Document:-

A/CN.4/SR.335

Summary record of the 335th meeting

Topic:

Law of the sea - régime of the high seas

Extract from the Yearbook of the International Law Commission:-

1956, vol. I

the Commission should follow the same line as it had taken on the continental shelf.

37. Mr. ZOUREK thought it might be advisable to take a provisional decision in order to avoid subsequent reopening of the discussion. He suggested that there should be no provision for comprehensive compulsory arbitration, but that the procedure should be determined by the nature of each specific case. For instance, certain provisions with regard to the arbitration machinery applicable to disputes on fishing would not govern cases relating to the continental shelf.

38. At the suggestion of the CHAIRMAN, *further discussion of Section 3 was deferred.*

39. Mr. ZOUREK asked to what extent articles already adopted by the Commission would need revision in the light of replies from governments, and whether the Special Rapporteur had contemplated reopening the whole question of the continental shelf irrespective of government comments.

40. Mr. FRANÇOIS, Special Rapporteur, in reply, said that the Commission had a twofold task. In the first place, it had to examine the replies from governments in order to decide whether any modification of the Commission's original standpoint was called for. Secondly, it had to bring into line various provisions—even those upon which there were no government comments—in order to smooth out possible inconsistencies in the texts —for instance, in the article quoted in paragraph 24 of his report, which Mr. Scelle contended raised a question of discrepancy. He did not accept that contention, but the issue must be decided by the Commission. That, of course, did not imply revision of the text of every article, in particular those which had been adopted after a second reading. There was obviously no time to re-examine every question of principle. Texts already adopted should be reviewed only if uniformity of approach required such a course.

41. The CHAIRMAN, endorsing the Special Rapporteur's opinion, said that a distinction must be drawn between the two types of article: those that had been definitely adopted, such as the provisions on the continental shelf and contiguous zone, and those that had been provisionally approved at the seventh session and subsequently submitted to governments for comment, such as the articles on the territorial sea and the conservation of the living resources of the sea. Provisionally approved articles must be given detailed consideration and, where appropriate, amended. Definitely adopted articles must, as the Special Rapporteur recognized, be brought into line in the final report.

42. There was, moreover, a further reason for reviewing at least some aspects of those articles. The Inter-American Specialized Conference on Conservation of Natural Resources, which had recently met at Ciudad Trujillo, had studied not only the legal, but also the scientific and economic aspects of the subject and had adopted a resolution on the continental shelf very similar to the articles adopted by the Commission at its third session which had, in fact, inspired the Conference's recommendation. The new data on many technical aspects of the whole subject made available by the Conference would materially assist the Commission in its work, while fresh elements arising out of government replies must certainly be taken into account.

43. He himself intended to submit a proposal amending the definition of the continental shelf contained in the draft adopted by the Commission at its fifth session and providing a definition of the term " natural resources " used in the same draft.

The meeting rose at 1.05 p.m.

335th MEETING

Friday, 27 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.

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

Section 7, sub-section A: — Right of passage in waters which become internal waters when the straight baseline system is applied

1. The CHAIRMAN, inviting the Commission to continue its consideration of the Special Rapporteur's report on the regime of the high seas and the regime of the territorial sea (A/CN.4/97), requested the Special Rapporteur to introduce Section 7, sub-section A.

2. Mr. FRANÇOIS, Special Rapporteur, outlined the historical background of the question as set out in paragraphs 43-48 of his report.

3. Sir Gerald FITZMAURICE said it was an important question and should certainly be considered by the Commission.

4. The Special Rapporteur, while summarizing his (Sir Gerald Fitzmaurice's) arguments very fairly, had given reasons for dissenting from them that were not entirely satisfactory. In paragraph 46 he had stated that the case of Her Majesty's Government proceeded from the erroneous assumption that the essential purpose of the straight baseline system was to extend the outer limit of the territorial sea. The proposal he (Sir Gerald Fitzmaurice) had put forward at the Commission's seventh session[1] had certainly not been dependent on that assumption. It was clear that the purpose of the straight baseline system was to increase the area of internal waters and, indirectly—although that consideration was only secondary—to extend the total area of waters over which the coastal State enjoyed jurisdiction.

5. The straight baseline system had two consequences: it extended the area of internal waters and, what was more important, established a new type of internal waters. Prior to the introduction of the straight baseline system, there were two clearly defined types of waters—territorial waters and internal waters. The majority of the latter lay behind the coastline of the State, and in that case no question of the right of innocent passage arose. Thus all or most waters to the seaward of the coastline were territorial waters, carrying the right of innocent passage because they were the only means of approach to the ports of the State in question or the usual means of getting from one part of the sea to the other.

6. The position had since changed; under the straight baseline system, waters to seaward of the coastline might become juridically internal waters and, incidentally, they might be of very considerable extent. In every other respect, however, such waters remained more akin to territorial waters, which they had previously been. It was therefore just as rational and necessary to have recognized access to them as previously. Again, as regards access to the open sea, waters that had been territorial had become internal. There was therefore a strong case for the recognition of the right of innocent passage through waters enclosed between the coastline and a straight baseline, at least in respect of waters to landward of the baseline through which the right of passage had previously been recognized.

7. It might be argued that the provision would be required in the code for that purpose, because in such cases a State would automatically grant the right of innocent passage. That condition, however, had applied when such waters had been territorial waters, and a specific rule that had been found necessary under those circumstances was equally justifiable when, by a change in legal status, they had become internal waters.

8. Mr. PAL wondered what was the precise meaning of the term " coastline " as used by the previous speaker.

9. His understanding was that the judgment of the International Court of Justice in the Fisheries case between the United Kingdom and Norway had not established any new principle of law and that the Commission had based article 5 on that judgment. If that were so, recognition of the establishment of a baseline was merely the application of an existing law. He failed to see, therefore, what was the innovation with regard to internal waters. He could not accept the assumption that a part of the territorial sea had been converted into internal waters, for it would seem that the area in question had always been regarded as internal waters, with accompanying right of innocent passage. Acceptance of Sir Gerald Fitzmaurice's proposal might adversely affect similar cases of tacit recognition of right of passage.

10. Sir Gerald FITZMAURICE, replying to Mr. Pal, said, first, that in referring to the coastline he had had in mind the physical line of delimitation of land and sea as depicted on the chart by the low-water mark.

11. Without going into the question of whether the judgement of the International Court of Justice in the case referred to had given effect to an existing law or had introduced an innovation, it could be said that at most the judgment amounted to a recognition of the faculty of certain countries to establish a straight baseline system. It was not mandatory, and indeed most countries had experienced no difficulties in the functioning of the low-water system. A straight baseline system had to be specially established, and unless and until that had been done, a country was deemed to operate the low-water-mark system, and the sea areas concerned remained part of the territorial sea, with the right of innocent passage. If, at a stroke of the pen, a State could convert those waters into internal waters, with the result of becoming authorized to withhold the right of passage, the situation would obviously be most unsatisfactory. A country's right to establish a straight baseline system should be subject to the right of innocent passage through the areas in question.

12. Mr. SANDSTRÖM, endorsing the opinion expressed by Mr. Pal, said that the judgment of the International Court of Justice in the Anglo-Norwegian dispute had been declaratory and not attributive. He recalled the Swedish Government's comments on article 5,[2] stressing the principle that the baselines delimiting the territorial sea should coincide with the outer limits of internal waters. There was no question of introducing a new type of waters.

13. Sir Gerald Fitzmaurice's argument was, however, fairly strong, and it should be possible, as he had suggested, to reserve the right of innocent passage through internal waters where such a right had been previously recognized.

14. Mr. EDMONDS said that Sir Gerald Fitzmaurice's arguments were compelling and unanswerable. One of the main reasons for the establishment of the straight baseline system was that of necessity where the configuration of certain coastlines made it difficult for a mariner to ascertain whether, at a given point, he was in territorial waters or on the high seas. The purpose of the system was one of clarification. There was no ground for applying different provisions to that part of the internal waters

[1] A/CN.4/SR.299, paras. 85-89 and A/CN.4/SR.316, paras. 44-56.

[2] *Official Records of the General Assembly, Tenth session, Supplement No. 9* (A/2934), pp. 38-39.

between the straight baseline and the coastline, for the sole reason that the territorial sea had been moved to seaward by the utilization of straight baselines. The Commission should adopt Sir Gerald Fitzmaurice's proposal.

15. Mr. FRANÇOIS, Special Rapporteur, said that the main question at issue was the purpose of establishing baselines. Sir Gerald Fitzmaurice had suggested that it was the extension of the territorial sea. The comments of Scandinavian governments, however, cast doubts on that assumption, for it appeared that the objective was to retain a certain area as internal waters for their own needs. If that were so, the question of recognition of the right of passage did not arise, because it was precisely to prevent such a contingency that the State claimed the straight baseline system.

16. There was a further objection to Sir Gerald Fitzmaurice's proposal. One advantage of the straight baseline system was that of simplicity, when applied to a very indented coast where it was difficult to fix the natural coastline. Sir Gerald Fitzmaurice's proposal would entail the complications of a line closely following the coast; in fact, two lines would be required, and the establishment of one of them could be a difficult operation. The lack of accuracy in the delimitation of the new zone would give rise to difficulties over the right of passage. Mr. Pal and Mr. Sandström had disposed of the impression that article 5 introduced a new system. It would be difficult to adopt a system which distinguished between States that already applied the straight baseline system and were justified in regarding the zone of internal waters as internal, and States that adopted the straight baseline system in future and were compelled to recognize the right of passage in the new zone.

17. Sir Gerald FITZMAURICE, replying to the Special Rapporteur, said that no difficulties should arise with regard to his second point, because granting of the right of passage depended merely on a knowledge of the position of the straight baseline, which was perfectly simple to ascertain. If his principle were admitted, immediately a vessel crossed that baseline it would have the right of innocent passage through the waters between it and the coast.

18. The Special Rapporteur's first point might be met by restricting the right of innocent passage to cases where that right had previously been normally exercised.

19. As regards reasons for the establishment of the straight baseline system, it would be highly probable that if the areas in question had genuinely had the character of true internal waters, they would not previously have been much used by international shipping, for if they had been so used, they would not as a rule have markedly shown the character of internal waters. If so, the case would not arise. On the other hand, he hoped that the Special Rapporteur would admit the possibility of some countries' being tempted to abuse the straight baseline system in order to extend the area of their internal waters to waters habitually used by international shipping.

20. Mr. SANDSTRÖM said that the reason for the establishment of the straight baseline system was surely not an extension of internal waters, but that such waters, owing to the geographical configuration of the coastline, were essentially internal waters in character.

21. Mr. FRANÇOIS, Special Rapporteur, said that there seemed to be grounds for possible agreement between him and Sir Gerald Fitzmaurice. He would appreciate it if the latter would prepare a text setting out his views.

22. Sir Gerald FITZMAURICE said he would willingly do that.

23. Mr. ZOUREK observed that the problem did not seem to be a new one, since even with the low-water-mark system, there was always a certain area of water between the low-water mark and the coast. Besides, as had already been pointed out, there were the waters of bays to be considered. Lastly, it must be remembered that the same problem arose in regard to the waters of ports, which belonged to internal waters, and to the waters of roadsteads, which many writers considered as also forming part of internal waters. It would be difficult to recognize, either in theory or in practice, two classes of internal waters subject to different legal regimes. He thought that the difficulty was mainly due to the fact that the right of innocent passage had not been sufficiently clarified. That right included lateral passage and also passage into and out of ports and roadsteads. If it were free access to ports that was contemplated, that right seemed to be universally recognized with regard to ports opened to international traffic by the coastal State. He felt that if that point were clarified, Sir Gerald Fitzmaurice would be satisfied.

24. The CHAIRMAN said that article 5, as had been his intention when he had submitted a text at the seventh session,[3] had been based on the judgment of the International Court of Justice in the Fisheries case between Norway and the United Kingdom, and it was natural that the Commission, having adopted a new article on the straight baseline system, should take account of the fundamental concept behind the Court's judgment. The Anglo-Norwegian dispute, however, had been in respect not of navigation, but of fishing. The question of navigation could be considered from a different angle. A distinction must be drawn between what he would call the old internal waters and new internal waters based on the straight baseline system. In the case of the former, the right of passage was in practice granted only for access to ports. In the case of the latter, however, the situation was different, because the new delimitation might affect the right of passage through the territorial sea, a right which should be safeguarded. A new law had recently been passed in Cuba providing for measurement of the territorial sea by the straight baseline system. But there was no intention of preventing innocent passage, the purpose of the law having been exclusively the conservation of the living resources of the sea.

25. Since there was no question of setting up a new type of internal waters, there should be no difficulty in

[3] A/CN.4/SR.317, para. 2.

adopting suitable articles, the various cases mentioned being regarded as exceptions to the general system governing internal waters.

26. Mr. KRYLOV said that he could not give a definite opinion on Sir Gerald Fitzmaurice's proposal until he had seen the text. Despite its attractions, he feared that it might be a somewhat risky innovation.

27. Mr. ZOUREK said that one important aspect of the question should be clarified: was any other right of passage involved than that of access to ports? The establishment of straight baselines amounted to simplification of the coastline, and it was therefore difficult to argue that the right of passage in waters thus enclosed was necessary for navigation on the high seas.

28. Sir Gerald FITZMAURICE said that Mr. Zourek's point, however valid, applied only to one, admittedly frequent, case: that of a bay of shallow indentation, the baseline being drawn from one end to the other. Baselines, however, were frequently drawn, not straight across bays, but between the land and islands or outlying rocks. Such baselines might well enclose waters that were a natural passage for ships proceeding on their lawful occasions to and from ports outside that zone.

29. Mr. SANDSTRÖM pointed out that there had been some criticism from governments with regard to the drawing of straight baselines for economic reasons, mentioned in article 5. That question was related to Sir Gerald Fitzmaurice's proposal.

30. Sir Gerald FITZMAURICE said the point was hardly relevant. It was not a question of the method of, or the reasons for, drawing a particular straight baseline. The point was that such a baseline existed.

31. Mr. AMADO referred to the Commission's report on its sixth session where the problem had been presented with admirable clarity. He had an open mind on the question. While appreciating Sir Gerald Fitzmaurice's point of view, he saw some danger in admitting exceptions in a corpus of general provisions.

32. Faris Bey el-KHOURI suggested that article 5 be amended in the sense that the establishment of a straight baseline by a coastal State should not involve any obstruction of navigation. The establishment of a straight baseline system should not be a unilateral act, but should be preceded by consultation with other States.

Further consideration of sub-section A was deferred.

Sub-section B: Exploration and exploitation of the sea-bed and the subsoil of the high seas outside the continental shelf

33. Mr. FRANÇOIS, Special Rapporteur, said there had been some criticism of the Commission for having neglected that aspect of the subject. It was, however, a purely theoretical question, and it would be a work of perfectionism to embark on its codification. The Commission should not examine it at present.

34. Sir Gerald FITZMAURICE, while in substantial agreement with the Special Rapporteur, pointed out that there were sea areas where the depth did not exceed 200 metres which were nevertheless remote from the continental shelf. Admittedly, they were few.

Further consideration of sub-section B was deferred.

Sub-section C: Scientific research on the high seas outside the continental shelf

35. Mr. FRANÇOIS, Special Rapporteur, referring to the articles in the *Yale Law Journal* of April 1955 on the subject of hydrogen bomb tests on the high seas, mentioned in paragraph 51 of his report, endorsed Mr. McDougal's contention, reproduced in abridged form in the *American Journal of International Law* of July 1955, that what was most relevant in prior prescriptions from the regime of the high seas was simply the test of reasonableness. He stressed the importance of the concept of reasonableness, which had been frequently introduced by the Commission. In paragraph 52, he had drafted a statement of principle which the Commission might care to consider.

36. Mr. PAL said that the statement of principle formulated by the Special Rapporteur in paragraph 52 of his report did not cover the issue referred to by him in paragraph 51. The issue referred to in paragraph 51 was not whether one State was entitled to use the high seas to the exclusion of another State on any ground, but whether a particular kind of use was at all and, if so, to what extent, permissible, to any State. Paragraph 51 correctly brought out the issue, but the statement of principle in paragraph 52 completely avoided it and proceeded to provide for some other quite innocuous case. In its comments on article 2 of the draft regulations on the regime of the high seas, the United Kingdom Government had suggested the addition to the four freedoms therein specified of a fifth freedom—namely, " freedom of research, experiment and exploitation ". The statement of principle by the Special Rapporteur in paragraph 52 was really in compliance with that suggestion of the United Kingdom Government.

37. The first question to be considered was whether there should be any statement of principle at all. There he agreed with the Special Rapporteur that the Commission should give a ruling one way or the other, for that the matter constituted an international issue was undeniable. The Commission's decision, however, must be in harmony with the conscience of the international community. The Commission could not ignore the fact that in recent years powerful weapons of mass destruction had been invented and tested on the high seas and that, although political considerations were involved, some provision should be inserted in the draft prohibiting the use of the high seas, which were *res communis*, in a manner which might be injurious to mankind. Unless that new factor were taken into account little purpose would be served by the declaration regarding the freedom of the high seas offered by the Special Rapporteur in the first sentence of the text he had put forward in paragraph 52. He would accordingly propose as a basis for discussion an alternative text reading:

" Freedom of the high seas does not extend to any such utilization of the high seas as is likely to be harmful to any part of mankind. Scientific research and

tests of new weapons on the high seas are permissible only subject to this qualification, as also to the qualification that they do not interfere with the equal freedom of other States."

38. Mr. KRYLOV believed that the first sentence of Mr. Pal's text would suffice. However, he had no rigid objection to the second sentence provided the words " and tests of new weapons " were deleted, since it was widely held that such tests should not be carried out on the high seas at all.

39. Mr. PAL accepted Mr. Krylov's amendment.

40. Sir Gerald FITZMAURICE said that, while there would be general sympathy with the object of Mr. Pal's proposal, it would be difficult to accept in its present form. First, it was couched in terms so general as to be incapable of precise interpretation. Controversy was already rife, and was likely to continue, concerning the extent to which scientific experiments were harmful, but on a strict interpretation of Mr. Pal's wording they might be prohibited altogether. Secondly, Mr. Pal had implicitly drawn an invidious distinction between the use of the high seas and the use of the land for carrying out experiments, which was quite untenable. Whatever the correct conclusion, there was no case for discrimination. In view of the political questions involved, it might be as well to avoid any specific mention of tests of new weapons, particularly as such a provision might prove unacceptable to governments. In article 2 of the draft concerning the regime of the high seas adopted at the previous session, the Commission had already enumerated certain freedoms,[4] and he had always felt that freedom to conduct scientific experiments and research should be added. That might be done now with a qualification on the lines of the first sentence in the Special Rapporteur's text.

41. Mr. PAL, replying to Sir Gerald Fitzmaurice's second objection, said that as he was not framing a general proposition it was unnecessary to mention scientific experiments on land. The Commission was now dealing with the high seas.

42. Mr. SANDSTRÖM said that he had felt hesitant about the need for a statement of principle of the kind put forward by the Special Rapporteur, and the present discussion had done nothing to dispel his doubts. Mr. Pal's text was extremely vague. It was unlikely that anything useful could be said at the present stage when so little was known about the effects of the scientific experiments in question. However, if it were finally decided that some provision had to be included, he would be prepared to support the first sentence of the Special Rapporteur's text.

43. Mr. ZOUREK said that the principle stated in the comment on article 2 that " States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States " [5] was the generally accepted corollary to the freedom of the seas, but the Special Rapporteur appeared to be going back on it by introducing the concept of " reasonableness ". Though the Commission had on some occasions resorted to that criterion for lack of anything better in matters where rules of international law did not yet exist, in the present instance it was quite inadmissible, because it would enable States to violate established principles of international law by claiming that their action was " reasonable ".

44. The Commission must distinguish clearly between scientific experiment and tests of weapons of mass destruction. Experiments on the high seas with atomic or hydrogen bombs must be considered as a violation of the principle of the freedom of the high seas. He feared that the Special Rapporteur had allowed himself to be influenced too quickly by the advocate of one point of view without studying the numerous articles, notably by Japanese authorities on international law, which put forward the other.

45. There was no reason for abandoning or shifting from the position adopted at the previous session. Even those who wished to introduce the criterion of " reasonableness " must admit that if account were taken on the one hand of the interests of native populations, of the rights of all users of the high seas and, with regard to the living resources of the high seas, the rights of all mankind, and on the other hand of the interests of those who carried out experiments with weapons destined to destroy humanity, the answer to the question raised could only be that given by existing international law. He did not agree with those who wished to ignore the question raised during the discussion on the pretext that it was a political one; for the application of international law always had political aspects. The Commission had been called upon to define the regime of the high seas, and it must also explain what constituted a violation of the freedom of the high seas. Otherwise serious harm might result for the populations of regions bordering on the high seas, for maritime navigation and for all those who lived by the produce of the sea. If the Commission's report passed over that point in silence it would be an inexplicable omission. The text proposed by Mr. Pal, in its amended form, was fully justified and formulated existing international law.

46. Mr. FRANÇOIS, Special Rapporteur, said that it was precisely because he realized that the public would be surprised if the Commission were to pass over the subject in silence that he had put forward his text as a basis for discussion. Even if it were eventually decided not to include any provision among the draft articles, at least a useful exchange of views would have been held.

47. He agreed with Sir Gerald Fitzmaurice that Mr. Pal's text was far too general and quite unacceptable as a legal text. There were a number of activities, such as fishing with very modern equipment, which could be prejudicial to other States, but could not be prohibited, and in that connexion he would like to point out in reply to Mr. Zourek that the particular sentence in the comment on article 2 to which he had drawn attention was loosely phrased and would be difficult to defend on purely legal

[4] *Official Records of the General Assembly, Tenth session, supplement No. 9.* (A/2434), para. 18.

[5] Ibid.

grounds. Scientific research and experiment must be judged according to whether they were justified even if harmful, and he saw no way of avoiding the criterion of " reasonableness ". He saw no insurmountable objection to omitting the second sentence of his text, although that would be somewhat unrealistic, since it was obviously tests of new weapons which were in question.

48. Mr. PAL considered that the term " harmful " was perfectly capable of precise definition; nor could there be any doubt about the meaning of the words " any part of mankind ", his object being to protect any group of people, however small. The example of modern fishing techniques chosen by the Special Rapporteur was not a happy one, because, while their use might damage the economic interests of other States, they could not possibly be described as harmful to mankind. He therefore again appealed to the Commission to accept his draft. The Special Rapporteur had really failed to come to grips with the issue, and the first sentence of his text, though it might salve the conscience of those members who were uneasy about omitting all mention of the matter, merely expressed a general limitation on the freedom of the high seas.

49. Mr. KRYLOV said that the difference between the two texts was that the Special Rapporteur's, which he regarded as unsatisfactory, enunciated an obligation on States, whereas the purpose of Mr. Pal's was clearly to protect human beings from exposure to danger. He continued to favour the latter.

50. Mr. FRANÇOIS, Special Rapporteur, said that in order to meet Mr. Krylov's point he would be perfectly prepared to substitute the word " others " for the words " other States " in his text.

51. Mr. SANDSTRÖM maintained that the real difference was that the Special Rapporteur had introduced the concept of what was reasonable and justifiable, so that utility had to be balanced against possible harmfulness. That had been the criterion in the past, when naval exercises and target practice had been carried out although they might have caused inconvenience to other States.

52. Mr. KRYLOV observed that the Commission was at the moment concerned with tests, whose effects could still not be properly measured.

53. Sir Gerald FITZMAURICE maintained his original objections to Mr. Pal's text, which, while covering the special case its author had in mind, would also go far beyond what was desired. He also pointed out that many scientific experiments which had produced results of the utmost benefit to mankind had, during the early stages, proved very harmful to individuals.

54. Mr. AMADO observed that if the Special Rapporteur's second sentence were omitted, the remaining text, while in conformity with the other articles, would contain no specific reference to scientific research. He therefore suggested that the words " for purposes of scientific research " should be inserted after the words " high seas ".

55. While sympathizing with the object Mr. Pal had in mind, he preferred the Special Rapporteur's text, which was framed in more suitable language for a legal code. At the same time he would find it difficult to vote against the first sentence in Mr. Pal's text and hoped that the proposal would be expressed in more suitable form.

56. Mr. EDMONDS said that the Special Rapporteur and Mr. Pal had approached the problem from entirely different angles. The former was concerned to ensure that States should do nothing on the high seas which might prevent others from exercising the same rights, while the latter wished to prevent States from using the high seas in a way which might cause injury to persons. Because of the political considerations involved and the difficulty of assessing the effects of experiments scientifically, he believed it would be prudent to make no statement on the matter. It would only create confusion and might result in unforeseen difficulties.

57. Mr. ZOUREK said that the word " unreasonably " was extremely dangerous and might destroy the freedom of the high seas, so that he could not condone its use. Nor did he think that on any grounds it would be possible to justify tests with weapons of great destructive power. He disagreed with both arguments adduced by Mr. Sandström. Experiments with atomic weapons, unlike naval exercises, could not be controlled and a great deal was already known about their effects, even on people many hundreds of miles away from the site of the experiments. The extremely harmful effects of experiments with atomic bombs were known from previous tests, particularly that in which the Japanese fishing vessel *Fukuryu Maru* had been subjected to radioactivity although outside the danger zone. He agreed with Sir Gerald Fitzmaurice that in the interests of mankind the real solution was to prohibit all tests of that nature.

58. Sir Gerald FITZMAURICE pointed out that he had not expressed any opinion as to whether or not atomic experiments should be carried out. He had only contended that, if they were prohibited, the ban should not single out the sea for the application of a special regime.

59. Mr. AMADO agreed with Mr. Zourek that the concept of reasonableness was far too subjective for a legal text.

60. The CHAIRMAN said that a fundamental difference between the two texts which had not yet been mentioned was that they were designed to protect entirely different interests. The Special Rapporteur was concerned to protect the freedom of the seas, of navigation, of fishing, etc., whereas Mr. Pal's aim was to protect the health and personal safety of human beings throughout the world. Perhaps it might be possible to word the proposals in such a way that both could be adopted on their own merits.

61. Mr. KRYLOV said that the difference between the two texts was not as great as the Chairman had suggested. After all, law was made *ad usum hominis*.

62. Mr. FRANÇOIS, Special Rapporteur, said that after the very useful exchange of views it would be

desirable to postpone a decision until they came to discuss article 2 of the draft of the regime of the high seas, by which time some of the absent members might have arrived.

It was so agreed.

The meeting rose at 1.05 p.m.

336th MEETING

Monday, 30 April 1956, at 3 p.m.

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Chairman: Mr. F. V. GARCÍA-AMADOR.
Rapporteur: Mr. J. P. A. FRANÇOIS.

Present:

Members: Mr. Gilbert AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. L. PADILLA-NERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

Adoption of the provisional agenda (A/CN.4/95) (*resumed from the 331st meeting*)

1. The CHAIRMAN, observing that the Commission was now practically at full strength, proposed that the provisional agenda be now adopted.

It was so agreed.

Publication of the documents of the Commission: General Assembly resolution 987 (X) (item 9 of the agenda) (A/CN.4/L.67) (*resumed from the 333rd meeting*)

2. The CHAIRMAN, before inviting the Commission to resume consideration of item 9, welcomed Mr. L. Padilla-Nervo, who was attending the Commission's session for the first time.

3. Mr. PADILLA-NERVO said that he had followed the work of the Commission, which he regarded as one of the most important organs of the United Nations, with great interest. Greatly honoured at having been elected, he had much regretted that special circumstances had prevented his taking part in the Commission's deliberations at the previous session; he hoped to have an opportunity now of making a modest contribution to its work.

4. Mr. LIANG, Secretary to the Commission, introducing the Secretariat's note on item 9 (A/CN.4/L.67) said that it dealt with a number of points in summary form. Of course the Commission was at liberty to submit to the General Assembly any further views it might have concerning the publication of its documents.

5. Mr. KRYLOV thought that most of the essential points had already been settled by the General Assembly in its resolution 987 (X). He agreed with the Secretariat that the documents should be printed by session rather than by subject so as not to run into difficulties of classification. He also agreed that everything must be done to avoid printing anything twice over. He was not entirely clear as to what was meant by " administrative questions of minor importance " in paragraph 8 of the Secretariat's note. He presumed that references to such important matters as the election of officers or elections to casual vacancies would not be omitted from the printed text of the summary records. In any work of codification the choice of documents to be printed was a major problem and he doubted whether memoranda by the Secretariat should be included in the same volume as the essential material—namely, the reports of the special rapporteurs, the summary records and the Commission's final report on the session. He would be particularly averse from such a procedure if the Secretariat's memoranda were disproportionately long by comparison with the reports of the special rapporteurs. The Commission might consider printing such memoranda separately. Finally, he wondered whether, as there would be heavy arrears to make up, it might not be advisable to start work on the more recent sessions rather than adhere to a strict chronological order.

6. Mr. LIANG, Secretary to the Commission, explained that the " administrative questions of minor importance " referred to in paragraph 8 were those of a purely procedural kind, which had no bearing on the substantive work of the Commission. He believed the Secretariat could be entrusted with the responsibility for deleting any such references from the summary records. Obviously passages relating to important matters such as the election of chairmen or discussions on the Commission's place of meeting would be retained.

7. It was for the Commission to decide whether Secretariat memoranda and studies, which were generally prepared for the assistance of special rapporteurs and were factual compilations for which he would not claim any scientific value, were to be printed.

8. Mr. KRYLOV said that it might not always be easy to decide whether or not to print the Secretariat's memoranda when they were related closely to the report of the special rapporteur.

9. Mr. SANDSTRÖM argued that although the Secretariat's memoranda might only be compilations, they sometimes had considerable value and were used extensively by the special rapporteurs. Consequently, in some