

Document:-
A/CN.4/SR.238

Summary record of the 238th meeting

Topic:
Other topics

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

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porteur to introduce his second report on the elimination or reduction of statelessness (A/CN.4/75).

91. Mr. CORDOVA said that the Commission had decided at its fourth session that he should not draft a report on the elimination or reduction of existing statelessness. At the present session, however, he had emphasized that, in his view, the Commission should not neglect that subject, which was an important influence in international relations. He had, therefore, been asked⁵ to draw up the second report in the preparation of which he had been materially assisted by Mr. P. Weis, of the Office of the United Nations High Commissioner for Refugees.

92. With regard to the elimination of present statelessness, he had thought it most appropriate to draft an additional protocol to the draft Convention on the Elimination of Future Statelessness, according to which the provisions of that convention might be applied to cases of present statelessness. Although there were some gaps, which it had been impossible to fill for lack of time, the protocol would, on the whole, eliminate present statelessness.

93. His proposals for the reduction of present statelessness were based on the assumption that States were likely to be more willing to amend their legislation so as to reduce future statelessness, than to amend it so as to reduce present statelessness, because in many States there were political, racial and religious difficulties in the way of the latter course. He had endeavoured, therefore, to make his suggestions as realistic as possible, and had drafted them in the form of a "convention on certain measures for the reduction of present statelessness". The provisions of the draft convention were not necessarily cumulative; States might select those which they wished to adopt, and exclude the others.

94. He had particular difficulty in adapting the Commission's proposals on arbitration to the needs of the draft protocol and the draft convention on present statelessness. In view of the very large number of cases with which it might be expected to be concerned, it was possible that a tribunal similar to those recommended in the draft Conventions on the Elimination and the Reduction of Future Statelessness would prove impracticable, but either the special agency recommended in those conventions or a similar institution ought, in his view, to be set up to protect the interests of existing stateless persons.

95. The suggestions he had made in his second report were tentative, rather than firm. They should therefore not be examined in detail. He would, however, welcome the views of members of the Commission by way of guidance for his further work on the subject.

96. Mr. KOZHEVNIKOV said that he had had no opportunity of studying the text of the second report on the elimination or reduction of statelessness. He recalled however, that the Commission had decided to

take the subject up only if time permitted. He had assumed that that decision meant that the matter would not be taken up until the agenda had been exhausted. He must therefore point out that certain other matters still remained to be disposed of.

97. Mr. SANDSTRÖM agreed with Mr. Córdova that it would not be possible to examine the second report in detail at the present session.

98. He hoped that Mr. Córdova might find it possible in his more extended study to give some attention to the relationship between the various drafts and recommendations on the elimination and reduction of statelessness. How far was their co-existence possible? What order or priority was desirable for them?

99. Again, he thought that Mr. Córdova should study the requirements of stateless persons themselves; they might not in fact wish to acquire the nationality that would be conferred on them by the terms of the various draft conventions in preparation.

100. The CHAIRMAN said that any full discussion of the elimination or reduction of present statelessness would have to be postponed to the sixth session. At the present session, nothing more could be done than to give the Special Rapporteur some guidance.

The meeting rose at 1.5 p.m.

238th MEETING

Wednesday, 12 August 1953, at 9.30 a.m.

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Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

⁵ See *supra*, 225th meeting, para. 75.

Consideration of the draft report of the Commission covering the work of its fifth session (resumed from the 237th meeting)

CHAPTER III: RÉGIME OF THE HIGH SEAS (A/CN.4/L.45/Add.1) * (resumed from the 237th meeting)

The CHAIRMAN invited the Commission to take up the outstanding paragraphs (and amendments thereto) of chapter III in the draft report covering the work of its fifth session (A/CN.4/L.45/Add.1), and the additional paragraphs proposed for inclusion.

*Paragraph 7 (64)***

1. The CHAIRMAN said that the Commission had to consider amendments proposed by Mr. Yepes¹ and Mr. Sandström,² as well as a new draft of paragraph 7 submitted by the General Rapporteur.

2. Mr. YEPES and Mr. SANDSTRÖM withdrew their amendments in favour of the General Rapporteur's re-draft, which read as follows:

"In defining, for the purpose of the articles adopted, the term 'continental shelf' as referring 'to the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of the territorial sea, to a depth of two hundred metres', the Commission abandoned the criterion of exploitability adopted in 1951 in favour of that of a depth of two hundred metres as laid down in article 1 of the present draft. The relevant passage of article 1 as adopted in 1951 referred to the area 'where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil'. Some members of the Commission favoured the retention of the text adopted in 1951 for the reason, *inter alia*, that it is more in accordance with the purpose of the draft not to adopt a fixed limit for the continental shelf but to let the territorial extension of the exercise of the powers given the coastal State depend on the practical possibilities of exploitation. The Commission, following the considerations adduced by the Special Rapporteur in the light of observations of certain governments, has come to the conclusion that the text previously adopted does not satisfy the requirement of certainty and that it is calculated to give rise to disputes. On the other hand, the fixed limit of two hundred metres—a limit which is at present sufficient for all practical needs—has been fixed because it is at that depth that the continental shelf, in the geological sense, generally comes to an end. It is there that the continental slope begins and falls steeply to a great depth. The text thus adopted is not wholly arbitrary for, as already stated, it takes into account the practical possibilities, so far as they

can be foreseen at present, of exploration and exploitation. Such unavoidable element of arbitrariness as is contained in that text is mitigated by the rule formulated below in paragraph 8 which covers to a large extent the case of those States whose waters surrounding the coast reach a depth of two hundred metres at a very short distance from the coast."

Mr. CORDOVA suggested that the word "wholly" be deleted from the penultimate sentence.

Mr. Córdova's proposal was rejected by 4 votes to 3, with 2 abstentions.

The re-draft of paragraph 7 proposed by the General Rapporteur was approved by 8 votes to none, with 1 abstention.

3. Mr. YEPES pointed out that paragraph 6, as adopted, stated that the Commission had adhered in the articles on the continental shelf to the basic considerations which underlay the articles provisionally adopted in 1951. The new text of paragraph 7 made it quite clear, however, that the Commission had now adopted a criterion for defining the continental shelf which was quite different from that adopted in 1951. The contradiction should be removed.

4. The CHAIRMAN could see no need for amending paragraph 6.

5. Mr. LAUTERPACHT, agreeing with the Chairman, said that the supposed contradiction depended on the view that the criterion for defining the continental shelf was a "basic consideration". In his view, it was not.

6. Mr. SANDSTRÖM agreed.

7. Mr. YEPES would not press his point, provided it were recorded that he considered there was a contradiction between paragraphs 6 and 7.

Paragraph 11 (68)

8. Mr. SANDSTRÖM withdrew the amendment that he had proposed to paragraph 11.³

9. The CHAIRMAN said that the Commission accordingly had before it only the re-draft proposed by the General Rapporteur, reading as follows:

"While article 2 as provisionally formulated in 1951 referred to the continental shelf as 'subject to the exercise by the coastal State of control and jurisdiction for the purpose of exploring it and exploiting its natural resources', the article as now formulated lays down that 'the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources'. The formulation thus adopted takes into account the views of those members of the Commission who attached importance to maintaining the language of the original draft and those who considered that the expression 'rights of sovereignty' should be adopted. In adopting the article in its

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter III.

** The number within parentheses indicates the paragraph number in the "Report" of the Commission.

¹ See *supra*, 234th meeting, para. 4.

² *Ibid.*, para. 1.

³ *Ibid.*, para. 48.

present formulation the Commission desired to avoid language lending itself to interpretations alien to an object which the Commission considers to be of decisive importance, namely, safeguarding the principle of the full freedom of the superjacent sea and the air-space above it."

The General Rapporteur's re-draft of paragraph 11 was approved by 9 votes to none, with 1 abstention.

Paragraph 12 (69)

10. The CHAIRMAN said that the Commission had before it a re-draft⁴ proposed by the General Rapporteur, reading as follows:

"On the other hand, the text as now adopted leaves no doubt that the rights conferred upon the coastal State cover all rights necessary for and connected with the exploration and the exploitation of the natural resources of the continental shelf. These rights are essentially tantamount to full control and jurisdiction, including the right to reserve exploitation and exploration for the coastal State or its nationals. Such rights include also full jurisdiction, in particular in connexion with suppression of crime."

11. Mr. SANDSTRÖM said that he was in general agreement with the re-draft but suggested that the second sentence be amended to read:

"These rights are essentially tantamount to full control and jurisdiction for those purposes including the right..."

12. Mr. LAUTERPACHT accepted Mr. Sandström's suggestion.

13. Mr. CORDOVA preferred the General Rapporteur's re-draft. It was more comprehensive, as the control and jurisdiction of the coastal State included the suppression of crime.

14. Mr. SANDSTRÖM said that the right to suppress crime could only be exercised in so far as that suppression was connected with exploitation and exploration. He wished to make it clear that the control and jurisdiction of the coastal State over the continental shelf was limited.

Mr. Sandström's proposal was rejected by 3 votes to 2, with 4 abstentions.

15. Mr. ALFARO said that the phrase "essentially tantamount" was imprecise. He proposed that the second sentence of the paragraph be amended to read:

"These rights comprise full control and jurisdiction and the right to reserve..."

Mr. Alfaro's amendment was adopted by 4 votes to 1, with 4 abstentions.

16. Mr. CORDOVA proposed that the third sentence of paragraph 12 be amended to read:

"Such rights include jurisdiction in connexion with suppression of crime".

Mr. Córdova's proposal was adopted unanimously.

Paragraph 12, as amended, was adopted unanimously.

17. As adopted, it read:⁵

"..."

Paragraph 13 (70)

18. The CHAIRMAN said that the Commission had before it certain amendments proposed by Mr. Sandström,⁶ and a text which he (the Chairman) had submitted in his capacity as Special Rapporteur. That text read:

"The Commission decided, after considerable discussion, to retain the term 'natural resources' as distinguished from the more limited term 'mineral resources'. It is true that in its previous draft the Commission only considered mineral resources, and certain members proposed adhering to that course. The Commission concluded, however, that the products of sedentary fisheries, in particular, being natural resources permanently attached to the bed of the sea, should not be outside the scope of the régime adopted and that this aim could be achieved by using the term 'natural resources'. It is clearly understood, however, that the rights in question do not cover so-called bottom-fish and other fish which, although living in the sea, occasionally have their habitat at the bottom of the sea or are bred there. Nor do these rights cover objects such as wrecked ships and their cargoes (including bullion) lying on the sea-bed or covered by the sand of the sub-soil."

Since the French text was the original, he thought that the English translation of the second sentence should be amended to read:

"The Commission concluded...in particular, to the extent that they were natural resources permanently attached..."

19. Mr. SANDSTRÖM suggested that the second sentence should be amended to read:

"The Commission concluded, however, that natural resources permanently attached to the bed of the sea should not be outside..."

20. The CHAIRMAN said that he had specified sedentary fisheries in his text because the Commission had been particularly concerned about them. They had originally been excluded from the definition of the resources belonging to the continental shelf, but the Commission had changed its mind and had come to the conclusion that sedentary fisheries ought to be considered as natural resources permanently attached to the bed of the sea, and therefore an integral part of the continental shelf. In view of that change of mind, the

⁴ For previous discussion of para. 12 see *supra* 234th meeting, para. 57.

⁵ See para. 69 in the "Report" of the Commission.

⁶ *Ibid.*, paras. 78-79.

text should stand as he had proposed, for the sake of clarity.

21. Mr. SANDSTRÖM withdrew his suggestion.

22. Mr. LAUTERPACHT suggested that the phrase "It is true that" at the beginning of the second sentence be deleted.

It was so agreed.

The re-draft by the Special Rapporteur of paragraph 13, as amended, was approved by 7 votes to none, with 3 abstentions.

Paragraph 21 (28)⁷

23. The CHAIRMAN said that as drafted the last sentence of paragraph 21 was concerned with the due notice that had to be given, and with the means of warning that had to be maintained, in cases in which the construction of installations was likely to interfere with navigation; it had been suggested that such notice and warning should be identical with those required in the case of installations already completed.

24. He felt, however, that it would not always be practical for due notice to be given in respect of provisional installations. The sentence might therefore, he suggested, read as follows:

"However, in cases in which 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."

The Chairman's proposal was unanimously accepted.

Paragraph 25 (82-84)⁸

25. The CHAIRMAN said that the Commission had before it two amendments proposed by Mr. Zourek. The first was that the paragraph should end at the words "some elasticity", the remainder of the paragraph being deleted; the second was for the insertion, after paragraph 25, in accordance with a previous decision by the Commission,⁹ of a new paragraph to read:

"The Commission was of the opinion that where the same continental shelf is contiguous to the territories of two adjacent States, the delimitation of the continental shelf between them should be carried out in accordance with the same principles as govern the delimitation of the territorial waters between the two States in question."

26. The Commission also had before it a proposal, which he (the Chairman) put forward in his capacity as Special Rapporteur, that a clause be inserted after the clause which Mr. Zourek had proposed, to read as follows:

"The actual method used for delimiting the territorial seas in special cases might be affected however by certain considerations, particularly as regards navigation and fishing interests which would not apply in the case of the continental shelf."

27. Thirdly, Mr. Kozhevnikov had proposed the addition of the following passage:

"It should, however, be noted that several members of the Commission considered that it would be premature to apply for the purposes of delimiting the continental shelf the principles drawn up by the Committee of Experts on the delimitation of territorial waters, since those principles have not yet been discussed by the Commission. In their opinion, the proper course would be to provide that the boundaries of the continental shelf contiguous to the territories of two or more States should be determined by agreement between the States concerned. In the absence of such agreement, the resultant dispute between them should be settled by one of the appropriate procedures for the peaceful settlement of disputes."

28. Mr. KOZHEVNIKOV said that in the first sentence of his amendment the word "several" in the English translation should be replaced by the word "certain" so that the English text might conform with the Russian. A similar change should be made in the French text.

29. In reply to the CHAIRMAN, Mr. ZOUREK said that he was unable to withdraw his first proposal. As article 8 of the draft articles on the continental shelf was quite general in its application, there seemed to him to be no purpose in citing it in a paragraph of the draft report otherwise concerned only with the boundaries of the continental shelf.

30. Mr. LAUTERPACHT said that it was essential to mention the possibility of arbitration in the proposed additional paragraph.

31. If Mr. Zourek's second proposal were accepted, it should be introduced by the phrase "Having regard to the element of elasticity implied in article 7 as adopted...".

32. Mr. ALFARO pointed out that disputes concerning the boundary of the continental shelf were one case in which arbitration might perhaps be necessary.

33. Mr. ZOUREK said that the Commission seemed to be considering his second proposal as a new suggestion, whereas in his view it was a direct consequence of the decision previously taken by the Commission. Further, he was unwilling to accept Mr. Lauterpacht's suggestion that a decision previously reached be used to illustrate the latter's contention about the elasticity implicit in article 7.

34. Mr. CORDOVA agreed with Mr. Zourek that there was no connexion between his (Mr. Zourek's) second proposal and the element of elasticity in article 7. Nevertheless, article 7 of the draft articles on the continental shelf and the new paragraph proposed by Mr. Zourek were contradictory. If the new paragraph were accepted, the contradiction would have to be resolved.

⁷ Resumed from the 236th meeting, paras. 14-20.

⁸ *Ibid.*, paras. 22-35.

⁹ See *supra*, 205th meeting, para. 68.

35. The CHAIRMAN, referring to Mr. Kozhevnikov's and Mr. Zourek's contention that, as a result of its previous decision, the Commission was obliged to insert Mr. Zourek's second proposal without change, said that Mr. Zourek's proposal that the draft articles on the continental shelf should include an article according to which the principles governing delimitation of the continental shelf and those governing delimitation of territorial waters should be the same had been rejected by 7 votes to 2, with 4 abstentions.¹⁰ It had been agreed, however, by 12 votes to 1, that "it should be stated in the commentary that the principles governing delimitation of the continental shelf and those governing delimitation of the territorial waters should be the same".¹¹ The Commission had not, however, agreed on any particular text for the commentary.

36. Mr. ZOUREK said that the summary record in question was incomplete.

37. Referring to the possible contradiction between his proposal and the text of article 7, he said that the method laid down in article 7 for determining the boundary of the continental shelf was to be used, in the words of the article, "in the absence of agreement between those States or unless another boundary line is justified by special circumstances". His proposal was no more than that the principles according to which the boundary of the continental shelf was determined should normally, whether by agreement between the States concerned or as a result of special circumstances, be the same principle as governed the delimitation of the territorial waters.

38. Mr. SANDSTRÖM, referring to Mr. Lauterpacht's earlier proposal, suggested that the text of Mr. Zourek's second proposal should be introduced by the phrase "Without prejudice to the element of elasticity implied in article 7...".

39. Mr. LAUTERPACHT withdrew his suggestion in favour of Mr. Sandström's.

40. The CHAIRMAN also accepted Mr. Sandström's suggestion, and withdrew his own amendment to the paragraph.

Mr. Zourek's first amendment was rejected by 5 votes to 4, with 1 abstention.

41. Mr. CÓRDOVA explained that he had voted in favour of Mr. Zourek's proposal, not because he was against the principle of arbitration, but because the wording of paragraph 25 of the draft report implied that the principle of arbitration was restricted to matters arising under article 7.

Mr. Sandström's amendment was adopted by 6 votes to 3, with 1 abstention.

Mr. Zourek's second amendment was adopted unanimously.

It was agreed, by 6 votes to 3, that the text of

Mr. Zourek's second amendment, as amended by Mr. Sandström, should form a separate paragraph.

42. Mr. KOZHEVNIKOV said that he had no objection to the text which he had proposed as an addition to paragraph 25 being made a separate paragraph.

43. Mr. LAUTERPACHT did not favour Mr. Kozhevnikov's proposal either as a new paragraph or as an addition to the existing one, for it was merely a statement of the views of a minority, and was thus out of harmony with the form of the report.

44. Mr. YEPES reiterated his view that the report should reflect the views of all members of the Commission. Mr. Kozhevnikov's proposal should be accepted.

45. Mr. ZOUREK also supported Mr. Kozhevnikov's proposal, and maintained that it was untrue to say that it was contrary to accepted practice to report minority opinions. Indeed, in view of the fact that the Commission's report was in the nature of a commentary on draft conventions, it was particularly important that the General Assembly should have before it the views of those who had been unable to accept the views of the majority.

46. Mr. ALFARO said that he did not object to Mr. Kozhevnikov's proposal, although it was customary in drafting reports to state the dissenting views first and the conclusion reached afterwards. He therefore doubted the wisdom of making Mr. Kozhevnikov's proposed text an independent paragraph.

47. In order to make it clear that the three sentences of Mr. Kozhevnikov's proposal were all descriptive of the minority view, the full stops separating them should be replaced by semi-colons.

48. Mr. CÓRDOVA said that he had been a member of the minority some of whose views were summarized in Mr. Kozhevnikov's proposal. He was, however, in favour of arbitration for the settlement of international disputes; the last sentence of Mr. Kozhevnikov's proposal, therefore, did not entirely reflect his position. He suggested, accordingly, that the last two sentences of the proposed text be dropped.

49. Mr. KOZHEVNIKOV said that he was glad to see that a number of members of the Commission thought that minority opinions should be included in the Commission's report; that was a good democratic principle.

50. He accepted Mr. Alfaro's suggestions concerning punctuation. Referring to Mr. Córdova's suggestions, he said that the second sentence of his proposed text was organically connected with the first, and must be retained. The third sentence did not mention arbitration specifically, but "appropriate procedures for the peaceful settlement of disputes" in general; arbitration was undoubtedly one such procedure.

51. Mr. LAUTERPACHT thought that Mr. Kozhevnikov's proposed text should not be made a separate paragraph; if it were, that section of the report would

¹⁰ *Ibid.*, para 65.

¹¹ *Ibid.*, para. 68.

appear disjointed and undue prominence would be given to the views of the minority.

52. Mr. KOZHEVNIKOV said that it appeared logical to him for the majority opinion, which was described in paragraph 25, to be followed by the minority opinion in a separate paragraph.

The text of Mr. Kozhevnikov's proposal, as amended, was approved by 5 votes to none, with 3 abstentions.

It was agreed by 5 votes to 4 that Mr. Kozhevnikov's proposal should form a separate paragraph.

Paragraph 25, as amended, was approved by 9 votes to 3.

Additional paragraph (88) to follow paragraph 30

53. Mr. ZOUREK said that, as some members of the Commission had been opposed to the insertion of a clause on compulsory arbitration, a clause which had not figured in the original draft articles, he felt it desirable that the report should indicate their views on a question of such importance. He therefore proposed the insertion, after paragraph 30, of a new paragraph reading as follows:

“Certain members of the Commission were strongly opposed to the insertion in the draft of a clause on compulsory arbitration on the ground that there was no reason for imposing on States one only of the various measures laid down in current international law, and particularly in Article 33 of the Charter of the United Nations, for the pacific settlement of international disputes. They also pointed out that the insertion of such a clause would make the draft unacceptable to a great many States. A few members raised the further objection that such a clause would give any contracting State the right to take action on any pretext against the other contracting States by a unilateral request to international tribunals, thus increasing the possibility in present circumstances of putting pressure on the weaker States and in effect curtailing their independence.”

54. Mr. LAUTERPACHT said that, as he had already had occasion to recall, the Commission had at the beginning of the session rejected the suggestion that a minority should be entitled to have its views included in the report in a way that would deprive the majority of the right to reply. The various points discussed in Mr. Zourek's proposal were not otherwise mentioned in the draft report, so that if it were adopted the last word on the question of arbitration would effectively rest with the minority. With regard to the specific proposal under consideration, that did not seriously worry him, as he thought that none of the various objections raised—particularly that in the last sentence—called for a reply. He would, however, suggest the deletion of the word “strongly” from the first sentence.

55. Mr. ALFARO said that, as he could not agree to the views of the minority being given greater prominence than those of the majority, he could only accept Mr. Zourek's proposal if it preceded paragraph 30 instead of following it.

56. Mr. LAUTERPACHT suggested that the most appropriate point at which to insert Mr. Zourek's proposal would be at the end of paragraph 28.

57. Mr. ZOUREK had no objection to his proposed text being inserted as a separate paragraph to follow paragraph 28.

It was agreed, by 6 votes to none, with 2 abstentions, to insert Mr. Zourek's proposal, without the word “strongly”, as a separate paragraph to follow paragraph 28.

Additional paragraph (last part of para. 97) to follow paragraph 45

58. Mr. ZOUREK proposed that the following text be inserted as a new paragraph to follow paragraph 45:

“Certain members of the Commission were definitely opposed to the adoption of the text of article 3, on the ground that there was no real need for the creation of an international authority, since fisheries could be regulated as in the past, by means of agreements between States. They pointed out that the proposal to give an international authority power to issue regulations binding on the nationals of States was clearly in conflict with the basic principles of international law.”

59. Mr. LAUTERPACHT said that he could not accept Mr. Zourek's proposal, which was entirely negative, and explained nothing.

60. Mr. ZOUREK pointed out that the text which he proposed was necessarily negative, since it gave the views of those members of the Commission who did not accept the Commission's decision.

61. In his view, the Commission's report should present a faithful account of the Commission's discussions, and the text which he proposed was in accordance with what had been said.

62. Mr. SANDSTRÖM suggested that the word “definitely” should be deleted, and that the proposed text should be added to paragraph 45, instead of being made a separate paragraph.

63. Mr. ZOUREK accepted Mr. Sandström's first suggestion; and said that in the present instance he had no objection to the second.

64. Mr. ALFARO said that he was in favour of permitting those members of the Commission who disagreed with the Commission's decisions to indicate their views in the report, but that he was strongly opposed to any system which gave the views of the minority greater prominence than those of the majority. He would therefore vote against Mr. Zourek's proposal if it was to be inserted after the existing text of paragraph 45.

It was agreed by 5 votes to 1, with 2 abstentions, to insert the text proposed by Mr. Zourek, without the word “definitely”, at the end of paragraph 45.

Paragraph 48 (100) (resumed from the 236th meeting)

65. Mr. YEPES recalled that he had proposed¹² that the second sentence, which was dangerous and incorrect and which read:

“The Commission, in adopting these articles, was influenced by the view that although the prohibition of abuse of rights is not yet firmly established as a doctrine of international law, it is not altogether unsupported by the judicial and other authority and that it is germane to the situation caused by these articles.”

should be replaced by the following:

“The Commission, in adopting these articles, was influenced by the view that the prohibition of abuse of rights is clearly supported by judicial and other authority and is germane to the situation caused by these articles.”

66. Mr. LAUTERPACHT pointed out that the words “the situation caused by these articles”, which had been taken by Mr. Yepes from his own text, should read: “the situation covered by these articles”. He also pointed out that the word “clearly” should be deleted from the English text of Mr. Yepes’ proposal, which was stronger than the French and went much further than he considered appropriate. In his view, the wording which he had himself proposed described the situation with complete accuracy, particularly when taken in conjunction with the fourth sentence, which read:

“The prohibition of abuse of rights, in so far as it constitutes a general principle of law recognized by civilized states, provides to a considerable extent an accurate legal basis for the general rule, as formulated in article 3.”

67. Mr. SCALLE felt that any ambiguity in such a matter would be most undesirable. The doctrine of abuse of rights had made great headway during the past decade, and in his view it could now be regarded as belonging to what Article 38 of the Statute of the International Court of Justice called “the general principles of law recognized by civilized nations”. There was a concordance of theory with regard to it, and he believed that the existence of concordance was of much greater importance in that connexion than in relation to the doctrine of the continental shelf, with regard to which Mr. Lauterpacht had cited it.

68. Mr. ZOUREK said that, although the Commission had touched on the question of abuse of rights and had agreed that it was of great importance, it had not examined it in any detail. In his view, the proponents of that doctrine were inclined to extend the principles of municipal law to international law too mechanically. Since the question was controversial and had not been discussed, he thought it would be wiser for the Commission not to mention it in the report.

69. Mr. LAUTERPACHT said that, as could be seen from the relevant summary records, both he and Mr. Scelle had made detailed reference to the doctrine of the abuse of rights.

70. Replying to a question by the CHAIRMAN, Mr. YEPES said that he had no objection to the deletion of the word “clearly” from the English text of his amendment.

Mr. Yepes’ amendment, without the word “clearly” in the English text, was adopted by 7 votes to 1, with 2 abstentions.

71. Mr. AMADO proposed the deletion of the fifth sentence of paragraph 48, reading:

“To that extent it may be held that [Article 3] is not altogether in the nature of a drastic departure from the principles of international law.”

72. Mr. SANDSTRÖM agreed that the sentence should be deleted, but felt that the first and last two sentences should be deleted as well. The wording used by the General Rapporteur implied that the rule formulated by the Commission contained some element of codification, whereas in his view it was clear that it was wholly an innovation.

73. Mr. LAUTERPACHT said that he could agree to the deletion of the first and last sentences, since they referred directly to codification and Mr. Sandström thought there was no element of codification in the rule in question. He did not understand, however, why it should be thought necessary to delete the antepenultimate and penultimate sentences as well.

74. Mr. SANDSTRÖM thought that the effect of paragraph 48 as a whole would be enhanced by the deletion of those sentences, since they were somewhat out of place and their substance was in any case given in the penultimate sentence in paragraph 51.

Mr. Sandström’s proposal that the first sentence be deleted was adopted by 5 votes to none, with 4 abstentions.¹³

Mr. Sandström’s proposal that the last three sentences be deleted was rejected by 6 votes to 3, with 1 abstention.

Mr. Amado’s proposal that the ante-penultimate sentence be deleted was rejected, 4 votes being cast in favour and 4 against, with 2 abstentions.

Paragraph 48, as amended, was approved by 7 votes to 1, with 2 abstentions.

Paragraph 54 (106) (resumed from the 237th meeting)

75. The CHAIRMAN stated that Mr. Kozhevnikov had submitted an amendment for the insertion of an additional sentence at the end of paragraph 54, but had

¹³ The first sentence read as follows: “This latter circumstance, as well as considerations of wider legal principles, lend some support to the view that, in a sense, the rule now formulated in the final draft of the articles on fisheries is in the nature of codification.”

¹² See *supra*, 236th meeting, para. 92.

requested that, as he had been obliged to leave the meeting, discussion of it be deferred until the next meeting, when the Commission would also have to vote on the draft chapter as a whole.

76. Mr. ZOUREK recalled that he too had submitted an amendment to the section of the report dealing with the contiguous zone. Since the purpose of his amendment was identical with that of Mr. Kozhevnikov's, he would consult him with a view to submitting a joint proposal for consideration at the next meeting.¹⁴

CHAPTER IV: NATIONALITY, INCLUDING STATELESSNESS (A/CN.4/L.45/Add.2) *

77. The CHAIRMAN invited the General Rapporteur to introduce the chapter on nationality, including statelessness, in the draft report covering the work of the Commission's fifth session (A/CN.4/L.45/Add.2).

78. Mr. LAUTERPACHT said that he was in a difficulty, as he feared from what Mr. Córdova had said about previous chapters that the chapter on nationality, including statelessness, would not conform to the Special Rapporteur's ideas of what the report should contain. The Commission's report could, of course, be limited to a summary of what had been said in the discussion, but in his (Mr. Lauterpacht's) view it was essential that it should explain the purpose of the texts which the Commission was submitting to the General Assembly, and their relation to existing international law, even if those questions had not been discussed in the Commission. There was no question of his trying to impose his own views on the Commission, but only of presenting the Commission's views to the world in the manner best calculated to secure their acceptance. The Commission was under an obligation to explain to the General Assembly and to the world at large what it was doing, and why, and whatever had been the practice in the past, he intended, so long as he remained General Rapporteur, to press for the adoption of a report along the lines he had indicated.

79. He would not, however, wish the Commission to include in its report a chapter which did not meet with the approval of the Special Rapporteur, and if his fears proved well-founded, he saw no alternative to withdrawing the whole of the draft chapter on nationality, including statelessness, except the first six paragraphs.

80. Mr. CORDOVA agreed that he had said it was essential that in preparing his draft report the General Rapporteur should limit himself to what had been said in the discussions, in order to avoid controversy as to whether the views expressed were those of the Commission as a whole. In the present instance, however, he wished to make it quite clear that he had no objections to the general form of the draft chapter on nationality, including statelessness, and wished to pay a tribute to the excellence of the General Rapporteur's work. It was

true that not everything in the chapter had been said in the discussions, but even if it had not been said, it had been present in members' minds.

81. Mr. LIANG (Secretary to the Commission) pointed out that the chapter on nationality, including statelessness, was not on the same plane as the chapters on arbitral procedure and on the régime of the high seas. It was clear from the Commission's Statute that the draft conventions on the elimination and on the reduction of future statelessness should be submitted to governments for comment, and given appropriate publicity; for that purpose they might or might not be accompanied by explanatory comment, and the chapter drafted by Mr. Lauterpacht could or could not be regarded as such explanatory comment. It should be clearly understood, however, that the Commission was not submitting to the General Assembly the final results of its work on statelessness.

82. He suggested that it would be desirable for the Commission to submit the draft conventions to the Economic and Social Council as an interim report, in accordance with the second part of article 17, paragraph 2 (c), of its Statute.

83. The CHAIRMAN said that, in view of what Mr. Córdova had said, there was clearly no need for the General Rapporteur to consider withdrawing any part of the draft chapter. The explanations contained in it were absolutely necessary to avert misunderstanding of the draft conventions, and the Commission would begin to examine it paragraph by paragraph at the next meeting, adhering strictly to the procedural rules which it had adopted at the beginning of the 236th meeting.¹⁵

The meeting rose at 1 p.m.

¹⁵ See *supra* 236th meeting, para. 1.

239th MEETING

Thursday, 13 August 1953, at 9.30 a.m.

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Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Faris Bey el-KHOURI,

¹⁴ See *infra*, 239th meeting, para. 83.

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter IV.