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**Summary record of the 351st meeting**

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

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58. Sir Gerald FITZMAURICE said that Mr. Zourek's first point was much more in harmony with the spirit of conservation than Mr. Pal's proposal. His second point, however, seemed hardly consistent with his first.

59. He still failed to follow Mr. Padilla-Nervo's argument as to the anxiety of the coastal State regarding conservation measures taken by another State in an area of the high seas contiguous to its coasts. If the coastal State had any special interest, its rights were fully safeguarded under articles 28 and 29. If, on the other hand, it professed no interest—and, *pace* Mr. Zourek's comments, it was a fact that many coastal States had not displayed any interest whatever in areas outside their own territorial sea—other States, whose nationals were engaged in fishing in that area, did have such an interest. No real case had been made out for a principle which would prevent the taking of measures of conservation merely because an area happened to be somewhere near the coast of a coastal State.

60. Mr. PAL, in reply to Sir Gerald Fitzmaurice, said that the anxiety of certain coastal States might not be that foreign fishermen would operate near their coasts, but that conservation measures instituted by countries with powerful and well-established fishing fleets might exclude coastal nationals from fishing in areas near their coasts.

61. Mr. PADILLA-NERVO pointed out that, in spite of the remedies available, coastal States felt concern at being obliged to submit to conservation measures adopted by distant States. It must be borne in mind that many coastal States did not yet possess large fishing fleets, or for one reason or another had been prevented hitherto from exploiting the resources of the sea contiguous to their coasts. Accordingly, the Commission must recognize their special interest, and that could be done without prejudice to the general aim, which was conservation.

62. In that connexion, he agreed with Mr. Zourek that conservation measures should be made obligatory for States.

63. The CHAIRMAN observed that article 25 referred to a very limited case, and that any measures taken under that article would not affect the coastal State, even if it had a special interest. The Commission had not yet come to grips with the crucial issue, which was the special interest of the coastal State. In framing the present articles, it must look to the future, while not disregarding the interests of those States which had a long-established fishing industry.

*The meeting rose at 6.10 p.m.*

## 351st MEETING

*Wednesday, 23 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.

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

**Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97/Add.3, A/CN.4/99 and Add.1-7) (*continued*).**

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

#### *Article 25 (continued)*

1. The CHAIRMAN, inviting the Commission to continue its consideration of the draft articles relating to the conservation of the living resources of the high seas, recalled the amendment to articles 25-29 proposed at the previous meeting by Mr. Pal<sup>1</sup> and the amendment to article 25 proposed by Mr. Zourek.<sup>2</sup> With regard to the latter, he would point out that the exercise of the right recognized in article 30 carried a mandatory implication in respect of article 25.

2. Mr. SPIROPOULOS said he was convinced that the differences of opinion revealed by the discussion were not as profound as they might seem, and that by a determined effort agreement could be reached. Those differences reflected the two opposing points of view expressed, on the one hand, in article 25, covering States' rights of regulating fishing in the high seas, and, on the other hand, in the proposals of some members—in particular Mr. Pal and Mr. Padilla-Nervo—who had urged that priority be given to the coastal State in the regulation of fishing. He was sure that, if the order were reversed—i.e., if the rights of the coastal State were established first, everything else would fall into place.

<sup>1</sup> A/CN.4/SR.350, para. 35.

<sup>2</sup> *Ibid.*, para. 55.

3. He fully appreciated Mr. Padilla-Nervo's views on the concern of a coastal State at the spectacle of other States taking conservation measures in areas off its own coasts, for the idea of a powerful fishing fleet operating in waters close to a coast did constitute something of a bogey. As he had pointed out at the previous meeting, however, that was the existing legal situation.<sup>3</sup> Agreement, therefore, would call for concessions from the partisans both of the coastal State and of the fishing State.

4. The articles as a whole gave the coastal State rights that it had not previously enjoyed, and indeed almost all the rights it could claim, for they were limited only by the conditions of the establishment of special interest under article 29. That limitation was perfectly logical, because the provisions of international law could protect only interests that actually existed. If, however, the element of special interest were eliminated no great loss would be suffered, and satisfaction would have been given to the coastal State.

5. He would therefore propose, as an attempt at a compromise solution, the following text for an article combining the provisions of articles 28 and 29:

1. Any coastal State (may) (shall) adopt unilaterally measures for the maintenance of the productivity of the living resources (in any area) of the high seas contiguous to its coast, provided that negotiations to this effect with the other States concerned have not led to an agreement within a reasonable period of time.

2. Any measure which the coastal State adopts under the first paragraph of this article must be based on appropriate scientific findings, and must not discriminate against foreign fishermen.

6. He had inserted the word "may" in parentheses in view of Mr. Zourek's proposal. His own proposal, while giving priority to the coastal State in matters of conservation, did not really change the situation. It merely created a presumption in favour of the coastal State. The only aspect that he had excluded was that of special interest. Even where there was no special interest, the coastal State would still enjoy its prerogative. That, however, was not of great importance, because in case of disagreement the final decision would always be taken by the arbitral commission. His proposal obviously implied the adoption of the articles dealing with arbitration.

7. Mr. SANDSTRÖM said that he had arrived at the same conclusions as Mr. Spiropoulos, although by a somewhat different reasoning. He had pointed out at the previous meeting that, under articles 28 and 29, the coastal State had been given every right that it could reasonably claim.<sup>4</sup> Subsequently, he had come to the conclusion that the special interest of the coastal State was the circumstance of contiguity, and since that was also a general circumstance, the articles should be redrafted in order to make the right of the coastal State independent of the showing of a special interest.

8. His arguments were confirmed by the Canadian Government's comment on article 28 (A/CN.4/99/Add.7, p. 2) that: "A coastal State always has an interest in the resources of the high seas contiguous to its coast by the mere fact of contiguity." Acceptance of the Canadian Government's view would achieve the same result as Mr. Spiropoulos' proposal.

9. Mr. HSU, endorsing Mr. Spiropoulos' proposal, said that in theory Mr. Pal's proposal had much to recommend it. Conservation was of vital importance and the coastal State obviously had a special interest in the matter. Looked at from the practical standpoint, however, the question was already amply covered by the provisions of the draft articles. He pointed out that legal rights also entailed obligations: if in practice a coastal State shrank from accepting its obligations, then the rights became illusory.

10. Mr. Pal might perhaps agree not to press his proposal until the questions of the contiguous zone and the breadth of the territorial sea had been settled; in the meantime, Mr. Spiropoulos' proposal should be acceptable.

11. Mr. SPIROPOULOS, in reply to Mr. EDMONDS, who had asked whether his proposal amounted to replacing article 29 by his new text, without any reference to a special interest, said that he did not attach great importance to that point, but would follow the wishes of the Commission. All he had aimed at was to lay slightly greater stress on the rights of the coastal State without in any way altering the basic situation. He had kept the possibility of recourse to the arbitral commission constantly in mind. His proposal, though not necessarily ideal, had been an attempt, on the basis of fundamental principles, to produce a text that would secure general agreement among all States engaged in fishing on the high seas.

12. Mr. PAL said that, subject to certain modifications, Mr. Spiropoulos' proposal was acceptable. In view, however, of the disagreement revealed by the comments of governments, agreement within the Commission would not necessarily decide the question. The Commission, after all, was not the community of nations.

13. As to Mr. Hsu's suggestion, whatever might have been his personal attitude, as he did not represent the Government of India, his acceptance could hardly affect the issue.

14. With regard to the deletion of the factor of special interest, he had from the outset stressed that articles 28 and 29, as drafted, would never satisfy the claims of coastal States, and in that connexion would recall that the Rome Conference had—although by a narrow majority—specifically recognized the special interest of the coastal State in the field of conservation of living resources. Any solution devised should not be based merely on the past and on so-called vested interests. Many coastal States were still under-developed and had no fishing fleets, yet their special interest in areas of the high seas contiguous to their coasts was beyond question, though still only potential. While bearing in mind that agreement in the Commission would not necessarily

<sup>3</sup> *Ibid.*, para. 53.

<sup>4</sup> *Ibid.*, para. 37.

command general support from governments, he would endorse Mr. Spiropoulos' proposal.

15. Mr. PADILLA-NERVO said that, in general, he could accept Mr. Spiropoulos' proposal, and that the statements of Mr. Sandström and Mr. Pal confirmed the view he had expressed during the general discussion of the subject, that the fundamental issue in the whole question was the recognition of the special interest of the coastal State in conservation of the living resources of the high seas.<sup>5</sup>

16. There was no denying that that principle had been accepted by the Rome Conference, which had defined the principal objective of conservation of the living resources of the seas as being "to obtain the optimum sustainable yield so as to secure a maximum supply of food and other marine products".<sup>6</sup> The same paragraph continued: "When formulating conservation programmes, account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast." Further, the Inter-American Specialized Conference on the Conservation of Natural Resources of the Submarine Shelf and Oceanic Waters, held at Ciudad Trujillo in 1956, had unanimously confirmed that principle in paragraph 5 of the operative part of its final resolution.<sup>7</sup> He was convinced that that view would be endorsed by a large majority when the question came to be considered by the General Assembly of the United Nations at its forthcoming eleventh regular session.

17. The recognition of the special interest of the coastal State, although acknowledged in the draft articles, was not expressly stated. The wording of article 29, paragraph 1, was unduly restrictive, and that provision should be broadened. It was essential to recognize that the special interest of the coastal State existed merely by virtue of its position, and that it should not be given a limitative interpretation—e.g., by a restrictive condition that nationals of the coastal State should be actually engaged in fishing in the area concerned.

18. He welcomed the approach of the Canadian Government to the question, which was very similar to his own, for it dealt with the special interest of the coastal State on the objective basis of the mere fact of contiguity.

19. His own suggestions for amending article 29 would follow much the same lines as Mr. Spiropoulos's proposal, except that in the first sentence of paragraph 1, he would prefer to state in so many words that the coastal State had a special interest. Moreover, he would have preferred to have Mr. Spiropoulos's paragraph 1 prefaced by a phrase to the effect that, in consequence of its special interest, the coastal State might adopt unilaterally whatever measures of conservation were appropriate. He would reserve the right, however, to revert to those points when articles 28 and 29 came up for consideration.

20. Mr. SALAMANCA, while agreeing that the right of the coastal State in matters of conservation should not

be conditional, pointed out that the discussion was veering away from article 25 towards an examination of article 29. If, as it seemed, the main interest of the Commission was to define the rights of the coastal State, it would be better, in the context of Mr. Spiropoulos' proposal, to take up article 29 forthwith.

21. Mr. EDMONDS said that Mr. Padilla-Nervo's fundamental proposition, that every coastal State had an inherent special interest in the living resources of the sea, did not provide the entire solution of the problem. It might be conceded that a coastal State indeed had a special interest, but such a State was not always willing to take action. That was the situation which the draft articles as a whole attempted to cover by recognizing the interests of other States in cases where the coastal State did not take conservation measures.

22. The aim of the Commission—as of the Rome Conference—was to codify provisions for ensuring the optimum sustainable yield from the living resources of the sea and for the regulation of measures taken to that end. Conservation measures must have a twofold basis: a programme based upon scientific findings, and rules for effective enforcement. Any conservation programme was always expensive, especially when carried out at sea, and many coastal States were unwilling to undertake such a burden. In view, therefore, of the wide variety of attitude and practice among coastal States, there was no reason for introducing mandatory provisions.

23. Admittedly the draft articles did not constitute an ideal text—though his own proposal<sup>8</sup> would both clarify and simplify them—but on the whole they formed a consistent pattern of provisions safeguarding the interests of all States concerned. In articles 25 to 33, they covered all the possibilities that might arise. In article 28, for instance, the coastal State was given a considerable extension of existing rights not enjoyed by non-coastal States. Article 29 went even farther, in meeting the unusual situation of a coincidence of failure to reach agreement and the circumstance of urgency.

24. As a whole, the draft articles were sound and practical and ensured that appropriate conservation measures based on scientific findings could be enforced, a point which, as had been stressed at the Rome Conference, was of vital importance. The Commission was, in fact, implementing the fundamental principles that had been enunciated at the Rome Conference, and instead of making up a patchwork of isolated provisions, the articles taken as a whole would be seen to form a consistent pattern. Even if it were conceded that a coastal State had theoretically a special interest in conservation, the Commission should not place upon it the obligation of embarking upon a conservation programme which might be too heavy for it to bear. In all cases where a coastal State was prepared to take conservation measures, the Commission had provided adequate machinery for doing so, and had fully safeguarded its rights.

25. Mr. PAL pointed out that the origin of the claim of the coastal State to a special interest in conservation

<sup>5</sup> A/CN.4/SR.338, para. 9.

<sup>6</sup> A/Conf.10/6, para. 18.

<sup>7</sup> A/CN.4/102/Add. 1.

<sup>8</sup> A/CN.4/SR.338, para. 3.

measures in any area of the high seas contiguous to its coasts was to be found in the new doctrine formulated on 28 September 1945 by the President of the United States of America, in the proclamation declaring the right of his country "to establish fisheries conservation zones in the high seas areas contiguous to the coasts of the United States, either exclusively or in agreement with other States concerned".<sup>9</sup> That principle had been confirmed at the Rome Conference and, more recently, in paragraph 5 of the operative part of the Ciudad Trujillo resolution, which had again recognized the special interest of the coastal State in the continued productivity of the living resources of the high seas adjacent to its territorial sea. There were ample grounds, therefore, for supporting the viewpoint of the Canadian Government, referred to by Mr. Sandström, and for accepting Mr. Spiropoulos' proposal.

26. The CHAIRMAN said that Mr. Spiropoulos had attempted to cover in one article the two cases covered by articles 28 and 29. As he had pointed out at the previous meeting,<sup>10</sup> each of the six articles in the series 25-30 dealt with a separate case. In view of the wider application of article 29, it would be hardly appropriate to combine in one article two so disparate cases as those covered by articles 28 and 29. In fact, Mr. Spiropoulos' proposal dealt with article 29. In any event, the provision in paragraph 2 (a) of that article, which had been one of the provisions of a joint Cuban-Mexican proposal submitted at the Rome Conference, was of importance and should be retained. As to paragraph 3, he was not sure whether Mr. Spiropoulos wished to delete it or to retain the provisions on arbitration.

27. With regard to the Ciudad Trujillo resolution referred to by Mr. Padilla-Nervo and Mr. Pal, they had quoted paragraph 5 of the operative part, but paragraph 6 pointed out that there was no agreement among the States represented at the Conference, either concerning the nature and scope of the special interest of the coastal State or as to how the economic and social factors which that State or other interested States might invoke should be taken into account in assessing the objectives of conservation programmes.<sup>11</sup> The special interest of the coastal State had been conceded in principle; the interests of other States, however, including non-coastal States, had also been stressed.

28. Reference had also been made in the Commission to the case of the coastal State that had no special interest in the area concerned, whereas other non-coastal States had historic interests. On that point, the Ciudad Trujillo Conference had restricted itself to recognition in principle of the special interest of the coastal State in the conservation of the living resources of the high seas adjacent to its territorial sea. Paragraph 4 of the preamble to the draft articles (A/2934, page 14), however, recognized that special interest unconditionally.

29. In reality, the question of the special interest of the coastal State was not of major importance. That interest existed in principle and had received recognition in the preamble to the draft articles. It was not essential to introduce into the criteria of the draft articles a concept already formulated in the preamble.

30. He could not help observing that the major contributions to the discussion so far had been in the sense of extending the rights of the coastal State. There were other, and contrary views, however, among the comments by Governments, and in order to arrive at a balanced decision the Commission must take account of all the opinions expressed. The important issues to be settled were the rights of the coastal State, subject to the limitations of article 29, paragraph 2, and the question of arbitration.

31. Mr. SPIROPOULOS was in general agreement with the Chairman. He wished to reassure those who feared that acceptance of his proposal by the Commission would have little effect on the attitude of Governments. Despite the fact that members sat in their individual capacities, he was convinced that any agreement arrived at round that table would carry considerable weight in other circles.

32. He had restricted his proposal to the provisions of the first two paragraphs of article 29, as raising the most controversial issue. Arbitration must be compulsory, of course, otherwise the whole series of draft articles would be inoperable, because no State would ever voluntarily abandon its rights to fish and take conservation measures. He had not included the provision of paragraph 2 (a) because of the limitation it imposed on the rights of the coastal State. If the Commission wished, however, he would be perfectly willing to reinsert that provision. Changes would naturally be called for in other articles, for instance, article 25.

33. As Mr. Edmonds had pointed out, indifference on the part of a coastal State to the taking of conservation measures could not mean that other States would lose their rights in the areas concerned. The insertion in line 3 of paragraph 25, between the words "may" and "adopt", of some phrase such as "provided the coastal State has not adopted any measures" would meet that case, and the opportunity would have been given to the coastal State to take appropriate action.

34. The Chairman's point that the special interest of the coastal State was only of secondary importance raised the question whether it was necessary to specify such an interest. In view of the fact that an objective solution to any disagreement would always be at hand in the shape of arbitration, he would be ready to delete the reference to the special interest.

35. Mr. SANDSTRÖM agreed with Mr. Edmonds that, in their general lines, the draft articles adopted at the previous session were satisfactory and that the Commission should not depart from them substantially. It had been laid down in the draft articles that agreement should first be sought on conservation measures, and that only in the event of failure could unilateral action be taken. His objection to inserting the text proposed by

<sup>9</sup> *Official Records of the General Assembly, Eighth session, Supplement No. 9 (A/2456)*, p. 45.

<sup>10</sup> A/CN.4/SR.350, para. 48.

<sup>11</sup> A/CN.4/102/Add.1.

Mr. Spiropoulos at the beginning of the whole draft, as he understood that Mr. Spiropoulos intended, was that it made no reference to the necessity of first trying to obtain agreement between the States concerned. The Commission should take as its basic text the draft articles adopted at the previous session and should not deal first with the urgent measures to be taken by the coastal State.

36. Sir Gerald FITZMAURICE, believing that Mr. Spiropoulos had offered a possible compromise, drew the Commission's attention to certain considerations. First, a distinction must be made between a special interest and an *exclusive* special interest, and in that connexion he had been struck by the Chairman's comments concerning the special interest of the coastal State. It was important to bear in mind that, although normally the coastal State did have a special interest in fisheries contiguous to its coast by virtue of its geographical position, other States might also have a special interest in such fisheries for entirely different reasons, such as that their nationals had fished there for many years and that the catch was important to the economy of the country. It was quite unrealistic to consider the coastal State as being the only one capable of claiming a special interest in that particular area. Once that fact was recognized many of the difficulties encountered by the Commission would be overcome.

37. Secondly, there was a question of presentation involved. Governments had to take into account the impact the draft articles would make on fishing circles and it might be advisable to avoid making too explicit or too exclusive a reference to the special interest of the coastal State, lest it made the draft unacceptable in certain quarters.

38. Thirdly, the Commission had perhaps overlooked the fact that there were two kinds of coastal State, those facing a large unbounded stretch of sea and those grouped round a portion of the high seas or a gulf. In the latter instance all the coastal States concerned might claim rights over the same waters, and if they all invoked the provisions of article 29 chaos might easily ensue.

39. Fourthly, the Commission should bear in mind Mr. Edmonds' point that many coastal States were either not in a position to regulate fisheries or had no desire to do so, and that it was in the common interest for conservation measures in the areas contiguous to their coasts to be instituted, if they were needed, by the States which fished there.

40. If Mr. Spiropoulos' text were adopted, the Commission must carefully examine the consequences of that decision for article 25. It must also reject Mr. Pal's proposal to add a provision in that article preventing States other than the coastal State from introducing conservation measures in the areas contiguous to its coast, which would be allowed under Mr. Spiropoulos' text if the coastal State failed to take the necessary action.

41. He considered that the provision contained in article 29, paragraph 2 (a), should be retained, since the whole object of the draft was to prevent stocks of fish from being unduly depleted. If there was no danger of that, then conservation was not necessary.

42. Although Mr. Padilla-Nervo's suggestions might give more or less the same results as Mr. Spiropoulos' text, he preferred the latter because it stipulated more clearly that the coastal State must first try to reach agreement with other interested States on conservation measures, and that only if it were unsuccessful could it act unilaterally. Nor did he favour, as proposed by Mr. Padilla-Nervo, the emphasis being placed exclusively on the special interest of the coastal State in conservation in the area contiguous to its coast, since it was by no means always the case that the coastal State's special interest was the only one.

43. An alternative solution might be for the Commission to adopt a provision more or less on the same lines as the existing article 29, but defining the special interest of the coastal State rather more precisely by explaining that it could be either a latent or a potential interest, and keeping the reference to the existence of a special interest as being an essential condition for the exercise of the right to take unilateral action. On the other hand, he would have no objection to omitting all reference to the special interest of the coastal State provided that the conditions stated in paragraph 2 (a) were preserved and that article 25 were not modified.

44. The CHAIRMAN wondered whether, in the interests of orderly discussion, it would not be preferable for the Commission to take as its basic text the articles in the order adopted at the previous session, together with the comments of governments.

45. Mr. SPIROPOULOS contended that once a decision had been reached on articles 28 and 29 the others would give no difficulty.

46. He agreed with Sir Gerald Fitzmaurice that it would be absurd to prevent other States from instituting conservation measures if the coastal State failed to do so.

47. He had not included in his text the provision contained in article 29, paragraph 2 (a), because no such requirement had been laid down in article 25. He was, however, prepared to make good the omission.

*It was agreed to postpone further discussion of article 25 and to deal first with article 29.*

#### *Article 29*

48. Faris Bey el-KHOURI said that all difficulties of definition and ambiguity would be avoided if the articles were to refer solely to the "interest" of the coastal State, without any qualification of the nature of that interest.

49. Mr. SALAMANCA considered that the Commission should vote separately on the opening words of article 29. He would have thought that with regard to the nature of the coastal State's interest, Mr. Spiropoulos' proposal was substantially the same as Mr. Padilla-Nervo's.

50. He could not agree with Sir Gerald Fitzmaurice that Mr. Spiropoulos' intention had been to allow any State to regulate fisheries in an area contiguous to the coast of another State.

51. Mr. PADILLA-NERVO considered that the opening words of article 29, paragraph 1, were not consistent with paragraph 4 of the preamble to the draft articles, and therefore formally proposed the insertion at the beginning of Mr. Spiropoulos' text of a separate paragraph reading:

A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coasts.

Members would note that that text was identical with the beginning of paragraph 1 as adopted at the previous session, except that he had substituted the word "has" for the word "having".

52. Mr. ZOUREK said that, although he did not believe that there was any substantial difference of opinion between Mr. Spiropoulos and Mr. Padilla-Nervo, he was inclined to support the latter's proposal because it explicitly recognized the coastal State's special interest in the conservation of resources within the area contiguous to its coasts, and because such a provision would make the whole draft more acceptable to governments.

53. Mr. AMADO observed that Mr. Padilla-Nervo's intention evidently was to affirm that the coastal State had a special interest by virtue of its geographical position.

54. Mr. PADILLA-NERVO confirmed that Mr. Amado's understanding was correct.

55. Mr. AMADO pointed out that it was also necessary to recognize the interests of other States fishing in the same area.

56. Mr. FRANÇOIS, Special Rapporteur, emphasized the need to restrict the right of the coastal State to the part of the high seas contiguous to its coasts; otherwise the provision might be interpreted as conferring on the coastal State unilateral powers over a very wide area. That was particularly important now that the Commission had deleted the limitation of 100 miles agreed upon at the fifth session.<sup>12</sup>

57. Mr. SCELLE found it difficult to agree to such a privilege being extended to the coastal State, since many such States had displayed no interest whatsoever in fishing in the area contiguous to their coasts, whereas other States had done so for many years. By way of example he mentioned the traditional fishing grounds of French fishermen off the coast of Newfoundland. There was no justification for favouring the coastal State in that way, since it might prejudice the interests of States wishing to maintain or develop a fishing industry.

58. The Commission seemed again to be engaged in whittling away the freedom of the high seas, which were essentially *res communis* and therefore open to all nations on an equal footing. That deplorable process had been much in evidence during the discussions on the continental shelf. If it were allowed to continue, the freedom of the high seas would disappear altogether and the oceans would be divided up between the coastal States, in flagrant violation of one of the basic principles of

international law in regard to public property. As always, he would do everything in his power to resist such a trend, which would encourage further claims for wider belts of territorial sea.

59. Mr. SPIROPOULOS wished to make it clear that he had not accepted Mr. Padilla-Nervo's amendment to his text, which was based on article 29 but omitted the reference to the special interest of the coastal State.

60. Faris Bey el-KHOURI, observing that the opening words of article 29 might be interpreted as being merely descriptive of certain attributes of the coastal State rather than as laying down a condition for the exercise of unilateral rights, said he could support either Mr. Padilla-Nervo's wording or that proposed by Mr. Spiropoulos.

61. Sir Gerald FITZMAURICE appealed to Mr. Padilla-Nervo not to insist on his amendment, which would destroy the possibility of compromise opened up by Mr. Spiropoulos. He disagreed with Mr. Zourek that the adoption of Mr. Padilla-Nervo's amendment would render the draft more acceptable to the General Assembly. Coastal States would not reject the draft if no reference were made to their special interest, because of the rights conferred on them in article 29. On the other hand, the inclusion of Mr. Padilla-Nervo's amendment, which strongly suggested that only coastal States could have a special interest in conservation in the areas contiguous to their coasts, might make the draft unacceptable to a whole group of other States. He believed that though special *rights* were being conferred on the coastal State, it was undesirable to stress the coastal State's special *interest* too much in the article itself.

62. He believed that a more telling example than that given by Mr. Scelle was that of the long-established Spanish and Portuguese fishing grounds off Newfoundland, since neither Spain nor Portugal had any territories in that region, and the fisheries, at least for Portugal, were vitally important economically.

63. He asked whether Mr. Spiropoulos would be prepared to accept certain drafting changes to make his text adhere more closely to that adopted at the previous session. It might read roughly as follows:

Any coastal State, with a view to the maintenance of the productivity of the living resources of the sea, may adopt unilateral measures of conservation appropriate to any particular fisheries in the sea contiguous to its coasts provided. The actual wording could be left to the Drafting Committee.

64. Mr. AMADO thought that, in view of modern developments, the coastal State must have some means of ensuring that its own nationals did not suffer from the fishing operations of nationals of other States with large fishing fleets, in areas contiguous to its coast. Perhaps a proper balance of the interests involved would be secured if Mr. Spiropoulos' text were adopted.

65. Mr. SPIROPOULOS said that drafting changes on the lines suggested by Sir Gerald Fitzmaurice were quite acceptable to him, particularly as he had concluded, after mature reflection, that some of the phrases from article 29 might well be reinstated.

<sup>12</sup> Official Records of the General Assembly, Eighth session, Supplement No. 9 (A/2455), p. 17.

66. He, too, appealed to Mr. Padilla-Nervo not to press his amendment, because the special interest of the coastal State was already recognized in the preamble and it was undesirable to insert a statement in the draft articles themselves which might make them unacceptable to other States.

67. Mr. SCALLE observed that the tendency to extend the rights of coastal States had been partly corrected at the previous session by the provisions for compulsory arbitration, but now the Commission appeared to be going even farther by granting coastal States certain preemptive rights over the high seas in virtue of their geographical position. The scheme adopted at the previous session at least had the merit of being arranged in a logical order, and unilateral rights were conferred on the coastal State only after other possibilities had been exhausted. That text, in his opinion, had been acceptable and it had not given rise to any weighty objections from governments. He saw no reason whatever for making substantive changes and giving the coastal State preferential treatment when its rights were no more important than the rights of other States.

68. Mr. SALAMANCA considered that the main point at issue was whether or not the rights of the coastal State under article 29 should be made conditional on its having a "special interest". Mr. Padilla-Nervo's amendment had the advantage of being explicit and of being consistent with paragraph 4 of the preamble.

69. In answer to a question by Mr. SANDSTRÖM, Mr. SPIROPOULOS confirmed that he had not proposed omitting paragraph 3 of article 29.

70. Mr. PADILLA-NERVO said that the discussion had led him to the conclusion that he must press for his amendment. Most of the objections had related not so much to his proposal as to the text adopted at the previous session. If, as had been argued by some members, the interests of the coastal State were exactly the same as those of other States, he failed to see what could have been the Commission's object at the previous session in recognizing the special rights of the coastal State. His amendment neither conflicted with the existing text of article 29 nor excluded States from fishing in areas contiguous to the coasts of other States. If his amendment did not gain support, those who were opposed to it could vote for Mr. Spiropoulos' text.

71. As his amendment contained an important statement of principle, he asked for a roll-call vote.

72. Sir Gerald FITZMAURICE said that he had understood Mr. Padilla-Nervo to have stated earlier that he wished what would now become the second paragraph of Mr. Spiropoulos' proposal to be prefaced by some such words as, "in consequence".<sup>13</sup> If that were the case, although the first sentence as proposed by Mr. Padilla-Nervo might contain a statement of fact, the whole emphasis in article 29, paragraph 1, would have been changed. He would thus be forced to vote against the amendment, not because he disagreed that the coastal

State had a special interest or should be given special rights, but because he was unwilling for the entire emphasis to be placed on them without mention of the corresponding interests of other States. He wondered whether Mr. Padilla-Nervo's point was not in fact met by Mr. Spiropoulos' text, which concentrated on the rights of all the States concerned.

73. Mr. PADILLA-NERVO said that he would not insist on the insertion of the words "in consequence".

74. The CHAIRMAN put to the vote by roll-call Mr. Padilla-Nervo's proposal for a new paragraph<sup>14</sup> to be inserted at the beginning of Mr. Spiropoulos' text.

*The result of the vote was as follows:*

*In favour:* Mr. Amado, Mr. François, Mr. Krylov, Mr. Padilla-Nervo, Mr. Pal, Mr. Salamanca, Mr. Zourek.

*Against:* Mr. Edmonds, Sir Gerald Fitzmaurice, Mr. Sandström, Mr. Scelle, Mr. Spiropoulos.

*Abstentions:* Mr. García-Amador, Mr. Hsu, Faris Bey el-Khoury.

*Mr. Padilla-Nervo's amendment was accordingly adopted by 7 votes to 5, with 3 abstentions.*

75. The CHAIRMAN, speaking as a member of the Commission, said that he had abstained from voting on the amendment because he thought it unnecessary to insert a statement concerning the special interest of the coastal State in article 29 once that had been done in paragraph 4 of the preamble. That should, of course, not be interpreted to mean that he was opposed to the principle itself. In fact he had been instrumental in securing its acceptance by the Commission at the previous session.

76. Mr. FRANÇOIS, Special Rapporteur, said that he had voted in favour of the amendment, which was less dangerous than Mr. Spiropoulos' text because at least it laid down some directive for the exercise of unilateral rights by the coastal State and would provide a criterion to guide an arbitral commission if the measures instituted in a zone which was claimed as "contiguous" were challenged.

77. Mr. KRYLOV, explaining his support for the amendment, said that although the special interest of the coastal State had been recognized in the preamble, it was nevertheless desirable to include a statement on the subject in the body of the text.

78. Mr. SPIROPOULOS said that he had opposed the amendment because of the existence of paragraph 4 in the preamble.

79. Mr. HSU explained that he had abstained from voting because Mr. Spiropoulos' text provided a better basis for reconciling two extreme points of view.

80. Faris Bey el-KHOURI said that he had abstained from voting on the amendment not because he rejected the contention that the coastal State had an interest in conservation in the area contiguous to its coast, but because he could not vote on the text until he knew how it would affect the remainder of article 29.

<sup>13</sup> See para. 19, above.

<sup>14</sup> See para. 51, above.



81. If Mr. Spiropoulos' text had been put to the vote first, he would have supported it.

82. Mr. SANDSTRÖM said that, although he agreed that the coastal State had a special interest in conservation in the area contiguous to its coasts, he had opposed the amendment because it might reduce the chances of agreement on the draft as a whole.

83. Mr. EDMONDS said that he had voted against the amendment because, although he had no objection to the statement of fact it contained, it might give rise to difficulties and conflicts because it took no account of the other provisions in the draft.

84. Mr. ZOUREK said that he had supported the amendment because it was consistent with the economic interests of coastal States, which had already been recognized on an even wider scale by the Commission in its draft articles on the continental shelf. In view of the latter decision, it would have been strange not to refer to the rights of coastal States to promulgate regulations for conservation, which, he pointed out, would in no way discriminate against nationals of other States.

85. Mr. PADILLA-NERVO observed that the Commission had now recognized the special interest of the coastal State in positive instead of conditional terms.

86. Mr. SCALLE said that he had already adequately explained his reasons for opposing the amendment.

*The meeting rose at 1.15 p.m.*

## 352nd MEETING

*Thursday, 24 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. Shushi 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 SCALLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

*Secretariat:* Mr. LIANG, Secretary to the Commission.

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

**Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97/Add.3, A/CN.4/99 and Add.1-7) (continued)**

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

*Article 29 (continued)*

1. The CHAIRMAN recalled that at the previous meeting the Commission had adopted Mr. Padilla-Nervo's amendment to Mr. Spiropoulos' combined text for articles 28 and 29. It remained to take a decision on Mr. Spiropoulos' text itself<sup>1</sup> which had now been appended by the inclusion of the provision contained in paragraph 2 (a) of the article adopted at the previous session.

2. Mr. SPIROPOULOS pointed out that he had also accepted certain drafting changes proposed by Sir Gerald Fitzmaurice, which could be referred to the Drafting Committee.

3. Referring to paragraph 3 of article 29 as adopted the previous year, he expressed concern at the possible contradiction between the stipulation that measures unilaterally adopted by the coastal State would remain obligatory pending the arbitral decision and the statement in paragraph 2 that the measures would be valid as to other States only if the requirements set out in sub-paragraphs (a), (b) and (c) were fulfilled.

4. Mr. PADILLA-NERVO said that it was not clear from Mr. Spiropoulos' text whether a coastal State was entitled to adopt conservation measures unilaterally after failure to reach agreement with the other States concerned.

5. The CHAIRMAN explained that, after lengthy discussion at the previous session, the Commission had decided that the coastal State should be obliged to initiate negotiations, the nature of which had not been specified, with other interested States for the purpose of reaching agreement on the conservation measures to be taken. It was only after that requirement had been fulfilled, and if no result had been reached within "a reasonable period of time"—and it had been left to the discretion of the coastal State to decide what constituted a reasonable period of time—that the coastal State could act unilaterally.

6. Mr. SANDSTRÖM considered that the condition was rather more rigorous and required States to make a real effort to initiate serious negotiations.

7. Mr. EDMONDS asked that the Drafting Committee should consider the following revised text for article 29:

1. A coastal State having a special interest in the maintenance of the productivity of the living resources in any area of the high seas contiguous to its coast may adopt unilaterally such measure or measures of conservation as may be appropriate for such area, provided that negotiations with the other States concerned have not led to an agreement within a reasonable period of time.

<sup>1</sup> A/CN.4/SR.351, para. 5.