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Summary record of the 377th meeting

Topic:
Other topics

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It was agreed to request the Special Rapporteur to place the article at a more appropriate point in the set of articles on piracy.

60. Mr. KRYLOV pointed out that previous versions of the draft were already in the hands of the public. The numbering of the articles should accordingly be changed as little as possible, in order to avoid confusion.

Article 17

There were no observations on article 17 or on the comment thereto.

Article 18

There were no observations on article 18 or on the comment thereto.

Article 19

61. Mr. SANDSTRÖM did not like the order of words in the French text of the beginning of the article and asked that the phrases "sans motif suffisant" and "pour cause de suspicion de piraterie" should be transposed, as they were in the English text, which was better.

It was so agreed.

Article 20

62. Sir Gerald FITZMAURICE, referring to the first sentence in the second paragraph of the comment, pointed out that though a merchant ship might hand a pirate ship over to a warship or to the authorities after overpowering it, it did not necessarily overpower it with that end in view.

It was agreed to amend the comment on the article accordingly.

Article 21: Right of visit

63. There were no observations on the article or on the comment thereto.

Article 22: Right of hot pursuit

64. Mr. ZOUREK, speaking as Chairman of the Drafting Committee, drew attention to the changes to the article made in pursuance of the Commission's decisions.

65. Mr. KRYLOV, referring to the second sentence of paragraph 4 of the comment, questioned the need to refer to "constructive presence", a term which appeared to be confined to Anglo-Saxon jurists.

After some discussion, *it was agreed* to delete the sentence in question.

66. Mr. AMADO, referring to the paragraph 4 (1) of the comment, recalled that he was one of the members of the Commission who were of the opinion that no pursuit commenced when the ship is already in a contiguous zone can be recognized.

67. Sir Gerald FITZMAURICE, supported by Mr. ZOUREK, proposed that it be made clear in paragraph 4 (3) of the comment that a second ship arresting the ship pursued must have actually joined in its pursuit and not merely intercepted it.

It was agreed to add the words "provided that it has

joined in the pursuit and not merely effected an interception" after the words "which began the pursuit" in the first sentence of the paragraph.

Article 23: Pollution of the high seas

68. Sir Gerald FITZMAURICE pointed out that the effect of radioactive waste on the suitability of fish for eating was still a matter of controversy.

It was agreed to substitute the words "which may be particularly dangerous" for the words "which is particularly dangerous" in the third paragraph of the comment on the article.

Sub-Section B: Fishing

Article 24: Right to fish

69. Mr. ZOUREK proposed that paragraphs 1 and 2 of the article be made separate articles. Paragraph 1, under the heading "Right to fish" would then constitute article 24, as it had done in the draft adopted by the Commission at its seventh session, while paragraph 2 containing the definition of the expression "conservation of the living resources of the high seas", would form the introduction to the set of articles on fishing.

It was so agreed.

70. Mr. SPIROPOULOS, referring to the second paragraph of the comment, said that the explanation of the term "nationals" still did not make it sufficiently clear that the term referred not to physical persons but to ships. Furthermore, as it stood, the sentence did not cover small craft which did not fly a flag.

After some discussion, *it was agreed*, on the proposal of Sir Gerald FITZMAURICE and Mr. SPIROPOULOS, to state that: "the term nationals denotes fishing boats having the nationality of the State concerned, irrespective of the nationality of the members of their crews".

The meeting rose at 1.05 p.m.

377th MEETING

Thursday, 28 June 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, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

Consideration of the Commission's draft report covering the work of its eighth session (continued)

Chapter II: Law of the sea

Part II: The high seas (A/CN.4/2.68/Add.3) (continued)

Conservation of the living resources of the high seas
Introduction

1. The CHAIRMAN invited the members of the Commission to resume consideration of their report at the introductory comment on the articles on the conservation of the living resources of the high seas.

2. Mr. SANDSTRÖM, referring to the third sentence in the eleventh paragraph, pointed out that, in summarizing the provisions of article 29 as adopted by the Commission at its seventh session, it quoted only one of the qualifications on the right of the coastal State to adopt measures of conservation unilaterally, namely, the proviso that negotiations with the other States concerned had not led to an agreement within a reasonable period of time. In his opinion the summary would be incomplete without the addition of requirement (a) contained in paragraph 2 of the article to the effect that there must be an imperative and urgent need for the measures of conservation.

3. The CHAIRMAN suggested going farther and referring to all the conditions set forth in the article, not necessarily in full, but by the addition of a clause such as "... provided that the conditions set forth in the article be fulfilled".

4. Mr. SANDSTRÖM said that he could accept that suggestion, although the conditions to which he had referred related to the reasons for adopting the measures of conservation unilaterally, whereas requirements (b) and (c) concerned the validity of those measures for other States.

5. Mr. PAL said that he did not see any need to change the sentence, which reproduced paragraph 1 of the article almost word for word. Paragraph 1 dealt with the reasons why measures of conservation might be adopted unilaterally, whereas paragraph 2 was concerned with the question of whether the measures should be binding on other States.

6. Mr. FRANÇOIS, Rapporteur, agreed with Mr. Sandström that the sentence as drafted might give an inadequate impression of the article. He was also willing to accept the Chairman's suggestion. He could not see why Mr. Pal should object to reproducing the article in as complete a form as possible.

7. The CHAIRMAN pointed out that the Rapporteur, in tracing the history of articles 28 and 29, had already

given a complete summary of the first of the articles. If the second article were not treated in the same way, the impression might be conveyed that the Commission had adopted no more than what was reproduced.

8. Mr. PAL said that he had not raised any objection to reproducing the article in full. Undoubtedly, if the Commission thought it necessary to give a complete summary of articles in the introductory comment, despite the fact that the text of the article was given some pages farther on, the sentence in question should be amended on the lines proposed.

9. On the proposal of Mr. SANDSTRÖM *it was agreed* to add the following words at the end of the third sentence of the eleventh paragraph of the introductory comment: "and provided that such measures be maintained only under the conditions specified".

10. Mr. PAL said that the principle of the special interest of the coastal State appeared to be somewhat heavily watered down in the last two sentences of the thirteenth paragraph of the introductory comment. He wondered whether the text accurately reflected the turn the discussion had taken.

11. Mr. ZOUREK said that, to his recollection, the Commission had merely agreed on the fact that the special interest of the coastal State was not an exclusive interest. The last sentence in the thirteenth paragraph might be said to qualify the special interest of the coastal State almost out of existence. He thought that it should be deleted.

12. Faris Bey el-KHOURI said that he understood the Commission merely to have agreed that the special interest of the coastal State did not preclude other States from having an interest too.

13. Mr. FRANÇOIS, Rapporteur, said that he distinctly recalled that Sir Gerald Fitzmaurice, Mr. Padilla Nervo and he, himself, had expressed or agreed with the views reflected in the two sentences.¹

14. Sir Gerald FITZMAURICE agreed with the Rapporteur that the two sentences accurately reflected the turn taken by the discussion. The view had been taken that the coastal State automatically had a special interest in the maintenance of the productivity of the living resources in the high seas contiguous to its coasts by the very reason of their contiguity, but that there was no reason why its special interest should have precedence over that of other States which had fished in the area for some time. He was anxious to keep the last sentence in the paragraph, though perhaps in a somewhat amended form. It would, he thought, help to influence the opinion of non-coastal States in favour of the set of articles.

15. Mr. SANDSTRÖM agreed that the sentences were a fairly exact reflection of the consensus of opinion in the Commission. The last sentence in the paragraph would require some amendment, however, as the special interest of the coastal State was based not on its command of the coasts, but on the fact that the waters were contiguous

¹ A/CN.4/SR.351.

to its coasts and of economic importance to it. Furthermore, the words "and has not *ipso facto* a higher standing than the other interests involved" in the last sentence were merely a repetition in different terms of what had been said in the previous sentence.

16. Mr. AMADO proposed substituting the words "by reason of the sole fact of the geographical situation of the State" for the words "solely by reason of the fact that the State commands the coasts".

It was so agreed.

17. The CHAIRMAN explained that, whereas, in the draft articles 28 and 29 adopted by the Commission at its seventh session it had merely let it be presumed that the coastal State had a special interest, the two articles in their revised form implied that the coastal State necessarily had a special interest. It having been pointed out, by him in particular, that there were cases in which other States which had fished from time immemorial in an area of the high seas adjacent to the territorial sea of a coastal State had a greater interest in the maintenance of the productivity of the living resources in that area than the coastal State, the Commission had felt it essential to include the qualification contained in the two sentences under discussion.

18. Mr. ZOUREK said that he still doubted whether the text was an accurate reflection of the Commission's views. According to article 29, which gave the coastal State alone the right to adopt unilateral measures of conservation subject to certain conditions, the special character of the coastal State's interest certainly appeared to give it more rights than those enjoyed by the other States concerned. He was accordingly in favour of deleting the phrase beginning "and has not *ipso facto*".

19. After further discussion, *it was agreed*, on the proposal of the RAPPORTEUR, that the two sentences should be transposed and re-drafted on the following lines:

The special character of the interest of the coastal State should be interpreted in the sense that the interest exists solely by reason of the fact of the geographical situation of the coastal State. The Commission did not wish to imply that the "special" interest of the coastal State would take precedence *per se* over the interests of the other States concerned.

20. Mr. ZOUREK said that he could not accept the second of the two proposed sentences. Moreover, the last sentence in the sixteenth paragraph reading: "Other members wished . . . or other peaceful means" was incomplete and required the insertion of the words "of differences arising out of the application of these articles" after the words "to seek a settlement".

21. Mr. FRANÇOIS, Rapporteur, said such a modification would be acceptable.

22. Sir Gerald FITZMAURICE observed that the whole sentence was a little misleading because the real point under discussion had been that under the proposed draft no fresh or more extensive obligations would be accepted for the pacific settlement of disputes, beyond those contained in the United Nations Charter under which States were not bound to come to any final solution by

means of the various methods enumerated in article 33. The sentence in question suggested that some members would have been willing to support a definite obligation to effect a settlement, but that would not be the effect of the draft as it stood at present, which was precisely the reason why other members had felt that there was need to provide for compulsory arbitration.

23. While not opposing Mr. Zourek's amendment, he would prefer the sentence to read: "Other members thought that it would be sufficient to rely on existing provisions for the settlement of disputes by negotiation etc."

Sir Gerald Fitzmaurice's wording was adopted.

24. Mr. EDMONDS said that he had some misgivings regarding the second sentence of the seventeenth paragraph. From the words "it felt that" onwards, it gave the impression that the Commission regarded itself as exercising permanent supervision over the application of the general rules it had formulated. Moreover, the phrase "the smooth working of the general rules" was not a happy one; the system established by the general rules might be said to "work" but not the rules themselves.

25. Sir Gerald FITZMAURICE said that he had similar misgivings regarding the same sentence. It was inappropriate to speak of the Commission "giving States rights over the high seas"; perhaps "recognizing" or "proposing" would be more suitable. The reference to "rights which were not yet confirmed by existing international law" might give the impression that their confirmation was merely a matter of time. He proposed substituting the words "going beyond" for the words "which were not yet confirmed by", and "due functioning" for "smooth working".

26. Mr. EDMONDS said that, although he would prefer the deletion of the whole phrase beginning "which were not yet confirmed" down to "the peaceful settlement of disputes but", with the exception of the words "the Commission", he did not wish to press the point.

After some further discussion *it was agreed to retain the sentence, subject to the drafting changes proposed by Sir Gerald Fitzmaurice.*

27. The CHAIRMAN, referring to the last paragraph of the introductory comment, proposed the insertion after the words "exaggerated claims in regard to the extension of the territorial sea" of the words "or to other claims to jurisdiction over areas of the high seas".

It was so agreed.

28. Sir Gerald FITZMAURICE proposed the insertion of the words "fail in an important part of their purpose if they do not" between the word "will" and the words "help to smooth" in the same paragraph.

It was so agreed.

Article 25

29. Mr. SANDSTRÖM considered that the Rapporteur should explain in the comment why the Commission had modified the text adopted at the previous session

by making the provision contained in article 25 mandatory instead of optional.

30. Mr. FRANÇOIS, Rapporteur, said that though he had not made an explicit reference to that change in the comment, he had sought to interpret its effect in the second paragraph; that would perhaps suffice.

31. Sir Gerald FITZMAURICE disagreed with the Rapporteur; it would be very desirable to draw attention to the change made in the article.

32. Mr. FRANÇOIS, Rapporteur, undertook to draft an appropriate passage.

33. Mr. KRYLOV proposed the deletion of the first sentence of the comment on article 25 and of the first paragraph of the comment on article 26 because references to earlier texts adopted by the Commission served little purpose and would be confusing to the ordinary reader.

Mr. Krylov's amendment was adopted.

34. Sir Gerald FITZMAURICE, referring to the last sentence in the first paragraph of the comment, which read: "Nevertheless, the existence of such regulations issued by States engaged in fishing does not prevent the coastal State from invoking article 28 or itself adopting conservation measures in pursuance of article 29 under the conditions laid down in these articles", said that he had never understood the Commission to have decided that the existence of regulations by States other than the coastal State did not prevent the coastal State from adopting conservation measures in pursuance of article 29. His assumption had always been that the coastal State could make use of the faculty granted to it under article 29 only, when there were no conservation measures in force for the area in question. Absolute precision on that point was obviously very important; otherwise two different sets of regulations might be promulgated, the first applicable to the nationals of a State fishing in the area, and the second emanating from the coastal State, which would claim that they were valid for anyone fishing in the area. He had supposed that if conservation measures already existed, the coastal State was bound by the provisions of article 27, its position being adequately safeguarded because the measures could be challenged before an arbitral tribunal.

35. Mr. FRANÇOIS, Rapporteur, drawing attention to the second paragraph of the comment on article 29, expressed the view that the Commission had not intended to go beyond requiring the coastal State, if conservation measures already existed, to initiate negotiations with the other States concerned before adopting unilateral measures of its own in the event of failure to reach agreement. He did not believe that the Commission had contemplated preventing the coastal State from adopting unilateral measures.

36. Sir Gerald FITZMAURICE said that the second paragraph of the comment on article 29 was inaccurate because that article imposed an express obligation on the coastal State to try to reach agreement with the other States concerned before enacting unilateral measures. The article did not merely suggest that it would be desirable for the coastal State to do so.

37. Mr. ZOUREK, endorsing the Rapporteur's interpretation of article 29, pointed out that if a coastal State found conservation measures to be urgently necessary, it could take unilateral action even if others already existed, though he recognized that that might lead to a difference which would have to be submitted for settlement by the means provided for in the draft.

38. Sir Gerald FITZMAURICE emphasized that the coastal State could act unilaterally only after it had attempted and failed to reach agreement with the other States concerned.

39. His point would be met if the last sentence in the first paragraph of the comment to article 25 were worded as follows: "Nevertheless, the existence of such regulations issued by States engaged in fishing does not prevent the coastal State from invoking article 28 or 29."

Sir Gerald Fitzmaurice's amendment was adopted.

40. Sir Gerald FITZMAURICE proposed the substitution of the word "conservation" for the word "fishing" in the first sentence of the second paragraph of the comment, because fishing regulations need not necessarily have anything to do with conservation.

Sir Gerald Fitzmaurice's amendment was adopted.

41. Mr. FRANÇOIS, Rapporteur, observed that in accordance with the Commission's decision at its previous meeting to consign article 24, paragraph 2, to a separate article, the comment on the definition of conservation would be transposed from the comment on article 25 to follow the new article.

Article 26

42. Sir Gerald FITZMAURICE pointed out that, to be consistent with other articles, article 26, paragraph 1, should refer to "the stock or stocks of fish or other marine resources" and not to "the living resources of the high seas".

43. Turning to what had now become the first paragraph of the comment, he suggested that the word "regularly" was open to misconstruction because it might not be understood to include fishing at longer intervals than one year.

44. Mr. FRANÇOIS, Rapporteur, undertook to insert the necessary explanation in the comment.

45. Mr. ZOUREK said that it would have been preferable for the sake of consistency and accuracy to substitute the word "casually" for the word "occasionally" in the first sentence of the comment.

Article 27

46. The CHAIRMAN asked whether, as he had suggested during the discussion,² the Rapporteur could explain in the comment that the provisions of article 27 did not apply to nationals of another State starting to fish in an area where conservation measures were already in force, if their activities were only on a small scale.

47. Mr. FRANÇOIS, Rapporteur, said that he would comply with the Chairman's request.

² A/CN.4/SR.356, para. 92.

48. He then proposed that the last paragraph of the comment on article 27 should be replaced by the following text:

The Commission's attention had also been directed to a proposal that where a nation is primarily dependent on the coastal fisheries for its livelihood, the State concerned should have the right to exercise exclusive jurisdiction over fisheries up to a reasonable distance from the coast in view of relevant local considerations when this is necessary for the conservation of these fisheries as means of subsistence for the population. It was proposed that in such cases the territorial sea might be extended or a special zone established for the above-mentioned purpose.

After some discussion of these problems the Commission realized that it was not in the position to examine fully their implications and the elements of exclusive use involved therein. The Commission recognized, however, that the proposal regarding abstention, with the objective of providing incentives for building up and restoring the productivity of resources, like the proposal based on the concept of vital economic necessity, may reflect problems and interests which deserve recognition in international law. However, lacking competence in the fields of biological science and economics adequately to study these exceptional situations, the Commission, while drawing attention to the problems, has refrained from making any concrete proposals.

49. The CHAIRMAN said that, although the principle of abstention was directly related to article 27, as the new text proposed by the Rapporteur referred to other considerations as well, its proper place was perhaps at the end of the draft articles on conservation.

50. Mr. PAL believed it would be preferable to insert the new text in the introductory comment so as to explain why the Commission had not dealt with certain problems in its draft.

51. Mr. FRANÇOIS, Rapporteur, did not favour Mr. Pal's suggestion for the reason that, by placing the new text in the introductory comment, too much emphasis would be given to an exceptional case.

52. Mr. KRYLOV could not see to which article the proposed new passage could be attached; he was therefore inclined to support Mr. Pal.

53. Mr. SANDSTRÖM agreed with the Chairman that the new text should be inserted at the end of the draft articles on conservation, because it dealt with problems only recently referred to the Commission and about which it had made no definite proposals.

It was agreed to insert the two new paragraphs proposed by the Rapporteur at the end of the draft articles on conservation under a separate sub-title.

54. Sir Gerald FITZMAURICE proposed the deletion of the words "and consistent with general legal principles" from the first sentence of the comment. The statement was not correct, because, the high seas being *res communis*, where States possessed jurisdiction only over their own nationals, in the absence of a general agreement the requirement laid down would not be consistent with general legal principles.

55. Mr. FRANÇOIS, Rapporteur, observed that those words had already appeared in the comment approved

at the previous session. However, he had no objection to their deletion.

Sir Gerald Fitzmaurice's amendment was adopted.

Article 28

There were no observations on the substance of article 28 or the comment thereto.

Article 29

56. Sir Gerald FITZMAURICE hoped that, in the light of what had been said earlier in the meeting during discussion of the introductory comment on the articles relating to conservation of the living resources of the high seas, the Rapporteur would agree that the last sentence of the second paragraph of the comment on article 29 did not properly reflect the intention of paragraph 1 of the article itself. He suggested that the sentence be amended to read:

If the case is so urgent that article 28 cannot be applied, it will nevertheless be *necessary* for the State not to take unilateral action until it has consulted the other State concerned *and tried to reach agreement*.

Sir Gerald Fitzmaurice's amendment was adopted.

57. Sir Gerald FITZMAURICE observed that the third paragraph of the comment dealt with the case where, as for example in the Eastern Mediterranean, the configuration of the coastline was such that a particular area of the high seas adjoined the territorial seas of more than one coastal State. Did the last sentence of that paragraph, which read "In that case prior agreement between the various States is necessary", mean that in such a case it would not be open to any of the States concerned to take unilateral measures under article 29, and that prior agreement between them would have to be reached before any conservation measures could be taken?

58. Mr. FRANÇOIS, Rapporteur, said he had not wished to convey the impression that prior agreement was absolutely necessary, but only that it was desirable. If agreement was not reached, for example, the matter could be submitted to arbitration in accordance with paragraph 31; but it would, of course, be preferable for agreement to be reached.

59. Mr. SANDSTRÖM thought that in the case in point there could be no question of conservation measures being taken without prior agreement between the States concerned.

60. Sir Gerald FITZMAURICE agreed with the Rapporteur that under article 29, paragraph 3, it was in theory open to any of the coastal States concerned to challenge, in the arbitral commission provided for in article 31, any conservation measures taken unilaterally by another of the coastal States concerned. The objection to allowing that to happen, however, was that the measures taken would remain in force until and unless the arbitral commission pronounced against them, with the result that fishermen might be subject to a number of conflicting regulations, all supposedly in force. On the other hand, he appreciated the fact that there were

objections to excluding the cases in point from the provisions of article 29, as would be done if the present wording of the third paragraph of the comment were retained.

61. The CHAIRMAN, speaking as a member of the Commission, felt that article 29 could not apply in the case of an area of the high seas adjacent to the territorial sea of more than one coastal State. Such cases would have to be settled by prior agreement between the States concerned, and he saw no reason why the Commission should not frankly say so.

62. Mr. AMADO suggested that the second sentence of the third paragraph of the comment on article 29 be amended to read: "In that case, application of the measures envisaged will depend on prior agreement between the various States."

63. Mr. PAL pointed out that the agreement between the States concerned might be an agreement to divide up the area in question so that each of them could take unilateral conservation measures in one part of it.

64. The CHAIRMAN pointed out that the wording proposed by Mr. Amado would also cover such an eventuality.

Mr. Amado's amendment was adopted.

65. The CHAIRMAN, speaking as a member of the Commission, drew attention to the comment by certain governments to the effect that unilateral measures of conservation should not be applied until the arbitral commission had decided that they were valid. In his opinion that comment was a reasonable one, taking into account the damage which could be caused to non-coastal States in cases where the measures envisaged were either arbitrary or inappropriate. As the present text had been approved by a large majority of the Commission, however, he was prepared to accept it.

Article 30

There were no observations on article 30 or the comment thereto.

Article 31

66. Mr. ZOUREK thought that, as the text of article 31 had been completely re-drafted by the Drafting Committee in order to take account of proposals submitted by Mr. Edmonds, the Commission should perhaps vote on it.

67. Replying to observations by Mr. PAL and Mr. SPIROPOULOS, he confirmed that the words "composed of seven members" had been omitted in error after the words "to an arbitral commission" in paragraph 1.

68. Mr. KRYLOV felt that the effect of the words "in case of absolute necessity" in paragraph 5 was almost comical. Surely, the words "in case of need" would suffice.

69. Sir Gerald FITZMAURICE said that the Drafting Committee had wished to take into account the fact that as long as arbitration continued many fishermen might be prevented from earning their living as a result of the measures which had been taken; it had therefore felt it

right to lay some stress on the fact that the time limit for rendering an arbitral award should not be extended except "in case of real necessity". Perhaps Mr. Krylov would be satisfied if those words were substituted for those to which he objected.

70. Mr. AMADO felt that the arbitral commission would not fail to bear in mind the effects of delay in rendering its award. It would certainly not decide to exceed the time limit laid down unless there was a "real" or "absolute necessity" for it to do so. Any such phrase as "in case of absolute necessity" could therefore, in his view, be omitted.

71. Mr. PAL agreed. If the Commission was willing to give the arbitral commission power to decide disputes, it could surely have confidence in it to take the interests of all parties to the dispute into account.

72. Mr. SPIROPOULOS agreed with Mr. Amado and Mr. Pal. The words in question added nothing to the text, since the arbitral commission would have no choice but to continue its deliberations if it found that the period allotted to it was insufficient.

73. Mr. EDMONDS said that, although he would not insist on the words in question being retained, increasing attention was being paid, in the United States of America at least, to ways of preventing the settlement of disputes from dragging on too long. From his own experience he knew that a restriction such as it was now proposed to omit from the text could have a very salutary effect.

74. Mr. SPIROPOULOS said it was not only the words "in case of absolute necessity" which were unrealistic, but the whole paragraph. Every member of the Commission knew that, by the time the parties had prepared and presented their oral pleadings and called expert witnesses, it was most unlikely that the arbitral commission would be in a position to render its award within three months of being constituted. It would therefore be preferable to omit from the article itself all mention of a time limit within which the award should be rendered and to say in the comment that, for the reasons adduced by Sir Gerald Fitzmaurice, it was to be hoped that the award would be rendered as quickly as possible.

75. Mr. SANDSTRÖM felt that a statement to that effect in the comment would be the expression of a pious hope at best. If the Commission wished any attention to be paid to the point, it must refer to it in the article. He agreed, however, that it was quite unrealistic to expect the arbitral commission to complete its work within three months. The period should be extended, but otherwise the text should remain as it was.

76. Mr. ZOUREK agreed that it was unduly optimistic to expect the arbitral commission to render its award within three months. The sense of urgency which that implied, moreover, accorded ill with the proposal to allow as much as five months for the commission's constitution. The least the Commission could do was to reduce, to three months the period allowed for constituting the commission and to increase to five months the period within which the award must be rendered.

77. Sir Gerald FITZMAURICE felt that the text must

be viewed as a whole. The present text was based on expert fisheries opinion which the Commission had received to the effect that, if too much time were allowed to elapse between the date when the unilateral measures were put into effect and the date when the arbitral commission rendered its award, one, or in some cases even two, entire fishing seasons might be lost, with disastrous consequences for fishermen. The constitution of the Commission might well entail considerable consultation and correspondence, but there was no reason why the parties should not be preparing their cases meantime so as to be ready to submit them to the commission as soon as it was constituted. The important thing was that the total period to which he had referred should not be extended, and in order to meet the objections made to the present text of paragraph 5 he suggested that the words "five" and "three" be transposed and that the word "absolute" be deleted before the word "necessity".

Sir Gerald Fitzmaurice's amendment was adopted, with a corresponding change in the comment.

78. Replying to a question by the CHAIRMAN, Mr. ZOUREK said that he did not insist on a vote on the revised text of article 31, but that he maintained his opposition to it, for the reasons which he had already indicated.³

79. Mr. KRYLOV said that he was also opposed to the revised text of article 31, for the same reasons as had led him to the former text.⁴

Article 32

80. Mr. KRYLOV said that in general he saw little point in referring in the comment to proposals on which the Commission had for one reason or another taken no action. In the case of article 32, he recalled that Mr. Edmonds had submitted proposals which, though of great interest in themselves, had been considered by the Commission to be too detailed for inclusion in the article itself. Those proposals now appeared in the comment on the article, where they were set out at considerable length. Since the Commission had not adopted those proposals, or even examined them in detail, he did not understand why it was felt necessary to incorporate them in the comment.

81. Mr. FRANÇOIS, Rapporteur, and Mr. EDMONDS recalled that the Commission had formally decided⁵ that Mr. Edmonds should prepare a text of his proposals for inclusion in the comment, and the CHAIRMAN added that that had been done on his proposal, because he had felt it was desirable to illustrate the criteria listed in article 29.

82. Mr. KRYLOV said that the fact remained that according to the comment "the Commission wished to state" certain principles which in fact it had neither

examined in detail nor approved. He did not, however, wish to press the matter further.

83. Replying to observations by Mr. ZOUREK and Mr. SANDSTRÖM, Mr. FRANÇOIS, Rapporteur, agreed that the intention of paragraph 4 of the comment could perhaps be expressed more clearly both in the English original and in the French translation. He suggested that he revise the wording with Mr. Edmonds.

It was so agreed.

Article 33

There were no observations on article 33 or the comment thereto.

The meeting rose at 1.05 p.m.

378th MEETING

Friday, 29 June 1956

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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, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

Consideration of the Commission's draft report covering the work of its eighth session (*continued*)

Chapter II: Law of the sea

Part II: The high seas (A/CN.4/L.68/Add.3) (*continued*)

Article 33 A: Fisheries conducted by means of equipment embedded in the floor of the sea

1. The CHAIRMAN invited the Commission to continue its consideration of the part of the report on the law of the sea dealing with the high seas.

2. Replying to questions by Sir Gerald FITZMAURICE and Mr. KRYLOV, Mr. FRANÇOIS, Rapporteur, pointed out that the text of the article and the third

³ A/CN.4/SR.352 paras. 72-74 and A/CN.4/SR.353, paras. 2 and 3.

⁴ A/CN.4/SR.352, paras. 42-45.

⁵ A/CN.4/SR.357, para. 18.