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**Summary record of the 333rd meeting**

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### Order of business

5. The CHAIRMAN asked for members' views on the order in which the items on the provisional agenda (A/CN.4/95) should be taken up. It was essential to allow enough time for the preparation of the final report on the regime of the high seas and the regime of the territorial sea, which had to be submitted to the General Assembly at its forthcoming eleventh session.

6. Mr. FRANÇOIS said that he had already prepared a report (A/CN.4/97) on certain aspects of the final report to be presented by the Commission on the regime of the high seas and the regime of the territorial sea. He also proposed to prepare a supplementary report dealing with the comments from governments, which had been received in considerable numbers. The work would take approximately one week, and he hoped that consideration of items 1 and 2 could be deferred until it had been completed.

7. Sir Gerald FITZMAURICE wondered whether, in the meantime, the Commission might not consider Mr. François' report (A/CN.4/97).

8. Mr. FRANÇOIS suggested that the Commission might start with item 7, "Arbitral procedure: General Assembly resolution 989 (X)".

9. Mr. LIANG, Secretary to the Commission, explained that in its resolution 989 (X) the General Assembly had invited the Commission to consider the comments of governments and the discussions in the Sixth Committee concerning the draft on arbitral procedure and to report to the General Assembly at its thirteenth session. It had also decided to place on the agenda for the thirteenth session the question of arbitral procedure, including the problem of the desirability of convening an international conference of plenipotentiaries to conclude a convention on the subject. As Mr. Scelle, formerly the Special Rapporteur on arbitral procedure, had not yet arrived, it would be difficult to take up that item forthwith.

10. Mr. AMADO considered that the Commission should apply itself without delay to the paramount task of completing the work on items 1 and 2, and saw no reason why a preliminary exchange of views should not be held on Mr. François' report (A/CN.4/97), which was ready, while he was preparing the supplementary report. There was no great hurry to take up item 7, since the Commission had to report on it only in 1958.

11. Mr. ZOUREK, while agreeing with Mr. Amado that the Commission should take up items 1 and 2 as soon as possible, believed that during the coming few days a useful start might be made on items 7, 8 and 9, which in any event would have to be considered some time during the session. Certain matters of general importance raised in the first part of Mr. François' report, such as those listed in paragraph 23, could then be considered, particularly as that could be done without direct reference to the texts of the draft articles themselves, on which governments had submitted their comments.

12. Mr. SANDSTRÖM agreed with Mr. Zourek.

13. Mr. LIANG, Secretary to the Commission, explained that the Secretariat's note on item 9, which involved the examination of certain technical questions, would not be ready until the beginning of the week. It would therefore be desirable to start with item 8, thus giving Mr. Scelle an opportunity to prepare himself for the discussion on item 7.

14. The CHAIRMAN suggested, in the light of the discussion, that the Commission should start with item 8, consult Mr. Scelle on his arrival about taking up item 7, and then pass on to item 9. As soon as Mr. François' supplementary report was ready, the Commission should interrupt its discussions and decide how to proceed with items 1 and 2.

*The Chairman's suggestions were adopted.*

*The meeting rose at 4.40 p.m.*

## 333rd MEETING

*Wednesday, 25 April 1956, at 10 a.m.*

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*Chairman:* Mr. F. V. GARCÍA-AMADOR.

*Rapporteur:* Mr. J. P. A. FRANÇOIS.

*Present:*

*Members:* Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Jaroslav ZOUREK.

*Secretariat:* Mr. LIANG, Secretary to the Commission.

### Election of First and Second Vice-Chairmen

1. The CHAIRMAN called for nominations for the offices of First and Second Vice-Chairmen.

2. On the proposal of Sir Gerald FITZMAURICE, seconded by Mr. PAL,

*Mr. Zourek and Mr. Edmonds were elected by acclamation First and Second Vice-Chairman respectively.*

**Question of amending article 11 of the Statute of the Commission: General Assembly resolution 986 (X) (item 8 of the provisional agenda) (A/3028, A/CN.4/L.65)**

3. The CHAIRMAN invited the Commission to take up item 8 of the provisional agenda: Question of amend-

ing article 11 of the Statute of the Commission: General Assembly resolution 986 (X).

4. Faris Bey el-KHOURI said that, although the Commission was undoubtedly better qualified than the General Assembly to fill any casual vacancy, its composition would be strengthened were the decision to be taken by the latter body. He could see considerable advantage in the Commission's thereby being regarded as enjoying a status comparable with that of the International Court of Justice, and would therefore be in favour of amending article 11 of the Commission's Statute in that sense.

5. Mr. SANDSTRÖM endorsed that view, except in respect of the last year of the five-year term of office, during which time any casual vacancy should preferably be filled by the Commission itself.

6. Mr. ZOUREK, stressing the practical aspect of the question, pointed out that, owing to the General Assembly's regular annual sessions being subsequent to those of the Commission, the proposed amendment of article 11 would entail a very considerable delay whenever a vacancy occurred while the Commission was in session. Moreover, the privilege granted by article 11 to the Commission at its establishment in 1947 had never been abused; the vacancies already filled had given rise to no criticism, for the Commission had always discharged that particular duty with care and competence. The comparison with the International Court of Justice made by Faris Bey el-Khoury, despite its superficial attractiveness, was hardly relevant, for that body was a court of magistrates whose duty it was to administer justice, whereas the Commission's task was to prepare draft recommendations on selected problems of international law for submission to the General Assembly. He was opposed to the amendment of article 11.

7. Sir Gerald FITZMAURICE said that the previous speaker's point was pertinent; in fact, vacancies did tend to occur prior to a session of the Commission and after a session of the General Assembly. He therefore wondered whether consideration had been given to the probability that the proposed amendment would mean that the Commission would have to function at least one short for an entire session.

8. Mr. LIANG, Secretary to the Commission, said that he could recall no detailed discussion of that point at the tenth session of the General Assembly; but there certainly had been prolonged deliberation in 1947, when the Statute of the Commission had been adopted, and the weighty arguments that had led to the adoption of article 11 had been precisely those advanced by the two previous speakers.

9. Mr. AMADO well recalled the practical reasons for which article 11 had been adopted in 1947. At the General Assembly's tenth session, the amendment had been proposed without adequate preparation, and seemed to have been inspired by an exaggerated perfectionism. The argument in favour of the larger electorate had carried no great weight in the General Assembly, and the joint amendment submitted by the delegations of Costa Rica and India reflected the concern of many

representatives. In view of the fact that as a result of its adoption the Commission might well be deprived of the services of one of its members for a whole year, he would oppose the amendment.

10. Mr. SANDSTRÖM reiterated that it would be advisable for the Commission itself to fill a vacancy occurring during the last year of the term of office. Speed in filling a given vacancy, however, was not of vital importance, because experience showed that the Commission had rarely been at full strength. Any vacancy which arose during the first four years of the term of office should certainly be filled by the General Assembly, which, in view of the political factors involved—he had in mind in particular the principle of geographical representation—was better fitted than the Commission to undertake that task.

11. Sir Gerald FITZMAURICE questioned the force of Mr. Sandström's point. In fact, the Commission had always tended to elect a national of the same country as his predecessor. The question of geographical representation therefore did not arise, and the issue was the purely practical one of selecting the most suitable individual to fill the vacancy.

12. He endorsed the views of Mr. Zourek and Mr. Amado. A two-year delay in filling a vacancy would be most undesirable. Unless there were stronger reasons for amending the article than had so far been adduced, he would favour the retention of the existing system.

13. Faris Bey el-KHOURI, referring to article 8 of the Commission's Statute, said that not only was the General Assembly better qualified than the Commission to assure a "representation of the main forms of civilization and of the principal legal systems of the world", it was also the most appropriate body to apply that provision. That was a right that the Commission should not arrogate to itself.

14. With regard to the difficulty that the General Assembly met only once a year, he would recall previous difficulties encountered by the Commission itself in attempting to fill casual vacancies quickly. In any event, a quorum would always be assured. Despite the fact that the Commission's choice might be a better one, the decision should be left to the Assembly.

15. Mr. AMADO suggested that further consideration of the question be deferred until the arrival of the absent members of the Commission.

*It was so agreed.*

16. The CHAIRMAN said that for the same reason it would be advisable to defer also taking up item 7—Arbitral procedure: General Assembly resolution 989 (X).

*It was so agreed.*

**Publication of the documents of the Commission: General Assembly resolution 987 (X) (item 9 of the provisional agenda)**

17. The CHAIRMAN invited the Secretary to the Commission to make a statement on item 9 of the provisional agenda.

18. Mr. LIANG, Secretary to the Commission, recalling that the matter of publication of the Commission's documents had been discussed at the tenth session of the General Assembly, which on 3 December 1955 had adopted resolution 987 (X), based largely on the Commission's recommendations, said that the question had two aspects—current and future documents, and those relating to previous sessions. The General Assembly, while discussing the question of the languages in which the documents should be printed, had adopted a different solution for each part of the problem. It had finally been decided, first, that the current and future documents of the Commission should be published in English, French and Spanish, and, secondly, that documents other than summary records pertaining to previous sessions, such as special reports and principal draft resolutions, should be printed in their original language, while summary records should be printed initially in English only.

19. There were also certain technical questions that the Commission might care to discuss. He had in mind, in particular, the form of publication. The Secretariat's proposal contemplated a yearbook consisting of three parts: Part 1, containing preparatory documents—for example, special rapporteurs' reports, comments of governments and the like; Part 2, the summary records of the Commission's meetings; and Part 3, the Commission's report to the General Assembly. It would be impossible to print all the relevant documents of previous sessions in one year, and it was proposed to liquidate the backlog of the period 1949-1955 in three years.

20. He suggested that detailed discussion of the question should be deferred until the document to be submitted by the Secretariat had been distributed.

21. On the proposal of Mr. KRYLOV, *it was decided to defer further consideration of item 9 of the provisional agenda.*

#### **Regime of the high seas; Regime of the territorial sea (items 1 and 2 of the provisional agenda) (A/CN.4/97)**

22. Mr. FRANÇOIS, Special Rapporteur, explaining the issues connected with Section I: Order of chapters, of the special report (A/CN.4/97) he had prepared, said that the question of the order of chapters might appear relatively insignificant, but in view of the necessity for integrating the several questions treated into a systematic whole, it was of some importance. Of the two possible approaches described in paragraphs 5 and 6 of the report, his own preference was for the second—that of dealing with the topics in order of diminishing state sovereignty. If that method were adopted, the order of items would be, after an introduction, the territorial sea, the continental shelf, the contiguous zones and, lastly, the high seas. The Commission itself must decide that question of presentation.

23. In that connexion, he mentioned a letter received from Professor Böhmert, of Kiel, criticizing the fact that the Commission seemed to give equal consideration

to the continental shelf and to chapters dealing with the other parts of the sea, and making the point that such treatment created an erroneous impression that what was in fact only *lex ferenda* was *lex lata*. He himself did not attach great importance to that objection, and would not favour the exclusion from a report to the General Assembly on the provisions governing the various parts of the sea of a chapter giving the continental shelf its rightful place, but pointing out, of course, that much still remained controversial in that matter. He therefore preferred the order of chapters set out in paragraph 8.

*Further consideration of item 1 of the provisional agenda was deferred.*

*The meeting rose at 11.10 a.m.*

## **334th MEETING**

*Thursday, 26 April 1956, at 10 a.m.*

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*Chairman:* Mr. F. V. GARCÍA-AMADOR.

*Rapporteur:* Mr. J. P. A. FRANÇOIS.

*Present:*

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*Secretariat:* Mr. LIANG, Secretary to the Commission.

#### **Regime of the high seas; Regime of the territorial sea (items 1 and 2 of the provisional agenda) (A/CN.4/97) (*continued*)**

1. The CHAIRMAN, inviting the Commission to continue its consideration of the Special Rapporteur's report (A/CN.4/97) on the regime of the high seas and the regime of the territorial sea, called for comments on Section 1.

#### *Section 1. Order of chapters*

2. Mr. EDMONDS thought that, although the order of chapters was not of great importance, it would be more logical to start with the general principles relating to the freedom of the high seas and then to continue with the provisions on the territorial sea, the continental shelf and the contiguous zone as derogations from the general