

Document:-
A/CN.4/SR.240

Summary record of the 240th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1953 , vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

that, by taking as the base line the inner limit of the territorial waters, the article tended to restrict the width of these waters—a point on which the Commission had not yet taken any decision.”

91. Mr. ZOUREK explained that the purpose of his amendment was to make it clear that the Commission would in future be free to adopt any limit it might choose for the territorial sea.

92. Mr. LAUTERPACHT thought that that followed from the text of article 57 as it stood.

93. Mr. YEPES recollected that during the relevant discussions several members had spoken in the sense of Mr. Zourek's amendment, which should therefore be adopted.

94. Mr. ZOUREK said that he had drafted his amendment on the basis of the summary records of the relevant meetings. He also asked that in the French version the word “*souligné*” in the second sentence be replaced by the word “*affirmé*”.

It was so agreed.

Mr. Zourek's proposal was adopted by 8 votes to none, with 2 abstentions.

95. After some discussion in which Mr. YEPES, Mr. LAUTERPACHT and the CHAIRMAN took part, *it was agreed* that it would not be in order for the Commission to vote separately on the various sections of the chapter under consideration.

The chapter on the régime of the high seas in the Commission's draft report covering the work of its fifth session (A/CN.4/L.45/Add.1) was adopted by 8 votes to none.

96. Mr. YEPES explained that, although he had voted in favour of the draft chapter as a whole, he remained opposed to section IV (contiguous zone), because in his opinion the question of the contiguous zone ought to be examined together with the problem of the territorial sea. Further, in his view, it would be better not to create an artificial zone contiguous to the territorial sea, but to extend the limits of the territorial sea correspondingly, as was envisaged in American international law.

97. Mr. KOZHEVNIKOV explained that he had abstained from voting on the draft chapter as a whole because, although he approved of some paragraphs, he had opposed or abstained on others.

98. Mr. ZOUREK said that, in abstaining, he had been actuated by the same considerations as had Mr. Kozhevnikov.

99. Mr. LAUTERPACHT congratulated the Chairman on the successful conclusion of an important piece of work as Special Rapporteur on the régime of the high seas. He had displayed immense learning, patience and restraint.

The meeting rose at 1.5 p.m.

240th MEETING

Friday, 14 August 1953, at 9.30 a.m.

CONTENTS

	Page
Consideration of the draft report of the Commission covering the work of its fifth session (<i>concluded</i>)	
Chapter I: Introduction (A/CN.4/L.45/Add.3) . . .	384
Chapter V: Other decisions (A/CN.4/L.45/Add.4) . . .	386
Closure of the session	387

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, 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 (*concluded*)

CHAPTER I: INTRODUCTION (A/CN.4/L.45/Add.3) *

1. The CHAIRMAN invited the Commission to consider paragraph by paragraph the introductory chapter in its draft report covering the work of its fifth session (A/CN.4/L.45/Add.3).

*Paragraphs 1 to 5 (1-5)***

Paragraphs 1 to 5 were adopted unanimously.

Paragraph 6

2. Mr. ZOUREK was surprised to note that there was no mention in paragraph 6, in which the agenda for the fifth session was set forth, of an item which the Commission had added to its provisional agenda in a perfectly regular manner, namely: “Ways and means of providing for the expression of dissentient opinions in the report of the Commission covering the work of each session”. He proposed that that item be inserted after item (8).

3. The decision which the Commission had taken on that issue was, in his view, an unfortunate one, which it was still open to it to reconsider as regards future sessions. Unless other members of the Commission were in favour of reopening the question, however, he would not press that point, but at least it was essential that the

* Mimeographed document only. Incorporated with drafting changes in the “Report” of the Commission as Chapter I.

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

matter should be referred to in the Commission's report and he therefore also proposed that the following statement be inserted at an appropriate point in the draft chapter on other decisions (A/CN.4/L.45/Add.4): *

"The Commission discussed a proposal to recognize:

"(a) That any member of the Commission may attach a statement of his dissenting opinion from any decision by the Commission on draft rules of international law, whenever the whole or part of that decision does not express the unanimous opinion of the members of the Commission;

"(b) That any dissenting member may briefly explain his views in a footnote if, in any cases other than those covered by sub-paragraph (a) above, a decision has been taken on a question of principle affecting the work of the Commission.

"This proposal was rejected by the majority of the Commission.

"During the discussion, a compromise was proposed to the effect that members of the Commission should be entitled to record, in an annex to the final report, their dissent from all or part of a report adopted by the Commission, and to append a brief statement of the reasons for their dissenting opinion, at a length agreed to by the Chairman or, in the event of disagreement between the Chairman and the member concerned, by the officers of the Commission. The Commission was divided on this question, six members voting in favour and six against, so that the proposal was rejected."¹

4. The CHAIRMAN suggested that, for the sake of convenience, Mr. Zourek's two proposals should be discussed simultaneously, although the second related to the draft chapter on other decisions.

It was so agreed.

5. Mr. LAUTERPACHT agreed that, in order to make the report accurate, paragraph 6 of the introductory chapter must be amended in the manner proposed by Mr. Zourek. If that were done, it would hardly be possible to avoid referring to the discussion and decision on that item of the agenda in the chapter on other decisions. The only question was how such reference should be made. The text proposed by Mr. Zourek gave no indication as to why the two proposals had been rejected, and it might therefore be wrongly construed.

6. Mr. KOZHEVNIKOV said that he, too, had been surprised to find no mention of the additional item in the Commission's report; however, as Mr. Lauterpacht agreed that it should have been mentioned, no discussion of Mr. Zourek's first proposal seemed necessary.

The second proposal reflected exactly what had taken

place in the Commission, and he saw no reason why that should give rise to discussion either.

7. Mr. LIANG (Secretary to the Commission) said that responsibility for the absence of any mention of the additional item lay with the Secretariat, which had prepared the two draft chapters under consideration at the request of the General Rapporteur. It had seemed to the Secretariat that that item was related to the conduct of the Commission's business, and questions concerning the conduct of business had not been reflected in the Commission's previous reports, nor were they reflected in the reports of other United Nations organs. That was, of course, no reason why the Commission should not mention the item in its own report if it felt it to be of sufficient importance.

8. Although it was true that the item had appeared on the agenda for a number of the Commission's meetings, that did not necessarily imply that it had been formally placed on the agenda for the session.

9. Mr. YEPES said that the item in question had been placed on the agenda for the session, and that the decisions referred to in Mr. Zourek's second proposal had been taken. In the circumstances he did not see how the Commission could adopt any other course than that which Mr. Zourek proposed.

10. Mr. SANDSTRÖM said that, although he was not opposed to mention being made in the Commission's report of the item in question, he wondered whether the Commission's decision on it had in fact been as negative as Mr. Zourek's proposal implied. In rejecting the two proposals mentioned by Mr. Zourek, the Commission had tacitly reaffirmed the previous rules, to which reference should, perhaps, be made.

11. Mr. ALFARO said that he had always been in favour of allowing the minority to state their views in the Commission's report, but that he agreed with Mr. Lauterpacht that Mr. Zourek's second proposal might give the wrong impression. In particular, mention of "a compromise" was inappropriate. He would be unable to vote for Mr. Zourek's second proposal unless it were suitably amended.

12. Mr. ZOUREK pointed out, with regard to the Secretary's explanations, that the item in question went far beyond the conduct of the Commission's business, since it affected the form of all the Commission's future reports. It would, however, be unnecessary for him to dwell on that side of the question, since there seemed to be no opposition to the item being mentioned in the Commission's report.

13. For the sake of brevity, he had purposely omitted mention of the reasons advanced for and against the two proposals which had been made, but he would have no objection to including them, if the General Rapporteur thought it desirable. It had also been suggested that reference should be made to the existing rules, but during the Commission's consideration of the item those rules had not been discussed, nor had they been formally reaffirmed. The only formal decisions the Commission

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

¹ This amendment became para. 163 of the "Report" of the Commission.

had taken had been to reject the two proposals which had been made.

14. Mr. SANDSTRÖM saw no reason for indicating the arguments which had been advanced for and against those proposals.

15. The CHAIRMAN suggested that the Commission might first vote on Mr. Zourek's first proposal, namely: that the following item be inserted after item (8) in paragraph 6 of the introductory chapter:

"Ways and means of providing for the expression of dissentient opinions in the report of the Commission covering the work of each session."

The proposal was adopted unanimously.

16. After some informal consultation together, Mr. LAUTERPACHT and Mr. ZOUREK suggested that the second paragraph of the text which Mr. Zourek proposed be inserted in the chapter on other decisions should be amended to read as follows:

"During the discussion, it was proposed that Members of the Commission... by the officers of the Commission. The proposal was not accepted, the vote being equally divided. The existing rule, adopted at the third session, provides that the Commission's report should only contain a statement to the effect that, for the reasons given in the summary records, one member was opposed to the adoption of a particular passage in the report."

The joint proposal was adopted unanimously.

Mr. Zourek's second proposal, as amended, was adopted unanimously.

Paragraph 6, as amended, was approved unanimously.

Paragraphs 7 and 8 (7-8)

Paragraphs 7 and 8 were approved unanimously.

CHAPTER V: OTHER DECISIONS (A/CN.4/L.45/Add.4)

17. The CHAIRMAN then invited the Commission to discuss, paragraph by paragraph, the chapter on Other Decisions in its draft report covering the work of its fifth session (A/CN.4/L.45/Add.4).

Paragraph 1 (164)

18. Mr. YEPES said that he did not think the proposed text of paragraph 1 exactly reflected the Commission's decisions on the law of treaties, and proposed the addition to it of the following sentence:

"After a brief exchange of views on this subject, the Commission decided that the rapporteur, in the final draft of his report, should take account of any observations members of the Commission might make in the form of written statements."

19. Mr. LAUTERPACHT said that he could see no objection to Mr. Yepes' proposal, which he therefore accepted.

Paragraph 1, as amended, was approved unanimously.

Paragraph 2 (165)

Paragraph 2 was approved unanimously.

Paragraph 3 (166)

Paragraph 3 was approved by 8 votes to none, with 2 abstentions.

Paragraphs 4, 5 and 6 (167-169)

Paragraphs 4, 5 and 6 were unanimously approved.

Paragraph 7 (170)

20. Mr. LAUTERPACHT suggested that, in the phrase reading: "the periodical election of the Commission will take place at the eighth session of the General Assembly", the words "will take place" should be replaced by the words "is due to take place".

It was so agreed.

Paragraph 7, as amended, was approved unanimously.

Paragraphs 8 and 9 (171-172)

Paragraphs 8 and 9 were approved unanimously.

Paragraph 10 (173)

21. Mr. KOZHEVNIKOV proposed the deletion of the three sentences reading:

"Past experience has shown that the quiet atmosphere of Geneva is more conducive to efficiency in the kind of work the members of the Commission have to perform. The library facilities in the European Office, with material gathered and organized since the days of the League of Nations, have proved to be unsurpassed in the field of international law. As it is necessary to hold the session during the summer months, consideration should also be given to the fact that climatic conditions in New York at that time of the year are rigorous to the point of interfering with the health and working capacity of the members."

Those three sentences were couched in a style which was inappropriate in a formal report.

22. Mr. AMADO, Mr. SANDSTRÖM and Mr. CORDOVA agreed that, at least, the last of the three sentences referred to by Mr. Kozhevnikov should be amended.

23. Mr. LIANG (Secretary to the Commission) said that the Secretariat had included those three sentences because it believed it to be the Commission's desire that the memorandum which Mr. Alfaro had sent to him (the Secretary) for submission to the Interim Committee on Programme of Conferences,² and on which the sentences were based, should be brought to the attention of the appropriate authorities. He felt that it was most desirable that the Commission should give the reasons

² See *supra*, 226th meeting, para. 76.

for which it preferred Geneva to New York, instead of stating the fact baldly.

24. Mr. ALFARO agreed with Mr. Kozhevnikov that what had been said in his memorandum would, perhaps, be inappropriate in a formal report. On the other hand, he agreed with the Secretary that it was desirable that the Commission should indicate the reasons for its decision.

25. The CHAIRMAN first put to the vote Mr. Kozhevnikov's proposal that the last three sentences of paragraph 10 be deleted.

That proposal was rejected by 6 votes to 4.

26. After some consultation Mr. LAUTERPACHT and Mr. ALFARO proposed that paragraph 10 be amended to read as follows:

"The Commission decided, after consulting the Secretary-General in accordance with the terms of article 12 of its Statute and receiving the views of the latter, to hold its next session in Geneva, Switzerland, for a period of 10 weeks beginning on 17 May 1954. The Commission is unanimously in favour of Geneva as a meeting place in preference to New York, as general conditions in Geneva are more conducive to efficiency in the kind of work the members of the Commission have to perform. In particular, the library facilities in the European Office, with material gathered and organized since the days of the League of Nations, have proved to be unsurpassed in the field of international law."

The joint proposal was adopted unanimously.

Paragraph 11 (174)

Paragraph 11 was approved by 8 votes to none, with 2 abstentions.

Paragraph 12 (175)

Paragraph 12 was approved by 8 votes to none, with 2 abstentions.

Paragraph 13 (176)

Paragraph 13 was approved by 8 votes to none, with 2 abstentions.

Paragraph 14

27. Mr. KOZHEVNIKOV, on the grounds that such a statement was inappropriate in a formal report, proposed the deletion of paragraph 14, which read:

"In view of these considerations, the Commission is of the view that the added expenditure caused by holding the session in Geneva at the time decided upon by the Commission would be fully compensated by the resulting satisfactory working conditions and the efficiency in the work of the Commission."

28. Mr. LIANG (Secretary to the Commission) agreed

that paragraph 14 could be deleted, since its substance was already covered by the preceding paragraphs.

Mr. Kozhevnikov's proposal was adopted unanimously.

29. Mr. LAUTERPACHT recalled that he had abstained from voting on the date and place of the sixth session, since he had had serious misgivings about the effect the Commission's decision would have on its work. He had voted in favour of the paragraphs in the Commission's report dealing with that question, because they accurately reflected the reasons behind the Commission's decision. He wished, however, to place the following statement on record:

"The decision to convene the Commission for 17 May 1954 was dictated by the desire to meet the wishes of the General Assembly with a view to effecting economies. The probable result of that decision is that the Commission may have to meet with one-quarter or more of its members absent. The value of the deliberations and decisions of a Commission so constituted is bound to suffer in consequence of the absence of a considerable number of members. Moreover, such deliberations and decisions are likely to be re-opened when the Commission is complete. The result must be waste of time and money.

"The necessity for the decision taken by the Commission is also regrettable inasmuch as, for reasons of small and doubtful economies, it prevents some members from associating themselves with the work of the Commission at all its stages. In view of this, it is to be hoped that members of the new Commission may have an opportunity of reviewing the decision regarding the date of the next session in the light of the circumstances then prevailing and also that the President, when in New York, will make the appropriate representations to the organs of the General Assembly."

Closure of the session

30. The CHAIRMAN announced that the Commission had now completed its work, although it had by no means completed its agenda. Eleven weeks had proved much too short for all the Commission had had to do. It had, however, drawn up rules governing three important subjects, arbitral procedure, the continental shelf and statelessness.

31. The present Commission had also reached the end of its term of office. Taking into account the fact that it had had to build up its own experience as it went, it could, he thought, feel satisfaction at what it had accomplished, tempered by an increasing awareness of the immensity of the task which the Commission had been set. It had already informed the General Assembly that in its view that task could be carried out only by a permanent body, and although that view had not been accepted, he thought that it was borne out by experience.

32. The Commission realized that the drafts it was submitting to the General Assembly did not meet fully

all the requirements of article 20 of its Statute, but in view of the limited time at its disposal that was unavoidable. What could afford all its members full satisfaction was the spirit of harmony, mutual confidence and even friendship in which, despite unavoidable and important differences of view, it had always worked. Members could only hope that the same atmosphere would continue to pervade the Commission in the future.

33. His last and most pleasant task was, on behalf of the Commission, to thank all those who had contributed to its work: the General Rapporteur for a report whose scientific value all members could commend and which undoubtedly enhanced the Commission's prestige; the First Vice-Chairman, who had so admirably steered the Commission through perhaps the most difficult stage of its journey; the Second Vice-Chairman and the Special Rapporteurs; and finally the Secretary, who had fulfilled his dual functions with such distinction, and all members of his devoted and efficient staff.

34. After voicing the Commission's hopes for the complete recovery of Judge Manley O. Hudson, whose absence had been so great a loss to the Commission at

the present session, he said that it only remained for him to thank all members of the Commission for their confidence and loyal co-operation.

35. Mr. AMADO said that, although it fell to him as First Vice-Chairman to thank the Chairman for the services which he had rendered to the Commission, he feared he was quite unable to express at all adequately what the Commission would wish him to say. All its members had known Mr. François' ability and renown as an international lawyer, but it was as Chairman that he had given the full measure of his qualities. The Commission was under a deep debt of gratitude to him for his unfailingly courteous yet energetic conduct of its proceedings.

36. In conclusion, he would only express his own pleasure at having had the honour of working with the other members of the Commission for five years.

37. The CHAIRMAN thanked Mr. Amado for his kind words, and *declared the fifth session of the International Law Commission closed.*

The meeting rose at 11.35 a.m.
