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**Summary record of the 336th meeting**

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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

instances they might have to be reproduced, particularly if they contained material omitted from the special rapporteurs' reports.

10. Mr. AMADO, referring to the last operative paragraph of General Assembly resolution 987 (X), said that the Commission had to decide whether it was necessary to re-submit the question of the printing of its documents to the General Assembly. Most of the points to be settled had been clearly stated in the Secretariat's note.

11. Mr. SALAMANCA did not think any hard-and-fast rules could be laid down as to which documents should be printed and which not, and therefore suggested that it be left to the Chairman, in consultation with the Secretariat, to decide at the end of each session. The Secretariat's suggestions concerning the publication of documents from previous sessions seemed quite acceptable.

12. Mr. PAL considered that all the types of document, including Secretariat memoranda, mentioned in the Secretariat's note were covered by sub-paragraphs 1 (a) and 1 (b) of resolution 987 (X) so that there was no need for the Commission to refer the matter back to the General Assembly.

13. Mr. LIANG, Secretary to the Commission, wished to make clear that the final report of each session would continue to be printed in the same form as before for submission to the General Assembly, but would also be reproduced at the end of the volume for each session.

14. He agreed with Mr. Pal that the "studies" referred to in sub-paragraph 1 (a) of the General Assembly's resolution included Secretariat memoranda.

15. In reply to Mr. Amado, he said that the Commission could refer the question to the General Assembly again if it chose, but first it should examine whether there was any necessity to do so.

16. Sir Gerald FITZMAURICE considered that the points of principle had already been approved by the General Assembly and that there was no need to refer back to that body. It only remained for the Commission to decide certain matters of detail. The decisions would be recorded in the report on the session, so that any points arising from them could, if desired, be raised in the Sixth Committee.

17. Summarizing those matters of detail, he said that the Secretariat's suggestion about omitting from the summary records minor questions of procedure could be accepted, as well as the suggestions regarding working documents in paragraph 9 of its note. With regard to paragraph 10, he considered that any Secretariat papers containing factual information of value should definitely be printed, but that working papers in the strict sense—that was, documents such as those reproducing two parallel texts for purposes of comparison and whose only aim was to facilitate discussion—should not be printed, because the texts would already have been reproduced elsewhere. He agreed that, as suggested in paragraph 15, editing by session was the only practicable course.

18. Finally, as it was desirable to print all material on the law of the sea as quickly as possible, he would support

Mr. Krylov's idea of starting with the more recent sessions, the fifth, sixth and seventh, and leaving the earlier ones until later.

19. Mr. SPIROPOULOS, pointing out that the General Assembly had already authorized the publication of virtually all the Commission's documents, said that there was no need to refer the whole question again to that body. He supported Mr. Salamanca's view that it could be decided at the end of each session which documents should be printed. The decision with regard to the first seven sessions might be left to the Secretary, as it would be quite impracticable for the Commission to examine all the documents involved. The essential was to select those documents which were indispensable for an understanding of the summary records; consequently, any working paper used as a basis for discussion must be reproduced.

20. For practical reasons he was inclined to favour the suggestion to start by printing the documents for the years 1953-1955.

21. Mr. LIANG, Secretary to the Commission, to avoid any misunderstanding over the Secretariat's suggestions in paragraph 9 regarding the printing of documents which had originally appeared in another language than English—the language in which the summary records would be printed—emphasized that those suggestions related only to the first seven sessions; from the present session onwards both documents and summary records would be printed in all three languages.

22. He also wished to make clear that paragraph 10 related only to working papers, in which material reproduced elsewhere was classified, analysed or summarized for the convenience of members.

23. Concerning dates of publication, he wished to inform the Commission that the Secretariat had already started editing the volume on the first session, a comparatively easy task, because there had been no reports by special rapporteurs and the memoranda submitted by the Secretariat at that session had already been printed. The Secretariat also intended to complete work on the second volume by October, so that, together with the volume on the present session, three would have been prepared for the printer by that date. While he appreciated that the material on maritime questions was of great topical interest, it would be impossible, for practical reasons, to follow Mr. Krylov's suggestion, and the volumes for the fifth, sixth and seventh sessions might not be out until 1958.

24. Mr. SPIROPOULOS pointed out that although, since the Sixth Committee could not discuss the draft in detail, it was not particularly important for the General Assembly to have all the reports on maritime questions in printed form when it came to discuss the Commission's final draft to be prepared at the present session, the volumes from the fifth session onwards would be very much needed if an international conference on the matter were convened.

25. Mr. SALAMANCA said that the Secretariat's note should have mentioned the fact that work had already been started on the volumes for 1949 and 1950.

26. Mr. LIANG, Secretary to the Commission, explained that as the publication programme was subject to certain financial arrangements, the Secretariat had not wished to commit itself to any specific dates.
27. Faris Bey el-KHOURI believed that the Secretariat could proceed immediately with the work, since all the points at issue had already been approved by the General Assembly.
28. Mr. ZOUREK also considered that there was no need to refer the question again to the General Assembly, which had left the Commission all the necessary latitude to proceed with the publication of its documents.
29. With regard to the title, he suggested that "Year-book" would not be an entirely satisfactory description of the contents, and that the volume might be called "Documents of the International Law Commission for the year —".
30. Mr. LIANG, Secretary to the Commission, said that the suggestion made by Mr. Krylov the previous year to call the volume a yearbook had been considered a practical one by the Secretariat, because that title conformed with United Nations practice and had as a precedent the yearbook of the Institut de droit international. The title suggested by Mr. Zourek was not so satisfactory. Moreover, it might be misleading as suggesting a distinction between the Commission's documents and its summary records.
31. Mr. EDMONDS suggested that the volume might be called "Proceedings of the International Law Commission for the year —".
32. Mr. LIANG, Secretary to the Commission, wondered whether such a title might not convey the impression that the volume contained the summary records only, without any of the supporting documents or the final report.
33. The CHAIRMAN did not feel the Commission need take any final decision at the present stage. The consensus of opinion was clearly that the subject need not be referred to the General Assembly again. Perhaps it would suffice to request the Rapporteur to insert a passage in the final report summarizing the views expressed during the present discussion.
34. Sir Gerald FITZMAURICE maintained that, having already agreed not to re-submit the question to the General Assembly, the Commission should now approve the suggestions put forward by the Secretariat in its note, it being understood that they would be interpreted in the light of the present discussion, and should reach some agreement on the title of the publication and the order in which the first seven volumes should be printed, so as to give the Secretariat some guidance.
35. Mr. AMADO agreed that, after the present exchange of views, a decision could be taken.
36. As perfection was not of this world, he saw no reason why the volume should not be called a yearbook.
37. The CHAIRMAN thought it would be difficult to adopt any general and rigid decision *a priori* as to which documents should be printed each time.
38. Mr. SALAMANCA pointed out that that was precisely the reason why he had advocated the practical solution of the documents being selected at the end of each session by the Chairman in consultation with the Secretariat.
39. Mr. SANDSTRÖM supported Mr. Salamanca's view.
40. Mr. LIANG, Secretary to the Commission, did not believe that that solution was altogether practicable, owing to the great pressure of work towards the end of the session. However, the problem of selection would really arise only with regard to documents of previous sessions and the Secretariat could consult the Chairman by correspondence on any doubtful points.
41. The CHAIRMAN suggested that the Commission decide not to re-submit the question of printing its documents to the General Assembly, and that the Chairman and the Commission, in consultation with the Secretary, should decide at the end of each session which documents should be printed, as well as the order of publication of the volumes for previous sessions. He also suggested that the Commission approve in principle the suggestions put forward in the Secretariat's note (A/CN.4/L.67).
- The Chairman's suggestions, together with the further suggestion that each volume should contain an index, were approved.*
- Question of amending article 11 of the Statute of the Commission: General Assembly resolution 986 (X) (item 8 of the agenda) (A/3028, A/CN.4/L.65) (resumed from the 333rd meeting)**
42. The CHAIRMAN, inviting the Commission to resume its consideration of item 8 of its agenda—Question of amending article 11 of the Statute of the Commission, relating to the filling of casual vacancies in the membership—recalled the Commission's decision at its 333rd meeting<sup>1</sup> to defer further consideration of the question, pending a fuller attendance of members.
43. Mr. PADILLA NERVO said that, in view of the fact that the question of amending article 11 would be before the General Assembly at its forthcoming eleventh session, it was desirable that the Commission should express its views clearly. There was no doubt that in such an important matter the Sixth Committee of the General Assembly would acknowledge the weight of the Commission's opinion.
44. Mr. SALAMANCA, in the light of the Commission's historical development, stressed the importance to be attached to the political factor in any consideration of the question of amending article 11. For that reason, the filling of casual vacancies should be undertaken by the General Assembly. The summary record of the previous discussion did not suggest that the difficulties indicated were of vital importance, because in fact the Commission often worked at less than full strength.

<sup>1</sup> A/CN.4/SR.333, para. 15.

Moreover, the extension of the term of office of members from three to five years would mitigate that disadvantage to some extent.

45. Sir Gerald FITZMAURICE pointed out that, with regard to the person elected, the result would be the same whether casual vacancies were filled by the Commission or by the General Assembly. The political element would have been effectively taken into account at the previous full elections by the General Assembly, which always gave due consideration to, *inter alia*, the principle of geographical distribution. Experience had shown that the Commission had tended to fill any casual vacancies by electing a national of the same country as the previous member. The only question that arose, therefore, was that of the particular individual upon whom the choice should fall; there again, the tendency had been to pay careful attention to the views, unofficially expressed, of governments; that tendency, already evident in the Commission, would be even more clearly manifested in the General Assembly. The only factor involved was that of practical convenience. The sole result of leaving the decision to the General Assembly would be that the person elected would have to miss at least one session before being able to take an active part in the Commission. The only possible advantage of amending the article would be that the Commission would be relieved of a certain responsibility. The value of that particular relief, however, had not been assessed.

46. Mr. SANDSTRÖM agreed that the question of which body should fill casual vacancies in the Commission was not of great importance in itself. While appreciating the stress laid by Mr. Salamanca on the political factor, he would stand by the opinion he had voiced at the 333rd meeting<sup>2</sup> to the effect that, while the General Assembly could fill any vacancy arising during the first four years of the term of office, the Commission itself should fill any vacancy occurring during the last year.

47. Mr. AMADO said that the Commission should place on record in simple, precise and objective terms its opinion that, while appreciating the General Assembly's interest in the question, for reasons of practical convenience it was of the opinion that casual vacancies should be filled by the Commission itself.

48. Mr. ZOUREK, also recalling the opinion he had expressed previously,<sup>3</sup> said that the existing system had worked well. While acknowledging the force of Mr. Salamanca's point, he would remind him that political factors were very much to the fore in elections by the General Assembly. Provided that the Commission respected the spirit of the General Assembly's decisions, there could be no disharmony between the two bodies. The elections by the Commission under article 11 of its Statute showed that, as regards the final choice of new members, the Commission had in all cases observed the geographical distribution of the legal systems represented in the Commission, resulting from the earlier elections by the General Assembly. Practical considera-

tions, as Sir Gerald Fitzmaurice had pointed out, should rule out the lengthy and complicated procedure of an election by the General Assembly, all for one vacancy alone. Mr. Amado's views<sup>4</sup> deserved support.

49. The CHAIRMAN put the question to the vote in the form of a proposal to recommend that article 11 of the Statute of the Commission be amended to provide that casual vacancies should be filled by the General Assembly instead of by the Commission itself.

*The proposal was rejected by 8 votes to 2, with 3 abstentions.*

50. The CHAIRMAN said that the Commission's report to the General Assembly would make clear the weight given by it to the practical considerations involved.

*It was so agreed.*

#### **Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/99 and Add.1-5)**

##### *Conservation of the living resources of the high seas*

51. Mr. FRANÇOIS, Special Rapporteur, said that some governments had submitted comments in which the principles proposed by the Commission regarding conservation of the living resources of the high seas were criticized. The objections of principle—in particular those of the Governments of China and India—called for careful consideration. The Government of the United Kingdom had also made a full reply, reproduced in document A/CN.4/99/Add.5, which contained criticisms of principle on certain points.

52. The Indian Government's criticism bore mainly on the alleged inadequacy of the provision safeguarding the rights of the coastal State which, it was claimed, should have the exclusive right of taking measures for the protection of the living resources of the sea within a reasonable distance of its coast. That criticism affected in particular those under-developed countries which for political reasons had hitherto been unable to assert their rights to develop their fishing fleets. The Chinese Government had expressed its view in less detail.

53. The United Kingdom Government had taken the opposite view in its criticism of article 29, which aimed at giving a wide degree of latitude to coastal States in that matter. Without proposing an amendment, it had found the principle enunciated in article 29 unacceptable. The replies of those three governments had fully ventilated the problem; other government comments had dealt with the jurisdiction given to the coastal State in article 29, and, in particular, with paragraph 3 of that article, and with other aspects of the question.

54. Sir Gerald FITZMAURICE thought that the Special Rapporteur had hardly given a fair description of the opinion of the United Kingdom Government. There was no question of any radical objection to the principle of article 29; indeed, the document made it clear that the United Kingdom Government was by no means unsympathetic to the idea. It had merely

<sup>2</sup> A/CN.4/SR.333, para. 10.

<sup>3</sup> A/CN.4/SR.333, para. 6.

<sup>4</sup> A/CN.4/SR.333, para. 9.

pointed out that articles 29 and 32 would require further study before an opinion could be reached as to whether an acceptable formulation could be devised for what was fundamentally a new principle.

*The meeting rose at 5.50 p.m.*

## 337th MEETING

*Tuesday, 1 May 1956, at 10 a.m.*

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*Chairman:* Mr. F. V. GARCÍA-AMADOR.

*Rapporteur:* Mr. J. P. A. FRANÇOIS.

#### *Present:*

*Members:* 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.

#### **Regime of the high seas (item 1 of the agenda)** (A/2934, A/CN.4/99 and Add.1-5) (*continued*)

#### *Conservation of the living resources of the high seas* (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the comments by governments on the draft articles relating to conservation of the living resources of the high seas.
2. Mr. PAL, recalling that in article 2 of the provisional articles concerning the regime of the high seas the Commission had in part defined freedom of the high seas, including freedom of fishing, said that in the comment on that article it was pointed out that any freedom exercised in the interests of all entitled to enjoy it must be regulated. Articles 24 to 30 were accordingly regulating articles, while article 24 in addition reaffirmed the freedom of fishing. The Government of India had no quarrel with the drafting of that article. Articles 25 to 30 were regulating articles proper, while articles 31 to 33 dealt with the settlement of disputes, and—as he understood the position—the main concern of the Government of India was with the regulating articles proper.
3. The Commission, in its comment, had recognized the special interests both of the coastal State and of all other States interested in fishing on the high seas, and the Indian Government had proceeded on that basis. The coastal State, however, had not been defined in articles 25 to 30, and the Indian Government, in its amendment

to article 26, had therefore proposed a limitation of the contiguous sea area to a belt of a hundred miles from the coast.<sup>1</sup> The Indian proposal concerning article 25 amounted to a qualification of the area of the high seas concerned by granting regulatory powers of the coastal State. In other areas of the high seas, of course, freedom of fishing would be enjoyed by the nationals of all States. Where the three conditions—the hundred-mile belt, engaging in fishing by nationals of the coastal State, and the fact that nationals of other States were not so engaged—were fulfilled, the coastal State with its special interests had a perfectly legitimate claim. In article 26 again, the Indian proposal would limit the contiguous area to a belt of one hundred miles from the coast, within which the coastal State would have regulatory powers, while beyond that belt the general provisions of the article would apply. It would be seen, therefore, that in both articles 25 and 26, the Indian Government proposed that in the contiguous zone—which was defined—regulatory powers would be granted to the coastal State. That fundamental idea also underlay its amendments to the other articles which, however, should not raise any difficulty.

4. With regard to articles 31 to 33, he understood that the Government of India would reserve its position until a decision had been reached on the subject of arbitral procedure. He wished to reserve his right to revert to the Indian proposals in the light of the discussion.

5. Mr. SANDSTRÖM said that, if a balanced view were to be obtained on the articles on the conservation of the living resources of the high seas, they should not be taken separately; for instance, if article 25 were read in relation to articles 28 and 29, a very different light would be thrown upon it. Paragraph 1 of article 28 was also applicable to cases covered by article 25, and under articles 28 and 29 the coastal State was granted what he might call its natural rights; it would, moreover, always have the opportunity of taking the initiative in making conservatory regulations. It would be inappropriate further to extend those rights to the detriment of those of other States interested in fishing in the same waters.

6. The only possibility that might be considered was a stipulation that a single State whose nationals were engaged in fishing in the area in question should approach the coastal State prior to initiating such conservation measures.

7. Sir Gerald FITZMAURICE said that the main impression he had received from reading the comments by governments on the provisional articles was one of optimism, tempered, however, by a certain sense of disappointment. On the whole, no serious objections had been raised, so it might be inferred that there was substantial acceptance of the provisions; that was all to the good. On the other hand, comments by some governments raised doubts as to whether the essential objectives of the Commission could be achieved.

8. The question of fisheries was linked with the problem of the limits of the territorial sea. Appreciating that many claims to a wide belt of territorial sea were inspired by

<sup>1</sup> A/CN.4/99.