Document:-

A/CN.4/SR.353

Summary record of the 353rd meeting

Topic:

Law of the sea - régime of the high seas

Extract from the Yearbook of the International Law Commission:-

1956, vol. I

71. The establishment of regional expert bodies to decide whether the provisions of article 29, paragraph 2, had been fulfilled was a possibility worth considering, and he recalled that the Inter-American Specialized Conference held at Ciudad Trujillo in 1955 had decided to set up an oceanographic institute. The technical advice of an institute of that kind would carry great weight.

72. Mr. ZOUREK said that several speakers had urged that compulsory arbitration was an indispensable condition for the practical application of the draft articles on conservation. He had not been convinced by the arguments adduced and failed to see what advantage the articles on arbitration had over other existing means for the settlement of disputes. For there was no lack of other means; he need only mention the Hague Convention of 1907 for the Pacific Settlement of International Disputes, the General Act of Geneva of 1928 for the Pacific Settlement of International Disputes (revised in 1949), the optional clause in Article 36 of the Statute of the International Court of Justice, the procedure for the settlement of disputes by the Security Council of the United Nations and many bilateral agreements between States interested in fishing on the high seas.

73. A further point was the question whether the procedure proposed in the draft article was in fact arbitration. He would agree with Mr. Amado[11] that the classic conception embodied in article 37 of the Hague Convention implied a legal basis for settlement. In the cases to which the present draft referred, however, it would usually be necessary to make new rules, and that was not within the scope of arbitration. Moreover, the cases covered by the draft articles varied widely in importance and scope, and a single instrument for dealing with them irrespective of their nature was inappropriate. In some cases, an expert opinion would suffice; in others, it would be advisable to have recourse to a commission of inquiry or a joint commission, while in yet others the best means of arriving at a solution might be to refer the matter to an arbitral tribunal after drawing up a *compromis*. He would take only one example. It might be considered that the purpose of conservation of the living resources of the sea was either to maintain those resources at their existing level or to develop them in order to secure the maximum supply of food and other marine products. A dispute between a coastal State, the growth of whose population urgently demanded that emphasis be laid on the latter aspect and another State, which wished only to maintain the *status quo*, was hardly a question that could be left to the decision of an arbitral commission. Such a matter, which was of vital importance to the coastal State, could be settled by the States concerned only by means of an international convention.

74. If it were objected that other means than arbitration were available under the articles, his reply would be that in practice an arbitration clause was always invoked without first seeking a settlement by other means. What was important was the obligation to settle the dispute by peaceful means. If that were codified, the decisive factor would be the common desire to settle and not a set of articles on compulsory arbitration.

75. Sir Gerald FITZMAURICE suggested that Mr. Zourek had misconceived the situation. The means for settling disputes that he had quoted were perfectly valid provided the States concerned *wished* to resolve a difficulty that had arisen. That, precisely, was the nub of the whole matter, for what would be the situation if the State that had unilaterally imposed certain measures of conservation did not want a settlement of any resulting dispute? Under Mr. Padilla-Nervo's proposal, such a State, while paying lip service to the principle of conciliation, might procrastinate for a period perhaps of years, during which time the conservation measures would be imposed, despite the disagreement of the other State. Only a positive obligation to submit a difference to arbitration could lead to a satisfactory solution. The Commission must draft articles that would be acceptable to all the States concerned, and it was in the interests of the partisans of the coastal State to work to that end. The attitude that they had adopted, however, if maintained, would inevitably lead to the frustration of their own hopes. At its previous session the Commission had gone a long way to meet their point of view. Without destroying the system it had set up, it could not possibly agree to the deletion of the provisions on arbitration contained in article 29, paragraph 3, and articles 31, 32 and 33.

The meeting rose at 1 p.m.

[11] See para. 54 above.

353rd MEETING

Friday, 25 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. 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 29 (continued)

1. The CHAIRMAN pointed out that the Commission already had before it two amendments to article 29, paragraph 3—namely, a general proposal by Mr. Krylov [1] for the abandonment of the provisions concerning compulsory arbitration, and a specific proposal by Mr. Padilla-Nervo [2] for the substitution of alternative means of peaceful settlement.

2. Mr. ZOUREK, replying to Sir Gerald Fitzmaurice's contention at the previous meeting that he had misconceived the situation,[3] pointed out that States willing to seek a peaceful settlement of their differences would do so by voluntary recourse to one of the many means of peaceful settlement available. States willing to submit to compulsory arbitration could easily do so by accepting the optional clause in the Statute of the International Court of Justice or acceding to the General Act of 1928. States not so inclined would be even less willing to submit to compulsory arbitration in the matter of conservation of the living resources of the high seas.

3. It had frequently been argued during the discussions that compulsory arbitration must be imposed on States because the draft would confer rights on coastal States which they did not previously possess; but he did not find that argument convincing. In that connexion, he recalled the practice followed in aerial navigation. When the problem of regulating aerial navigation had arisen after the First World War, the Paris Convention of 13 October 1919 had recognized that States had sovereignty over the air space above their territory, at a time when the principle of freedom of the air had been upheld by most writers, after being twice affirmed by the Institute of International Law, in 1906 and 1911. The authors of the convention of 1919 had also thought it necessary to impose compulsory arbitration on the contracting Parties, but the body of rules formulated in the convention had worked very well without the parties ever having had recourse, as far as he was aware, to that method of settling disputes.

4. The CHAIRMAN regretted that difficulties had arisen over a question which, to all appearances, had been satisfactorily settled at the previous session. Mr. Krylov and other speakers had referred to the General Assembly's opinion on the Commission's draft on arbitral procedure and the fact had to be faced that the reaction had not been favourable. A close examination of the records, however, revealed that the rejection of the Commission's proposals had been due to the view that they were excessively rigorous as provisions for the settlement of disputes at the international level. The principle of compulsory arbitration had been accepted by the General Assembly when it set up a mixed arbitration commission to settle certain disputes between Italy and Libya.[4] It was therefore a reasonable assumption that the General Assembly would not reject the substance of the Commission's draft. The text in its existing form, however, was perhaps excessively rigid and tended to disregard the variety of contingencies.

5. The question at issue was whether disputes arising out of measures of conservation should be subject to compulsory arbitration. The principle of the traditional system of optional arbitration was embodied in Mr. Padilla-Nervo's proposal. In the settlement of international disputes during the period of predominance of the concept of sovereignty, procedure had been governed by that concept. The evolution of international law, however, had changed the situation. The new starting point was the recognition of the right of the coastal State to regulate the exploitation of certain resources that were not its own property, but were common to all States, and the point to be decided was whether the coastal State should be compelled to accept compulsory arbitration when differences arose with another State over the regulatory measures taken.

6. Mr. Padilla-Nervo's proposal amounted to the imposition of a clear obligation to resort to peaceful settlement. At the previous session, when the question had been considered in all its aspects, it had been decided that the obligation was imperfect in that it would lapse before it could be fulfilled. What were the means proposed by Mr. Padilla-Nervo? First, negotiation. If that were begun, the obligation would be fulfilled *ipso facto*. From the outset of negotiations the question of the appointment of mediators by the parties did not arise. If no agreement were reached, however, there was always the problem of who was to appoint the conciliation commission. In practice, that procedure inevitably entailed lengthy delay, during which time the unilateral measures imposed by the coastal State remained in force to the detriment of the rights of other States. He need not describe in detail certain recent cases in which a coastal State had taken unilateral conservation measures, for they would be in the minds of all members. It was known, however, that, conservation measures having been adopted in good faith, the State that had adopted them had subsequently refused to enter into negotiations for the peaceful settlement of differences that had arisen in that connexion with other States. In those cases, the stipulations of Article 33 of the United Nations Charter had been ignored, although they represented a rule of law that was in force, and the conservation measures unilaterally adopted had continued to be applied. The same result would follow from the acceptance of Mr. Padilla-Nervo's proposal.

7. It had been said that the Commission's draft articles would be rejected by several coastal States. But what of the attitude of non-coastal States if the arbitration provisions were deleted? The Commission must strike a balance between the opposing points of view. Recog-

[1] A/CN.4/SR.352, para. 44.

[2] *Ibid.*, para. 70.

[3] *Ibid.*, para. 75.

[4] General Assembly resolution 988 (X), 6 December 1955.

nition of a contiguous zone in respect of fisheries, in which the coastal State would have the right to adopt conservation measures unilaterally without any accompanying obligation, would lead to an absurd situation in which the coastal State would be given exclusive rights in an area of the high seas where its interests were not exclusive.

8. It should be stated in the report that acceptance of the principle of compulsory arbitration was without prejudice to any decision that the Commission might take on arbitral procedure in its draft on that subject to be submitted to the General Assembly at its thirteenth session.

9. Mr. EDMONDS suggested that during the discussion the main issue had become somewhat obscured. For many years nationals of States interested in fishing had conducted their operations in whatever area of the high seas they chose—a practice which, not unnaturally, had led to a decrease in many species of fish in several parts of the world. There was an appropriate analogy in the early extravagant expenditure of the forestry and oil resources of the United States, where conservation measures had been taken only tardily. In the case of fisheries, conservation measures on a sound scientific basis were undertaken with the object of increasing, or at least maintaining, the average sustainable yield of marine products.

10. Subsequent to the Commission's taking up that subject, the General Assembly, in resolution 900 (IX), had requested the Secretary-General to convene an international technical conference in Rome and had decided to refer the report of that conference to the Commission. The Rome Conference had linked the granting of special rights to coastal States with the obligation to resort to arbitration in the case of any dispute arising out of the exercise of those rights, and the Commission—whose present Chairman had been Deputy Chairman of the Rome Conference—had accepted that principle, which was the corner-stone of the whole system.

11. The question was one of fact and not of theory. If the living resources of the high seas were to be maintained or increased, the problem of conservation must be solved. There were two possible approaches. The first—mutual agreement between States—as implicitly recognized by the Rome Conference, had not proved satisfactory. The second was the establishment of an international organization to control conservation of all living resources; in the present circumstances, however, that was impracticable. The Commission had therefore agreed that international law should recognize the grant of certain additional rights to the coastal State, but that in exchange for such rights the coastal State should accept arbitration if any measure it imposed was objected to by another interested State.

12. Despite certain reservations, there had been a welcome measure of agreement among governments on the broad principles laid down by the Commission. To remove the foundation-stone of arbitration would bring down the whole structure, for it would inevitably entail rejection of the draft by the great majority of States interested in fisheries. Rules must be not only workable, but acceptable.

13. The Commission was fortunate in having as a basis for its work the findings of such an authoritative body as the Rome Conference, and an impartial study showed that the only workable plan was that embodied in the general principles set forth in the draft articles.

14. Mr. AMADO, referring to the discussions on the subject at the previous session, recalled that Mr. Spiropoulos and the Chairman had both said that questions of detailed arbitration procedure were not the proper concern of the Commission and that once a sufficient number of ratifications to the convention had been received it would be necessary to set up an international authority. He had agreed and had proposed a text.[5]

15. The whole system and its evolution were in a very large measure due to the Chairman, to whose initiative and authority he paid a tribute. It was he who had evolved the concept of the special interest of the coastal State.

16. It had to be realized that the apprehension of coastal States at the spectacle of large-scale, mechanized fishing off their coasts was natural, and he had doubted whether the small coastal States, which were fearful of their very survival, would accept the principle of compulsory arbitration. There was no doubt that many smaller States felt that, in the matter of juridical disputes, the scales were weighted against them. That fact emphasized the importance of scientific and technical justification for any conservation measures adopted—a point that had been stressed in his proposal—always bearing in mind the principle of arbitration as an essential provision that no jurist would oppose. His solution had been in the nature of a compromise, because he had been very conscious of the complexity and difficulty of the whole problem. Since then, there had been a trend of opinion towards the setting up of an international marine organization, in which the Brazilian Government in particular was interested.

17. On the question of the draft articles, he fully endorsed the Chairman's opinion.

18. Faris Bey el-KHOURI said that Mr. Padilla-Nervo's proposal suffered from two defects. First, there was a lack of decisiveness. In the case of a dispute, Mr. Padilla-Nervo's only solution was to enumerate a number of familiar procedures for peaceful settlement. The issue, however, might perfectly well remain undecided. At the previous session, he (Faris Bey el-Khouri) had stressed the necessity for compulsory arbitration,[6] his own preference for a tribunal being the International Court of Justice. Although that proposal had not gained the Commission's approval, he still thought that it was the best solution.

19. The second defect of Mr. Padilla-Nervo's proposal was that any solution arrived at by the means suggested would not be binding on other States, but would apply

[5] A/CN.4/SR.298, para. 15.

[6] A/CN.4/SR.304, para. 24, SR.305, paras. 13, 32.

only to the States immediately concerned. To be fully satisfactory, however, a solution should be of general application.

20. Mr. SCELLE endorsed the Chairman's remarks, except for one point, which he thought had not been fully understood. It was a simple matter of procedure, which did not involve the institution of compulsory arbitration. When a State agreed to resort to arbitration, the basic assumption was simply that it would act in good faith. The obligation depended in fact on the voluntary acceptance by a State of the principle of arbitration. What must be avoided was acceptance in principle followed by evasion in practice. Further, the question of principle must be clearly distinguished from the issues in a specific case.

21. Mr. Padilla-Nervo's proposal merely re-stated Article 33 of the Charter. Unfortunately, for all practical purposes, that article was a dead letter. In the matter of conservation, however, the situation was one of crisis and could not be allowed to drift, particularly in view of the increasing awareness of the truth that many peoples of the world were under-nourished.

22. Mr. Amado's idea of an authoritative international organization was admirable, but the plain fact was that in existing world conditions the proposal was premature.

23. The draft articles were an undoubted step in the right direction, whereas Mr. Padilla-Nervo's proposal amounted to little more than beating the air.

24. Mr. PAL asked what would be the consequence of the votes on the proposed amendments to article 29, paragraph 3. If the amendments were rejected, would article 31 be adopted automatically? If so, he would be in some difficulty. Article 29, paragraph 3, referred to the procedure envisaged in article 31, and article 31 comprised three distinct paragraphs. If the Commission accepted the principle of compulsory arbitration in that connexion, he would then have no objection to article 31, paragraph 1, but paragraph 2 would still be unacceptable to him. It was of the very essence of arbitration that the parties to the dispute should have the choice of arbitrators. That would be so, as long as the parties' confidence in justice remained a factor to be considered in the administration of justice. For all practical purposes, article 31, paragraph 2, of the draft did not leave the parties any choice. It was notorious that agreement of the parties even on the choice of one umpire was a rare thing. Paragraph 2, in requiring agreement of the parties on all the members of the arbitral commission, practically took the choice out of their hands. Hence States would be invited not only to submit to compulsory arbitration, but also to submit to arbitration by a body set up by a third party—a situation that would, he feared, be quite unacceptable to them.

25. The CHAIRMAN replied that rejection of the amendments to article 29 would not pre-judge any decision on article 31, which would be put to the vote in the usual manner, together with any amendments that might be submitted.

26. Mr. PAL said that in that case there was nothing to be gained by taking a decision on article 29, paragraph 3, separately. It would be simpler to decide once and for all on provisions for the settlement of disputes.

27. The CHAIRMAN said that that point, which had been made by Mr. Krylov at the previous meeting,[7] raised a different issue.

28. Sir Gerald FITZMAURICE said that the question at issue was the principle of compulsory arbitration and not the detailed provisions covered by article 31. Mr. Pal's point might be met by Mr. Edmonds' amendment [8] to article 31.

29. Mr. SANDSTRÖM, concurring, said that consideration of procedural details should be deferred pending the decision of principle on article 29, paragraph 3.

30. Mr. SALAMANCA said that, with regard to Mr. Padilla-Nervo's proposal, the Commission had a choice between two alternatives. Mr. Padilla-Nervo considered that the Commission should simply establish the rights of a coastal State, leaving it free to choose the method of exercising those rights. That, of course, implied a certain criticism of the work of the previous session, which Mr. Padilla-Nervo justified by stressing the trend of opinion in favour of his view. There was, however, another point of some interest from the political angle —namely, the apprehension that the rights of the coastal State might be denied it by fishing States. He would point out that both the Rome Conference and the Commission had established only one criterion—namely, the technical criterion referred to by Mr. Scelle.

31. He was aware of the international tension that had arisen between the States concerned in the cases referred to by Mr. Scelle, but he must stress that any unilateral affirmation of rights was precarious until endorsed by international law.

32. The Commission had recognized the special interest of the coastal State by granting it rights which it did not previously enjoy. Unfortunately, the progressive nature of the Commission's work had not been appreciated in all quarters. Despite differences of opinion within it, it should act as a catalytic agent, for in that way it would be fulfilling its true functions. The conclusion reached at the Inter-American Specialized Conference at Ciudad Trujillo in 1956 had been that there was no agreement among the States represented at the Conference concerning the nature and scope of the special interest of the coastal State. Rejection of Mr. Padilla-Nervo's proposal would not prevent the question being raised in the General Assembly. Some attempt at least should be made to reconcile the two conflicting viewpoints. He deprecated doubts being thrown on the validity of the Commission's work at the previous session and would be unable to vote for Mr. Padilla-Nervo's proposal.

33. Mr. ZOUREK said that Mr. Scelle's strictures on Article 33 of the Charter had been too severe. As far as he knew, not a single dispute concerning conservation of the living resources of the high seas had yet been submitted, either to the Security Council or to any other international body.

[7] A/CN.4/SR.352, para. 62.

[8] See para. 56 below.

34. Mr. SCELLE observed that that fact proved his point exactly, not only with regard to disputes concerning conservation, but also with regard to differences in other spheres.

35. Mr. ZOUREK emphasized that it was for the interested States themselves to have recourse to the provisions of Article 33 and put them into effect to settle their differences.

36. Mr. SANDSTRÖM observed that the special interest of the coastal State in the region of the high seas contiguous to its coast was being spoken of as though it were an exclusive right. Other States, especially those with long-established fishing industries, also had interests in the same regions, and therefore in case of conflict between the different interests the matter should be submitted to arbitration.

37. Mr. SALAMANCA agreed that that was the crucial issue, but pointed out that States had already begun to talk in terms of " rights " rather than " interests "; some had even spoken of " exclusive rights ".

38. Mr. PADILLA-NERVO said that he did not intend to reply to all the comments on his proposal, and would only emphasize that it had been based on a twofold premise: first, that the good faith of States should not be questioned unless their actions belied it and, secondly that differences between them must be settled by peaceful means; otherwise, in the absence of an international authority to ensure that States honoured their treaty obligations, armed conflict was the only remaining remedy.

39. He certainly did not subscribe to the view that Article 33 of the Charter had remained a dead letter, and believed it was an over-simplification to suggest that States would not abide by the Charter, but would resort to arbitration. The Commission must take into account political realities and the practice of States. He himself believed that disputes concerning conservation measures could be settled easily.

40. Perhaps there was some confusion, in that conservation was sometimes approached purely from the point of view of exploiting the resources of the sea, rather than from the point of view of preserving certain species from depletion. It seemed hardly likely that small States which had not the facilities to carry out costly scientific experiment and research would be in a position to hamper the activities of powerful fishing fleets.

41. At times, members gave the impression that the Commission was conceding some rights or privileges to the coastal State, and that that concession must be matched by acceptance of compulsory arbitration, without which, it was contended, the scheme would be inoperable; but he had so far heard no convincing arguments in support of that thesis.

42. Whatever decision the General Assembly might take, the coastal State had a special right by very reason of its contiguity and a number of other important factors, and that special right would not disappear even if the procedure for the settlement of disputes proved unworkable. An important step forward had already been taken by the Commission, in recognizing the coastal State's special interest.

43. Although certain economic interests were involved, it was unlikely that an armed conflict would result from the application of conservation measures, and hence there was a good chance of achieving international agreement.

44. Mr. KRYLOV said that, in spite of Mr. Padilla-Nervo's able defence of his proposal, he remained of the opinion that the Commission should, for the time being, discard the provisions concerning arbitration until a final decision had been reached concerning the draft on arbitral procedure. He accordingly made a formal proposal, which he considered to be purely of a procedural nature, to that effect.

Mr. Krylov's proposal was rejected by 10 votes to 4, with 1 abstention.

45. Mr. SPIROPOULOS, observing that Mr. Padilla-Nervo seemed to share the view of most members, asked whether the substance of his proposal could be covered in the comment.

46. Mr. PADILLA-NERVO said that he would not insist on his proposal's being put to the vote if the text were reproduced in the comment, together with the reasons he had given for submitting it. Members of the General Assembly would then be able to acquaint themselves with his views.

47. The CHAIRMAN explained that it was customary to refer in the Commission's report to the various proposals submitted. The personal views of individual members were not recorded in the report, except that short statements of dissenting opinions might be inserted, together with a reference to the summary records, where fuller explanations of those opinions were given.

48. Mr. FRANÇOIS, Special Rapporteur, said that it was possible to indicate in the report that a certain view had been expressed, and had either been supported or opposed by the majority; but if a statement of that sort were to be made, a vote must be taken on Mr. Padilla-Nervo's proposal, as he did not know how much support it had obtained.

49. Faris Bey el-KHOURI said it would be most undesirable to put Mr. Padilla-Nervo's proposal to the vote, since its rejection might be interpreted to mean that the Commission was not in favour of disputes concerning conservation measures being settled by the procedures laid down in Article 33 of the Charter, whereas obviously such procedures would be permissible and desirable.

50. He himself could not vote for the proposal because it was inadequate and because it should be stipulated that if other peaceful means for the settlement of disputes failed, there should be compulsory reference to an arbitral tribunal or to the International Court of Justice.

51. The CHAIRMAN assured Faris Bey el-Khouri that such a construction would not be placed on the rejection of the proposal.

52. Mr. AMADO said that the Commission should take advantage of Mr. Padilla-Nervo's willingness not to insist

on a vote; that would enable it to avoid taking any radical decision. Interested persons could obtain an account of the discussion from the summary records.

53. Mr. PADILLA-NERVO did not believe that a vote cast against his proposal by those who found it inadequate and who believed that compulsory arbitration was essential because reliance could not be placed on the good will of governments, would imply opposition to the peaceful settlement of disputes as such. The difference of opinion was of a purely legal character and had nothing whatever to do with political considerations.

54. The CHAIRMAN put to the vote Mr. Padilla-Nervo's proposal[9] of a new text to replace article 29, paragraph 3, and articles 31, 32 and 33.

Mr. Padilla-Nervo's proposal was rejected by 9 votes to 4, with 2 abstentions.

Article 29, paragraph 3, was accordingly adopted.

Article 31

55. The CHAIRMAN thought that the best procedure would be for the Commission to continue by discussing article 31, after which it would be easier to take a decision on the remaining articles.

56. He said that Mr. Edmonds would shortly introduce his new text for article 31, which read as follows:

1. The differences between States contemplated in articles 26, 27, 28, 29 and 30 shall, at the request of any of the parties, be settled by arbitration, unless the parties agree to seek a solution by another method of peaceful settlement.

2. The arbitration shall be entrusted to an arbitral commission composed, in any combination, of seven members well qualified in the legal, administrative or scientific fields of fisheries, depending upon the nature of the dispute to be settled.

3. Two members shall be named by the State or States on the one side of the dispute; and two members shall be named by the State or States contending to the contrary. The remaining three members, one of whom shall be designated as chairman, shall be named by agreement of the States in dispute, or failing agreement shall, upon the request of any State party, be from neutral countries and named as follows: one, who shall act as chairman, by the Secretary-General of the United Nations; one by the President of the International Court of Justice; and one by the Director-General of the Food and Agriculture Organization. If, within a period of three months from the date of the request for arbitration, there shall be a failure by those on either side in the dispute to name any member, such member or members shall, upon the request of any party, be named by the Secretary-General of the United Nations. Any vacancy arising shall be filled in the same manner as provided for the initial selection.

4. The arbitral commission shall be convened by the chairman within five months from the date of the request for arbitration. Its determination or determinations shall be submitted to the parties within a further period of three months, unless the arbitral commission decides to extend such period.

5. Except as herein provided, the arbitral commission shall determine its own procedure.

6. The remuneration of members of the arbitral commission shall be paid by the State or States selecting the member, or on whose behalf the member was selected by the Secretary-General of the United Nations; the remuneration of the other three members shall be an item of joint expense. Joint expenses arising from the arbitration shall be divided equally between the parties.

57. Mr. FRANÇOIS, Special Rapporteur, summarizing the comments of governments on article 31 (A/CN.4/97/Add.3), said that the Brazilian Government had recommended the establishment of a permanent international maritime body, not only to settle differences arising from the application of the articles, but also to carry out technical studies. That possibility had been discussed at the previous session, and he thought it merited further careful study. In his opinion such a body, if of an advisory character only, could be valuable, but in view of the great diversity of the problems to which differences might give rise, he doubted whether it should be given wide arbitral and judicial powers. He therefore continued to believe that the machinery provided by article 31 was preferable.

58. The suggestion by the Government of the Union of South Africa that the words " after consultation " be substituted for the words " in consultation " in paragraph 2, was consistent with the Commission's intention and could be accepted.

59. The Netherlands Government's observations related only to points of drafting.

60. The United Kingdom Government had objected to the provision in paragraph 3 enabling the arbitral commission to extend the time-limit for rendering its decision. As he had explained in paragraph 65 of the addendum to his report, he did not share the United Kingdom Government's fear that the clause might lead to dangerous delays, because he believed that a commission in which both parties had enough confidence to allow it to settle the issue between them should be able to extend the prescribed period for the completion of its work, if it considered that necessary.

61. The United States Government had made certain proposals concerning the composition of the arbitral commission and those proposals had been taken up in part by Mr. Edmonds. He was not in favour of restricting, as Mr. Edmonds' text appeared to do, the wide freedom in the choice of members given to the Secretary-General in the original text, because it was essential to take into account the numerous interests involved.

62. The Canadian Government's view (A/CN.4/99/Add.7, page 3) that, if there were disagreement about the composition of the commission, all parties to the dispute should have the right to be represented seemed to be covered by Mr. Edmonds' text.

63. The CHAIRMAN invited the Commission to consider the comments by governments in the order in which they had been introduced by the Special Rapporteur.

64. Mr. AMADO said that, although support for the kind of institution proposed by the Brazilian Govern-

[9] A/CN.4/SR.352, para. 70.

ment was gaining ground, he did not believe it was practicable at the present stage.

65. Mr. SCELLE said that if there had been any chance of the Brazilian proposal being accepted by governments he would have been the first to support it, but in the present circumstances he would vote in favour of the text adopted at the previous session.

66. Mr. SANDSTRÖM also had much sympathy for the Brazilian Government's proposal, but would not vote for it for the reasons given by Mr. Scelle. Nevertheless, he believed that an international body with advisory and research functions was desirable, and some statement to that effect might well be made in the comment.

Mr. Sandström's suggestion was approved.

At the Chairman's suggestion, it was agreed to refer the points raised by the Governments of South Africa and the Netherlands to the Drafting Committee.

67. Sir Gerald FITZMAURICE explained that the reason for the United Kingdom Government's proposal, which he supported, that the arbitral commission should not be empowered to extend the time-limit for rendering its decision, was that fisheries circles would find it difficult to accept a provision allowing a State or group of States acting in agreement, to adopt unilaterally conservation measures that were binding on other States. A system under which such unilateral measures would have to obtain the sanction of an international body before being promulgated would have been preferable. That course, however, had been rejected by the Commission, and the unilateral measures would now remain in force until the arbitral decision had been given, so that a whole fishing season might be missed, with resultant financial and economic loss. Consequently, it was most desirable for the arbitral proceedings to be concluded speedily. The arbitral commission, however, would probably avail itself of the power given to it to extend the time-limit, particularly since discussions between scientists and technical experts, who frequently disagreed amongst themselves, tended to be lengthy. He considered that the period allowed in paragraph 3, though not long, was reasonable, and that there was no need to give the commission power to extend it, since that might encourage delay.

68. Mr. PAL was in favour of retaining the provision at the end of paragraph 3, because owing to its very nature the question to be settled might require considerable time. There were no grounds for apprehending that the arbitral commission would abuse the right of extension given to it. Furthermore, the United Kingdom Government's concern should be allayed by the provision in article 32, paragraph 2, by virtue of which the arbitral commission could decide that pending its award the measures in dispute should not be applied.

69. Mr. SANDSTRÖM agreed with Mr. Pal, because he thought that three months was a very short period. However, the Commission could stress in its report the need for the arbitral commission to reach a settlement as quickly as possible.

70. Mr. KRYLOV could not support the United Kingdom Government's proposal and hoped that Sir Gerald Fitzmaurice would not press it.

71. Mr. SPIROPOULOS, though sympathizing with the United Kingdom Government's point of view, feared that it was virtually impossible to conclude the arbitral proceedings, during which each of the parties would probably wish to make an oral submission, in three months, particularly if certain scientific questions had to be examined as well. Nevertheless, he thought it was valuable to prescribe a fairly short time-limit, such as that in paragraph 3, allowing for an extension if necessary.

72. Mr. AMADO said that while he was not in favour of a substantive change in paragraph 3, it might be well to make the provision more stringent by ensuring that the time-limit could be extended only when strictly necessary.

73. Sir Gerald FITZMAURICE recognized the force of the objections to the United Kingdom Government's proposal and said that he would be satisfied if attention were drawn, in the comment, to the danger of delay if the arbitral commission was unable to reach a decision within the time-limit prescribed.

74. The CHAIRMAN suggested that the Special Rapporteur be asked to amend paragraph 3 in the sense suggested by Mr. Amado and to prepare a statement on the lines suggested by Sir Gerald Fitzmaurice for inclusion in the comment.

It was so agreed.

75. Mr. EDMONDS, introducing his new text for article 31, explained that paragraph 1 remained unchanged. The modifications he had proposed followed the United States Government's suggestions concerning the procedural and administrative provisions relating to the constitution of the arbitral commission.

The meeting rose at 1 p.m.

354th MEETING

Monday, 28 May 1956, at 3 p.m.

CONTENTS

Chairman: Mr. F. V. GARCÍA-AMADOR.

Rapporteur: Mr. J. P. A. FRANÇOIS.

Present:

Members: Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. Shuhsi HSU,