Document:-

**A/CN.4/SR.345**

**Summary record of the 345th meeting**

Topic:

**Law of the sea - régime of the high seas**

Extract from the Yearbook of the International Law Commission:-

**1956, vol. I**

without having received any order to stop while they were within the limits of the territorial sea.

50. In the case adduced by the Special Rapporteur, he would ask what was the aircraft to do if the foreign vessel ignored the order to stop and made off?

51. His own proposal ensured the giving of a genuine order and continuous hot pursuit, although not by the same craft throughout. There was not necessarily anything unreasonable in permitting the coastal State aircraft to call in a surface craft in order to make the arrest, provided the situation were regulated. But if it were not, the existing practices would continue, whereby the foreign vessel would not have been made aware that it was required to stop, there would have been no pursuit by the reporting aircraft, and the subsequent arrest of the foreign vessel on the high seas would be illegitimate.

52. Mr. SPIROPOULOS said that, without giving a firm opinion on a question that called for further study, he wished to draw attention to the fact that the article as drafted assumed that the vessel giving the order to stop was also the pursuing vessel. In Sir Gerald Fitzmaurice's case, however, one craft, airborne, would begin the pursuit, while another craft, seaborne, would take over.

53. Mr. PADILLA-NERVO wished to make two comments. The motive in granting a coastal State the right of hot pursuit was the protection of its rights within internal waters or the territorial sea. The means of exercising that right would naturally be influenced by technical progress; that, however, was a secondary question. The right to carry out pursuit was granted to the State as such, and not to the ship. That was the ma n point.

54. As Sir Gerald Fitzmaurice had pointed out, the use of aircraft in exercising the right of hot pursuit was a fact that could not be disregarded, especially as the practice was growing, particularly among small States. Mr. Pal was right in his contention that the Commission could not ignore the situation, which must be regulated.

55. He would support Sir Gerald Fitzmaurice's additional paragraphs 5-7. He proposed an amendment, however, which he considered important: Paragraph 7 could be improved by adding at the end of the first sentence the words, " unless the aircraft is itself able to seize the vessel or to escort it to a harbour of the coastal State." That addition would allow the aircraft not only to participate, or rather to collaborate with the State ships, in the seizure, but also to effect the seizure itself. Experiences of the last war, and others, showed that in certain cases an aircraft could carry out seizure. That applied especially to seaplanes, as they could come alongside a vessel and arrest the crew, which amounted to virtual seizure of the vessel. It was also possible for an aircraft, by means of its own resources, to force an offending vessel to put into a port of the coastal State.

56. Mr. SPIROPOULOS said that it must be realized that acceptance of Sir Gerald Fitzmaurice's proposal would involve the abandonment of the classic principle that the coastal State vessel, after beginning pursuit within the territorial sea, should continue it on the high seas. The collaboration of two instruments of pursuit, aircraft and surface craft introduced an entirely new element.

57. Mr. AMADO said that maritime States were legitimately interested in the existing situation, in which aircraft were used by States for the purpose of protecting their rights in the territorial sea. That did not mean, however, that the right of hot pursuit should necessarily be extended to the aircraft of a coastal State. In the exercise of hot pursuit there was an established link between the two vessels concerned that was lacking in the case of use of aircraft, which hardly came within the institution of the right of hot pursuit as he understood it. He could not support Sir Gerald Fitzmaurice's proposal.

58. Mr. EDMONDS said that the Commission should not lose sight of fundamental principles. It was accepted that the right of hot pursuit could be exercised if a vessel of the coastal State knew, or had reason to believe, that the laws of that State had been or were being violated. In such circumstances, the right of hot pursuit could be exercised from the moment of giving the order to stop. In view of the increasing use of aircraft as part of coastal States' policing forces, there was no reason why the order to stop should not be given by one kind of vessel—or an aircraft—and the pursuit continued by another kind of vessel. The important point was the fundamental right to give the order to stop and to undertake hot pursuit, not the specific means by which that right was exercised.

59. Mr. SANDSTRÖM, supported by Mr. SCELLE, saw no objection to the pursuit being started by one vessel and subsequently taken over by another.

60. Mr. PADILLA-NERVO, concurring, said that it was not provided in paragraph 1 that the pursuing vessel must be the same as the vessel giving the order to stop. The right of hot pursuit was granted to the State and not to the instrument used in the exercise of that right.

61. Sir Gerald FITZMAURICE said that it was not infrequent in such cases for one vessel to initiate the pursuit and for another subsequently to take it over. It had never been argued that such a practice was necessarily illegitimate, provided there was no break in continuity of pursuit.

*Further consideration of article 22 was adjourned.*

*The meeting rose at 1.10 p.m.*

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## 345th MEETING

*Monday, 14 May 1956, at 3 p.m.*

CONTENTS

*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. L. PADILLA-NERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, 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.4/97 and Add. 1, A/CN.4/99 and Add. 1-6)** (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of article 22 in the light of the addendum (A/CN.4/97/Add.1) to the Special Rapporteur's report.

*Article 22: Right of hot pursuit* (continued)

2. Mr. FRANÇOIS, Special Rapporteur, said that, of the two Netherlands proposals in paragraphs 153 and 155, the first was really a drafting amendment to improve the last sentence of paragraph 3 of the article.

*The Netherlands proposal in paragraph 153 was adopted.*

3. Mr. FRANÇOIS, Special Rapporteur, said that the second Netherlands proposal was one of substance. The question had already been ventilated on previous occasions, and he hoped that the text proposed would meet with general agreement.

4. Sir Gerald FITZMAURICE said that the Netherlands proposal was dangerously vague. The granting of such a drastic right as that of hot pursuit should be clearly defined. He proposed amending the text to read: " The right of hot pursuit may be exercised only by warships and other public vessels specially authorized to that effect."

5. Mr. FRANÇOIS, Special Rapporteur, and Mr. SPIROPOULOS supported that proposal.

*Sir Gerald Fitzmaurice's proposal was adopted.*

6. The CHAIRMAN suggested that the Commission revert to its consideration of Sir Gerald Fitzmaurice's proposal for three additional paragraphs.[1]

7. Mr. AMADO, recalling his comments at the previous meeting,[2] said that he would abstain from voting both on the article on the contiguous zone and on Sir Gerald Fitzmaurice's proposal to extend the right of hot pursuit to aircraft.

8. Sir Gerald FITZMAURICE said that Mr. Padilla-Nervo's amendment[3] to his proposed new paragraph 7, concerning the possibility of the aircraft itself seizing the offending vessel, was acceptable to him.

9. With reference to the question whether the right of hot pursuit must be exercised throughout by the same vessel, although in practice the pursuit would normally be initiated and concluded by the same vessel, cases had occurred of the participation of more than one vessel. Provided there was no break in continuity of pursuit, it would be illogical to regard that practice as necessarily illegitimate. The authorities of the coastal State had the obligation of maintaining pursuit from the time of giving the order to stop. If they did that, there might well be no objection to a second vessel's taking over from the first.

10. If that principle were accepted in the case of surface craft, it must obviously be admissible in the case of aircraft. He doubted whether the argument against extending the right of hot pursuit to aircraft was well founded. The whole question centred on the agency for the application of an accepted principle of international law. As he had previously pointed out, it would be impossible in practice to exclude aircraft from participation in hot pursuit, and in order to avoid the abuse of which he had given an example at the previous meeting[4] it was logical that the right be recognized, but also regulated.

11. Mr. EDMONDS, after recalling his reference at the previous meeting to fundamental principles[5] and stressing the essential basis of the right of hot pursuit, pointed out that, if the offender made no attempt to escape, the arrest would be made within the territorial sea. Was it logical, therefore, to allow an offending vessel to escape simply because the coastal State vessel making the final arrest was not the same as the one that had given the order to stop? In that respect, an aircraft was in exactly the same position as a surface craft. Aircraft were already widely used in the various protection services of States, and when having the same qualifications as a surface vessel should not be excluded from participation in hot pursuit.

12. Mr. SPIROPOULOS said that the two questions—that of the use of aircraft in hot pursuit and that of the combination of vessels—must be kept distinct: the second was certainly fundamental. He wondered whether Sir Gerald Fitzmaurice could quote a single specific case of hot pursuit in which the vessel effecting the seizure had not been the vessel that had given the order to stop. Even if such cases existed, he doubted whether an arrest in such circumstances would be regarded as legitimate. He had in mind the case of an offending vessel being pursued on to the high seas by a coastal State's vessel that, not being fast enough to overhaul, made a signal to another vessel to take over the chase. Did the Commission really wish to authorize such a procedure? Before taking a decision, it should decide whether it wished to abide by existing international maritime law or to extend its traditional provisions. His own impression was that existing law would demand that the same vessel initiate and conclude the pursuit.

13. There was perhaps an analogy with terrestrial practice in which, under some treaties, it was permissible

[1] A/CN.4/SR.344, para. 35.
[2] *Ibid.*, paras. 17, 18 and 57.
[3] *Ibid.*, para. 55.
[4] A/CN.4/SR.344, para. 38.
[5] *Ibid.*, para. 58.

for the authorities of one State to pursue for a limited distance an offender who had entered the territory of the neighbouring State, the essential condition being that the pursuit must be carried out by the same individual agent.

14. Mr. FRANÇOIS, Special Rapporteur, said that to the best of his knowledge there had never been any recognition in international law of the participation of more than one vessel in hot pursuit. Following the principles adopted by The Hague Codification Conference in 1930, paragraph 3 referred to " the pursuing vessel ". Acceptance of the principle of legitimate pursuit by a combination of vessels would amount to an amplification of existing international law. Of course, if the right of hot pursuit were extended to aircraft, it would logically entail the authorization of collective pursuit by surface craft.

15. Mr. EDMONDS said that the fact that precedent for the legitimate use of more than one vessel in hot pursuit might be lacking was no reason for denying the principle. He would point to the analogy of a police officer who, in pursuit of a malefactor, for reasons of physical inadequacy called for the assistance of a comrade. In such a case, it could not be argued that the subsequent arrest was unlawful simply because the agent of the law had changed. Equally, it was both good law and good sense that an offending vessel should not be allowed to escape the consequences of an infringement of the law.

16. Mr. SPIROPOULOS, in reply to Mr. Edmonds, pointed out that the cases were not on a par, since the malefactor fleeing from the police officer remained in the national territory. So long as the offending vessel remained within the territorial sea, the pursuit could be taken up by any number of vessels. The whole situation changed, however, once the vessels entered the high seas, where international law specifically restricted the rights of hot pursuit. If the Commission really wished to extend existing international law by giving the coastal State further jurisdiction, he would not stand in its way. He would, however, abstain from voting on such a proposal.

17. Faris Bey el-KHOURI said that it might well be that, as the Special Rapporteur had said, there was no precedent for the authorization of a combined operation in hot pursuit. That, however, was no reason for condemning it: he could not conceive of any legislation being enacted, the effect of which would be to aid the escape of an offender. He supported Mr. Edmonds and urged the view that combined pursuit could not be prohibited in international law.

18. Mr. EDMONDS, replying to Mr. Spiropoulos, said that, theoretically, after failure to respond to an order to stop and the initiation of a continuous hot pursuit, for jurisdictional purposes the high seas would be regarded as part of the territorial sea and the coastal State could exercise the same authority therein.

19. Mr. PADILLA-NERVO, endorsing Mr. Edmonds' view, said that if a right were granted to the State, logically there could be no restriction of its application through the means used to exercise it. If a coastal State were to make an arrest on the high seas, using in the exercise of its right a vessel other than that initiating the pursuit, he could not conceive of any court's rejecting the legitimacy of such an arrest. In the cases that he recalled, the issue had always turned on the question of the position of the offending vessel; he could recollect no case of the question of the number of pursuing vessels employed by the coastal State having been raised. The Commission should not fetter itself by rigid adherence to a traditional absolutism. He reiterated that, provided the necessary conditions were fulfilled, the means by which the right of hot pursuit was exercised had no relevance and the question of the instrument utilized was purely secondary. He would support Sir Gerald Fitzmaurice's proposal.

20. Mr. ZOUREK said that if progress was to be made in the discussion, two points must be noted. First, the classic concept of pursuit was based on the use of ships and not of aircraft. Secondly, the aircraft of a coastal State had the right to arrest a foreign vessel for infringement of the laws of that State, when the offender was within the territorial sea. The only question to be decided at present was whether aircraft should be granted *de lege ferenda* the right to pursue and arrest a foreign vessel on the high seas or at least to take part in a pursuit carried out by a warship belonging to the same State.

21. The Special Rapporteur had adduced strong arguments to the effect that, owing to the difference in speed between the pursuer and the offender, there was no necessity to recognize such a right. Sir Gerald Fitzmaurice had stressed the practical difficulties of effecting a seizure by aircraft without endangering the lives of the crew of the offending vessel and had urged that international law must take account of technical progress. His impression was that in that respect there was no great difference between the use of aircraft and that of surface vessels: either the offender obeyed the order to stop or he did not. In the latter case, force might have to be used, and the question of whether it was applied by air or surface craft was irrelevant. The only example he could remember of a pursuit in which one pursuing vessel had been relieved by another was the very special case of the schooner *I'm Alone*.

22. In that connexion it was interesting to consider the case of seaplanes; they were a type of machine whose legal status in regard to the exercise of the right of pursuit should be defined.

23. The Commission was faced with a new theoretical concept. If it proposed to extend international law by enlarging the jurisdiction of the coastal State, it must state its intention clearly.

24. Mr. SCELLE said that the question was an essentially simple one. If an offending vessel came under hot pursuit, it was by virtue of a right in international law that was generally accepted. In exercising that right the coastal State had international jurisdiction, not because its interests had been violated, but as a result of the provisions of international law governing the protection of those interests. Since the coastal State had been granted that special jurisdiction by international law, it was essential that an effective result be achieved in the appli-

cation of that law, and it was consequently otiose to attempt to prohibit States from using aircraft as a means of exercising the right of hot pursuit. The combination of aircraft and surface vessels in such an operation could not be prevented; hence, if a combination of air and surface craft were recognized, a combination of surface vessels alone must likewise be acknowledged.

25. Further, aircraft might not be the only alternative to vessels in the operation of hot pursuit. At some future date, man might invent a ray which could incapacitate the offending vessel and prevent its escape. The developments of man's inventiveness could not be disregarded, and no one could impede the upholding of international law by the most appropriate means available. The fact that pursuit might be effected by more instruments than one was merely the reflection of the technical application of international law. The reason why the question had not been considered before was simply that the necessity for such consideration had not arisen. He supported Mr. Padilla-Nervo's view.

26. Mr. PAL, endorsing Sir Gerald Fitzmaurice's proposal, said that so far as he knew there was no authority for saying that hot pursuit must be continued and completed by the vessel initiating it. At least, in none of the cases had the question been raised and decided one way or the other. On the other hand, there were cases in which the pursuit had in fact been carried out by two or more vessels in succession; but the legitimacy of the pursuit had been questioned on that ground. In those circumstances, it was difficult to say that the law on the point was settled and that international law did not countenance pursuit by two or more vessels in succession. But even if the law was settled that way, he was willing to have the exercise of the right extended to two or more vessels in succession. The right of pursuit was really given to the coastal State and not to any particular vessel, as was made clear in paragraph 1 of the article. There was no logic in limiting its exercise to one vessel only. If the requisites for the right existed and the pursuit was properly initiated, he saw no reason why the pursuit should not be allowed to be continued and completed by any effective means in order to subdue the offender.

27. Mr. Spiropoulos's point was hardly applicable, for his territorial malefactor could cross the frontier into a foreign territory. An offending vessel entering the high seas, however, was entering on a part of the sea open to all. Analogy, in such a matter, was always likely to be misleading. If the right of pursuit could continue and could be exercised by several police officers so long as the malefactor remained in national territory, it could also continue if he entered no-man's-land. It might cease only when he entered a territory prohibited to the pursuing policemen.

28. Mr. LIANG, Secretary to the Commission, referring to the *I'm Alone* case, said that the judgment of the tribunal [6] provided no definite answer to the question, but that support for Sir Gerald Fitzmaurice's case might be deduced from its findings. The Canadian vessel *I'm Alone* had first been pursued by one United States coast-guard cutter, which was subsequently joined by a second, the pursuit being then undertaken jointly. The *I'm Alone* had finally been sunk by the second pursuing vessel in circumstances which were not stated. The tribunal had stated that the use of " necessary and reasonable force " by the pursuing vessel for making the required seizure was justifiable. Since the pursuing vessel was the second United States cutter, it might be inferred that the use of two vessels was also justifiable. That judgment did not finally settle the question, of course, but he had the impression that in the conduct of hot pursuit the coastal State could use as many vessels as were required.

29. Mr. ZOUREK did not think that the *I'm Alone* case could be cited in support of Sir Gerald Fitzmaurice's view. The diplomatic correspondence concerning the case showed that the Canadian Government had argued that the schooner *I'm Alone* had been sunk by a ship which had only joined in the pursuit two days after it began and which had come from an entirely different direction. The United States Government, far from rejecting that argument, had merely stressed that the first vessel had continued in pursuit throughout the whole operation, thereby complying with the rules of international law.

30. Mr. SPIROPOULOS cited the hypothetical case of an offending vessel which, owing to the technical incapacity of the original pursuing vessel, was on the high seas several hundred miles away from the scene of the offence before being arrested by the second vessel of the coastal State, which might also have been equally remote from the place of the offence at the time of its commission. If Sir Gerald Fitzmaurice's proposals were accepted, that would be a legitimate exercise of the right of hot pursuit. Before the Commission took such a decision, it should carefully weigh the dangers that lay ahead. He was not opposed to any necessary extension of international law, but would abstain from voting on that issue.

31. Mr. SANDSTRÖM said that the question of the continuity of pursuit would be decided in each particular case and was no concern of the Commission. The use of aircraft by States with long coastlines was inevitable; he supported the views of Sir Gerald Fitzmaurice and Mr. Padilla-Nervo.

32. Mr. SCELLE said that when there was a profound similarity between the basic principles of municipal and those of international law, the techniques of application should also be similar. If a police officer called on a comrade for assistance, such action was perfectly legal when performed on national territory. In the case of hot pursuit, parallel action was equally legitimate, because it was the implementation of a provision of international law. The high seas were assimilated for that particular purpose to the territorial sea, and the first pursuing vessel was therefore justified in calling upon the assistance of a second vessel of the coastal State.

33. Sir Gerald FITZMAURICE disagreed with the suggestion that the combined use of aircraft and surface

[6] Reports of International Arbitral Awards, Vol. III, pp. 1611 *et seq.*

vessels in the exercise of hot pursuit would necessarily be detrimental to the freedom of the seas. On the contrary, his proposals, by regulating it, would strengthen and preserve the freedom of the high seas.

34. The existing danger arose from the unregulated combined use of aircraft and surface craft. Even if the Commission were to reject his proposal, it could still do nothing to prevent the use, in practice, of aircraft in combination with surface vessels, in ways lending themselves to abuse, such as for reconnaissance purposes only. That abuse was a far greater danger to the freedom of the seas than the open recognition and regulation of the right of aircraft to participate in hot pursuit.

35. Mr. SCELLE said that there was no contradiction between requiring that the order to stop must be given in the territorial sea and recognizing that hot pursuit could be carried out by more than one vessel.

36. Mr. SANDSTRÖM observed that there was no definite proposal before the Commission that the article should authorize pursuit by more than one vessel.

37. Mr. AMADO remained convinced that acceptance of Sir Gerald Fitzmaurice's proposals would be a development and not a re-statement of international law for the purpose of codification. However, the discussion had been useful in airing opinion.

38. Mr. SCELLE emphasized that where a second vessel engaged in hot pursuit, there must have been no interruption.

39. The CHAIRMAN put to the vote the proposal that hot pursuit by more than one vessel be authorized.

*The proposal was adopted by 10 votes to none with 4 abstentions.*

40. Sir Gerald FITZMAURICE said that he had voted in favour of the proposal because it was a statement of existing law.

41. The CHAIRMAN put to the vote the question whether the statement should be incorporated in the text of the article itself or placed in the comment.

*It was agreed by 13 votes to none with 1 abstention that the statement should be placed in the comment.*

42. In reply to a question by the CHAIRMAN, Sir Gerald FITZMAURICE observed that although aircraft most commonly did not effect the actual arrest, but only assisted in the operation, it was theoretically possible for them to stop a vessel and direct it to port. However, as it was a matter of drafting, perhaps the Commission could vote on the principle that aircraft could be used in hot pursuit and leave the precise wording of the provisions and that of Mr. Padilla-Nervo's amendment to paragraph 7 to the Sub-Committee.

43. Mr. PADILLA-NERVO said that the purpose of his amendment to paragraph 7 of Sir Gerald Fitzmaurice's proposal was to make clear that the aircraft itself could effect the arrest and escort the vessel into port.

44. The CHAIRMAN, speaking as a member of the Commission, pointed out that by giving aircraft powers of arrest the Commission would have entered into the domain of air law, which to him seemed a very questionable course. Whether or not aircraft could participate in hot pursuit was an entirely separate issue. Consequently the two principles should be voted on separately.

45. He then put to the vote the principle that aircraft should be authorized to participate in hot pursuit.

*The principle was adopted by 9 votes to 3 with 2 abstentions.*

46. The CHAIRMAN put to the vote Mr. Padilla-Nervo's amendment to the effect that aircraft should be authorized to arrest a foreign vessel.

*Mr. Padilla-Nervo's amendment was adopted by 7 votes to 3 with 4 abstentions.*

*Article 22 was referred to the Sub-Committee for re-drafting in the light of the foregoing decisions.*

47. Mr. KRYLOV agreed with the CHAIRMAN that the Commission should not have entered the domain of air law. The decision to formulate a new rule of international law by authorizing aircraft to execute hot pursuit was not a progressive development, but a type of perfectionism which he deplored. He therefore remained resolutely opposed to the provision.

48. Mr. SCELLE said that his main reason for supporting the proposals just adopted had been that there was not a single government which would have been prepared to surrender its right to use aircraft for hot pursuit and for the arrest of the vessel pursued.

49. Mr. FRANÇOIS, Special Rapporteur, said that he had opposed Sir Gerald Fitzmaurice's proposals because he saw no point in allowing aircraft to pursue vessels out into the high seas subject to the conditions laid down in the proposals. When an aircraft was giving, in the three-mile zone, a " visible and comprehensible " signal to a ship, the distance between the aircraft and the ship would be so small that, in view of the speed of the aircraft, it would always be possible to arrest the ship before it left the territorial sea. That being so, Sir Gerald Fitzmaurice's provisions would only lead to the kind of abuse which, in the past, there had been a general effort to guard against.

50. Mr. ZOUREK said that he had opposed Sir Gerald Fitzmaurice's proposals largely for the same reasons as those given by Mr. Krylov and the Special Rapporteur.

51. The CHAIRMAN, pointing out that the remaining comments by Governments on article 22 related to questions connected with the contiguous zone, consideration of which the Commission had agreed to defer, invited the Commission to pass on to article 23.

*Article 23: Pollution of the high seas*

52. Mr. FRANÇOIS, Special Rapporteur, said that he was prepared to accept the amendment of the Union of South Africa (A/CN.4/97/Add.1) to substitute the words " pollution of the high seas " for the words " water pollution " and the suggestion by the Netherlands and United Kingdom Governments to refer to " oil " instead of " fuel oil ", for technical reasons.

53. The Netherlands Government had also proposed the insertion of two new provisions reading:

All States shall draw up regulations to prevent water pollution by oil, resulting from the exploitation of submarine areas.

All States shall co-operate in drawing up regulations to prevent water pollution from the dumping of radio-active waste.

54. Members might feel that the first of those provisions was unnecessary as the point was already covered in the existing text. In the second, however, the Netherlands Government had drawn attention to a new danger not covered by article 23.

55. Mr. PAL, pointing out that in its draft articles both on the high seas and on the territorial sea the Commission had dealt with the air space above, contended that in the present instance the provision should not be confined to water pollution only, but should also take contamination of the air into account. He had been prompted by the second proposal of the Netherlands Government to put forward a new text for article 23 reading:

1. All States shall draw up regulations to prevent pollution of the high seas by oil, ionizing radiation or radio-active fall-out or waste.

2. All States shall co-operate in drawing up regulations for the purposes above stated.

56. Owing to modern technical developments it was vitally necessary to forestall injurious and dangerous practices. The dangers of ionizing radiation and of radio-active fall-out and waste were well known, and States must be made responsible for drawing up the necessary regulations to prevent pollution by those agents also.

57. Mr. SANDSTRÖM doubted the wisdom of the amendment suggested by the Union of South Africa, because pollution must obviously be prevented in the territorial sea as well as in the high seas; he would therefore prefer that the text of article 23 should remain unchanged.

58. The CHAIRMAN observed that it was clear from the comment that the Commission had borne that point in mind.

59. Mr. SALAMANCA suggested that Mr. Sandström's preoccupation would be met by the deletion of the word " high " in paragraph 1 of Mr. Pal's text.

60. Mr. PAL accepted that amendment.

61. The CHAIRMAN, speaking as a member of the Commission, pointed out that the effect of Mr. Pal's text might be restrictive. Perhaps it should be made clear that there were other polluting agents. That would leave the door open for future agreement on international regulations.

62. Mr. PAL had no objection to such a modification.

63. Sir Gerald FITZMAURICE said that he could have accepted the second new provision proposed by the Netherlands Government, because States should be required to regulate the dumping of radio-active waste so as to prevent water pollution, but without scientific advice he was unable to form an opinion on the technical implications of Mr. Pal's text. It was a well-known fact that radio-active fall-out could occur in, and perhaps drift from, places many thousands of miles from the site of the original explosion, and therefore the only way to prevent such pollution would be to prohibit atomic experiments altogether which, as he had already emphasized in another connexion, would be outside the normal scope of a draft on the high seas. Therefore, though sympathizing with the reasons which underlay Mr. Pal's proposal, he would be unable to support it.

64. Mr. ZOUREK believed that Mr. Pal was correct in proposing that the scope of the article should be extended to the airspace above the high seas, because the effects, for example, of ionizing radiation were more dangerous to seafarers than radio-activity in the water. He also favoured Mr. Pal's text because it was more comprehensive. The Transport and Communications Commission of the United Nations had already taken up the question of water pollution from radio-active waste five years previously, and it would be surprising if the Commission were to omit any mention of the matter in its draft.

65. Mr. SALAMANCA reaffirmed his opinion that it did not come within the Commission's competence to prohibit atomic experiments.

66. Mr. SCELLE considered that the text should make express reference to pollution of the superjacent air.

67. Mr. SANDSTRÖM asked for a separate vote on the first clause of Mr. Pal's text ending at the words " high seas by oil ".

*Further discussion of article 23 and the amendments thereto was adjourned until the next meeting.*

*The meeting rose at 6.15 p.m.*

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## 346th MEETING

*Tuesday, 15 May 1956, at 10 a.m.*

CONTENTS



*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-