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**Summary record of the 118th meeting**

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

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conservation zones may be established under agreements between the United States and such other States ; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements.”

That was an important statement of policy.

The meeting rose at 1 p.m.

## 118th MEETING

Thursday, 5 July 1951, at 9.45 a.m.

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*Chairman*: Mr. James L. BRIERLY  
*Rapporteur*: Mr. Roberto CORDOVA

#### *Present*:

*Members*: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCALLE, Mr. J. SPIROPOULOS, Mr. Jesús María YEPES.

*Secretariat*: Mr. Ivan KERNO, Assistant Secretary-General in charge of Legal Department; Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law and Secretary to the Commission.

#### **Régime of the high seas : report by Mr. François (item 6 of the agenda) (A/CN.4/42) (*continued*)**

##### CHAPTER 7 : RESOURCES OF THE SEA (*continued*)

1. The CHAIRMAN recalled that Mr. Hudson had put forward an alternative text. He asked Mr. François to state his views on it.

2. Mr. FRANÇOIS said that Mr. Hudson's text did not seem to him to go far enough, as it left matters very much in the *status quo*. The United States had already gone further than Mr. Hudson proposed to do. The latter, in effect, suggested that it be left to the States concerned to come to an agreement in regard to regulations for the protection of the resources of the sea, but from President Truman's proclamation it would be seen that the United States laid claim to a special zone where American nationals would enjoy special rights. It was true that the proclamation referred to negotiations with a view to an agreement, but that did not alter the fact that a claim was made to a special zone in which the coastal State would have special rights in regard to the protection of the marine fauna. While that point of view was comprehensible, he felt that the Commission should look for something else than the solution proposed by Mr. Hudson.

3. His own text was based on an idea expressed by Mr. Córdova during the second session<sup>1</sup> to the effect that the coastal State, by reason of its special interests, had the right to take measures to ensure the protection of the marine fauna off its coasts. The system he proposed to the Commission provided adequate safeguards against the coastal State exceeding its rights. In addition, it was made an essential condition that, in the case of dispute, the coastal State must be prepared to accept arbitration.

4. Mr. Hudson's proposal, on the other hand, did not contain any reference to arbitration. It only provided that the States concerned should come to an agreement. It was to be feared that, in such case, powerful States would impose their will on weaker ones. Under his system, on the other hand, all States would be on the same level.

5. It was possible that the great Powers would not be prepared to accept that system, but he did not believe that States which related the question of the continental shelf to that of the protection of the resources of the sea would accept a system such as that proposed by Mr. Hudson.

6. In reply to a question by Mr. Yepes, Mr. HUDSON stated that his text was intended to replace the first two paragraphs of Mr. François' proposal (A/CN.4/42, p. 37 mimeographed English text; para. 80, printed French text).

7. He did not understand how Mr. François could say that his (Mr. Hudson's) proposal did not go as far as President Truman's proclamation. Admittedly that proclamation referred to "contiguous zones", which his text did not, but the second and third sentences of his proposal were taken almost word for word from President Truman's proclamation.

8. Furthermore, he had stipulated in the last sentence that in no case should any area be closed to the entry of nationals of other States, to engage in fishing activities.

9. The CHAIRMAN pointed out that neither Mr. Truman's proclamation nor Mr. Hudson's proposal stated specifically what would happen if the nationals of a third State engaged in fishing without conforming to the established rules. It was, doubtless, to be assumed that they would be forced to conform.

10. Mr. HUDSON said that, in the first place, that would be so, but it would then be necessary to include the States in question in the agreement. The rules could, moreover, be amended.

11. He added that the zone 200 sea miles wide laid down in Mr. François' proposal seemed to him much too extensive. He did not see why a coastal State, which was not engaged in fishing outside its territorial waters, should have the right to proclaim restrictions for the protection of the resources of the sea over so vast an area.

12. Mr. FRANÇOIS had a further objection to Mr. Hudson's proposal. It stated that measures necessary for the protection of the resources of the sea would be taken in concert by the States whose nationals were engaged in the fishing. It was, undoubtedly, usual to

<sup>1</sup> See summary record of the 65th meeting, para. 60, *et seq.*

find diverging views where several States were interested in the fishing in a given area. Their respective interests had to be safeguarded, but Mr. Hudson's proposal did not make any provision for possible disagreement.

13. Mr. HUDSON pointed out that the Commission was not at the moment concerned with the question of the settlement of disputes.

14. Mr. SPIROPOULOS thought the problem should be considered from a much wider angle. In the case of the high seas, no State had exclusive jurisdiction to regulate anything whatsoever. But in practice certain States had concluded agreements and had drawn up rules which had been tacitly recognized by other States. The choice lay between accepting that state of affairs, when the International Law Commission would have nothing else to do but leave it to the States concerned to reach agreement between themselves, or to consider the establishment of international rules by all the States concerned.

15. In any case, the system advocated by Mr. François, which would give all coastal States the right to make rules for the protection of the resources of the sea, did not appear to him to be practicable. It was an entirely novel idea.

16. Should the idea of international regulations, to be established by all the States concerned, be adopted, it would mean summoning a conference to draw up rules to be applied universally by a kind of High Seas Board.

17. Mr. SCELLE remarked that there had been similar situations in the past. A number of interested States had, for instance, been entrusted with or had delegated to them the establishment of the necessary regulations for navigation on the Danube and in the Straits.

18. Similarly, Mr. Hudson wanted the various States whose nationals were concerned with the fishing in a given area to come to an agreement for the establishment of regulations for the said area. Why, in effect, should a single State claim to regulate the use of the high seas? If the nationals of other States came to fish in the area in question they should, in the first place, conform to the existing regulations. Thus the Commonwealth countries, although they had never signed the agreements relating to the Straits, had recognized that they were bound by those agreements.

19. Briefly, Mr. Hudson's proposal provided for regional agreements *ratione materiae*, applicable to given areas and for the special purposes of those areas. Similarly, administrative law included the notion of departmental decentralization.

20. From some points of view that proposal was, therefore, very attractive, but it should be supplemented by the idea expressed in the third paragraph of Mr. François' proposal. They were no longer in an age when the organization of the international community was dominated by the right of the stronger. Under existing conditions right prevailed over might. Again, it was not sufficient to say that the States should come to an agreement; provision should be made against their not so doing. It would be usual to provide, in such a case, for recourse to arbitration or the International Court of Justice.

21. It was, unfortunately, not possible at the moment to appeal to an international administrative authority, the need for which had already made itself felt, but which could not come into existence under existing world conditions. There was, however, an International Court of Arbitration and an International Court of Justice.

22. He did not, therefore, see any absolute contradiction between Mr. Hudson's concept and the system proposed by Mr. François. In his opinion the two proposals were complementary.

23. Mr. HSU was entirely of Mr. Scelle's opinion. He did not see the necessity for adopting the concept of a coastal State with exclusive rights over a zone 200 sea miles wide. The Commission, however, proposed to grant coastal States rights over the high seas in connexion with the continental shelf, customs, etc. It would therefore seem logical to grant them such rights for the protection of the resources of the sea.

24. On the other hand, it did not appear to him possible to prevent agreement being concluded between States which had been engaged in fishing a given area for many years. But steps should be taken to see that powerful States did not impose their will on weaker ones. Mr. Hudson's proposal was therefore not adequate. An endeavour should be made to bring it into line with that of Mr. François.

25. Mr. YEPES was in favour of Mr. François' proposal. He considered that the differences between that proposal and Mr. Hudson's were so fundamental as to render them utterly incompatible. Mr. François, in effect, granted the coastal State control and management over regulations for the protection of the resources of the sea over a zone 200 sea miles wide, contiguous to territorial waters. Mr. Hudson, on the contrary, granted any interested State, or group of States, the right of regulation and control in any given area of the high seas.

26. In his opinion the coastal State was best qualified to establish such regulations, but he differed from Mr. François on one point. He felt that if a coastal State did not carry out its duties to the international community, the latter should intervene and decide what measures were to be taken.

27. Mr. SPIROPOULOS said that the reason why he could not accept Mr. François' notion was that, in his opinion, a single State should not have the right to make regulations concerning the high seas. On the other hand, Mr. Hudson's proposal, though it had its disadvantages, did not seem to him acceptable in principle.

28. However, he must repeat that the best solution would be the establishment of an international board for the protection of the resources of the sea. That board might be, in some sort, a specialized agency. Such a course would enable the Commission to achieve its purpose, and he asked the members to give it careful consideration.

29. Mr. SANDSTRÖM asked Mr. Spiropoulos how he thought the machinery of the board he had referred to would be set in motion. For instance, would the board act at the request of an interested State?

30. Mr. SPIROPOULOS replied in the affirmative. The board would lay down rules, which would be binding on all States.

31. Mr. YEPES would be prepared to accept Mr. Spiropoulos' suggestion, provided the board in question only took action when a coastal State had not carried out its duties.

32. Mr. FRANÇOIS was very glad to hear Mr. Hudson say that his proposal was only intended to replace the first two paragraphs of his own proposal.

33. It did not seem to him that the two proposals were so divergent as Mr. Yepes believed. Actually, his text provided that the coastal State should endeavour to enact the regulations in concert with the other countries concerned. It was, therefore, clearly to be understood that the coastal State would not impose regulations enacted by itself alone, but would try and come to an understanding with the other States concerned. But it was incumbent on the coastal State to take the initiative.

34. The two proposals did, however, differ in regard to one point. His text provided a procedure for settling disputes between the coastal State and the other States concerned, whereas Mr. Hudson's did not provide for the contingency of failure to reach an agreement.

35. Mr. Hudson's proposal should therefore be supplemented by a provision on the lines of the third paragraph of his own (Mr. François') proposal.

36. Mr. Spiropoulos' suggestion seemed to him very interesting, but difficult to put into practice, since circumstances varied so much from country to country. The same suggestion had already been made by Mr. Schücking to the League of Nations' Committee of Experts for the progressive codification of international law.<sup>2</sup>

37. Mr. SCELLE observed that the Commission seemed to incline in the same general direction. There were, however, some slight differences.

38. He himself had not dared to go so far as Mr. Spiropoulos. He found it difficult to conceive of a specialized agency concerned only with questions of fishing. The organization of fishing activities varied too much from country to country. The objection did not, however, appear absolutely insurmountable. It was possible to envisage a specialized agency, mainly concerned with the administration of fisheries and largely decentralized.

39. He observed that the Secretariat memorandum on the régime of the high seas (A/CN.4/32) continually referred to the idea of an extension of the jurisdiction of coastal States over the high seas. He considered that notion unacceptable, as it constituted a forthright denial of the régime of the high seas. The high seas were public property, so he did not see how it was possible to base a system on the extension of national jurisdiction over the high seas.

40. The history of international law showed that its rules had often had their origin in that way; but the

application of such a principle would amount to a return to the days when the republics of Genoa and Venice claimed possession of the seas just as far as they could impose their sovereignty. The extension of national jurisdiction over the high seas was therefore tantamount to recognition of the right of the strongest. It was impossible to take that as a starting point.

41. Mr. Spiropoulos' suggestion represented the logical conclusion to that idea. If its realization gave rise to difficulties, Mr. Hudson's notion, supplemented by that of Mr. François, might constitute an intermediate stage towards the achievement of the Commission's purpose. Should the Commission consider that the establishment of a specialized agency would solve the question, he did not see why it should not adopt that course. There was a specialized agency for air matters, where the difficulties were even greater.

42. Mr. AMADO was very surprised to hear Mr. Scelle say that he did not see any appreciable difference between Mr. Hudson's and Mr. François' proposals. While Mr. François said "every coastal State shall be entitled to declare, in a zone 200 sea miles wide contiguous to its territorial waters, the restrictions necessary to protect the resources of the sea", Mr. Hudson's proposal read: "States whose nationals are engaged in fishing in any area of the high seas may regulate and control fishing activities in such area for the purpose of conserving its resources." Whereas, in his proposal, Mr. François followed the slow and natural evolution of law, Mr. Hudson coldly envisaged that a powerful and rich State might establish itself in any area of the high seas and take possession of it. Surely that represented a considerable difference between the two concepts. He himself could not agree to a proposal to grant such unlimited rights to any country having access to some area of the high seas.

43. As regards Mr. Spiropoulos' suggestion, he thought it would be a good idea to consult the Fisheries Division of the United Nations Food and Agriculture Organization, which was doing important work on the subject.

44. Mr. SANDSTRÖM had also come to the conclusion that, for the purpose of reaching agreement, it was necessary to take into consideration something more than the goodwill of States. Mr. Spiropoulos' suggestion seemed to him to be an excellent one. A specialized agency, of the type he had suggested, might constitute an ideal meeting place, where the various States could jointly study the problems with which they were faced and take the necessary decisions. He would, however, like to see a more detailed proposal, on those lines, submitted to the Commission.

45. Mr. KERNO (Assistant Secretary-General) noted with satisfaction that the suggestion he had made at the last meeting<sup>3</sup> that something should be done in the general interests of mankind had borne fruit. It was, of course, for the parties concerned, i.e. the coastal States and those whose nationals were engaged in fishing to take the matter in hand in the first instance, but the necessity of ensuring the co-ordination of their efforts

<sup>2</sup> Report by Mr. Schücking on the law of territorial waters, League of Nations, Legal, document C.P.D.I. 19.

<sup>3</sup> Summary record of the 117th meeting, para. 114.

and safeguarding the common interest must not be overlooked.

46. Mr. CORDOVA recalled that he had already, in the previous year, advanced the idea that the resources of the sea should be protected in the interests of mankind as a whole. At that time, he had suggested that when two or more States had concluded a treaty relating to the protection of the resources of the sea, that treaty should be binding on all other States.<sup>4</sup>

47. The Commission had two proposals before it: that of Mr. François, conferring on the coastal State the right of regulating fishing activities, and that of Mr. Hudson, which disregarded the coastal State entirely, and gave that right to countries whose nationals were engaged in fishing.

48. He was always in favour of regulating fishing activities, but that should not be done for the sole benefit of States possessing large fishing fleets, and to the detriment of those which did not. The Commission should have the courage to say that the right of regulating fishing activities belonged neither to the coastal State nor to those whose nationals were engaged in the fishing. For that reason, Mr. Spiropoulos' suggestion seemed to him excellent. Regulation of the exploitation of the resources of the sea should be carried out by an international organization. Obviously existing conditions had to be taken into account, but only a solution of that sort would permit the development of international law.

49. Mr. ALFARO also drew attention to the fact that Mr. Hudson's proposal completely deprived the coastal State of the right of regulating fishing activities if it were not, itself, engaged therein or only possessed a small fishing fleet. He quoted the case of the Gulf of Panama, where large Costa Rican companies came to fish for sardines, which were used as bait in tuna fishing. The methods employed by those companies had resulted in the practical disappearance of sardines from the Panamanian coast, to the considerable detriment of the inhabitants of the country.

50. The adoption of Mr. Hudson's proposal would have the result of giving the companies in question the right to regulate the fishing in the waters of the Gulf of Panama, whilst Panama itself would be deprived of that right. Such a deprivation seemed to him inadmissible.

51. The CHAIRMAN considered that Panama would be able to take part in such regulation, as its nationals were engaged in the sardine fishing.

52. Mr. ALFARO considered that Panama would have very little say in the matter, when confronted with the other States engaged in intensive fishing activities.

53. Mr. AMADO said that Mr. Hudson's proposal was of considerable theoretical importance. No theorist had hitherto gone as far as he had done in, purely and simply, discarding the principle of contiguous zones. The Secretariat memorandum on the régime of the high seas (A/CN.4/32) however, envisaged two possible courses: "either the littoral State decides to extend its territorial sea and to set its limits some distance further out;

or else, without extending the limits of its territorial sea, claims the right to take measures applicable to all foreigners as well as to its own nationals, in respect of a certain zone of the high seas contiguous to its territorial waters, with a view to preventing depredations and the various practices that are prejudicial to sound conservation of the marine fauna . . . The second course requires the establishment by the littoral State of a contiguous zone in respect of fisheries" (p. 37, mimeographed English text; para. 113, printed French text).

54. Short of taking a very serious decision, he held it to be impossible to abolish the concept of the contiguous zone.

55. Mr. CORDOVA said that a similar situation to that mentioned by Mr. Alfaro obtained in the Gulf of California, where Mexico also had an interest in regulating the protection of the marine fauna. Actually, American fishermen were exterminating the sardines to the detriment of the Mexican people. A treaty provided for regulation, but Mr. Hudson's proposal was much too radical, as it would result in granting the privilege of laying down the law to the countries which had large fishing fleets.

56. Mr. HUDSON remarked that his proposal provided for the necessary measures to be taken in concert with the States concerned. In the case in question, Mexico would be able to take part in the negotiations for an agreement. Moreover, unanimity was required, and there was, therefore, no danger of weak States becoming the victims of the strong.

57. Mr. EL KHOURY said that his preference lay with Mr. Hudson's proposal. The first two paragraphs of Mr. François' proposal provided for the protection of the resources of the sea in a zone 200 sea miles wide contiguous to coastal States, but nothing beyond that area. Mr. Hudson's proposal, on the other hand, covered all fisheries and the protection of the marine fauna in all areas of the high seas.

58. If Mr. Hudson's proposal were supplemented by a provision on the lines of the third paragraph of Mr. François' text, the whole of the problem would be covered. For that reason he was of the opinion that the Commission should take up the examination of that third paragraph, and he would suggest that the words "if agreement cannot be reached in regard to the zone to which the dispute refers" be substituted for "if the two States are unable to reach agreement on the subject".

59. Mr. FRANÇOIS remarked that sight had been lost of the fact that the Commission was not at the moment dealing with fisheries, but with the protection of the marine fauna. Now the destruction of marine fauna in the high seas, but close to the coast, had marked effects on the marine fauna of territorial waters. The formula used by Mr. Hudson "the States whose nationals are engaged in fishing" was not, therefore, suitable. The coastal State was always concerned, even when its nationals were not engaged in high seas fishing.

60. Again, Mr. Hudson's proposal did not deal with the question in relation to the continental shelf, and

<sup>4</sup> See footnote above.

the Commission had recognized the close relationship between the continental shelf and the resources of the sea.

61. Mr. el Khoury's argument that Mr. Hudson's proposal was more advantageous because it had reference to all zones and not only to contiguous ones, was not very convincing; from the practical point of view, the most important point was the regulation of the protection of marine fauna in zones contiguous to the coast.

62. Mr. HUDSON said that it was necessary to start from the principle that the conservation of the resources of the sea was a question of interest to the whole of mankind. The question then arose as to which were the most effective measures to ensure such protection. In his opinion, the most effective conservatory measures would be those instituted by States engaged in fishing.

63. The area of the Newfoundland banks, for instance, constituted one of the principle fishing grounds in the world and was visited by the nationals of a variety of countries: Portugal, Spain, Denmark, Italy, United Kingdom, France, Newfoundland, etc. How could the resources of that area be conserved without the co-operation of all those countries? Similarly, in reply to Mr. Córdova's point, the United States and Mexico had agreed to set up a study commission to report to the two Governments, which would then be in a position to take the necessary measures. He had no doubt that they would be able to reach agreement.

64. Regarding the question as to what should be done if the States concerned were not prepared to take measures for the protection of the resources of the sea, or were unable to agree on such measures, it was obvious that, as the resources of the sea had to be protected in the interests of mankind as a whole, an international organization should be made responsible for carrying out the necessary studies and research. No solution could be found to the problem of the protection of the resources of the sea without prior and detailed study. For that reason, only an international organization, engaged in such studies, would be in a position to say that in such and such an area States were not taking the necessary action. No useful purpose would be served by asking the International Court of Justice to take decisions in such matters.

65. He would like members of the Commission to read the Convention for the Protection of the North-west Atlantic Fisheries, which set up a very complete organization, including a commission and panels of experts. An international organization under the auspices of the Food and Agriculture Organization might be considered, but the question could not be submitted to the International Court of Justice, which had no jurisdiction in the matter. An international organization would be in a position to submit recommendations, where States whose nationals were engaged in fishing were not able to come to an agreement in regard to conservatory measures, or had the intention of exhausting the banks. In the case of the Atlantic, the United States and Canada had set up a joint fisheries commission, which sat for several months each year, and they were, as a consequence, in process of establishing a fisheries code.

66. Briefly, conservation of the marine fauna was in the interests of mankind, and means must be found to bring it about. Any system would be more effective if the measures proposed were drawn up by those who would have to apply them, that was to say, by those engaged in fishing in the area in question. Consideration might also be given to the establishment of an international authority with powers to submit reports and recommendations.

67. Mr. YEPES wondered whether the same results could not be obtained by other means. The coastal State might be made responsible for enacting such regulations; it being provided that failure to do so would entail the intervention of the International Court of Justice.

68. Mr. HUDSON did not believe that a country like Newfoundland, for instance, could undertake the regulation of the fishing on the banks which bore its name. Failing agreement between all the States whose nationals were engaged in large-scale fishing activities in that area, it would be unable to enforce such regulations.

69. Mr. KERNO (Assistant Secretary-General) called the Commission's attention to a document on the régime of the high seas, published by the Secretariat in the previous year (A/CN.4/30). Paragraph 3 of that document, headed "Fisheries", contained the following statement:

"The Food and Agriculture Organization of the United Nations is empowered by article 1 of its constitution to promote and, where appropriate, to recommend national and international action with respect to 'the conservation of natural resources and the adoption of improved methods of agricultural production'. Article XVI of the constitution interprets the term 'agriculture' as including fisheries and marine products... A monthly Fisheries Bulletin and a Yearbook of Fisheries Statistics are published by FAO..."

70. At the last meeting he had mentioned the Economic and Social Council in that connexion. Should the Commission consider that an international organization could be of use in that field, it might conclude that the United Nations Food and Agriculture Organization was a suitable body.

71. Mr. FRANÇOIS said that it was not always advisable to strive after perfection. In that case perfection was, obviously, represented by the international board for the protection of the resources of the sea, proposed by Mr. Spiropoulos. If it were possible to set up such an organization, it would be welcomed on all sides, but there was no use trying to disguise the fact that there were difficulties in the way. Similar institutions were already in existence, but had not yet met with much success. Better results were to be hoped for from the United Nations Food and Agriculture Organization. It should not be overlooked, however, that the organization was only in the early stages of development.

72. Should an international board be set up, it would be preferable to submit all disputes to it, instead of having recourse to arbitration or to the International Court of Justice. In the meantime, was it so unusual a

proceeding to submit a dispute to the Court? Mr. Hudson had said that it would be impossible, as members of the Court did not have the necessary technical knowledge. That objection could be advanced against any Court, and, when judges in the various countries had to deal with subjects with which they were not familiar, they took expert advice.

73. Mr. HUDSON had said that fishing in Newfoundland waters was carried out at more than 200 miles from its coast. His own proposal related exclusively to the continental shelf and was intended to assist coastal States. The proclamation of the President of the United States, Mr. Truman, also related only to the contiguous zone.

74. Mr. HUDSON observed that Mr. François seemed to relate the question to the continental shelf and asked whether it was not in fact a new idea.

75. The CHAIRMAN recalled that Mr. François had already mentioned it.

76. Mr. FRANÇOIS pointed out that President Truman's two proclamations had been published at the same time.

77. Mr. HUDSON stated that there was no connexion between them.

78. Mr. FRANÇOIS went on to say that it was an example that had been followed by other States, which had linked the question of the continental shelf to that of the protection of the resources of the sea. As he had said on more than one occasion, if no account were taken of the fact that the two questions had actually, though perhaps wrongly, been linked together by some States, no course that the Commission might recommend stood any chance of being accepted by them.

79. Mr. HSU considered that there were two situations to be taken into consideration. The first was the situation such as that on the Newfoundland fishing grounds where, after the nationals of a number of states had been engaged in fishing there for centuries, it had been possible to set up international regulations by agreement between the States concerned. There might be coastal States in that part of the world which were not interested in the question. It was therefore entirely justifiable for States that were interested to meet and set up regulations in concert. He was always very much in favour of the internationalization of anything connected with the high seas, as he wished to maintain inviolate the principle of their freedom.

80. Nevertheless, and that was the second situation, where there was a continental shelf the coastal State was permitted to exercise exclusive control and jurisdiction and, in the case of adjacent seas, to extend control for customs, health, etc., purposes beyond its territorial waters. If the coastal State were accorded that sort of privilege, why should it be refused the right to control the fishing for a certain distance beyond its territorial waters? Fishing activities within that area were of interest to the coastal State. Personally he considered that the Commission should take that case into consideration. It was a matter of fundamental principle.

81. He had noted that Mr. Yepes' proposal gave the coastal State the right to proclaim rules. It might be added that an international régime, similar to that for the Newfoundland banks, could also be established.

82. Mr. YEPES said that he had taken the liberty of having a redraft of Mr. François' text circulated. His proposal was that the following text be substituted for the clauses at the top of page 37 (mimeographed English text; para. 80, printed French text) of Mr. François' report (A/CN.4/42):

“Every coastal State shall have the right and the duty — as far as possible in agreement with the other interested States — to declare, in a contiguous zone 200 sea miles wide, the restrictions necessary to protect the resources of the sea against extermination and to prevent the pollution of those waters by fuel oil. Should a coastal State fail to carry out its duties in that respect, the international community shall be entitled to prescribe the necessary measures, through a specialized agency of the United Nations, for example, to ensure such protection. The rules shall not discriminate in any way between the nationals and vessels of the various States, including the coastal State.

“If a State considers that its interests have been unfairly injured by the rules established, and if the interested States are unable to reach agreement on the subject, the dispute may be submitted to the International Court of Justice at the request of the State making the complaint.”

83. The proposal summarized the notions expressed during the meeting. He had borrowed from Mr. Hudson the concept that the conservation of the resources of the sea was a duty as well as a right of the international community. From Mr. François he had taken the notion of attributing the protection of species to the coastal State. He did not believe that it was possible to deprive the coastal State of participation in such conservatory measures. He had added that the coastal State also had a duty to the international community in that connexion. If the coastal State did not fulfil that duty it was, as Mr. Spiropoulos had said, for the United Nations to establish the necessary regulations through the intermediary of a specialized agency. Finally he had borrowed from Mr. François the notion that the settlement of disputes arising when a State considered itself injured should be entrusted to the International Court of Justice, on request by the party making the complaint.

84. The CHAIRMAN considered that it would be very difficult for the Commission to say either yes or no to such a proposal. It should be split up.

85. The first point to consider was whether, in regard to conservatory measures, priority should, in principle, be given to the coastal State. In his report (A/CN.4/42) Mr. François had stated:

“Every coastal State shall be entitled to declare in a zone 200 sea miles wide contiguous to its territorial waters, the restrictions necessary to protect the resources of the sea against extermination and to prevent the pollution of those waters by fuel oil” (*Ibid.*).

86. Mr. CORDOVA considered that the Chairman was right in putting the question of principle first. However, the rules of procedure required the Commission to give Mr. Hudson's proposal priority, as it amended Mr. François' text.

87. The CHAIRMAN and Mr. HUDSON considered that, in the case of a decision on a matter of principle, it was not necessary to follow the rules of procedure in regard to amendments. It was a matter of taking a position in regard to a principle.

88. Mr. AMADO wished to bring the two proposals into line but the CHAIRMAN did not think that would be possible.

89. The CHAIRMAN asked the Commission to vote on the two principles, enunciated by Mr. François and Mr. Hudson.

*There were 6 votes for Mr. François' principle and 6 for Mr. Hudson's.*

90. Mr. SANDSTRÖM said that the answer was to set up a sub-committee.

91. Mr. HUDSON proposed the addition to his text of the following clause:

"If any part of an area is situated within X miles of the territorial waters of a coastal State, that State must be permitted to take part in any concert adopted even though its nationals are not engaged in fishing in that area."

92. He had tried to draft a clause which would be acceptable to the majority of the Commission. The text had the support of Mr. François' contention that conservatory measures, or the absence thereof, in an area situated within X miles of the territorial waters of a State, could affect the fishing within those territorial waters. That contention afforded theoretical justification for the addition of a clause designed to break a landlock.

93. Mr. SCELLE said that it was very difficult to vote for either Mr. François' or Mr. Hudson's principle. The main object was to prevent the destruction of the resources of the sea. It was doubtless preferable that such protection be effected by means of an agreement between the various States, but failing such agreement it was better that the coastal State should take action than allow chaos to subsist. He did not believe that Mr. Hudson could object to such a course. It was in fact equivalent to what Mr. Truman had stated in his proclamation. He did not regard it as a good solution as it was always undesirable to allow a government to extend its jurisdiction in a field which did not belong to it, but it was better to do something than to take no action at all. He would prefer Mr. Hudson's proposal, if the States concerned could reach agreement, and that of Mr. François', failing a better.

94. Mr. SANDSTRÖM explained that his vote had been based on the assumption that the Commission would revert to the idea of setting up a special body; that would be the best solution.

*Mr. Hudson's additional paragraph was adopted by 6 votes to 5.*

95. Mr. FRANÇOIS wished to know whether the vote meant that his proposal had been rejected. Previously the votes had been equally divided, 6 for and 6 against. Mr. Hudson's amendment to his own (Mr. Hudson's) text was an obvious improvement, but he still preferred his own proposal and had voted against Mr. Hudson's text. Nevertheless, if it were held that the last vote related to the second paragraph of Mr. Hudson's text, his own text would thereby be discarded.

96. Mr. YEPES asked whether the formula adopted excluded the contiguous zone.

97. Mr. HUDSON replied that the adopted text had nothing to do with the contiguous zone, but it was possible that the Commission would consider the question of the contiguous zone separately from that of territorial waters, where the coastal State could exercise exclusive control for the purpose of conserving the marine fauna.

98. The CHAIRMAN added that it might even exercise an exclusive right to fish.

99. Mr. HUDSON recalled that the question had been considered at length in a memorandum on the régime of the high seas, drafted by the Secretariat (A/CN.4/32, p. 38, mimeographed English text; paras. 118-121, printed French text). He was glad that Mr. Yepes had raised the question. Should he accept the new approach to the problem, a solution might be reached.

100. Mr. FRANÇOIS again asked the Commission not to confuse the question of the protection of the resources of the sea with that of the regulation of fishing. The great majority of States had always objected strenuously to the adoption of the principle of the contiguous zone, where fishing was concerned. The position had not changed since the 1930 Hague Conference, and it was impossible to come to an understanding in that field. At the moment they were only concerned with the contiguous zone from the point of view of the protection of the resources of the sea.

101. Mr. HUDSON replied that the two questions were not confused in his text. He hoped that Mr. Yepes would be able to adopt it, having regard to the addition that he had just made.

102. Mr. CORDOVA observed that the difference between Mr. François' text and Mr. Hudson's was that Mr. François thought that the coastal State should be considered first.

103. Mr. HUDSON said that, according to Mr. François, the coastal State should be the only one to be taken into consideration.

104. Mr. FRANÇOIS referred to page 37 (mimeographed English text; para. 80, printed French text) of his report (A/CN.4/42): "The coastal State shall endeavour to enact such rules in agreement with the other countries interested in the fisheries in those waters". Failing agreement, recourse should be had to arbitration.

105. Mr. CORDOVA considered that the coastal State was mainly interested in conservation, and the other States in exploitation. Mr. François gave first place to the State most interested in conservation. In his new paragraph, Mr. Hudson only gave the coastal State the

right to be heard. It should be noted that the coastal State would always be in a minority.

106. Mr. HUDSON suggested that, in order to meet that objection, "must take part" be substituted for "must be permitted to take part". He added that decisions had always to be unanimous.

107. Mr. SPIROPOULOS objected that the coastal State might not wish to take part in the negotiations. It was, therefore, preferable to say: "is entitled to take part".

108. Mr. HUDSON accepted that wording. He added that an agreement could only be said to be adopted in concert if there were no dissident opinion. Should there be a State opposed to the agreement, then the regional office of the United Nations Food and Agriculture Organization should intervene.

109. Mr. CORDOVA pointed out that the regional office was not empowered to do so.

110. Mr. HUDSON said that it should be given the necessary powers. He recalled that the convention concluded between the United States and Mexico in 1949 for the scientific investigation of tuna had established a commission with powers to send notifications to the two governments, regarding what it proposed to do. Either of the governments could disapprove such notifications within a period of thirty days. If at the end of that very short period the measure had not been disapproved, it automatically came into force. That was a very satisfactory arrangement. Obviously, if there were opposition the notification was invalid, and the conservatory measure in question was not enacted.

111. Mr. CORDOVA observed that in that case there would be no regulation, but the Commission wished there to be one.

112. Mr. HUDSON replied that it was proposed to provide for recourse to the United Nations Food and Agriculture Organization.

113. Mr. FRANÇOIS maintained that such recourse would not have any practical consequences.

114. Mr. HUDSON replied that it was not possible to dictate to eleven States. He recalled that article XIII of the Convention for the North-west Atlantic Fisheries said: "The contracting Governments agree to invite the attention of any Government not a party to this Convention to any matter relating to fishing activities . . ." It should be the duty of the United Nations Food and Agriculture Organization to draw the attention of States to such matters.

115. Mr. AMADO's main object was to co-operate in the establishment of protective measures in regard to the resources of the sea. Mr. François' text read: "Every coastal State shall be entitled to declare in a zone 200 sea miles wide contiguous to its territorial waters, the restrictions necessary to protect the resources of the sea against extermination" (*Ibid.*). Mr. Hudson's text on the other hand read: "The States whose nationals are engaged in fishing in any area of the high seas may regulate and control fishing activities in such area for the purpose of conserving its resources against extermination." For effective protection it was necessary

that such restrictions or regulations should be enforced, and for that, the co-operation of States whose nationals were engaged in the fishing was necessary. It was for that reason that he had hesitated between the two proposals, though inclined to favour that of Mr. Hudson. The two texts were not very far apart, and he hoped it would be possible to bring them into line.

116. Mr. CORDOVA objected that not all States were interested in the protection of the species. The Californian fishermen had been opposed to the conclusion of an agreement between the United States and Mexico as it was to their interests to exploit the fisheries to the maximum. If they had been allowed to continue on those lines they would have exterminated the tuna. For that reason he was opposed to the idea of giving the right of regulating the fishing to those interested in its exploitation. It should not be forgotten that the State whose nationals were engaged in fishing would favour exploitation of the resources of the sea and would therefore be opposed to any regulation of fishing activities. So far as the fishermen themselves were concerned, their inclination would be to catch as much fish as possible, until such time as it dawned on them that they were killing the goose that laid the golden eggs. They would then be concerned to protect the fish, but in their own interests, and not in that of the coastal State.

117. Mr. HUDSON felt that Mr. Córdova had not stated the problem correctly. His text gave regulating powers to the States and not to the fishermen. He recalled that the Government of the United States had taken its stand against the claims of the Californian fishermen. Again, as it was a question of the resources of the high seas, what State could be empowered to regulate the activities of the fishermen, other than that to which those fishermen belonged?

118. Mr. KERNO (Assistant Secretary-General) asked whether the clause providing for the participation of the coastal State in consultations, which had been adopted as the second paragraph of Mr. Hudson's proposal, meant that the consent of that State was necessary.

119. Mr. HUDSON replied in the affirmative.

120. Mr. EL KHOURY said that the question was, who should take the initiative in drawing up the rules required for the protection of the resources of the sea; the coastal State or States engaged in fishing? The interested States had to be convened by someone. Why should that not be the coastal State?

121. Mr. HUDSON said that any State taking part in the agreement might invite the other States.

122. The CHAIRMAN did not consider it possible to accept a majority of one vote in the case of the principle itself of the rules to be established.

123. Mr. SANDSTRÖM considered that it was a difficult question to discuss, as they did not know what was to follow. If the Commission were to decide that an international agency was to have competence in the matter, the powers given to that body would influence the decisions to be taken on other points.

124. The CHAIRMAN wished to know the Commission's views in regard to intervention by an international

body where the States had not been able to reach agreement.

125. Mr. CORDOVA observed that the members of the Commission were unanimously agreed that the United Nations Food and Agriculture Organization should be empowered to act in the matter.

126. Mr. AMADO said it was clear that, as regards the high seas, its resources did not belong to anyone. They were not considering the continental shelf, nor fishing, but the conservation of the resources of the sea. On the high seas the States were free to do as they liked and their nationals could engage in fishing. But the coastal States, which had no rights over the high seas, maintained that the fishing was exterminating the fauna, and that that affected the resources of their territorial waters. That was the problem in a nutshell: on the one side the high seas and on the other the coastal States. Mr. François took his stand on the principle that the coastal State should be the first to be consulted. Mr. Hudson, on the other hand, laid emphasis on the importance of industrial exploitation. An endeavour should be made to reconcile those two formulae, and it was for that reason that he had voted for Mr. Hudson's latest proposal. The resources of the sea had to be protected, but it was also necessary to consider the interests of the coastal State to whom a legal title should be given, a thing it did not have at the moment. Actually, the sea off the coasts of a State did not belong to it. If they wished to find an answer to the question, they had to vote for Mr. Hudson's text.

127. Mr. CORDOVA said that the notion of freedom of the high seas had its counterpart in the rights of coastal States which had their own special interests. The position was as follows: the freedom of the high seas might, in itself, have been a good system, but fishing on the high seas had to be regulated in the interests of the States themselves, or its resources would be exhausted. It was necessary to modify the regime of the freedom of the high seas, in so far as resources of the sea were concerned, as it led to abuse. The course advocated by Mr. François was to give the right of regulation to the coastal State. Mr. Hudson proposed to give it to those who were exploiting those resources and had shown an inclination to exhaust them. For that reason he could not accept the latter's text.

128. Mr. FRANÇOIS remarked that the main point of divergence between Mr. Hudson and himself was the question as to who was to have the last word. It was not enough to say that the States should come to an agreement. In his proposal the last word belonged to an international organization. If Mr. Hudson could accept that solution, the difference between them would not be very great.

129. In reply to a remark by Mr. Sandström, Mr. HUDSON read out the following text:

"The FAO should confer competence on a permanent body to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them, and such body should make recommendations of conservatory measures to be adopted by the States

whose nationals are engaged in fishing in various particular areas".

130. Mr. FRANÇOIS would have liked to substitute "decisions" for "recommendations", but realized that it was impossible to do so.

131. Mr. CORDOVA said that if Mr. Hudson would substitute "decisions" for "recommendations", his text would be approved unanimously.

132. Mr. Hudson then proposed the following text:

"The FAO should confer competence on the permanent body to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them and such body should have power to notify to the States whose nationals are engaged in fishing in various particular areas the conservatory measures to be adopted in each area. Any notification should come into force in the area to which it relates within 6 months provided no such State makes objection within that period."

The meeting rose at 1 p.m.

## 119th MEETING

Friday, 6 July 1951, at 9.45 a.m.

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*Chairman:* Mr. James L. BRIERLY

*Rapporteur:* Mr. Roberto CORDOVA

*Present:*

*Members:* Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi Hsu, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

*Secretariat:* Mr. Ivan KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

**Régime of the high seas: report by Mr. François (item 6 of the agenda) (A/CN.4/42) (*continued*)**

CHAPTER 7: RESOURCES OF THE SEA: (*continued*)

1. The CHAIRMAN announced that the Commission had before it the text proposed by Mr. Hudson as a substitute for the regulations drafted by Mr. François (p. 37, (A/CN.4/42, mimeographed English text; para. 80, printed French text): Mr. Hudson's text, which included the paragraph adopted at the previous meeting (para. 91) read as follows: