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Summary record of the 134th meeting

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72. The CHAIRMAN pointed out that no penalty was mentioned and that there could not, therefore, be any question of a law. He added that he had opposed that article, but had deferred to the decision of the majority.

He, also, would prefer "desirable" to "necessary".

Article 5 was adopted and its comment was adopted as amended.

The meeting rose at 12 noon.

134th MEETING

Friday, 27 July 1951, at 11.0 a.m.

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Chairman: Mr. James L. BRIERLY

Rapporteur: Mr. Roberto CORDOVA

Present:

Members: Mr. J. P. A. FRANÇOIS, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jesús Maria YEPES.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Corrections to summary records

1. The CHAIRMAN explained that a certain period was generally allowed for sending in corrections to the provisional summary records of meetings, but a difficulty arose regarding the records of the final meetings of the session, since members would be leaving Geneva. If the normal procedure were followed it would not be possible to distribute the final records for at least two months, and that would hinder preparations for the work of the General Assembly.

2. He proposed therefore that no corrections should be made to the summary records of the final meetings of the session. That procedure could not give rise to any difficulties; members of the Commission were aware that the first draft of the records was generally very accurate and reliable and, moreover, the discussions at the final meetings did not deal with matters of substance but with mere questions of drafting.

3. Mr. YEPES said that, for his part, he was prepared to place full trust in the Secretariat.

4. In reply to a question by Mr. CORDOVA, the CHAIRMAN explained that the records in question would be those of the final week of the session. He pointed out that members of the Commission in fact made very few corrections.

The Chairman's proposal was adopted.

Second reading of the Report of the Commission covering its third session (*continued*): Chapters V, VI, VII and VIII and Annex (A/CN.4/L.31 Add.1)¹

CHAPTER V: REVIEW BY THE COMMISSION OF ITS STATUTE (*concluded*)

5. Mr. HUDSON was not sure that the chapter was appropriately placed, since it dealt with a special task entrusted to the Commission by the General Assembly.

6. The CHAIRMAN pointed out that chapters II, III and IV also dealt with special tasks, which had all been entrusted to the Commission by the General Assembly.

7. Mr. LIANG (Secretary to the Commission) said that he would have preferred the chapter to occupy a different position in the report, not because it dealt with a special task, but because it would be more logical to place it after chapter VII, which concerned the régime of the high seas. If that were done, the review of the Statute would follow all the chapters dealing with questions of substance studied by the Commission. Chapter V dealt with a question of organization, and should be placed near chapter VIII which recorded the other decisions of the Commission. However, the change was of no great importance and he saw no reason why the Review of the Statute should not remain as chapter V.

8. Mr. HUDSON observed that, in the existing order of chapters, reservations to multilateral conventions, which were dealt with in chapter II, were too far away from the law of treaties, which was examined in chapter VI. He thought that the review of the Statute should appear as chapter II and the reservations as chapter V.

9. After an exchange of views it was decided to leave the chapters in their existing order.

Paragraphs 60 to 71

Paragraphs 60 to 71 were adopted without comment.

CHAPTER VI: LAW OF TREATIES (*concluded*)

Paragraphs 72 to 75

Paragraphs 72 to 75 were adopted subject to the deletion of the words "in detail" in paragraph 75.

CHAPTER VII: REGIME OF THE HIGH SEAS (*concluded*)

Paragraphs 76 and 77

Paragraphs 76 and 77 were adopted without comment;

¹ Mimeographed document only, the text of which corresponds, with drafting changes to chapters V-VIII and annex of the *Report of the International Law Commission covering the work of its third session*. (See vol. II of the present collection.) The drafting changes are indicated in the present summary record. The paragraph numbers correspond to those of the "Report".

Paragraph 78

10. Mr. HUDSON proposed the deletion of the words "It reached certain conclusions and . . ." at the beginning of the second sentence.

It was so decided.

Paragraph 78 was adopted as amended.

Paragraphs 79 to 81

Paragraphs 79 to 81 were adopted without comment.

Paragraph 82

11. Mr. HUDSON proposed that in the second sentence the words "In his conclusion" be deleted.

It was so decided.

Paragraph 82 was adopted as amended.

Paragraphs 83 and 84

Paragraphs 83 and 84 were adopted without comment.

CHAPTER VIII: OTHER DECISIONS OF THE COMMISSION
(concluded)*Paragraphs 85 to 87*

Paragraphs 85 to 87 were adopted without comment.

Paragraphs 88 to 89

12. Mr. HUDSON proposed that, in the headings the words "General Assembly resolution on . . ." and the words "General Assembly resolution on the . . ." be deleted.

It was so decided.

Paragraphs 88 and 89 were adopted as amended.

Paragraphs 90 and 91

Paragraphs 90 and 91 were adopted without comment, subject to a few drafting amendments.

ANNEX: THE CONTINENTAL SHELF AND RELATED SUBJECTS
(CONSERVATION OF THE RESOURCES OF THE SEA, SEDIMENTARY FISHERIES, CONTIGUOUS ZONES) (concluded)

13. Mr. HUDSON, supported by the CHAIRMAN, proposed that the title of the Annex begin with the words "Draft articles on . . ." and that the words appearing in brackets be deleted.

It was so decided.

14. The CHAIRMAN pointed out that Mr. Scelle's note (footnote 22 of the "Report") should be included in the Report and not in the annex to be sent to governments.

It was so decided.

*Part I. Continental shelf**Article 1*

15. Mr. FRANÇOIS observed that article 1 referred to "marginal seas." The Commission always spoke of territorial waters and he saw no reason why a different term should be used in that instance and it might cause confusion. He proposed the substitution of the term "territorial waters."

16. Mr. HUDSON said that he preferred the term "marginal seas". Nevertheless, he was aware that it was not popular in Europe and he accepted Mr. François' argument.

Mr. François' proposal was adopted.

Article 1 was adopted as amended.

*Comment**Paragraphs 1 and 2*

Paragraphs 1 and 2 were adopted without comment.

Paragraph 3

17. Mr. HUDSON proposed that, in the first sentence the word "use" be substituted for the word "keep"; that in the second sentence the words "because it is" be substituted for the words "as being by now"; and that in the same sentence the word "also" in the phrase "and also because the term" be deleted.

It was so decided.

Paragraph 3 was adopted as amended.

Paragraph 4

Paragraph 4 was adopted without comment.

Paragraph 5

18. Mr. FRANÇOIS considered that, in the last sentence of the paragraph, the words "by reason of the depth of the waters" should be added after the words "technically possible".

It was so decided.

Paragraph 5 was adopted as amended.

Paragraph 6

19. On the proposal of Mr. HUDSON, it was decided to delete the word "possibly", in the fifth sentence of the paragraph, after the words "technical developments".

Paragraph 6 was adopted as amended.

Paragraph 7

20. On the proposal of Mr. HUDSON, it was decided to delete the words "which is based on the possibility of exploiting natural resources", at the end of the paragraph.

Paragraph 7 was adopted as amended.

Paragraph 8

21. Mr. HUDSON proposed the deletion of the words "a limit at such a distance could only serve a practical purpose in connection with fishing, since" before the words "as a general rule". He did not wish it to be recognized that the 200-mile limit was justified for fishing purposes.

22. Mr. FRANÇOIS accepted that amendment.

The amendment was adopted.

23. Mr. FRANÇOIS proposed the deletion of the word "even" before the words "the conservation" in the second sentence and of the words "Resources of the sea", appearing in brackets at the end of the paragraph,

since the reference also applied to other sections of Part II.

It was so decided.

24. Mr. LIANG (Secretary to the Commission) considered that in order to avoid all ambiguity, it would be advisable, in the second sentence, to say "should be dealt with separately", instead of "should be regulated separately".

It was so decided.

25. Mr. HUDSON proposed that in the same sentence the words "in the interests of which such limits are fixed" after the words "resources of the sea" should be deleted.

26. Mr. FRANÇOIS saw no objection to that deletion.

It was so decided.

Paragraph 8 was adopted as amended.

Paragraph 9

27. Mr. HUDSON proposed the deletion of the words "and there is no need to deal with them here", appearing at the end of the paragraph.

It was so decided.

Paragraph 9 was adopted as amended.

Paragraph 10

Paragraph 10 was adopted with various drafting amendments.²

Article 2

Article 2 was adopted.

Comment

Paragraph 1

28. Mr. YEPES proposed that the second sentence of the paragraph be deleted.

The proposal was rejected.

29. Mr. HUDSON proposed that the second sentence be amended to read "The article excludes control and jurisdiction independently . . ." instead of "There can be no question of jurisdiction and control independently . . .".

It was so decided.

Paragraph 1 was adopted as amended.

Paragraph 2 (paragraph 3 in the "Report")

30. Mr. HUDSON proposed the deletion of the paragraph, since it duplicated the terms of article 6.

31. Mr. YEPES pointed out that Mr. HUDSON had already made that proposal during the discussion on the subject, and that it had not been adopted.³

32. The CHAIRMAN observed that the Commission could nevertheless delete the paragraph if it so desired.

33. Mr. FRANÇOIS explained that the paragraph had been included in his report in order to counter the view

² The phrase, "The wording of the article brings out the fact that", was replaced by, "The text of the article emphasizes that".

³ Summary record of the 131st meeting, paragraph 2 *et seq.*, paragraph 16 in particular.

of Professor A. de La Pradelle, who was entirely opposed to the doctrine of the continental shelf on the ground that it restricted the freedom of the seas. The Commission had already watered down his original text and that paragraph was all that remained on the subject. He had included it in the comment on Article 2, since otherwise the principle of freedom of the seas would only be maintained in subsequent articles of secondary importance.

34. Mr. HUDSON withdrew his proposal.

35. He proposed that the words "though" and "very" in the phrase "though to a very limited extent" in the first sentence be deleted and that the beginning of the second sentence be amended to read: "exploration and exploitation are permitted . . ." instead of "It favours such exploration and exploitation only because . . .".

It was so decided.

Paragraph 2 was adopted as amended.

Paragraph 3 (paragraph 4 in the "Report")

36. Mr. HUDSON observed that the wording of the paragraph was rather abrupt. He proposed that the first sentence be amended to read: "It would seem to serve no purpose", instead of "It serves no purpose" and the second sentence to read: "That conception might lead to chaos" instead of "That conception would lead . . .".

It was so decided.

Paragraph 3 was adopted as amended.

Paragraph 4 (paragraph 2 in the "Report")

37. Mr. HUDSON proposed the transfer of the word "however", in the second sentence to after the word "circumstance".

38. He also proposed that paragraph 4 be placed after paragraph 1, the various paragraphs being renumbered accordingly.

It was so decided.

Paragraph 4 was adopted as amended.

Paragraph 5 (paragraph 6 in the "Report")

39. Following a comment by Mr. François, Mr. CORDOVA proposed that the beginning of the paragraph be amended to read: "The Commission has not attempted to base on customary law the right . . ." instead of "It seems to be unnecessary to attempt . . .".

It was so decided.

40. Mr. YEPES proposed that the word "already" be inserted before the words "established a new customary law".

It was so decided.

41. The CHAIRMAN expressed some doubt as to the accuracy of the idea expressed in the last sentence. He thought it should be deleted.

42. Mr. LIANG (Secretary to the Commission) thought that the last sentence, although worded as an axiom, was more open to question than the preceding one.

43. Mr. HUDSON observed that the authors of proclamations relied on more or less acceptable general

principles, but the CHAIRMAN pointed out that certain proclamations made extravagant claims.

44. Mr. FRANÇOIS proposed that the sentence in question be amended to read: "... the principle of the continental shelf is based upon general principles ..." instead of "It is sufficient to say that the proclamations are based ...".

It was so decided.

Paragraph 5 was adopted as amended.

Paragraph 6 (paragraph 7 in the "Report")

Paragraph 6 was adopted without comment.

Paragraph 7 (paragraph 5 in the "Report")

45. *It was decided* to make the following amendments to the text of paragraph 7: In the second sentence, to replace the words "nor can recourse be had" by the words "nor should recourse be had"; and in the last sentence, to replace the words "does not depend on" by the words "is also independent of".

46. Following a long discussion on the words "declaratory occupation", *it was noted* that the English term "constructive occupation" would be the best. Nevertheless, in order to adopt a text that could be more easily translated into the various languages, *it was decided*, on the proposal of Mr. YEPES, to replace the words "purely declaratory occupation" by the words "fictional occupation".

47. On the proposal of Mr. HUDSON; *it was decided* to make paragraph 7 the fifth paragraph of the comment.

Paragraph 7 was adopted as amended.

Articles 3 and 4 and comments

Articles 3 and 4 and the comments thereon were adopted without comment.

Article 5 and comment

48. On the proposal of Mr. HUDSON, *it was decided* that the words "does not affect" be replaced by the words "may not exclude".

Article 5 was adopted as amended.

49. There were no remarks on the accompanying comment.

Article 6

50. Following an observation by Mr. SANDSTRÖM and on the proposal of Mr. HUDSON, *it was decided* that in paragraph 1 the words "Interested parties, which may be affected by the construction of installations, must be duly notified thereof and due means of warning..." be replaced by the words "Due notice must be given of any installations constructed and due means of warning..."

51. On the proposal of Mr. HUDSON, *it was decided* that in paragraph 2 the words "No such installations shall have the status of an island..." be replaced by the words "Such installations shall not have the status of islands..."

Article 6 was adopted as amended.

Comment

Paragraph 1

52. On the proposal of Mr. YEPES *it was decided* that in the first sentence the word "inevitable" be replaced by the word "evident"; on the proposal of Mr. HUDSON *it was decided* that in the same sentence the word "will" be replaced by the word "may" and that at the end of the paragraph the words "unless the conflicting claims can be reconciled" be deleted.

Paragraph 1 was adopted as amended.

Paragraphs 2, 3 and 4.

Paragraphs 2, 3 and 4 were adopted with a minor amendment.⁴

Article 7 and comment

53. Mr. HUDSON proposed that the first sentence of paragraph 1 of the comment be amended to read "... the drawing of boundaries may be necessary..." instead of "boundaries may be necessary..."

It was so decided.

54. On the proposal of Mr. FRANÇOIS, *the Commission decided* that in the last sentence the word "possible" be inserted before the word "recourse" and that the words "where necessary" at the end of the sentence be deleted.

Article 7 and the comment thereon were adopted as amended.

Part II. Related subjects

Article 1

55. On the proposal of Mr. HUDSON *it was decided* to reverse the order of the second and third sentences.

56. *It was also decided* to delete the word "relevant" before "system of regulation" in the penultimate sentence.

Article 1 was adopted as amended.

Article 2

Article 2 was adopted without comment.

Comments on articles 1 and 2

Paragraph 1

Paragraph 1 was adopted without comment.

Paragraph 2

57. Mr. FRANÇOIS observed that his report (A/CN.4/L.27) included, in the sentence corresponding to the last sentence of paragraph 2, the words "or rather any inadequacy in the measures taken", following the words "the measures taken". That phrase no longer appeared in the amendment adopted by the Commission.⁵ It was important to stress that if a State whose nationals engaged in fishing in areas of the high seas contiguous to the territorial waters of another State failed to establish regulations, or established inadequate ones, the latter

⁴ The words "the present article" being replaced by "this article" in para. 3.

⁵ Summary record of the 132nd meeting, paras. 51-54.

would have the right to claim participation in any regulation. He proposed that in the last sentence of paragraph 2 the words "any regulations" be replaced by the words "regulations or the failure to adopt regulations".

It was so decided.

Paragraph 2 was adopted as amended.

Paragraphs 3, 4 and 5

58. The CHAIRMAN observed that, in paragraph 3, the title of the United Nations Food and Agriculture Organization should be given in full.

It was so decided.

59. Mr. LIANG (Secretary to the Commission) said that the footnote to paragraph 4 (resolution 298 C (XI), of 12 July 1950) should be incorporated in the text.

It was so decided.

60. Mr. HUDSON proposed the deletion of the word "actually" before "without sponsoring it" at the end of paragraph 5.

It was so decided.

Paragraphs 3, 4 and 5 were adopted as amended.

Article 3

61. Mr. HUDSON proposed that the last part of the first sentence be amended to read "... provided that non-nationals are permitted to participate in the fishing activities on an equal footing with nationals", instead of "provided that nationals of other States are permitted to participate in the fishing activities on an equal footing with its own nationals".

It was so decided.

Article 3 was adopted as amended.

Comment

Paragraph 1

62. Following a comment by Mr. LIANG (Secretary to the Commission) *it was decided* to delete the word "sharp" before the word "division" in the last sentence.

Paragraph 1 was adopted as amended.

Paragraph 2

Paragraph 2 was adopted without comment.

Paragraphs 3 and 4

63. Following a comment by Mr. HUDSON, *it was decided* that the words "an area" in paragraph 3 be replaced by the word "areas".

Paragraph 3 was adopted as amended.

*It was decided that the last sentence of paragraph 4 be deleted.*⁶

⁶ The last sentence read as follows: "It also feels that the authority exercised by the coastal State over such waters should not be restricted."

It was decided that paragraphs 3 and 4 be combined.

Paragraph 5

64. On the proposal of Mr. HUDSON *it was decided* that the words "purposes of", in the second sentence, be deleted.

Paragraph 5 was adopted as amended.

The comment on article 3 was adopted as amended.

Article 4

Article 4 was adopted

Comments

Paragraphs 1 to 3 were adopted without comment.

Paragraph 4

65. On the proposal of Mr. FRANÇOIS, *it was decided* that the first two sentences be combined and amended to read as follows: "The proposed contiguous zones are not intended for purposes of security or of exclusive fishing rights" instead of "The proposed contiguous zones are strictly limited. They are not intended ...".

The comment on article 4 was adopted as amended.

Closure of the third session

66. Mr. HUDSON congratulated Mr. Córdova on the skill and rapidity with which he had drawn material from the discussions for incorporation in the general report, and thanked him for the care with which he had conducted all the research involved in drafting the report.

67. Mr. CORDOVA, General Rapporteur, supported by Mr. el Khoury, warmly thanked the Chairman, on behalf of all the members of the Commission, for his able direction of the work of the third session.

68. The CHAIRMAN said that he had felt very doubtful about taking the Chair, in view of the heavy duties entailed. He thanked all the members of the Commission for their valuable collaboration, which had facilitated the study of the various items on the agenda for the third session to the greatest possible degree.

68a. He also thanked the Secretariat staff, officials of the Legal Department, the précis-writers and the interpreters. Some of them had had to put in long hours every day and sometimes work late servicing the meetings. It was their collaboration which had enabled the Commission successfully to complete a session which had, on the whole, been most fruitful.

69. Mr. LIANG (Secretary to the Commission) speaking on behalf of Mr. Kerno (Assistant Secretary-General) thanked the Chairman for his kind words to the Secretariat.

The meeting rose at 12.35 p.m.