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**Regime of the High Seas - Supplementary Report - The Right of International Organizations
to Sail Vessels under their Flags, by Mr. J.P.A. François, Special Rapporteur**

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

Extract from the Yearbook of the International Law Commission:-
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Comments by inter-governmental organizations on articles regarding fishing embodied in the provisional articles concerning the régime of the high seas adopted by the International Law Commission at its seventh session in 1955¹

[Original text: English]
[13 March 1956]

LETTER DATED 13 OCTOBER 1955 FROM THE EXECUTIVE SECRETARY OF THE INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES

In your letter of 24th August 1955 (LEG 292/8/01) I am invited to submit possible observations to articles 24-33 of the report of the International Law Commission covering the work of its seventh session held in Geneva from 2nd May to 8th July 1955. In this connexion I beg to submit the following comments:

Article 24 "concerning conservation of the living resources of the high seas". Here, as elsewhere in the articles, the term "conservation" is used in defining the aim for the regulations that could be introduced. However, there are certain reasons to consider that conservation in itself is no longer the sole aim for the regulations introduced as to fisheries over the world. We have passed that period when solely conservation of the stocks was to be considered, and we have entered upon a period where we, through our regulations, are trying also to develop useful fish stocks over their present or, say, natural strength. For instance, when we introduce regulations for the protection of the spawning places, for spawning individuals of a certain species, we are often aiming at giving that special species exceptionally good conditions for thriving compared to that of other, less valuable, species. This means that we are not just conserving the stock of this useful species, but are trying to develop it and to increase it. Other regulations of this kind exist and it can be visualized that several more will be introduced in the future when we shall have to increase the food supply from the sea very considerably.

When we, in future years, are faced with the

¹ Official Records of the General Assembly, Tenth Session, Supplement No. 9, pp. 9-15.

introduction of such regulations, there might arise difficulties through the constant use of just the word "conservation" in the articles. It might possibly be objected by some country that the regulations which we, for the development of the fishery, are trying to introduce are not covered by the international law as they do not only deal with conservation of resources but with their development above the natural, present stage. Thus, the possibility exists that the use of the term "conservation" in the law might well act as a barrier to the proper regulations for the necessary development of the fisheries. I should submit that it be considered to add, when using this term, an explanation that would make it possible for the law to cover also any regulations aiming at further development of stocks.

In the comment to article 24 "sedentary fisheries" is used. I admit that I am not quite aware of what exactly is understood by this term, and others might be in the same position. I understand it to be some kind of fishery by means of fixed gears or from fixed fishing stations, or even from anchored vessels. (The paper referred to in the footnote is not available to me.) From the results of the experimental work carried out in many places during recent years, it is obvious that a kind of sedentary fishery will be developed in the near future based on the fact that fish can be attracted by various devices (electricity, light) to a certain fixed gear. Such a fishery could very well be regarded as covered by the term "sedentary fisheries". This kind of fishery is already being carried out on a commercial scale in fresh water, and experiments on a commercial scale are being carried out also in the open sea. With the development during recent years of factory fishing vessels and floating fishing plants, it might well be imagined that a fishery along these lines will be a common feature in the not too distant future. I would think that some explanation of the term "sedentary fisheries" should be introduced in order that it may be clear whether or not fishery of the above-described kind is included in this term.

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Supplementary report by J. P. A. François, Special Rapporteur on the right of international organizations to sail vessels under their flags

[Original text: English]
[8 May 1956]

1. In the course of the International Law Commission's seventh session, at the 320th meeting on 27 June 1955, the Special Rapporteur, after the adoption of article 4 of the Commission's provisional articles concerning the régime of the high seas, read to the Commission a letter from Mr. Constantin A. Stavropoulos, Legal Counsel of the United Nations, relating to the flag and registry of ten fishing vessels owned by the United Nations (A/CN.4/SR.320, para. 68). The vessels had been recently

built in Hong Kong for the United Nations Korean Reconstruction Agency (UNKRA), taken to Pusan, Korea, and turned over to Korean nationals. They had been navigated from Hong Kong to Pusan under the United Nations flag and registry, British or Korean registry being unavailable by reason of the vessels' ownership, while it was deemed inappropriate to register the vessels in, for instance, Liberia, where registry could easily have been obtained, but with which country the vessels had no link whatsoever. In this connexion, and in view of the possible occurrence of future cases of this kind, Mr. Stavropoulos thought it desirable that the Com-

mission's provisional articles concerning the régime of the high seas should at least not exclude the possibility of registration by an international organization of its own ships. At the same time, he called the Commission's attention to the questions of jurisdiction and of the law applicable aboard vessels under international registration.

2. The Commission thereupon heard a number of statements by several of its members and its Secretary regarding the points thus raised (A/CN.4/SR.320, paras. 69-104).

3. Finally, a proposal by the Chairman to include in the report covering the work of the Commission's seventh session a comment to the effect that the Commission proposed to examine the question raised in Mr. Stavropoulos' letter at a later date was adopted by 10 votes to 1 with 1 abstention. The relevant comment appears in the Commission's report.¹

4. The questions to be answered seem to fall into three categories, viz: (a) those connected with the possibility of the United Nations or other international organizations owning vessels, (b) those relating to the flag, registration, nationality and protection of vessels owned by the United Nations or other international organizations, and (c) those concerning the law applicable to such vessels and the persons and chattels aboard.

5. When replying to the questions thus summarized, it may be helpful to keep in mind the advisory opinion of the International Court of Justice of 11 April 1949 on reparation for injuries suffered in the service of the United Nations, where it is stated that:

"It must be acknowledged that [the Organization's] Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

"Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State What it does mean is that it is a subject of international law and capable of possessing international rights and duties"²

6. No doubt can exist regarding the question whether the United Nations has or not the right to own ships. The Organization certainly has that right, since otherwise, in the words of the International Court, it may not be in a position to "effectively discharge its functions." The situation described in Mr. Stavropoulos' letter is an eloquent example. And the same conclusion necessarily applies to all international organizations of comparable capacity.

7. Again, no difficulty can arise over the question

whether the United Nations may register the ships it owns with a particular State and have them fly the flag of that State. But if no convenient registration, or no registration at all, is available, has the Organization then, or should it have, the right to register them with itself and fly the United Nations flag on them?

8. It is clear that the problem would not be solved by creating a "United Nations registration". For the legal status of a United Nations ship not registered with a State, whether on the high seas, in territorial waters or in a port, would be highly problematical, and the same applies to the crew and possible passengers. The legal system of the flag State applies to the vessel authorized to fly the flag, and in this respect the flag of the United Nations or of another international organization cannot be assimilated to the flag of a State. Especially with regard to the civil and criminal law applicable aboard ship, there would be no solution of the problem.

9. The United Nations, being unable to offer the same guarantees as States for the orderly use of the seas, under general international law is not entitled to register its own ships. This does not necessarily mean that the vessels mentioned in Mr. Stavropoulos' letter were illegally taken from Hong Kong to Pusan. There is little doubt that in the present case a plea of emergency was fully justified. However, in the light of this new experience, the United Nations should now look for a solution of the problems involved. The following proposal may be taken into consideration:

(a) The Members of the United Nations recognize a special United Nations registration which entitles the ship to fly the United Nations flag and to special protection by the United Nations;

(b) The Secretary-General of the United Nations is authorized to conclude, as the need arises, a special agreement with one or more of the Members by which these Members allow the vessels concerned to fly their flag in combination with the United Nations flag;

(c) The Members of the United Nations undertake in a general agreement to extend their legislation to ships concerning which a special agreement between them and the Secretary-General, as referred to in paragraph (b), may have been concluded, and to assimilate such ships to their own ships, in so far as that would be compatible with the United Nations' interests;

(d) The Members of the United Nations declare in the same general agreement that they recognize the special agreements between the Secretary-General and other Members of the United Nations, referred to in paragraph (b), and extend to the United Nations all international agreements relating to navigation to which they are a party.

10. In the event of the views expressed in the present report being accepted by the Commission, it would seem proper to insert a paragraph in the comment under article 4 of the articles concerning the régime of the high seas, indicating the views of the Commission on this subject.

¹ *Official Records of the General Assembly, Tenth Session, Supplement No. 9*, p. 4.

² *I.C.J. Reports 1949*, p. 179.