Document:-

A/CN.4/SR.349

Summary record of the 349th meeting

Topic:

Law of the sea - régime of the high seas

Extract from the Yearbook of the International Law Commission:-

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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.

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, 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. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

Regime of the high seas (item 1 of the agenda) (A/2456 and A/2934) (*continued*)

Single article on the contiguous zone (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of the draft single article on the contiguous zone, to be found in paragraph 105 of document A/2456.

2. Mr. ZOUREK, referring to the juridical character of the contiguous zone, recalled that at the previous meeting[1] he had pointed out that the concept of the contiguous zone raised two questions: had the coastal State the right to extend the application of its laws to a point in the high seas, or had it merely the right to prevent infringement of its laws? In his opinion the Commission, at its second session, had been correct in maintaining that a " State might exercise such control as was required for the application of its fiscal, customs and health laws, over a zone of the high seas extending for such a limited distance beyond its territorial waters as was necessary for such application ".[2]

3. An appropriate choice between those alternatives depended on reconciliation of the legitimate interests of the coastal State with the principle of the freedom of the high seas. From that point of view, it would be sufficient to recognize certain rights of control of the coastal State in the contiguous zone. The idea that the coastal State could also apply its legislation in the contiguous zone would entail the practical consequence that infringement of legislation in the contiguous zone could be followed by appropriate sanctions in that zone. If, however, the exercise of the right of control were recognized only for offences committed in the territorial sea, the situation would be different; and if, say, a vessel were arrested on suspicion of smuggling, the only action that could be taken in the contiguous zone would be that of prevention. Confiscation of goods would not be legitimate. To safeguard the legitimate interests of the coastal State, it would be sufficient to recognize its rights of control in the contiguous zone without going so far as to allow the application of its laws to be extended to that zone. He could not accept the argument that the coastal State had partial jurisdiction—i.e., sovereign powers in the contiguous zone or zones.

4. Mr. SANDSTRÖM, concurring with Mr. ZOUREK, added that the position taken up at the second session with regard to the conception of the contiguous zone had been maintained at the fifth session.

5. With regard to the question of immigration, the identification of the terms " immigration " and " emigration " in the comment on the article adopted at the fifth session (A/2456, para. 111) was wrong. In the case of immigration, any conflict between the individual and the State must be settled in favour of the State. In the case of emigration, however, what was involved was the liberty of the individual, whose right to leave his country as he wished should not be infringed, as was clearly stated in Article 13 of the Universal Declaration of Human Rights. He would support Sir Gerald Fitzmaurice's proposal to delete the word " immigration ".

6. Mr. AMADO wondered how the inclusion of the idea of emigration in the term " immigration " had ever received recognition. It was equitable that a coastal State should exercise control in the contiguous zone in order to protect certain specific interests; he had in mind, in particular, sanitary regulations and the prevention of the introduction of disease into Brazil, with its vast coastline. Control of immigration, however, did not call for the exercise of rights over such a wide area of the high seas, and a distinction should be drawn between immigration proper and protection against disease. The whole question was admittedly complex, but the specific aspects should be considered separately. The introduction of extraneous elements was liable to destroy the whole idea of the contiguous zone. He would support Sir Gerald Fitzmaurice's proposal to delete the word " immigration ".

7. Mr. HSU, endorsing Mr. Amado's view, said that the risks of disease through immigration could perfectly well be covered by sanitary regulations. To assimilate emigration to immigration would certainly involve a violation of human rights. In view of the disturbed state of the world, the question could not yet be finally settled, however. At some future date immigration might come to be accepted as a normal and acceptable practice. The doors should not be closed on that possibility, for it had to be remembered that international relations could not be governed by force alone; humanity also had a voice in the conduct of affairs and in the codification of law.

8. Mr. PADILLA-NERVO said that there were two problems connected with the contiguous zone; the nature of the rights of the coastal State and the number of those rights. With regard to the first, the essential difference between the juridical nature of the territorial sea and that of the contiguous zone had been recognized: over the former the State exercised all the powers inherent in the concept of sovereignty, whereas over the latter it had only limited and specific powers of control. That was Gidel's approach to the problem.

9. But the distinction as to juridical nature did not necessarily imply any difference in the quality of the rights enjoyed by the State. There were differences in the number of rights enjoyed, but as to their quality there was no difference between the rights enjoyed in the territorial sea and those enjoyed in the contiguous zone. That identity of rights was not affected by a difference in

[1] A/CN.4/SR.348, para. 72.

[2] *Official Records of the General Assembly, Fifth session, Supplement No. 12* (A/1316), para. 195.

their origin. The right to prevent smuggling in the territorial sea, for instance, derived from the idea of sovereignty, whereas in the contiguous zone it was authorized by international law; in both cases, however, the right was complete, and not merely partial, with the implication of the right to prevent an infringement of the recognized interests of the coastal State and to take sanctions against offenders. Those considerations led to the conclusion that to deny the coastal State its right to punish infringements of its laws amounted to the simple abrogation of the right in question and, in fact, to the disappearance of the contiguous zone.

10. With regard to the number of interests and, consequently, of rights covered by the contiguous zone, his general attitude was that the traditional concept of a contiguous zone to protect rights of customs and the like had a merely historical and circumstantial character, and that there was no basic legal reason why that concept should not be broadened.

11. He had in mind, in particular, the question of fisheries. He was far from suggesting that there should be a fishery area and that the contiguous zone should be exclusively reserved for the nationals of the coastal State. But independently of the decision taken with regard to the provisions of fishing in Chapter II of the provisional articles concerning the regime of the high seas, it was probable that the Commission would recognize a zone in which the coastal State had special jurisdiction in respect of conservation of the living resources of the high seas. He could not see any great difference in kind between such a special competence for the conservation of the living resources of the sea and the other traditional specific powers in respect of the contiguous zone.

12. Sir Gerald Fitzmaurice's point that the interests to be safeguarded in the contiguous zone were of a public nature [3] was surely covered by the fact that any action undertaken by the coastal State in respect of conservation was obviously undertaken in the public interest.

13. Whatever the decision taken on his suggestion that the concept of the contiguous zone should be broadened, that idea had already been translated into reality. In any case, the principle of the rights of the coastal State would not be affected, even if it was not covered by the concept of the contiguous zone, since it was already recognized by the provisions of Chapter II. The problem might perhaps be solved by the addition at the end of the first sentence of the article of some such words as " or for the conservation of the living resources of the high seas within the framework of the provisions of Chapter II of this convention ".

14. Faris Bey el-KHOURI said that the concept of the contiguous zone had been adopted in order to grant the coastal State the exercise of certain rights withheld from other States. The rights specified in the article were consistent with that concept, except for the reference to immigration, which should be deleted. The question of conservation would be considered subsequently; in that matter, the coastal State should not be granted any rights in the contiguous zone that were not shared by other States.

15. Mr. PAL thought that the only subject under consideration was Sir Gerald Fitzmaurice's proposal to delete the word " immigration ", which he would support. The concept of the contiguous zone was well defined in the draft, and its introduction was for certain well-defined purposes. If there were any suggestion of enlarging the connotation of that concept by extending it to cover rights other than those specified in the existing article, it should not be considered until a formal proposal was put before the Commission.

16. The term " contiguous zone " should be confined to the meaning given to it by the article and should be used for the purposes specified therein. If contiguity to the coast had to be expressed for other purposes, such as conservation of the living resources of the sea or fishing in the high seas, another more appropriate word or set of words might have to be found.

17. Sir Gerald FITZMAURICE observed that there seemed to be wide support for his proposal to delete the word " immigration ".

18. With regard to the proposal to delete the words " and punish ", a careful re-reading of the article had convinced him that the right to punish an infringement of specific regulations did in fact relate only to an offence committed within the territorial sea. If the point could be made clear in the comment, he would withdraw his amendment.

19. Mr. ZOUREK asked whether the question of immigration had not, in fact, been introduced on the proposal of a government, as he believed.

20. Mr. FRANÇOIS, Special Rapporteur, said that its introduction had probably been inspired by some government comment. He could see no objection to including immigration, and the criticisms voiced might be met by deleting the reference to emigration in the comment on the article.

21. Mr. KRYLOV, agreeing to that proposal, said that, in that respect, Mr. Sandström's argument had considerable force.

22. Mr. LIANG said that the insertion of the word " immigration " in the article might have been inspired by a comment by the Netherlands Government to the effect that it should be clearly understood that immigration and emigration were covered by the reference in the article to customs regulations (A/2456, p. 62, article 4).

23. Mr. AMADO, dissenting from the Special Rapporteur's view, said that no argument in favour of retaining the word " immigration " in the text had been put forward. He entirely failed to see any valid reason for a coastal State needing to exercise rights of immigration control in the contiguous zone.

24. Mr. FRANÇOIS, Special Rapporteur, said that " immigration " included the general policing of aliens and it was quite natural that a State should wish to exclude undesirable aliens from its territory, for which purpose a three-mile limit to the territorial sea was

[3] A/CN.4/SR.348, para. 61.

inadequate. The same considerations would apply to the admittance of persons suffering from certain diseases.

25. Sir Gerald FITZMAURICE said that the discussion confirmed his view that the word " immigration " should be deleted. If a coastal State could exercise customs control over the import of merchandise, it could equally well ascertain the particulars of the passengers in the same ship, and an extension of rights was therefore not called for. He agreed with Mr. Amado that the rights of sanitary control indirectly covered the case of immigration. The only possibility of evasion of immigration laws was by surreptitious landing, but in view of existing measures of control that possibility was extremely remote.

26. The CHAIRMAN put to the vote Sir Gerald Fitzmaurice's proposal to delete the word " immigration " from line 5 of the draft single article on the contiguous zone.

The proposal was adopted by 10 votes to 3, with 1 abstention.

27. The CHAIRMAN, referring to the juridical nature of the contiguous zone, said that he had some doubts as to its relationship with the right of hot pursuit, and whether it was a question of prevention and punishment of infringements committed within the territorial sea or whether—a point not covered by the article—there was a zone of the sea where certain laws were applicable. His doubts had been provoked both by the discussions at the Hague Codification Conference of 1930 and by existing national practice. At the Hague Conference, the concept of the contiguous zone had derived from the extension, for certain specific purposes, of the application of coastal States' legislation, with a consequential extension of the three-mile limit. The draft single article was on similar lines to a recommendation adopted by the Conference.

28. There was also, however, the question of penal jurisdiction, for in penal matters the zone of jurisdiction for purposes either of prevention or of punishment was greater than the breadth of the territorial sea. The territorial sea thus varied in extent according to the particular interest and right involved; and some States were claiming an extension of rights. The point might be merely academic, but it was not clear—and the article as drafted gave no assistance—whether the area concerned was territorial sea or contiguous zone.

29. There was one interest—namely, that of security—that had been included in the draft recommendation of the Preparatory Committee of the Hague Conference, and a provision on security should be inserted in the draft single article. Many legislations included provisions on security and the problem of the contiguous zone had shifted from the stage of individual to that of collective action. He had in mind the Panama Zone Declaration [4] and the establishment of a permanent security zone by the Rio de Janeiro Conference in 1947.[5] In view of those facts that aspect should not be overlooked. If a provision on security were included, the number of rights covered would be broadly three, customs and fiscal control being grouped together.

30. Mr. Padilla-Nervo had suggested the inclusion in the article of a provision covering fishing, on the ground that Gidel's concept had received general recognition. Nevertheless, he wished to point out that practice had not developed as had been anticipated in 1930, when admittedly the idea was premature; of the eight or ten States that had embodied the concept in their laws, at least half had not sought to establish a unilateral right. The reason why Gidel's concept had not taken firmer root was simply that the idea of the contiguous zone implied an exclusive interest of the coastal State, and that the exercise of rights therein would therefore not infringe upon the interests of any third party. Conservation of the living resources of the high seas, however, concerned a *res communis*, which was a very different matter. He had been an ardent supporter of the concept of the special interest of the coastal State in the contiguous zone, which special interest entailed special rights. Those rights, however, were never exclusive, for the interests of the international community must be safeguarded.

31. Although Mr. Padilla-Nervo had not proposed the establishment of a contiguous zone for fishing purposes, with exclusive rights for the coastal State, he (the Chairman) doubted the wisdom of referring in the text of the article to a right which had been dealt with elsewhere. The point might be only a technical one, but it seemed advisable to state, in the comment on the contiguous zone, that in respect of conservation the Commission had adopted a procedure detailed elsewhere.

32. Mr. SPIROPOULOS shared the Chairman's view with regard to Mr. Padilla-Nervo's suggestion. While he appreciated the latter's concern over the problem of conservation in the contiguous zone, it must be remembered that it was not a question of an exclusive, but rather of a collective, right. Article 5 of the draft articles relating to the conservation of the living resources of the sea (A/2934, p. 14) provided that a coastal State might adopt measures of conservation unilaterally, provided that negotiations with the other States concerned had not led to agreement. That right, however, was subject to certain conditions. At the previous meeting, he had pointed out that the provisions on conservation applied also to the contiguous zone.[6] Admittedly, he was not thinking of such remote areas as Mr. Pal had in mind, but if a State had the right to take measures of conservation far from its coast, it was obvious that it enjoyed similar rights within the contiguous zone.

33. There was one important problem to which attention should be drawn. Mr. Padilla-Nervo had proposed that the coastal State should have the right to apply sanctions against an offender, whereas the articles on conservation referred to measures of regulation only. In the case of an infringement of regulations, the question arose, who would apply sanctions in the contiguous zone? Would it

[4] Meeting of Foreign Ministers of the American Republics, Panama City; Final Act, Declaration No. 14: Declaration of Panama.

[5] Inter-American Conference for the Maintenance of Continental Peace and Security: Rio de Janeiro, 1947.

[6] A/CN.4/SR.348, para. 74.

be only the coastal State, or would it be any other State exercising jurisdiction on the high seas? Under article 5, the coastal State could take unilateral action subject to international regulation. Mr. Padilla-Nervo's proposal would grant an exclusive prerogative to the legislation of the coastal State. He doubted the wisdom of that principle.

34. Mr. SANDSTRÖM said that Mr. Spiropoulos' point was a useful reminder of the complexity of the relationship between the contiguous zone and the question of fishing. The question of the enforcement of measures of conservation, raised by the United Kingdom Government, was an important one, but it would be better to take that point after consideration of the articles on fishing.

35. Mr. PAL said that the term " contiguous zone " was used almost in a technical sense, as meaning an area required for the purpose of making effective any remedial measure relating to infringement, within the territorial sea, of certain substantive rights also available in the territorial sea. The contiguous zone was really an extension of the territorial sea for that limited purpose. Mr. Padilla-Nervo had referred to the right of conservation outside the territorial sea. Any infringement of that right would also take place outside the territorial sea, and sanctions might have to be applied in that same area, where, however, the remedy might not be adequate. It would be better to confine the text of the article adopted at the fifth session to the substantive rights contained therein. Consideration of other rights would arise later. He suggested the hypothetical case of a contiguous zone of, say, 100 miles off the coast of India. If that were accepted for the purposes of infringement, would remedial action be restricted to a twelve-mile limit or would the remedy be co-existive with the right? The logical procedure should be, first, to establish the substantive right and then the corresponding remedial right.

36. Mr. SPIROPOULOS, while appreciating Mr. Pal's point, thought it advisable to defer consideration of sanctions until the articles on fisheries were taken up.

37. Sir Gerald FITZMAURICE wondered whether Mr. Padilla-Nervo's proposal was really in the best interests of those coastal States he had in mind, for they were hardly consistent with measures of conservation that would be taken on the high seas. There was a general consensus of expert opinion that because of the habits of fish the notion of particular zones had little relevance to the idea of conservation. In that respect, therefore, no geographical limitations could apply. Mr. Padilla-Nervo's point was of more general interest and more properly related to the articles on fishing.

38. With regard to the Chairman's reference to security, he would point out that no subsequent action was taken on the idea mooted at the Hague Conference on the ground that it was unnecessary, because all States enjoyed the inherent right of self-defence, even on the high seas. There was considerable danger in the use of the word " security ", which had vague and wide implications. Its introduction might, in fact, negative the prevention of infringements of other specific rights.

39. Mr. PADILLA-NERVO explained that he had not submitted a formal proposal, but had merely raised certain implications of the question that seemed deserving of consideration. The Chairman's suggestion to refer to the point he had raised in the comment on the article was acceptable. Consideration of the question might perhaps be deferred. It was clear that there were broader aspects, touched upon by Mr. Spiropoulos and Mr. Pal, that called for thorough examination.

40. The CHAIRMAN said that it seemed to be generally agreed that a decision on the question of including a reference to conservation rights in the article or the comment should be deferred pending definite adoption of the articles on conservation, in particular, the provisions concerning the rights of the coastal State. A decision on the last sentence of the article should also be deferred until a decision had been taken on the breadth of the territorial sea.

It was so agreed.

41. Mr. SALAMANCA was opposed to the Chairman's suggestion that a reference to security should be included in the article on the contiguous zone, because there were provisions concerning regional defence agreements in the Charter of the United Nations. Furthermore, since the establishment of the United Nations, security questions had become an international rather than a national issue and Member States had assumed various obligations in regard to the maintenance of peace.

42. Faris Bey el-KHOURI said that the Chairman's suggestion was imprudent, since States might feel themselves free to invoke security considerations as a justification for seemingly unjustifiable acts.

43. Mr. EDMONDS also thought that such an addition was not only liable to abuse but was unnecessary, as the coastal State already possessed certain legitimate rights of self-defence.

44. Turning to the question of procedure, he said that the Commission should conclude its discussion on the contiguous zone before taking up the draft articles on the conservation of the living resources of the sea, because the conservation measures would also apply to other areas of the high seas.

45. Mr. AMADO found the Chairman's suggestion unacceptable, because a provision conferring exclusive rights on the coastal State must be drafted with the greatest precision.

46. Mr. PAL shared the doubts of other members regarding the wisdom of the Chairman's suggestion.

47. Mr. HSU said that provision for protecting the general security interests of States was already made in international law. He failed to grasp precisely what considerations the Chairman had in mind in the present instance.

48. The CHAIRMAN, speaking as a member of the Commission, said that, in view of the objections of members, he would not insist on a reference to security—a concept which might have become more difficult to define since the 1930 Conference for the Codification of International Law. He only wished to point out in passing

that the Preparatory Committee of the Conference had suggested referring to the question in response to the comments of certain governments. Perhaps some reference might nevertheless be made to it in the report, to show that it had not been ignored and to save the Commission from criticism by scholars familiar with the work of the 1930 Conference.

49. He did not believe that Mr. Hsu's objection was any more valid for the question of security than for any other question of importance to international law.

50. Mr. SALAMANCA considered that if any mention of the question were to be made in the report, a statement must also be included to the effect that, with the signature of the United Nations Charter, the freedom of Member States to take action in defence of their national security had been circumscribed.

51. The CHAIRMAN, speaking as a member of the Commission, observed that Mr. Salamanca seemed to have overlooked the Covenant of the League of Nations.

52. Mr. HSU reserved the right to propose the insertion in the draft article of a reference to regulations for combating subversive activities, after the breadth of the territorial sea had been discussed. That need might arise if a belt of twelve miles were not admitted to be in conformity with international law, because States might then claim certain rights in a contiguous zone for security purposes.

53. The CHAIRMAN suggested that subject to the decision on the draft articles relating to the conservation of the living resources of the sea, the Commission might approve the first sentence of the draft article on the contiguous zone as adopted at its fifth session, with the deletion of the word " immigration ". The decision on the second sentence should be deferred until the discussion of article 3—breadth—of the draft on the territorial sea had been concluded.

It was so agreed.

54. The CHAIRMAN then called for comments on the proposal [7] by Sir Gerald Fitzmaurice to add two new paragraphs to the draft article.

55. Sir Gerald FITZMAURICE said that, in the light of the views expressed during the discussion and the Commission's decision to leave the existing draft article substantially unchanged, he found it unnecessary to press for the adoption of the first new paragraph, the purpose of which had been to explain clearly the status of the contiguous zone.

56. On the other hand, he believed that there should be a provision on the purely technical point dealt with in the second proposed new paragraph, because, though infrequent, there were cases where, owing to the geographical conformation of the coast line, if one State instituted a contiguous zone without the agreement of its neighbours, vessels making for a port in another State might be unable to do so without passing through that zone. It was essential also for coastal States to have direct access from their ports through their territorial sea to the high seas. For those two reasons he believed that where the situation was as he had described, the States concerned should not be allowed to establish a contiguous zone without the agreement of all the countries interested.

57. Mr. KRYLOV, after observing that the provision contained in the first new paragraph might, if necessary, be examined after the Commission had dealt with the draft articles on conservation, said that the second new paragraph was unnecessary because, on Sir Gerald Fitzmaurice's own admission, it dealt with cases which were infrequent. In performing a work of codification, the Commission could not provide for all eventualities.

58. Mr. AMADO welcomed Sir Gerald Fitzmaurice's decision to withdraw the first new paragraph, which was only illustrative of the general proposition stated in the draft article already approved.

59. He was opposed to the inclusion of the second new paragraph, which had no place in a code of the law of the high seas. Furthermore, he had some objections to the wording, more particularly to the phrase " no contiguous zone may be established ", since there was no question of establishing a zone, but only of exercising rights within a prescribed area.

60. Mr. SANDSTRÖM, while feeling that there was no necessity to raise the question of access to ports, saw some value in the second paragraph because of the need to ensure that the contiguous zones of adjacent States did not overlap.

61. Mr. PAL thought that the Commission would be showing excessive caution if it adopted Sir Gerald Fitzmaurice's second paragraph, since the rights conferred on the coastal State in the contiguous zone would in no circumstances hamper navigation of the kind suggested in his proposal. That proposal contemplated passage through the contiguous zone of one State for the purpose of reaching a port in another State. Obviously, a ship proceeding in that manner would neither be going to the territorial waters of the State whose contiguous zone it was traversing, nor coming out of those territorial waters. Consequently, there would be no occasion for the operation of the contiguous zone. He could not endorse the insertion of such a provision.

62. Faris Bey el-KHOURI suggested that the question could be dealt with in the comment. It was unnecessary to insert a specific provision in the article itself because navigation in the contiguous zone, which was part of the high seas, was free.

63. Mr. FRANÇOIS, Special Rapporteur, joined Mr. Amado in welcoming the withdrawal by Sir Gerald Fitzmaurice of his first paragraph, particularly in view of the uncertainty of the precise meaning of the expression " exclusive rights ".

64. On the other hand, he considered that the second paragraph deserved close study and would provide a useful rule, because although it had been described as unnecessary on the ground that the contiguous zone remained a part of the high seas, nevertheless in that area

[7] A/CN.4/SR.348, para. 47.

navigation was subject to a type of control by the coastal State which did not exist anywhere else on the high seas. Consequently it would be possible for the coastal State to hamper the commerce of another State if access to the ports of the latter lay through the contiguous zone of the former—a possibility which most States would be very reluctant to accept.

65. Sir Gerald FITZMAURICE observed that, when the draft article on the contiguous zone had been drawn up, the Commission had not yet examined the problem of the delimitation of the territorial sea of two States the coasts of which were opposite each other, or of two adjacent States, and had therefore perhaps not contemplated the special and very limited cases with which his proposed new paragraphs were concerned.

66. In reply to Mr. Amado, he pointed out that contiguous zones were " established " in the sense that States made claims to exercise certain rights within a specific area.

67. He maintained that there was a possibility of conflict over the delimitation of the contiguous zone in certain places, which could be avoided if, in those cases, States were required to reach agreement before exercising their rights.

68. He would be content if his proposed paragraph, coupled with a statement on those lines, were inserted in the comment and would not press for the addition of a specific provision in the article itself.

69. Mr. KRYLOV and Mr. SANDSTRÖM supported that solution.

70. Mr. ZOUREK had no objection to a statement of that kind in the comment and pointed out that the principles laid down in articles 14 and 15 of the draft on the territorial sea could be applied to the delimitation of the contiguous zone in the cases referred to by Sir Gerald Fitzmaurice.

It was agreed to include in the comment the point raised by Sir Gerald Fitzmaurice in the second paragraph of his amendment, and to recommend that in such cases States should not exercise their rights in the contiguous zone until agreement had been reached between them over the delimitation of their respective zones.

Article 22: Right of hot pursuit (resumed from the 345th meeting)

71. The CHAIRMAN, recalling that the Commission had deferred [8] taking a decision on article 22 until it had examined the draft article on the contiguous zone, proposed that it now revert to that article, and to Sir Gerald Fitzmaurice's proposal to delete the last sentence of paragraph 1.[9]

72. Sir Gerald FITZMAURICE said that the logic of his amendment had been confirmed by the Commission's decision to limit the rights of the coastal State in the contiguous zone to the prevention of infringement in the territorial sea of certain specific regulations. Clearly an infringement of the laws and regulations of the coastal State could not be committed by an incoming vessel while in the contiguous zone. If the vessel had the intention of committing an infringement in the territorial sea, that could be established only by boarding the vessel in the contiguous zone. Consequently, there was no need to grant the right of hot pursuit in the contiguous zone.

73. Mr. FRANÇOIS, Special Rapporteur, said that Sir Gerald Fitzmaurice had taken into account only some of the instances in which the right of hot pursuit was recognized. One of the most important was where a contravention of the laws and regulations of the coastal State was discovered after the vessel had left the territorial sea. Once it had been recognized that the rights exercised in the territorial sea did not suffice for the protection of certain interests, he saw no reason for prohibiting hot pursuit in the contiguous zone.

74. Mr. AMADO maintained that it was inadmissible for hot pursuit to start in the contiguous zone, the inside limit of which formed the frontier between the territorial sea and the high seas.

75. He was also categorically opposed to the Special Rapporteur's tendency to assimilate rights exercised in the contiguous zone to rights exercised in the territorial sea, which were those exercised by the State on land. The Commission could not go farther than to allow the coastal State to punish the infringement of its laws within the limits laid down by international law.

76. Mr. SANDSTRÖM argued that, once the Commission had laid down in the article on the contiguous zone that the coastal State was entitled to punish infringements of regulations, the provision contained in the third sentence of article 22, paragraph 1, followed logically, the more so as the Commission did not lay down that the pursuit must begin at the scene of the offence. He therefore saw no grounds for prohibiting hot pursuit starting in the contiguous zone.

77. Sir Gerald FITZMAURICE said that the Special Rapporteur and Mr. Sandström were right to draw attention to the difference between a vessel leaving port after committing an offence and a vessel entering the contiguous zone of a coastal State with the intention of committing an offence. In the latter case it would be irregular to allow hot pursuit in the contiguous zone; indeed, he agreed with Mr. Amado that it would be inadmissible. It might also encourage attempts to start hot pursuit on the high seas, even outside the contiguous zone.

78. Furthermore, there must be some limitation of the exercise of the right of hot pursuit, and the juridical basis for such a limitation was the inherent difference of status between the territorial sea and the contiguous zone. He therefore persisted in his conviction that hot pursuit could not begin in the contiguous zone, where the coastal State did not exercise sovereignty.

79. Mr. HSU wondered whether the powers of control conferred on the coastal State in the article relating to the contiguous zone might not become illusory if Sir Gerald Fitzmaurice's view were accepted.

[8] A/CN.4/SR.344, para. 34.

[9] *Ibid.* para. 12.

80. The CHAIRMAN put to the vote Sir Gerald Fitzmaurice's amendment to delete the third sentence of article 22, paragraph 1.

The amendment was rejected by 7 votes to 3, with 4 abstentions.

81. Mr. ZOUREK believed that those who had opposed the amendment had done so on the understanding that the right of hot pursuit could be invoked only for infringements of the laws and regulations of the coastal State committed in its territorial sea or inland waters. Perhaps that should be stated more explicitly in the text in order to obviate the possibility of misunderstanding.

82. Mr. SANDSTRÖM, pointing out the need for consistency, observed that in the draft articles on conservation the term " contiguous " was used in a different sense.

83. Mr. PAL observed that the term " contiguous zone " should be confined to its technical sense and should not be used in any other.

84. Mr. ZOUREK agreed with Mr. Sandström, but said that the term " contiguous zone " had now acquired a technical connotation and should be maintained. Some other term should be used in the draft articles on conservation so as to eliminate all possibility of confusion.

The meeting rose at 1 p.m.

350th MEETING

Tuesday, 22 May 1956, at 3 p.m.

CONTENTS

Chairman: Mr. F. V. GARCÍA-AMADOR.

Rapporteur: Mr. J. P. A. FRANÇOIS.

Present:

Members: 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.

Also present: Mr. M. CANYES, representative of the Pan-American Union.

Welcome to the representative of the Pan-American Union

1. The CHAIRMAN welcomed Mr. Canyes, who was to attend the Commission's meetings as representative of the Pan-American Union. He said that members would be interested to hear that the Inter-American Council of Jurists, at its third meeting, held in Mexico City in January-February 1956, had reached a decision very similar to that of the Commission itself concerning co-operation with inter-American bodies in the interests of better co-ordination on matters of common interest.

2. Mr. LIANG, Secretary to the Commission, speaking on behalf of the Secretary-General of the United Nations, associated himself with the Chairman's welcome. In accordance with the Commission's decision at its previous session he had attended the third meeting of the Inter-American Council of Jurists and had enjoyed various facilities accorded him by the Secretariat of the Organization of American States as well as by the host Government.

3. Mr. CANYES, thanking the Chairman for his kind words, said that he was honoured to have the opportunity of attending the discussions of such an eminent group of lawyers presided over by a man who had played an important part in promoting co-operation amongst inter-regional organizations. He would be pleased to furnish any information members might wish to have.

Appointment of a drafting committee

4. The CHAIRMAN proposed that a drafting committee be appointed consisting of Sir Gerald Fitzmaurice, Mr. François, Mr. Padilla-Nervo and Mr. Scelle, with Mr. Zourek as Chairman.

It was so agreed.

5. Mr. SCELLE said that for reasons of health he might be unable to attend all the meetings of the Committee.

6. The CHAIRMAN replied that in that eventuality certain questions, particularly those affecting the French text, could be referred to Mr. Scelle privately.

Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97/Add.3, A/CN.4/99 and Add. 1-6) (*continued*)

Conservation of the living resources of the high seas (resumed from the 338th meeting)

7. The CHAIRMAN invited the Commission to revert to the draft articles relating to conservation of the living resources of the high seas (A/2934). Most members had already expressed their views in the general discussion, and he believed that the Commission could now proceed with the detailed examination of each article. The proposals of some governments would entirely alter the whole nature of the scheme; others were directed to points of detail.

Article 24: Right to fish

8. Mr. FRANÇOIS, Special Rapporteur, said that both the United States and the United Kingdom Government