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Summary record of the 348th meeting

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Law of the sea - régime of the high seas

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348th MEETING

Thursday, 17 May 1956, at 9.30 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, Mr. Shuhsi HSU, 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)

Re-drafts of articles 4, 5, 6 and 9 proposed by the Sub-Committee¹ (continued)

Article 4: Status of ships

Article 5: Right to a flag

1. The CHAIRMAN invited the Commission to continue its consideration of the re-drafted articles proposed by the Sub-Committee. Articles 4 and 5 as amended by Mr. Padilla-Nervo at the previous meeting would read:

Article 4

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas.

Article 5

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for the national character of the ship to be recognized by other States, there must exist a genuine link between the State and the ship.

2. The nationality of merchant ships, and hence their right to a flag, shall be established by documents issued by the authorities of the State of the flag.

2. Mr. PADILLA-NERVO said that at the previous meeting he had been mainly concerned to find the best

way of separating and clarifying the provisions on nationality, the right to a flag and the jurisdiction of the flag State.

3. He wished to make clear, however, that he was not wholeheartedly in favour of retaining the third sentence of article 5, paragraph 1, because he considered that the link between the State of registration and the ship was created precisely by the grant of nationality. The effect of substituting the condition proposed by the Netherlands Government for the criteria originally laid down by the Commission in article 5, which had been devised after a study of the widely divergent laws concerning registration, would be to create difficulties, because it was not made clear on whom lay the burden of proving that the link was genuine. The requirement that there must be such a link before other States were bound to recognize the nationality of the vessel was not justified by international practice. There were fourteen treaties between the United States and other countries and thirty-eight between the United Kingdom and other countries, by virtue of which the signatory States recognized the nationality of vessels of the other signatory States as granted under the municipal law of the flag State. There were also seventy-three treaties which laid down that the nationality of ships was determined by the laws of the State to which they belonged. Consequently the third sentence in article 5, paragraph 1, was not only useless, but might conflict with international practice.

4. He found the requirement in article 4, that ships could sail under the flag of one State only, implying as it did that the flag could not be changed on the high seas, acceptable.

5. Mr. SCELLE said that the amended text of article 4 was a considerable improvement on the Sub-Committee's version, because it brought out that the right to fly a flag was conferred by the grant of nationality. However, he would like the conditions implied to be set out explicitly in a second paragraph reading:

A ship may not, therefore, change its flag during a voyage or while stopping in a port of call; such a change may only be made after the formalities have been completed both in the State of its present nationality and in the State of its new nationality.

His purpose was to prevent ships from changing flags on the high seas so as to escape the jurisdiction of one of the flag States, particularly when seeking to avoid punishment for an act contravening the laws of that State. It was essential that all merchant ships should possess one nationality only, which could be easily identified, especially by ships performing police duties, and that any change of nationality should be effected in a regular and overt manner.

6. Sir Gerald FITZMAURICE said that Mr. Scelle's proposed addition would be a logical consequence of the provision contained in the first paragraph. He fully agreed that ships must not be allowed fraudulently to change flags during a voyage or in a port of call, but he wondered whether the latter part of Mr. Scelle's text might not be omitted, since it would give the flag State a complete power of veto on any transfer of registration. That was

¹ A/CN.4/SR.347, para. 37.

something which must be avoided at all costs, because it would be contrary to the interests of shipping and international communications. He believed that Mr. Scelle's purpose would be achieved if his text ended at the words "port of call".

7. Mr. SPIROPOULOS suggested that Mr. Scelle's wording was not entirely satisfactory, because it seemed to preclude the possibility of a change of registration altogether.

8. Sir Gerald FITZMAURICE agreed that the term "port of call" gave rise to ambiguity. Mr. Scelle's purpose, no doubt, was to ensure that a change of registration could be made only either in the vessel's home port or in its port of destination.

9. Mr. SCELLE confirmed that that interpretation was correct.

10. Observing that Sir Gerald Fitzmaurice's objection to the latter part of his text was pertinent, he explained that it had certainly not been his intention to suggest that the shipowner or captain must obtain the authorization of the State of registry before a change could be made, but only that the necessary steps to obtain a transfer should be taken. Otherwise nothing could be done if the State of registry refused to remove the ship from its register.

11. It would be for third States to decide whether a genuine link existed between the ship and the State of new registration and consequently whether the ship was entitled to fly its flag. The situation was analogous to a disagreement between two States over the nationality of an individual.

12. He was ready to amend his text to meet Sir Gerald Fitzmaurice's objection.

13. Mr. SPIROPOULOS considered that the danger of abuse had been greatly exaggerated. He had never heard of a single example of a ship improperly changing flags on the high seas. That being so he questioned whether it was appropriate for the Commission to adopt a provision which might threaten the legitimate interests of shipowners wishing to sell a vessel during its voyage, though he agreed, of course, that other States could only be required to recognize one flag.

14. The third sentence of the amended article 5² could be retained, but members should note that it was rather less stringent than the requirements laid down in the original text of article 5.

15. Mr. SCELLE, in reply to Mr. Spiropoulos' contention that there was little abuse of the right to fly a flag, asked how otherwise the prodigious increase in the fleets of some small countries was to be explained.

16. As for Mr. Spiropoulos' second argument, he would like to emphasize that the Commission's primary concern was the public interest and not the interests of shipowners, though the latter, of course, must not be overlooked. Hence it was essential for article 4 to be drafted as explicitly as possible, so that it would be clear to whose jurisdiction a ship on the high seas was subject.

17. Mr. SANDSTRÖM still maintained that the order followed in articles 4 and 5 was unsatisfactory: it seemed preferable first to establish the principle of nationality. The provision that ships should sail under one flag could be incorporated in article 6. Those points could usefully be referred to the Sub-Committee.

18. Faris Bey el-KHOURI believed that the point at issue was not whether ships could change flags on the high seas, but whether ships were entitled to be registered in more than one State. He accordingly considered that the requirement laid down in the first sentence of article 4 as adopted at the previous session was entirely adequate, and that there was no need to go into further detail.

19. He also confirmed the view he had expressed at the previous meeting³ that the third sentence in article 5, paragraph 1, should be omitted, because it was for States themselves to establish whether there was a genuine link between them and the ship whose owner was seeking registration. States should not be suspected of fraudulent practice in that regard.

20. The CHAIRMAN put to the vote the text for article 4 as amended by Mr. Padilla-Nervo.⁴

Mr. Padilla-Nervo's text for article 4 was adopted by 14 votes to none, with 1 abstention.

21. Mr. PADILLA-NERVO asked that Mr. Scelle's text for a second paragraph to article 4 be put to the vote in two parts, the first ending with the words "a port of call", because, as he had argued at the previous meeting,⁵ it would be preferable in article 4 to refer only to the questions of flag and jurisdiction. His objections would be met if the latter part of Mr. Scelle's text were re-drafted so as to omit any reference to the question of nationality; otherwise it would prohibit a legitimate change of flag in the course of a voyage.

22. Sir Gerald FITZMAURICE asked whether Mr. Scelle would be prepared to amend the latter part of his text to read "such a change may only be made if the necessary steps have been taken both . . ."

23. Mr. SCELLE said that he was unwilling to omit the reference to "formalities."

24. Mr. FRANÇOIS, Special Rapporteur, asked precisely what Mr. Scelle had in mind referring to "formalities". Surely, in view of the refusal of some States to allow ships to withdraw from their register, it would be rather strange to stipulate that an application for a change of registration must have been made.

25. Mr. SCELLE insisted that the shipowner or master must be required to give notice to the authorities of the State of registry of his desire to transfer to the registry of another State and to make the proper application to the latter; otherwise it would be easy for shipowners to abandon one flag and hoist another as it suited them.

26. Mr. LIANG, Secretary to the Commission, was unable to understand the force of the word "therefore"

³ A/CN.4/SR.347, para. 88.

⁴ See para. 1 above.

⁵ A/CN.4/SR.347, para. 79.

² See para. 1 above.

in Mr. Scelle's text since, according to the first paragraph of article 4, a ship could sail under only one flag and would continue to do so after it had changed flags.

27. Mr. SCELLE observed that article 4 was imprecise regarding the duration of that requirement.

28. Mr. LIANG, Secretary to the Commission, saw no objection to a ship changing its flag during a voyage once the necessary formalities for transfer of registry had been duly completed. He believed that such cases were fairly common.

29. Mr. SCELLE pointed out that with such a system it would be impossible to establish which jurisdiction the ship was subject to.

30. Mr. SANDSTRÖM asked whether, since some States prohibited the sale of ships on their register to foreigners, it would be enough to require that the ship-owner or master must make an application for transfer of registry.

31. Mr. SCELLE presumed that in such instances the vessels would be taken to another country where sale was allowed. It was then that dual nationality was so useful to shipowners and allowed them to change registry perfectly legitimately.

32. The CHAIRMAN put Mr. Scelle's proposed second paragraph for article 4⁶ to the vote in two parts: first, up to the words " a port of call "; secondly, the remainder.

The first part of Mr. Scelle's text was adopted by 8 votes to none, with 7 abstentions.

The remainder of Mr. Scelle's text was rejected by 6 votes to 3, with 6 abstentions.

33. At Mr. PAL's request the CHAIRMAN put the amended text of article 5,⁷ to the vote sentence by sentence and then as a whole.

The first sentence was adopted unanimously.

The second sentence was adopted by 14 votes to none, with 1 abstention.

The third sentence was adopted by 9 votes to 3, with 3 abstentions.

The second paragraph was adopted unanimously.

Article 5 as a whole was adopted by 11 votes to none, with 4 abstentions.

34. Mr. PADILLA-NERVO, explaining his vote on the third sentence, said that he agreed with Faris Bey el-Khouri that it should have been omitted because it was contrary to international practice. Many treaties recognized no link between the State of registry and the ship, other than that of nationality.

35. Sir Gerald FITZMAURICE said that he had voted in favour of the article because, though far from perfect, it was the best that could be achieved at present. Although the principle laid down in article 5 was both valid and necessary, he would have preferred the Commission to have adopted the criterion of the ability of the flag State

to exercise effective control over ships on the high seas, as proposed by the United Kingdom Government, the more so since some States tended to grant the right to fly their flag without being able to exercise control over the ships in question or assume international responsibility for them.

36. Mr. SALAMANCA reiterated the view that nothing had been gained by adopting the third sentence of paragraph 1, because the requirement that there must be a genuine link between the State and the ship was altogether too vague and imprecise.

37. Faris Bey el-KHOURI, explaining his vote, pointed out that there was a further objection to the criterion contained in the third sentence of paragraph 1; it might make it impossible for ships owned by the United Nations to fly the flag of a Member State because, membership of the United Nations apart, there might be no possibility of establishing a link between the ship and the State in question.

38. Mr. ZOUREK asked that the order of articles 4 and 5 be reversed so that the provision concerning the fundamental principle of nationality came first, as suggested by Mr. Krylov at the previous meeting.⁸

It was so agreed.

Article 6: Ships sailing under two flags

39. The CHAIRMAN put to the vote the Sub-Committee's draft of article 6.

Article 6 as re-drafted by the Sub-Committee was adopted by 12 votes to none with 3 abstentions.

Article 9: Signals and rules for the prevention of collisions

40. Mr. SALAMANCA said that it must be made clear in the comment that sub-paragraph 1 of the Sub-Committee's draft, which need not itself be amended, referred to the minimum international standards laid down by the International Labour Organization.

It was so agreed.

41. Mr. SPIROPOULOS saw no reason for dealing with a whole series of questions such as those enumerated in sub-paragraphs 1 and 2, which were entirely outside the scope of the present work of codification. He therefore favoured the original text of the article, which dealt solely with signals and rules for the prevention of collisions.

42. Mr. FRANÇOIS, Special Rapporteur, pointed out that the matters referred to in sub-paragraphs 1 and 2 were equally vital to the safety of life and property at sea. The Sub-Committee had simply filled certain gaps in the original article.

43. Mr. ZOUREK, observing that the inclusion of the words " *inter alia* " made it clear that the enumeration in the three sub-paragraphs was not exhaustive, agreed with the Special Rapporteur that it would not suffice to deal solely with signals and rules for the prevention of collisions.

⁶ See para. 5, above.

⁷ See para. 1, above.

⁸ A/CN.4/SR.347, para. 87.

44. Mr. AMADO considered that the original text of article 9 was preferable. It was unnecessary to require States to issue regulations on the matters referred to in sub-paragraphs 1 and 2 of the Sub-Committee's text, since they would do so in their own interests in any case.

45. The CHAIRMAN then put the Sub-Committee's draft of article 9 to the vote, taking the three sub-paragraphs separately.

Sub-paragraph 1 was adopted by 13 votes to none, with 2 abstentions.

Sub-paragraph 2 was adopted by 11 votes to 1, with 3 abstentions.

Sub-paragraph 3 was adopted unanimously.

Article 9 as a whole, as re-drafted by the Sub-Committee, was adopted unanimously.

46. Mr. AMADO explained that he had abstained from voting on sub-paragraph 1. He proposed that, as sub-paragraph 3 was the most important, it should be placed first.

It was so agreed.

Single article on the contiguous zone

47. The CHAIRMAN invited the Commission to consider the draft single article on the contiguous zone adopted at the fifth session.⁹ He drew attention to a proposal submitted by Sir Gerald Fitzmaurice to amend the article as follows:

Line 3

Delete the words " and punish ".

Line 5

Delete the word " immigration ".

Add new paragraphs 2 and 3 reading:

2. The faculty recognized in the preceding paragraph shall not affect the status of the waters in which it is exercised, as being and remaining high seas, nor shall it entitle the coastal State to claim or exercise any general jurisdiction over, or exclusive rights in, such waters.

3. In sea areas situated off the junction of two or more adjacent States, and where the establishment of a contiguous zone by one of these States would produce the effect that shipping could have access to ports in another only by passing through this zone, no contiguous zone may be established by any of the countries concerned until agreement has been reached between them on the delimitation of their respective zones.

48. Mr. FRANÇOIS, Special Rapporteur, recalled that the Commission had had doubts as to the precise scope of the text adopted at the fifth session, certain aspects of which called for comment—in particular, the juridical character of the measures of control that might be taken by the coastal State within the contiguous zone. Of course, the juridical character of the contiguous zone itself raised no problem, for it was clearly a part of the

high seas. There was some divergence between the view of the United Kingdom and that of various members of the Commission. The matter had been raised at a previous meeting in connection with article 22, when the right to start hot pursuit in the contiguous zone had been contested by Sir Gerald Fitzmaurice.¹⁰ The Commission had then deferred consideration of the question pending discussion of the article on the contiguous zone.

49. Sir Gerald Fitzmaurice's proposal closely followed the comment of the United Kingdom Government (A/CN.4/99/Add.1, page 74), which was the only government to comment on that subject. With regard to the proposal to delete the words " and punish ", he pointed out that those words were not in the text prepared at the third session, but had been added at the fifth session (A/2456, paras. 105 and 106). The amendment was unacceptable because the words completed the competence of the coastal State. In the case of a vessel approaching the coast, the coastal State might take necessary steps to prevent infringement, but in the case of a vessel leaving the territorial sea after committing an infringement, it was necessary to give the coastal State the right to punish the offender.

50. Sir Gerald Fitzmaurice would doubtless explain the reasons for his proposal to delete the word " immigration " in the fifth line.

51. The questions raised by the United Kingdom Government were the only questions that called for discussion at that time. Other aspects of the matter, such as the relation between the contiguous zone and the territorial sea and—Mr. Scelle's point¹¹—the relation between the contiguous zone and the continental shelf, could best be discussed under those particular items. Consideration of them should therefore be deferred, and the discussion restricted to Sir Gerald Fitzmaurice's proposal.

52. The CHAIRMAN, recalling the discussion on the contiguous zone in connection with the right of hot pursuit,¹² said that there were two major problems involved. First, the important question of the juridical consequences of the existence of a contiguous zone with regard to the right of hot pursuit. Did the juridical nature of the contiguous zone imply the right of control by the coastal State to prevent and punish an infringement of particular regulations, or should the contiguous zone, despite its being part of the high seas, be subject to the whole of the legislation of the coastal State? The right of hot pursuit would obviously be affected by the answers to those questions.

53. Secondly, could the coastal State protect its rights in the contiguous zone, in particular, in regard to customs, immigration, fiscal or sanitary regulations, by measures in any way different from those that it could take for that purpose within the territorial sea?

54. Mr. KRYLOV said that the Chairman had made it clear that the question was much more complex than

⁹ Official Records of the General Assembly, Eighth session, Supplement No. 9 (A/2456), para. 105.

¹⁰ A/CN.4/SR.344, paras. 22 and 25.

¹¹ A/CN.4/97, para. 35.

¹² A/CN.4/SR.344, paras 5-34.

would appear from Sir Gerald Fitzmaurice's proposal. He would add that the question of the conservation of the living resources of the high seas was also involved. The contiguous zone, moreover, was referred to in certain of the draft articles and also in the Indian Government's proposal concerning article 22.¹³ Even if the question of the territorial sea and continental shelf were disregarded, there were obviously many aspects of the subject calling for consideration. With regard to fisheries, for instance, the Norwegian and Icelandic Governments had proposed the establishment of an institution somewhat similar to the contiguous zone.¹⁴ The concept should be broadened rather than narrowed, as Sir Gerald Fitzmaurice's proposal seemed to imply. He did not attach any importance to the juridical nature of the zone from the theoretical point of view. The important aspect was the economic one, in particular the question of fisheries, which it was time to consider more fully. The contiguous zone should be considered in relation to the territorial sea; other aspects, such as immigration, were of minor importance.

55. Mr. HSU said that the Special Rapporteur's report (A/CN.4/97) gave the impression that the question of the contiguous zone was confined to matters of customs and the like. That might have been true in the past, but it was so no longer. He doubted whether the text was an adequate basis for a full discussion on the contiguous zone, a definition of the principles of which would be of assistance in tackling other problems. By ignoring important aspects of the question, such as the three-mile limit and security, the Commission would merely be promoting disorder in international maritime law.

56. Mr. SALAMANCA, supporting Mr. Krylov's view, said that to make a well-balanced report, the question of the contiguous zone must be subordinated to decisions on conservation of the living resources of the sea and on the territorial sea, which were extremely important subjects. There was no objection to dealing immediately with the first two amendments in Sir Gerald Fitzmaurice's proposal. Consideration of his proposed new paragraphs, however, should be deferred. The extra-legal aspect of the question was of importance and it must not be forgotten that the General Assembly might wish to amend the Commission's report for subsequent reference to a diplomatic conference. Deferment should not be indefinite, however.

57. Mr. PAL said he had expected that the discussion would be of a more restricted character. The word "contiguous" seemed to have given rise to difficulties. At the Commission's third session the contiguous zone had been taken to be an area outside the territorial sea twelve miles in breadth, within which certain rights for specific purposes of control were granted to the coastal State. At the fifth session, after consideration of comments by Governments—in particular, the Netherlands Government—the words "punish" and "immigration" had been added. The limit of the zone, however, had

remained at twelve miles. Subsequently, consideration of the right of hot pursuit, which was related to the question of the contiguous zone, had been deferred, pending a review of that question.¹⁵ It had never been suggested that the breadth of the zone should be extended beyond twelve miles or that the rights of the coastal State within it should go beyond those contemplated at the fifth session. The discussion, therefore, should properly be restricted to the question of the contiguous zone in its technical sense only.

58. In the articles on fisheries the use of the word "contiguous" was quite different, and that was not the immediate concern of the Commission now. The present question, which should be discussed within the 1953 definition, was whether to retain the article as drafted or to accept Sir Gerald Fitzmaurice's proposal.

59. Mr. SPIROPOULOS said that he was not convinced by the arguments of those speakers who doubted the wisdom of considering the question of the contiguous zone there and then. The text of the article did not include any provision concerning fishing in the territorial sea. The Commission's task was to define the legal status of the contiguous zone and the rights of the coastal State within it. The problem was remote from that of fisheries, and could therefore be appropriately discussed. There was admittedly a relation with the question of the territorial sea, but it was of little importance which was discussed first.

60. With regard to Mr. Pal's suggestion that the choice lay between the article as drafted and Sir Gerald Fitzmaurice's proposal, he pointed out that General Assembly resolutions 798 (VIII) and 899 (IX) empowered the Commission to review its articles if necessary.

61. Sir Gerald FITZMAURICE agreed with the views expressed by Mr. Pal and Mr. Spiropoulos. The question was essentially one of codification. From the purely juristic point of view, the question of exclusive jurisdiction over fisheries was bound up with that of the territorial sea, in the sense that no exclusive jurisdiction could be asserted except within its limits. That principle was generally acknowledged and the question could be discussed only in connexion with the subject of the territorial sea. If the Commission were to approve it in connexion with the question of the contiguous zone, it would be going far towards abolishing the essential distinction between the contiguous zone and the territorial sea, reflected in the fact that the basic conception of the contiguous zone—although by no means generally accepted—was that the rights of the coastal State within it should be restricted to certain matters involving the interest of the coastal State in its public capacity. No question of private rights, as in the case of fisheries, arose.

62. He had been surprised at Mr. Krylov's proposal, for, unless the Commission were to countenance a departure from existing law, the question of exclusive jurisdiction over fisheries was not a subject for discussion in relation to the contiguous zone.

63. Subject to reverting to that matter, and turning to

¹³ A/CN.4/97/Add.1, para. 151.

¹⁴ A/CN.4/99/Add.1, pp. 47-49; A/CN.4/99/Add.2, pp. 5-10.

¹⁵ A/CN.4/SR.344, para. 34.

his first two amendments, he pointed out that the distinction between an incoming and an outgoing ship explained by the Special Rapporteur was not made clear in the present text of the article. The idea behind his first proposal was that an incoming ship had not reached the zone in which it could commit an offence and that punishment therefore did not arise. If that point could be made clear, he would withdraw his proposal.

64. With regard to the second amendment, to delete the word "immigration", the reasons behind the United Kingdom Government's comment (A/CN.4/99/Add.1, page 74), though indirect, were worth consideration. The Commission had interpreted immigration as including emigration (A/2456, para. 111). While it would be reasonable to control the former, regulation of the latter might lead to abuse—for example, to the arrest, outside the territorial sea, of political refugees leaving a country on a foreign ship. There was, moreover, no need to extend such rights to the coastal State within the contiguous zone, for it would have no difficulty in controlling immigration in its internal waters or the territorial sea. If, however, some other means of meeting the underlying point of his proposal could be found, he would not press the amendment.

65. Mr. HSU supported Mr. Spiropoulos in his contention that the definition of the contiguous zone as drafted was not hard and fast. The General Assembly had asked the Commission to harmonize the draft articles, a process which must inevitably entail some modification of texts.

66. With regard to the order of discussion of the various questions involved, without having any strong views on the matter, he would suggest that the contiguous zone be taken last.

67. The CHAIRMAN said that the Commission was perfectly entitled to modify any decision it had taken, but before it did so, he wished to draw attention to certain aspects of the problem.

68. In the first place, the question of the extension of the contiguous zone did not affect the draft article. It was true that the definition of the contiguous zone, limiting it to a distance of 12 miles from the base-line from which the width of the territorial sea was measured, did lay down a definite figure. In adopting the article, however, the Commission had had in mind a breadth of the territorial sea of less than twelve miles. In any event, the distance adopted at the fifth session had been regarded as provisional and subject to modification in the light of the decision on the breadth of the territorial sea.

69. He could see no advantage in deferring consideration of the contiguous zone, which was connected with problems such as customs regulations and the like arising outside the territorial sea. Those problems were not linked with problems of fisheries, which would have to be dealt with in the articles on conservation of the living resources of the high seas.

70. Mr. SALAMANCA pointed out that consideration of one special aspect was inevitably linked with that of others. Deferment did not imply pre-judging the issue.

71. Mr. SPIROPOULOS wondered whether, if the breadth of the territorial sea were extended to twelve miles and the contiguous zone consequently eliminated, States would be obliged to accept that situation. Some States might well prefer a three-mile or six-mile limit, in which case the question of the contiguous zone was of considerable interest. Independently of the question of the territorial sea, he could not agree to the limit of twelve miles being mandatory. It was a question, not of fulfilling an obligation, but of exercising a right. The other aspects of the subject referred to had no relevance to the question of the contiguous zone.

72. Mr. ZOUREK said that his original preference had been to take the territorial sea first. He had abandoned that idea, however, for technical reasons. Subject to establishing its breadth, the contiguous zone could be properly discussed there and then. As had been pointed out, the fundamental issue was the definition of the nature of the contiguous zone, for its existence was not in dispute, and that issue embraced the question whether the coastal State had the right to extend the application of its legislation to a point on the high seas or merely the right to prevent infringement of its laws. That distinction was essential and was reflected in the differences between the texts of the third and fifth sessions, the latter of which embodied the extension of certain rights. Another question was the corpus of interests involved. Both those questions could be discussed, and he would oppose any proposal to defer consideration of them.

73. Mr. KRYLOV maintained his opinion that it would be advisable to deal first with the question of conservation, which was extremely important, and to defer consideration of the more theoretical legal aspects put forward by the Special Rapporteur and dealt with in Sir Gerald Fitzmaurice's proposal. He would not press the point, however.

74. Mr. SPIROPOULOS, in reply to Mr. Krylov, pointed out that the question of the contiguous zone could not prejudice any right of the coastal State to regulate fisheries outside the territorial sea, since once that right was acknowledged on the high seas in front of its coast, it went without saying that the contiguous zone was included.

The meeting rose at 1.10 p.m.

349th MEETING

Friday, 18 May 1956, at 9.30 a.m.

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Chairman: Mr. F. V. GARCÍA-AMADOR.

Rapporteur: Mr. J. P. A. FRANÇOIS.