shelf and the adjacent continental seas in order that these resources, which are so essential to our national life, may continue to be exploited now and in the future in such a way as to cause no detriment to the country's economy or to its food production, lays down that national sovereignty and jurisdiction are to be extended over the sea adjoining the shores of the national territory, whatever its depth and in the extension necessary to preserve, protect, maintain and utilize natural resources and wealth of any kind which may be found in or below those waters. These provisions are in harmony with those of the declaration of the maritime zone signed by Peru, Chile and Ecuador on 18 August 1952, to ensure the conservation and protection of their natural resources and to regulate the use thereof to the greatest possible advantage of each country; hence it is likewise the duty of each Government to prevent the said resources from being used outside the area of its jurisdiction so as to endanger their existence, integrity and conservation to the prejudice of peoples so situated geographically that their seas are irreplaceable sources of essential economic materials.

These principles are defended by the Port Authorities Regulations, which require the issue of a special concession or license. It follows that the masters and crews of the arrested ships not only contravened the domestic law on whaling, but also acted to the prejudice of the national interests and wealth by engaging in a clandestine and unlawful form of whaling, which they attempted to conceal, encroaching on Peruvian jurisdictional waters without a licence from the authorities, and throwing overboard the documents concerning not only their location or status at sea, but also the quantity, species and age of the whales killed. It is also a matter of common knowledge and of international repute that the arrested ships belong to a person associated with an industrial
organization which disobeys and contravenes every international rule made for the defence of the species which he was hunting.

8. The principle referred to in the preceding paragraph is stated expressly and in all the necessary detail in article 764 of the Port Authorities Regulations, already cited more than once, which lay down that any person or undertaking intending to fish or hunt either in coastal or in deep waters shall be required to apply to the Supreme Government for a licence. This provision, in both the letter and the spirit, applies to individuals and bodies corporate, national and alien, whether domiciled in Peru or not, operating within or outside territorial waters; for the expression "deep water" hunting and fishing is expressly defined in article 735 of the Regulations as hunting or fishing carried on outside the territorial waters of the Republic. Unquestionably this requirement of a licence from the Supreme Government, which in the present case was not complied with, is the elementary or fundamental measure of protection which States are bound and entitled to give to the marine fauna and biological complex in the waters contiguous to their territories for the purpose of averting the extermination and disappearance of given species as a result of intensive clandestine operations which may cause irreparable harm.

9. By article 555 of the Port Authorities Regulations the master is the commanding officer of a merchant ship and is personally responsible for the navigation and control of the ship, her crew and her cargo, and is the representative and confidential agent of the owner. For that reason these proceedings have been brought against the masters of the ships Olympic Victor, Olympic Lighting, Olympic Fighter, Olympic Conqueror and Olympic Challenger, because they personally conduct the venture of hunting and also because they are liable to make restitution for the damage and to suffer the penalty which is awarded to them jointly with the shipowners or proprietors, if these avail themselves of their lawful rights during these proceedings or any other proceedings which may be had in consequence thereof.

10. In this case not only has a breach of the Port Authorities Regulations been committed, but there has also been evasion of payment of dues and the provocative attitude of the masters and of the persons who have instructed them to respass in territorial waters. They were debarred from entering these because it was common knowledge that they had had notice of the prohibition by Peru of encroachment on her waters. Although these circumstances have not been a subject of examination, in these proceedings, they constitute circumstances aggravating the offence charged.
11. By article 33 port officers are empowered to punish offences against the Regulations by the penalties and in the manner set forth in that article. Article 34 lays down that any offence for which the Regulations do not expressly provide a penalty shall render the offender liable to a fine proportional to the gravity of the offence.

12. The act charged is an offence against the Regulations, punishable under the two articles just cited by a penalty appropriate to the gravity of the offence itself and also to the numerous attendant circumstances, including the use and deployment of units of the Navy and Air Force to put down the offence.

Now therefore the Court orders as follows:

(1) Captains Sofus Sauger, Willi Schlatermunel, Juel Eugbretsen, Bjarne Anderson and Wilhem Reichert, masters respectively of the ships Olympic Victor, Olympic Lightning, Olympic Fighter, Olympic Conqueror and Olympic Challenger, and the owners or proprietors of the arrested ships, whose agents at law the said masters are, shall pay jointly and in common a fine of three million dollars or its equivalent in the national currency, within five days reckoned from the date of notification of this judgment, into the Deposit Accounts Fund, Revenue Department, Lima.

(2) The ships Olympic Victor, Olympic Lightning, Olympic Fighter, Olympic Conqueror and Olympic Challenger shall remain impounded as security for the payment of the fine aforesaid, and shall be released on its payment in full.