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Summary record of the 233rd meeting

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of an agency or tribunal might make their adoption more difficult ; but the proposal was very defensible, as it was not unreasonable to ask the General Assembly to act, as it were, as an arbitrator.

85. Mr. ZOUREK hoped that the Commission would give due thought to the matter before deciding to insert in the conventions a text according to which the General Assembly would be obliged to establish certain institutions in the event of disagreement between the contracting parties, for such action was beyond the competence of the General Assembly, which could only act in conformity with the Charter of the United Nations, and thus was empowered only to make recommendations to States Members. It could not make good the deficiencies of contracting parties.

86. Mr. HSU said that it would do no harm to include paragraph 4, as the General Assembly would then be able to consider the whole matter. He proposed the following text for that paragraph :

“4. If, within two years of the entry into force of the convention, the agency or the tribunal referred to in paragraphs 1 and 2 has not been set up by the Parties, any one of the Parties shall have the right to request the General Assembly to set them up.”

Paragraph 1 of the additional article, as amended during the discussion, was adopted by 10 votes to 2, with 1 abstention.

Paragraph 2 of the additional article, as amended during the discussion, was adopted by 9 votes to 2, with 2 abstentions.

Paragraph 3 of the additional article, as amended during the discussion, was adopted by 9 votes to 2, with 1 abstention.

Paragraph 4 of the additional article, in the form suggested by Mr. Hsu, was adopted by 4 votes to 2 with 5 abstentions.

87. Mr. SCELLE suggested that, as paragraph 4 established a form of sanction for non-compliance with the provisions laid down in paragraphs 1 and 2, it should follow those paragraphs. Paragraph 3, which was of more general concern, would then become the last paragraph.

It was so agreed.

The additional article proposed by the Drafting Committee was adopted, as a whole and as amended, by 10 votes to 2, with 1 abstention.

The meeting rose at 1.5 p.m.

233rd MEETING

Thursday, 6 August 1953, at 9.30 a.m.

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Chairman : Mr. J. P. A. FRANÇOIS.

Rapporteur : Mr. H. LAUTERPACHT.

Present :

Members : Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

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

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (continued)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS AND DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS (continued)

Relation between the two draft conventions (Paragraph 121 of the “Report”)

1. The CHAIRMAN invited the Commission to discuss the relation between the draft Convention on the Elimination of Future Statelessness and the draft Convention on the Reduction of Future Statelessness. The General Rapporteur had presented a proposal reading as follows :

“The Commission deems it convenient, in order to clarify a situation which may otherwise give rise to misunderstanding, to indicate at this juncture in general terms the relation between the two drafts. The Commission is convinced of the desirability of eliminating or at least drastically reducing statelessness in the future. The Commission does not at present consider it necessary to recommend to Governments which of the two conventions they should adopt as the basis for their observations. However, it is of the opinion that members of the United Nations should recognize the urgency of the problem by giving consideration to both conventions and by commenting on them. It may be added that while the Convention on Elimination of Statelessness by its nature does not admit of reservations, it would be a matter for the decision of States accepting the Convention on Reduction of Statelessness to what extent reservations to that convention shall be declared admissible.

"In due course, and after receiving the comments of Governments, the Commission will consider whether and in what form it should submit to Governments final drafts of the Convention and what course of action it should recommend."

2. In the General Rapporteur's view, his proposal was a suggestion as to what might be included in the Commission's report rather than a text for detailed discussion. Further, the General Rapporteur considered that the Commission's agreement to include in its report a passage on the lines of his proposal would not *ipso facto* commit it to agreement with the terms of either one of the two conventions; indeed, the General Rapporteur's proposal was that the Commission should not vote on the conventions separately.

3. Mr. SANDSTRÖM found some difficulty in grasping the exact meaning of the General Rapporteur's proposal. There was, for example, a contradiction between the sentence running:

"The Commission does not at present consider it necessary to recommend to governments which of the two Conventions they should adopt as the basis for their observations",

and the succeeding sentence running:

"However, it is of the opinion that Members of the United Nations should recognize the urgency of the problem by giving consideration to both Conventions and by commenting on them".

4. If the intention of the first sentence was merely that the Commission did not recommend one or other of the two conventions to governments, it might perhaps be amended to read:

"The Commission does not at present consider it necessary that governments should adopt either the one or the other of the two Conventions as the basis for their observations".

5. In other respects, he agreed with the General Rapporteur's proposal.

6. Mr. LAUTERPACHT agreed that Mr. Sandström's suggestions clarified and improved the text.

7. Mr. YEPES, referring to the same sentences as Mr. Sandström, thought that the phrase "at present" in the first was vague and therefore unnecessary. Further, the French translation of the second should be amended by replacing the word "*doivent*" by the word "*devraient*", for it would be inappropriate for the Commission to phrase the opinion imperatively.

8. The CHAIRMAN asked members to confine their remarks to general principles, leaving drafting details on one side.

9. Mr. KOZHEVNIKOV, referring to the second of the two sentences to which Mr. Sandström had referred, said that the Commission ought not to express an opinion on the urgency of the problem, which was a matter for governments; the sentence should therefore be deleted. Similarly, the succeeding sentence, in which

it was stated that the Convention on Elimination of Future Statelessness by its nature did not admit of reservations, should also be deleted.

10. As to the method of voting on the two conventions, he would prefer them first to be voted on separately, and then together.

11. Mr. LAUTERPACHT said that the core of his proposal was the statement that the Commission was convinced of the desirability of eliminating or at least drastically reducing statelessness. The Commission could not at present say which course—elimination or reduction—should be followed; that was a matter for governments to decide in the future. Therefore a vote on the two conventions taken together would be more appropriate.

12. It was, in his view, most important that the Commission should express an opinion on the urgency of the problem. Nevertheless, if it would enable Mr. Kozhevnikov to vote for the paragraph he (Mr. Lauterpacht) would gladly delete the sentence in question. Similarly, on the issue of the inadmissibility of reservations to the Convention on the Elimination of Statelessness, there would be no object in deleting the reference if Mr. Kozhevnikov was going to vote against the proposal in any case; for his own part, he thought that some guidance should be given to those governments which might be hesitant to accept even the Convention on the Reduction of Future Statelessness.

13. Mr. LIANG (Secretary to the Commission) said that the General Rapporteur's proposal was not so much an account of the relation between the two conventions as an appeal to governments to comment on their texts. It thus seemed superfluous, as governments were bound by the Commission's Statute to comment on them.

14. Further, he thought that the question of the admissibility of reservations to the Convention on Elimination of Statelessness was misplaced. It was a point that should certainly be made somewhere, but he would prefer to see it rather in an introductory section of the report—perhaps in the section entitled "Object and Nature of the two Conventions".

15. The second paragraph of the General Rapporteur's proposal had little obvious connexion with the relation between the two conventions; it described, rather, the steps which the Commission had taken and was proposing to take. Even as it stood, however, he questioned its accuracy, for the final drafts of the two conventions should, in conformity with the Commission's statute, be submitted to the General Assembly rather than to governments.

16. The CHAIRMAN said that the General Rapporteur wished to learn the views of members on the principles enunciated in his proposal; he would then be able to draft appropriate paragraphs and place them suitably in the relevant chapter of the draft report.

17. Mr. ALFARO was in general agreement with the substance of the proposal. However, he thought that it

might be strengthened if, in addition to the statement that the Commission was convinced of the desirability of eliminating or reducing statelessness, it was also stated that it had taken up the matter at the instance of the Economic and Social Council; the second sentence might then begin:

“The Commission, like the Economic and Social Council, is convinced of the desirability...”

18. In the fourth sentence, which urged governments to recognize the urgency of the problem, it might be more appropriate to refer to the will of governments rather than to their duty. The sentence might open:

“However, it is of the opinion that Members of the United Nations will recognize...”

19. Mr. KOZHEVNIKOV said that, although he could not express a final opinion until he had heard more of the views of his colleagues, he felt that it was not appropriate to refer to the admissibility of reservations to the Convention on the Elimination of Statelessness. It was wrong to assume that reservations to that Convention would necessarily be inadmissible. In principle, it was possible to make reservations to any convention, the right to do so being a sovereign right of any sovereign State.

20. As to the method of voting on the two conventions, he thought that as each had its own distinctive features, they should be voted upon separately.

21. Mr. SPIROPOULOS said that the General Rapporteur would undoubtedly take the opinions expressed by members of the Commission as the basis for the revision of his text.

22. As it stood, the proposal began badly, for the first sentence referred to the possibility of a misunderstanding arising. It seemed to him that no misunderstanding could possibly arise, the difference between the two conventions being evident from their titles. Again, taking the third sentence, surely it was plain that if governments were faced with two texts they would comment on both; indeed, the Commission should ask governments for their observations on a single document comprising the texts of the two conventions, for except in the unlikely event of all governments disapproving of the draft convention on the elimination of future statelessness, which would then have to be abandoned, it was probable that both conventions would ultimately be opened for signature and ratification.

23. It would be improper for the Commission to ask governments to “recognize the urgency of the problem”, though governments could rightly be requested to comment on the conventions on the ground that the Commission considered the problem to be urgent. Further, the question of reservations to the Convention on the Elimination of Future Statelessness was a matter for governments. He agreed with the Secretary that the final drafts would go to the General Assembly, and the second paragraph of the proposal should therefore be amended in that sense.

24. As to the method of voting, the two conventions

dealt with two different subjects, and it would therefore be normal to take a separate vote on each. But in the circumstances, it was reasonable to vote on the two texts together, leaving the final decision on which text to recommend to the General Assembly for a later session, by which time the observations of governments would have been received.

25. The CHAIRMAN said that the essence of the proposal lay in its third sentence, where it was stated that the Commission did not consider it necessary to recommend which of the two conventions should be adopted as the basis for the observations of governments. If that view prevailed, it followed that it would be impossible to vote on each convention separately, for what would happen if one of them were to be rejected?

26. Mr. CORDOVA said that if the Commission accepted the General Rapporteur's proposal it would refrain for the time being from expressing a preference for the one convention or the other. He thought that the Commission was in agreement that the observations of governments should first be awaited.

27. Referring to Mr. Spiropoulos' assertion that there was no possibility of misunderstanding the relation between the two conventions, he said that for his part he was sure that governments would be confused if, on receiving two apparently contradictory texts from the Commission, the reasons for presenting them both were not stated.

28. The General Rapporteur's proposal that the inadmissibility of reservations to the Convention on the Elimination of Future Statelessness should be mentioned had been criticized, but in his (Mr. Córdova's) view it was essential to declare that that convention was directed to the total elimination of statelessness, and that it would be impossible to achieve that end if reservations to the convention were permitted.

29. As to the vote on the conventions, he considered that both must be submitted to governments for their observations and the two final drafts, incorporating any changes necessitated by those observations, subsequently presented to governments as alternatives for signature and ratification.

30. Mr. SPIROPOULOS repeated that the relation between the two conventions, if there was one, was evident from their titles and texts. Nevertheless, it would be useful to include in the Commission's report an historical account of the origins of the two conventions, starting with the request of the Economic and Social Council that the Commission should “...prepare at the earliest possible date the necessary draft international convention or conventions for the elimination of statelessness.”¹

31. He agreed with the Chairman that the disadvantage of taking separate votes on the two conventions was that the Commission would be unable to present to

¹ Council resolution 319 B III (XI), of 11 August 1950.

governments for their observations one of which it happened to disapprove. Therefore, despite the normal practice of taking separate votes on separate subjects, the two conventions should in the circumstances be voted upon together.

32. Mr. LIANG (Secretary to the Commission) said that the relation between the two conventions might be one of mutual exclusiveness or one of co-existence; but whichever was the case, the proposal under discussion was much more concerned, and in his view rightly so, with the progress of the Commission's work. He recalled that at the fourth session, Mr. Sandström had suggested that two conventions be drafted: the outcome of that request was the "Report on the Elimination or Reduction of Statelessness" prepared by the Special Rapporteur (A/CN.4/64), in which the two drafts were elaborated. The Commission should accordingly send both texts to governments and seek their comments on them. At the stage which the Commission had now reached it would be appropriate to suggest that governments might comment first on the desirability of having two conventions, and then on the substance of each of them. Thus the third sentence of the General Rapporteur's proposal, in which it was stated that the Commission did not at present consider it necessary to recommend which of the two conventions should be adopted as a basis for observations by governments, should be modified to read:

"The Commission requests governments to comment on the two conventions".

33. Mr. LAUTERPACHT said that he would be very glad to take into account, in drafting the report, the observations which members of the Commission had made, at least to the extent to which they were not mutually contradictory.

34. It seemed to him that if, as appeared to be the case, it was possible for misunderstanding to arise in the Commission, so much the greater was the possibility of misunderstanding arising among ordinary readers of the report. He thought it was undeniable that there was a relation between the two conventions, even if it were only that of mutual exclusiveness.

35. He felt that the Commission should first decide whether it could accept the second sentence of his proposal: was the Commission "convinced of the desirability of eliminating or at least drastically reducing statelessness in the future"? Secondly, the Commission should decide whether it was fully agreed that the two conventions should be regarded as alternatives. For his part, he felt that progress would have been achieved by the acceptance of either convention, and that the difference between them was slight.

36. Mr. KOZHEVNIKOV said that the discussion was gradually convincing him that the Commission ought to fall back on its normal procedure and vote on the two conventions separately, for though there was certainly a connexion between them they were not identical, but dealt with different subjects. One was concerned with the total elimination of statelessness in the future; the

scope of the other—the reduction of statelessness in the future—was more restricted. Further, they had been discussed separately, and if the Commission followed that procedure to its logical conclusion, its opinion on them should be determined separately.

37. Mr. ZOUREK said that the Commission should eschew peremptory phraseology, such as that of the fourth sentence of the General Rapporteur's proposal. Further, in his view there was no need to refer to the inadmissibility of reservations to the Convention on the Elimination of Future Statelessness, for reservations were normal in the case of all conventions.

38. The General Rapporteur's suggestion that the two conventions be voted upon together was unusual, in so far as it would involve delaying for twelve months any decision the Commission might take on the merits of the two conventions. He did not himself consider that there was any conflict between the third sentence of the General Rapporteur's proposal, that the Commission did not consider it necessary to recommend to governments which of the two conventions they should adopt as the basis for their observations, and the proposal that the Commission should vote on each convention separately.

39. The CHAIRMAN intervened to repeat that if the Commission rejected one convention it would clearly be impossible to submit that text to governments for their consideration.

40. Mr. HSU said that the General Rapporteur's concern that the Commission should not be obliged at a preliminary stage of its work to decide on the relative merits of the two conventions was perfectly legitimate. The Commission should therefore vote only on the two conventions together.

41. He urged the Commission to give its general approval to the General Rapporteur's proposal, and to leave him some freedom to draft his report as he thought fit, taking into account the views expressed by members.

42. Mr. SANDSTRÖM was not clear whether the General Rapporteur's intention was that the Commission, having presented two draft conventions to governments for comment, should ultimately present them with two final drafts for acceptance. He (Mr. Sandström) could not agree that a decision in that sense should be taken forthwith. He preferred the second paragraph of the General Rapporteur's proposal as submitted, and, indeed, would suggest that it be slightly modified so as to leave completely open the question of which, or how many, conventions might be submitted for acceptance in the form of final drafts.

43. Mr. YEPES thought that the Commission should state most emphatically that it was "convinced of the desirability of eliminating or at least drastically reducing statelessness in the future". Secondly, he considered that the two draft conventions prepared were mutually exclusive, and should not both be submitted to governments for comment. He thought that, as the draft Convention on the Elimination of Future Statelessness

would command the less support from governments, only the draft Convention on the Reduction of Future Statelessness should be submitted to them. Thirdly, no mention should be made of the possible inadmissibility of reservations to the Convention on the Elimination of Future Statelessness, for the right to enter reservations was a right that every government enjoyed in respect of every convention.

44. Mr. ALFARO was in general agreement with the views expressed by the General Rapporteur in his proposal. He thought that the first sentence should not be deleted, though it might be amended to read somewhat as follows :

“The Commission deems it convenient... to indicate at this juncture the reasons which have caused it to present two draft conventions.”

45. As to the second sentence, he agreed with Mr. Yepes that the Commission should emphasize that it was convinced of the desirability of eliminating or drastically reducing statelessness. Indeed, that elimination or reduction was not only desirable but necessary, and the Commission should say so bluntly. He agreed with the third sentence, for though the Economic and Social Council had requested the Commission to recommend conventions directed to the elimination of statelessness, it had been considered that total elimination was impossible, and that a draft convention aiming at the reduction of future statelessness was therefore necessary.

46. He agreed with Mr. Zourek that the fourth sentence was too peremptory. It might perhaps be reworded somewhat as follows :

“However, it is of the opinion that Members of the United Nations, recognizing the urgency of the problem, will give consideration to and will comment on both conventions.”

47. He agreed with Mr. Sandström's suggestion concerning the second paragraph, and was also in favour of the two conventions being voted upon as a single whole, as such a vote would be tantamount to a decision on the sum total of the Commission's deliberations on nationality and statelessness.

48. Faris Bey el-KHOURI said that it was useless to present two conventions to governments for their comments, because it would be most undesirable for two conventions to be ultimately opened for signature and acceptance. The existence in international law of two different means of dealing with the problem of future statelessness could only mean that governments would be unnecessarily divided into two groups, according to the way in which they wished to deal with the matter in their own territories. In any event, there was no significant difference between the two conventions. Even the convention that had been entitled “on the Elimination of Future Statelessness” was really concerned with the reduction of statelessness consequent upon the death of existing stateless persons.

49. Mr. KOZHEVNIKOV commended Faris Bey

el-Khourī's reasoning to the Commission, and also supported Mr. Yepes' statement that the right to enter reservations to all international conventions was an inherent right of sovereign States.

50. The statements of some members of the Commission gave him the impression that a majority regarded the Convention on the Elimination of Future Statelessness as unrealistic and considered it doubtful whether it would command the necessary support from governments. For his part, he considered the other convention equally unrealistic ; but it would be most improper for the Commission to ask governments for their comments on a convention of which it did not itself approve. In the circumstances, the two conventions should be voted upon separately. The Commission should not be afraid of expressing its opinion.

51. Referring to the second sentence of the General Rapporteur's proposal, in which the Commission was stated to be convinced of the desirability of eliminating or reducing statelessness in the future, he said that such a statement was surely superfluous, for if the Commission had not been so convinced it would not have been dealing with the question at all. The real issue hinged not on the desirability of eliminating or reducing statelessness, but on the method of doing so. Some members considered that the methods involved in both draft conventions were wrong, and would fail to have the desired effects ; they considered that States ought to take the necessary action individually.

52. Mr. CORDOVA felt that the Commission had now come to the crux of the matter, which was whether it should submit one draft convention or two. In his view, it was essential that it should submit both. No one disputed the fact that the final aim of the Commission's endeavours was the elimination of statelessness, or that technically it was attainable. But if the Commission submitted only the draft Convention on the Reduction of Future Statelessness, it would thereby imply that it regarded that aim as unattainable. It was not the responsibility of individual members of the Commission to decide what they would be able to accept if they were the representatives of their governments ; their only task, that laid upon them by the Economic and Social Council, was, as international lawyers, to devise a legal formula for the elimination of statelessness. As it seemed, however, that for political reasons it would be difficult to eliminate statelessness, the Commission was also submitting the draft of another convention, designed to reduce it so far as seemed feasible in the present political circumstances.

53. Even if not a single government ratified the draft Convention on the Elimination of Future Statelessness it would do a great deal of good ; for, in the same way as the principles of the 1899 and 1907 Hague Conventions had gradually come to inspire the legislations even of the many States which had not ratified them, so it might be hoped that even if the draft Convention on the Elimination of Future Statelessness were not ratified, future legislation would gradually become more and more imbued with its spirit.

54. Mr. SPIROPOULOS pointed out that the normal procedure, as laid down in the Commission's Statute, would be to submit both draft conventions to the General Assembly. There was, however, a danger that if the first were put to the vote, it would be rejected. Moreover, the Economic and Social Council had already taken a very definite stand on the whole matter. For those reasons the General Rapporteur had proposed that the Commission should, by a single vote, decide to submit both conventions for comment by governments, and should not, until the comments of governments had been received, decide whether and in what form it should submit final drafts of them to the General Assembly. The proposed procedure was certainly abnormal, but so were the circumstances. The procedure had, moreover, the advantage that a favourable vote would not commit members to support for the two conventions, as it would not mean anything more than that they should be submitted to governments for comment.

55. Mr. ZOUREK said that the differences between the two conventions were so slight that he could not attach much weight to the argument that if separate votes were taken on them, one might be adopted and the other rejected. He considered, on the other hand, that it would be very difficult to explain why the Commission had taken a single vote on two texts which were not mutually complementary.

56. Mr. YEPES felt that the difficulty arose from the attempt to define the relation between the two conventions. In his view, that was unnecessary, and the Commission should simply have one chapter in its report containing the first draft convention and explaining that although, in the present circumstances, it only represented an ideal, the Commission submitted it because it had been so instructed, and another chapter containing the second draft convention and explaining that it had been prepared with a view to providing a realistic means of substantially reducing statelessness, even in existing circumstances.

57. Mr. LAUTERPACHT felt that Mr. Yepes' suggestion was merely tantamount to voting on each convention separately. For that reason, he could not support it.

58. The CHAIRMAN agreed with those members of the Commission who had pointed out that it must first decide whether it wished to vote on the two conventions together or separately. Once that question had been decided, the Commission could then proceed to the vote—or votes—on the texts themselves.

59. Mr. KOZHEVNIKOV requested that the vote—or votes—on the texts themselves be deferred until the next meeting, since the final texts had only just been distributed.

It was so agreed.

60. The CHAIRMAN put to the vote the proposal that the Commission should take a single vote on the two draft conventions together.

The proposal was adopted by 10 votes to 1, with 2 abstentions.

61. Mr. YEPES explained that he had voted against the proposal for the sole reason that he did not think that the two conventions should be fused into one in that way, and considered that a separate vote should have been taken on each.

Consideration of the draft report of the Commission covering the work of its fifth session (resumed from the 232nd meeting)

CHAPTER III: RÉGIME OF THE HIGH SEAS
(A/CN.4/L.45/Add.1) *

62. The CHAIRMAN drew attention to the chapter on the régime of the high seas in the draft report of the Commission covering the work of its fifth session (A/CN.4/L.45/Add.1), and suggested that the Commission consider it paragraph by paragraph.

63. Replying to a question by Mr. HSU, he said that there could be no objection to members first making general statements on the draft chapter, provided they did not re-open the substantive discussion on the draft articles themselves.

64. Mr. HSU said that the draft report dealt with every conceivable question except the most crucial one, namely, the reason why the Commission had recognized the sovereign rights of the coastal State over the so-called continental shelf, instead of its exclusive right to the exploration and exploitation of the natural resources thereof. Paragraphs 11 and 12 stated that the term "sovereign rights" had been used instead of the expression "control and jurisdiction" for two reasons: first, "to avoid language lending itself to interpretations alien to an object which the Commission considers to be of decisive importance, namely, safeguarding the principle of the full freedom of the superjacent sea and the air space above it"; and secondly, so as to leave "no doubts as to the completeness of the rights of the coastal State". Neither was a sufficient reason. A principle could not be safeguarded by impairing it, nor could encroachment on a principle be justified by making the encroachment complete.

65. It was, indeed, admitted in paragraph 16 that "the Commission does not deem it necessary to elaborate the question of the nature or of the legal basis of the sovereign rights attributed to the coastal State". The report went on: "Some of the considerations relevant to this matter have been adduced above in paragraphs 11 and 12". He had already shown that those considerations were unconvincing.

66. It was also admitted that "it may be premature to base the principle of the sovereign rights of the coastal State exclusively on recent practice". Yet immediately afterwards it was stated that "that practice itself is considered by the Commission to be supported by

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter III.

considerations of legal principle and convenience". Leaving aside the question whether a practice which was declared to be something on which it was premature to base the principle of the sovereign rights of the coastal State could properly be regarded as being "supported by considerations of legal principle and convenience", those considerations themselves turned out to be quite irrelevant to the question at issue; for they bore upon the desirability of giving the rights of exploration and exploitation to the coastal State as opposed to giving them to non-coastal States, not to the desirability of giving them to one particular State as opposed to giving them to the community of States.

67. Paragraph 16 ended by stating that the principle that the coastal State should enjoy sovereign rights over the continental shelf was "in no way incompatible with the rationally conceived principle of the freedom of the sea". That statement added nothing. Nowhere in the report was the "rationally conceived principle of the freedom of the sea" explained. Repetition of the assertion that the coastal State enjoyed sovereign rights over the continental shelf did not make it any more compatible with the principle of the freedom of the sea, whether that principle was rationally or irrationally conceived.

68. In section C of the draft chapter entitled "The nature of the task of the Commission", passing reference was again made to the question of the coastal State's sovereign rights. What was said, however, was no more convincing than the passages upon which he had already commented, and further examination of it was therefore unnecessary.

69. What he had said should not be regarded as criticism of the General Rapporteur, who had been given the impossible task of justifying the Commission's decisions: for the Commission itself had not attempted to justify its decisions; it had merely adopted them. It had decided to give the coastal State sovereign rights over the continental shelf, but it had not attempted to explain why; that task had been left to the General Rapporteur. It was little wonder that he had been unable to carry it out satisfactorily, for the Commission's decision, and therefore the whole of the draft articles, was unscientific and unfortunate. The draft articles were unscientific because they were unnecessary and unrealistic, for reasons which he need not again explain. They were unfortunate because they conflicted with an established principle of international law which had served the international community well for three centuries.

70. He could almost agree with the General Rapporteur's suggestion, in paragraph 39, that the Commission should recommend to the General Assembly that it take no action on the draft articles on the grounds that they had already been published, since that would be tantamount to shelving them. Merely to shelve them, however, would be prejudicial to the Commission's prestige, and would also waste all the hard work which the Commission had devoted to the subject. He therefore considered that it would be preferable to take no final

decision on the subject at the present session, but to leave it over till the sixth session, when a more scientific draft might be prepared and better use made of the Commission's previous work on the subject.

71. Mr. SCALLE agreed with much of what Mr. Hsu had said; but although he would vote against the draft articles, he would vote for many of the paragraphs in the draft chapter, because they accurately reflected the Commission's decisions.

72. Mr. YEPES saw no need for general discussion on the draft chapter as a whole. However, since the value of the draft articles had been called into question, he wished to place on record that in his view they represented a scientific achievement of great value. On the other hand, there were many paragraphs in the draft chapter which he could not support, since in his view they did not give an accurate account of what had gone on in the Commission. Especially was that true of section B (i), which was entitled "The concept of the continental shelf as used in the articles" and was the most important section in the whole chapter. Within that section, the most important paragraph was paragraph 7. That paragraph stated that the Commission had "adhered literally to the definition adopted in 1951" except with regard to the substitution of the words "to a depth of 200 metres" for the words "where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and sub-soil". That "exception" was fundamental, and the text proposed by Mr. Lauterpacht reminded him of the statement in army drill manuals that the left turn was exactly the same as the right turn, except that it was the other way round.

73. It was also regrettable that although paragraph 7 attempted to explain the reasons why the new definition had been adopted, it contained no mention of the serious objections to it which certain members of the Commission, including himself, had advanced. It was therefore his intention to submit a re-draft of paragraph 7.

74. Mr. KOZHEVNIKOV said that he did not intend to take part in the general discussion, and would only repeat that his acceptance of any part of the comments in section B of the draft chapter did not mean that he accepted them as legally valid comments on the draft articles.

75. Mr. SANDSTRÖM agreed with Mr. Yepes that the Commission's report should indicate the minority's views on certain fundamental points. He also pointed out that, although the Commission had agreed to adopt a neutral formula to define the rights which the coastal State should exercise over the continental shelf, the idea of sovereignty had reappeared in the text proposed by Mr. Lauterpacht.

76. In the absence of further general comments, the CHAIRMAN invited the Commission to consider the draft chapter paragraph by paragraph.

*Paragraph 1 (58)**

Paragraph 1 was approved by 12 votes to none, with 1 abstention.

Paragraph 2 (59)

Paragraph 2 was approved by 12 votes to none with 1 abstention.

Paragraph 3 (60)

Paragraph 3 was approved by 11 votes to none with 2 abstentions.

Paragraph 4 (61)

Paragraph 4 was approved by 12 votes to none with 1 abstention.

Paragraph 5 (62)

77. Mr. KOZHEVNIKOV asked whether, by voting on paragraph 5, the Commission would be voting on the substance of the draft articles embodied therein. If so, it might be desirable to defer the vote in order that the text could be carefully checked. Article 6, paragraph 1, for example, stated that "The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or fish production" whereas the exact words in the text adopted by the Commission had been "...in any unjustifiable interference with navigation or fishing or in reducing fish production".

78. Mr. SANDSTRÖM supported the suggestion that the vote be deferred to enable the text to be carefully checked. He himself had noticed that article 6, paragraph 4, read "Due notice must be given of any such installations constructed...", although it had been suggested that those words should be amended to read "Due notice must be given of the construction of any such installations...".

It was agreed that the vote on paragraph 5 should be deferred until the next meeting.²

Paragraph 6 (63)

79. Mr. AMADO suggested that the reference to the Commission's own study and discussion of the problems involved should precede the reference to the views enunciated by writers and learned societies.

80. Mr. SCELLE felt that there was a contradiction between paragraph 6, where it was stated that "the Commission has now departed in various respects from its preliminary draft", and paragraph 7 where, as Mr. Yepes had pointed out, the General Rapporteur maintained that no changes had been made.

* The number within parentheses indicates the paragraph number in the "Report" of the Commission.

² See *infra*, 234th meeting, para. 58.

81. Mr. KOZHEVNIKOV felt that the apologetic tone of paragraph 6 was wholly inappropriate. If the Commission had taken a decision, it must be presumed that it had done so for reasons which it considered good.

82. Mr. LAUTERPACHT said that he had referred first to the views enunciated by writers and learned societies because they had preceded the Commission's own study and discussion, which, indeed, in part rested upon them.

83. He could not agree with Mr. Scelle that there was any contradiction between paragraph 6 and 7. The former stated that the Commission had departed from its preliminary draft in *various respects*; the latter stated that, as regards the definition, it had adhered literally to its previous decision, except in one particular.

84. He could not understand Mr. Kozhevnikov's objection as he could see nothing apologetic about stating that the Commission had adhered to the basic considerations underlying the articles provisionally adopted in 1951, namely, recognition of the coastal State's rights over the continental shelf and the desire to maintain the freedom of the seas.

85. Mr. SCELLE said that it was not the case that the Commission had adhered to all the basic considerations underlying the preliminary draft. It had departed from them in two ways: first, it had introduced the concept of sovereignty over the continental shelf; secondly, it had modified the definition of the continental shelf.

86. Mr. YEPES fully agreed with what Mr. Scelle had said, and felt that the General Assembly would also not be convinced that no basic changes had been made. He therefore proposed that the words "While adhering to the basic considerations" be replaced by the words "While in general taking into account the considerations".

87. Mr. LIANG (Secretary to the Commission) pointed out that paragraph 6 was an attempt to give the Commission's view of the importance of the changes it had made. It was, perhaps, difficult to consider it before deciding what was to be said in the paragraphs relating to the individual articles, and it might therefore be desirable for the vote on it to be deferred.

88. The CHAIRMAN, speaking as a member of the Commission, said that he could not support Mr. Yepes' proposal because, in his view, and he thought in that of the majority of members, the changes which had been made did not affect the basic principles, either with regard to the question of sovereignty or in the definition. He could therefore accept the text proposed by the General Rapporteur.

89. Mr. CORDOVA said that he shared the views expressed by the Chairman.

90. Mr. HSU said that he, on the other hand, agreed with Mr. Yepes and Mr. Scelle that the changes which had been made were departures, and departures for the worse, from the basic considerations underlying the preliminary draft.

Mr. Yepes' proposal was rejected by 5 votes to 2, with 4 abstentions.

Paragraph 6 was approved by 8 votes to 2, with 2 abstentions.

91. Mr. YEPES asked that a footnote be inserted in the Commission's report to the effect that he had voted against paragraph 6 for the reasons he had given during the discussion on it.

The meeting rose at 1 p.m.

234th MEETING

Friday, 7 August 1953, at 9.30 a.m.

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Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Giberto AMADO, Mr. Roberto CORDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

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

Consideration of the draft report of the Commission covering the work of its fifth session (*continued*)

CHAPTER III: RÉGIME OF THE HIGH SEAS (A/CN.4/L.45/Add.1) * (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the chapter on the régime of the high seas in the draft report covering the work of its fifth session (A/CN.4/L.45/Add.1).

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter III.

Paragraph 7 (64)**

2. Mr. SANDSTRÖM proposed the insertion, after the first two sentences of paragraph 7¹ referring to the change in the method of delimiting the continental shelf, of a sentence reading as follows:

"Some members of the Commission wanted to maintain the previously adopted text even in this respect for the reason *inter alia* that it corresponds better to the purpose of the draft not to adopt a fixed limit for the continental shelf but to let the territorial extension and the exercise of the powers to be given the coastal State depend on the practical possibilities of exploiting;"

The text should then continue: "The majority of the Commission, following the considerations adduced by the Special Rapporteur..." instead of "The Commission, following the considerations adduced by the Special Rapporteur...". He also proposed the deletion of the last sentence, reading: "The text thus adopted is not arbitrary, for, as already stated, it also coincides generally with the practical possibilities of exploration and exploitation." The practical possibilities of exploration and exploitation were at present generally limited to a depth of 30 metres, not 200 metres.

3. Mr. YEPES appealed to the Commission's understanding and to the General Rapporteur's sense of fair play to devise a generally acceptable formula for what was the most important paragraph in the whole chapter. He was strongly in favour of the draft articles, but he could not vote in favour of the report unless it was a faithful account of what had actually occurred. He did not see why the Commission should not frankly state that it had changed its mind, since such was the case. Mr. Lauterpacht had not been present at the third session and it was therefore understandable that he should fail to realize how complete was the change

** The number within parentheses indicates the paragraph number in the "Report" of the Commission.

¹ Paragraph 7 read as follows:

"7. In defining, for the purpose of the Articles adopted, the term "continental shelf" as referring "to the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of the territorial sea, to a depth of two hundred metres", the Commission adhered literally to the definition adopted in 1951 except with regard to the passage reproduced in italics. The relevant passage of Article 1 as then adopted referred to the area "where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil". The Commission, following the considerations adduced by the Special Rapporteur in the light of observations of governments, has come to the conclusion that the text previously adopted does not satisfy the requirement of certainty and that it is calculated to give rise to disputes. On the other hand, the fixed limit of two hundred metres — a limit which is at present sufficient for all practical needs — coincides with widely accepted practice and is in conformity with the fact that it is at that depth that the continental shelf, in the geological sense, generally comes to an end. It is there that the continental slope begins and falls steeply to a great depth. The text thus adopted is not arbitrary for, as already stated, it also coincides generally with the practical possibilities of exploration and exploitation."