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Summary record of the 295th meeting

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295th MEETING

Friday, 20 May 1955, at 10 a.m.

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* The number within brackets indicates the article number in the draft contained in Chapter III of the Report of the Commission (A/2934).

Chairman : Mr. Jean SPIROPOULOS

Rapporteur : Mr. J. P. A. FRANÇOIS

Present :

Members : Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.

Secretariat : Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

Régime of the high seas (item 2 of the agenda)
(A/CN.4/79) (resumed from the 294th meeting)

DRAFT ARTICLES (A/CN.4/79, SECTION II)
(resumed from the 294th meeting)

Proposed article 35: Arbitration
(resumed from the 291st meeting)

1. The CHAIRMAN invited the Commission to continue its consideration of the new article concerning arbitration proposed by Mr. Scelle.¹

2. Mr. SCELLE said that the inclusion of such a provision in the draft articles on the high seas would be consistent with previous decisions taken by the Commission and would establish a procedure for the settlement of any disputes arising out of the rules it was in

process of establishing. Since such disputes might be numerous, he considered that they should be submitted either to the Permanent Court of Arbitration or to a special arbitral tribunal, rather than to the International Court of Justice with its somewhat lengthy procedure, though that possibility was not excluded by his text, States being given the widest latitude to choose whichever method they preferred. He had been guided by the example of the nature and growth of social legislation in his own country, being convinced that in international matters some judicial instance was necessary to interpret and define conventional law.

3. Mr. GARCÍA AMADOR said that he could agree to the inclusion of such a provision. Although civil and penal international responsibilities were not clearly distinguished at the time of Anzilotti, present practice had established a distinction between the two. He considered that latitude should be left to the tribunal to which disputes were referred to decide whether or not responsibility should be confined to States, and therefore proposed that the reference to States in the first sentence be deleted.

4. Mr. EDMONDS believed that it was not a proper function of the Commission to incorporate in its draft articles a provision imposing on individuals obligations of the kind envisaged. It was not clear from the text whether it would be possible for an individual to sue a government for a violation of the rules.

5. However, he would not go further into the merits of the text because he wished to suggest that its consideration be deferred until the Commission had disposed of the question of fisheries.

6. Mr. HSU considered that it would be in the international interest to include a provision concerning the procedure to be followed for the settlement of disputes, and did not regard Mr. Edmonds' objections as very well founded.

7. As to the procedural question, perhaps such a general provision should be dealt with after item 3, since it related both to the high seas and to the territorial sea. Moreover, as the Commission had not yet reached agreement about the width of the latter, it would have to consider some procedure for reconciling conflicting claims on that issue.

8. In reply to a question by the CHAIRMAN, Mr. SCELLE said that he would have no objection to his proposal being taken up after the Commission had concluded its consideration of items 2 and 3. He had put forward his proposal because the draft under discussion was in the form of a series of pious wishes rather than precise obligations binding on governments. He therefore considered it necessary to add a clause on jurisdiction, which pre-supposed the possibility of sanctions.

9. Mr. SALAMANCA had understood the Commission to have decided at the previous meeting to take up the question of fisheries after item 3. He therefore con-

¹ 291st meeting, para. 79.

sidered that Mr. Scelle's proposal should be dealt with only when both those matters had been disposed of.

10. The CHAIRMAN suggested that the Commission take up Mr. Scelle's proposal so soon as it had completed its discussion of items 2 and 3.

It was so agreed.

11-12. Mr. GARCÍA AMADOR asked that it be understood that the Commission might provide two different systems of arbitration: one for the high seas and one for the territorial sea. It should not at the present stage commit itself to a single uniform system.

It was so agreed.

Composition of Drafting Committee

13. The CHAIRMAN proposed that the Drafting Committee should consist of Sir Gerald Fitzmaurice, Mr. François, Mr. García Amador and Mr. Scelle, with Mr. Krylov as Chairman.

It was so agreed.

14. Mr. ZOUREK asked that the Drafting Committee should take into account his proposed addition to article 2 on the régime of the high seas (A/CN.4/L.52).² In his view, such a provision was essential if the long-established principle of the freedom of the seas was to be protected. He noted that a proposal in the same sense had been made by Mr. Sandström.

15. Mr. FRANÇOIS (Special Rapporteur) observed that the proposals would be considered by the Drafting Committee, together with his own proposed new text for article 21 which he said at the 289th meeting that he would re-draft.

Régime of the territorial sea (item 3 of the agenda) (A/2693, A/CN.4/90 and Add.1 to 4, A/CN.4/93, A/CN.4/L.54)

16. The CHAIRMAN opened the discussion on item 3 of the agenda: régime of the territorial sea.

17. Mr. LIANG (Secretary to the Commission) observed that the comments of the Governments of Egypt and Thailand (A/CN.4/90/Add.4) had arrived too late to be taken into account by the secretariat when preparing its working paper (A/CN.4/L.54).

18. Mr. FRANÇOIS, (Special Rapporteur) explained that he had not prepared a further report on the territorial sea. The provisional articles adopted by the Commission at its sixth session were to be found in its report to the ninth session of the General Assembly.³

19. In view of the limited response of governments in the past to the Commission's recommendations, he wel-

comed the fact that sixteen had submitted comments on the draft articles, including five of those represented on the Commission; viz, Brazil, the Netherlands, Sweden, the United Kingdom and the United States of America. Several of the comments had been extremely interesting and revealed that attention was being given to the Commission's work. He appealed, however, to those members of the Commission whose governments had not replied to urge them to do so in future. The comments of governments reproduced in documents A/CN.4/90 and Addenda 1 to 4 thereto had, with the exception of those of Egypt and Thailand, been summarized by the secretariat in its working paper. In the light of those comments, he had submitted certain amendments (A/CN.4/93) to the draft articles adopted at the previous session.

20. Generally speaking, the Commission's draft articles had been favourably received, and several governments had paid a tribute to the contribution it was making to the development of international law in respect of the territorial sea.

21. He suggested that the Commission take up the provisional articles one by one; that would enable him briefly to recapitulate the comments made by governments and to explain the reasons for such modifications as he had proposed.

It was so agreed.

PROVISIONAL ARTICLES (A/2693, CHAPTER IV)

Article 1 [1]: Juridical status of the territorial sea; and article 2 [2]: Juridical status of the air space over the territorial sea and of its bed and subsoil

22. Mr. FRANÇOIS (Special Rapporteur) observed that there had been few observations on article 1, but it would call for modification if the Commission acted on the Netherlands Government's comment that the qualification laid down in paragraph 2 also applied to article 2. That point could be covered by making article 2 the second paragraph of article 1, paragraph 2 of which would then become article 2, a solution which had the virtue of making it unnecessary to renumber the remaining articles.

23. Mr. EDMONDS suggested that the Drafting Committee might, in the interests of consistency, consider substituting the word "articles" for the word "regulations" in paragraph 2 of article 1.

24. He saw no objection to the change suggested by the Special Rapporteur.

25. The CHAIRMAN considered that it would be preferable in the English text of paragraph 2 to use the word "rules" instead of "regulations".

The two foregoing observations were referred to the Drafting Committee.

26. Mr. ZOUREK observed that if the Commission accepted the Special Rapporteur's proposal that articles 1 and 2 be amalgamated, it would reverse the decision,

² See 283rd meeting, footnote 13.

³ "Report of the International Law Commission covering its sixth session" (A/2693), Ch. IV, in *Yearbook of the International Law Commission, 1954*, vol. II.

taken at the previous session after long discussion, that the Commission should uphold the difference, recognized in practice and theory, between the régime of the territorial sea and the juridical status of the air space above it. It meant that sovereignty over the air space would be subject to the same restrictions as sovereignty over the territorial sea, a proposal which he could not accept, since it would be at variance with the law as it stood. Such a change was hardly warranted by the comment of one government alone, and he noted that no other had raised a similar objection.

27. Mr. FRANÇOIS (Special Rapporteur) observed that if Mr. Zourek's last argument had any force there would be little point in considering any of the replies from governments, since they generally singled out different points. If Mr. Zourek thought it would be a fundamental change to make a separate article of paragraph 2 of article 1, he would be prepared to repeat the text in article 2 in precisely the same terms. At all events, the inclusion of the words "other rules of international law" should make it plain that the restriction on sovereignty imposed by paragraph 2 was not the same for the air space as for the territorial sea. Adoption of the modification he (Mr. François) had suggested would entail no change of principle.

28. Mr. SALAMANCA pointed out that the adoption of the Special Rapporteur's amendment would eliminate the title of article 2; that might meet Mr. Zourek's point.

29. Mr. ZOUREK could not accept the Special Rapporteur's contention that it would suffice to repeat in article 2 paragraph 2 of article 1. The point at issue was that, unlike the case of the territorial sea, no limitations existed on sovereignty so far as the air space was concerned. At any rate he personally knew of no such restrictions, and did not consider that the air space could be treated on the same footing as the territorial sea.

30. Mr. AMADO, pointing out that the sole reference in the provisional articles to the air space above the territorial sea was that to be found in article 2, said that he was inclined to sympathize with Mr. Zourek's point of view.

31. The CHAIRMAN, speaking as a member of the Commission, suggested that the Commission might be well advised to eschew change, particularly as there were advantages in allotting a separate article to the question of air space in a draft otherwise entirely devoted to the territorial sea.

32. Sir Gerald FITZMAURICE associated himself with the views expressed by Mr. Zourek and Mr. Amado, though he appreciated the reason why the Special Rapporteur had thought the embodiment of article 2 in article 1 appropriate. It would not in fact be so, because of the ambiguity created by the use of the words "these regulations" in paragraph 2 of article 1, when the air space was not dealt with elsewhere in the draft. Such rules as did exist on the matter derived almost entirely from different international conventions. He therefore believed that the text should be left unchanged.

33. Mr. SANDSTRÖM agreed with the previous speaker.

34. Mr. FRANÇOIS (Special Rapporteur) observed that aircraft were subject to the jurisdiction of the State of registration; accordingly, there was a limitation on the sovereignty exercised over the air space above the territorial sea. While he would not press his amendment, he could not agree that it was inappropriate to mention the restrictions on sovereignty over the air space above the territorial sea, since they did in fact exist.

Article 1 was adopted unchanged by 11 votes to none, with 2 abstentions.

Article 2 was adopted unanimously.

35. Mr. ZOUREK explained that he had abstained from voting on article 1 because he was opposed to the reference to "other rules of international law", believing that the draft articles should be comprehensive.

36. Mr. KRYLOV said that, though he had himself supported article 1, he fully understood the considerations which had prevented Mr. Zourek from doing so. In his (Mr. Krylov's) opinion the comment of each government should be taken into consideration.

37. Mr. ZOUREK observed that the Special Rapporteur had perhaps misunderstood him. All he had wished to convey was that the comment of one government alone hardly constituted decisive grounds for modifying a provision. He certainly agreed that if the draft was to gain general acceptance, due weight would have to be given to the comments of governments.

38. Mr. SCELLE said that, although he had not abstained on article 1, which, generally speaking, was acceptable to him, he regretted the inclusion of the words "and other rules of international law" in a draft which was meant to represent a step forward in codification.

39. Mr. KRYLOV apologized for having misunderstood, as had evidently the Special Rapporteur, the drift of Mr. Zourek's remarks.

40. He would point out to Mr. Scelle that a draft of the kind under discussion could not hope to be completely comprehensive.

41. Mr. LIANG (Secretary to the Commission) agreed with Mr. Scelle that codification should be, as far as possible, comprehensive, but pointed out that an attempt to enumerate was almost inevitably accompanied by a danger of omission. The expression "other rules of international law" embraced those which, though indirectly applicable, might not have a direct bearing on the régime of the territorial sea, and could not, therefore, be appropriately included.

42. Mr. SCELLE observed that the expression might encourage the persistence of doubts about the relative importance of certain rules, some of which apparently had been deemed to be unsuitable for codification.

43. The CHAIRMAN urged the Commission not to

embark upon a lengthy academic discussion about possible future repercussions of the text it had adopted.

Article 3 [3]: Breadth of the territorial sea

44. Mr. FRANÇOIS (Special Rapporteur) introducing the discussion on the crucial article concerning the breadth of the territorial sea, reminded the Commission that he had first proposed a limit of six miles, later a limit of twelve miles with certain restrictions, and finally a limit of three miles with possible extensions. The Commission, however, had been unable to agree on a uniform recommendation, and had submitted to governments for their consideration a choice of nine different systems.⁴ Their replies revealed widely divergent views which members would find conveniently set out in the Secretariat's working paper.

45. Thus there seemed to be little ground for hope that agreement could be reached on a general limit acceptable to all States; but in studying the replies he had been struck by the fact that even the most determined champions of the three-mile limit, such as the United Kingdom Government, recognized that there was room for extension in special circumstances, provided it was not brought about unilaterally. He quite agreed that if States were allowed to fix the limit in an entirely arbitrary manner the freedom of the high seas would be doomed. Perhaps the only possible solution was that put forward in his new text for article 3. In that connexion he felt that due weight should be given to the views of countries possessing considerable tonnages.

46. It remained to decide what reasons could be admitted, in special cases, for extending the limit established. In his text, he had recognized the validity of historical or geographical reasons. It would be remembered that the first had been mentioned by the Scandinavian States, which also claimed an extension of the limit for geographical reasons, such as an unusually indented coastline. The Commission might wish to examine the thorny question of economic grounds, a claim which might be considered to have been reinforced by the judgment of the International Court of Justice in the Fisheries Case between the United Kingdom and Norway.⁵ The United Kingdom Government, in its reply, had set out weighty arguments against such a claim, and he had accordingly not mentioned economic reasons explicitly, although as his enumeration was not limitative, they were not excluded.

47. The Commission would note that any extension of the limit would have to be approved by an international organ set up within the United Nations, in which respect he had followed article 3 of the draft articles on fisheries adopted by the Commission at its fifth session.⁶

⁴ A/2693, para. 68, in *Yearbook of the International Law Commission, 1954*, vol. II.

⁵ *I.C.J. Reports 1951*.

⁶ "Report of the International Law Commission covering the work of its fifth session" (A/2456), para. 94, in *Yearbook of the International Law Commission, 1953*, vol. II.

48. In conclusion, he expressed the hope that such a compromise would be acceptable to the great majority of States.

49. Mr. SALAMANCA said that the problem of the breadth of the territorial sea was perhaps the most difficult one before the Commission, as was shown by the extraordinary variety of criteria adopted by the various countries in fixing it. Further evidence was provided by the fact that the Special Rapporteur had changed his proposals more than once.

50. If the Special Rapporteur's latest proposals were accepted by the Commission, there was no doubt that many States would not be satisfied with the three-mile limit. Nor was it practicable to contemplate an international conference on the question, because experience showed that at such international meetings governments assumed extreme positions—ordinarily for bargaining purposes—thus often leading to inconclusive results.

51. It was clear that the extensive claims to a territorial sea of much more than three miles in width which were being made by some States were largely inspired by a desire to protect their fishery interests. It was unlikely that the States concerned would change their attitude in deference to any decision taken by the Commission.

52. For those reasons, he urged the Commission to give serious consideration to the suggestion made by the Belgian Government in its comment on article 3. That suggestion represented a realistic and practical attempt to reconcile the different points of view on the breadth of the territorial sea, by admitting the possibility of extension up to twelve miles subject to adequate guarantees against unilateral measures; the necessary safeguards would be ensured by providing that the State concerned must reach agreement with the other States interested in the fishing zones which it was proposed should be restricted.

53. Mr. GARCÍA AMADOR suggested that further discussion on article 3 be postponed until the Commission had dealt with the two problems of contiguous zones and fisheries.

54. The proceedings at the 1930 Codification Conference and subsequent developments had shown that rigid adherence to the principle of a narrow territorial sea was displeasing to many States; yet it was equally clear that the majority of those States did not aim at acquiring full sovereignty or jurisdiction over the maritime zones they claimed. Their main purpose had been to assume control of certain maritime zones contiguous to the usually accepted territorial sea in order to conserve and develop the living resources of those zones.

55. He felt, and in that he was at one with Gidel, that if it were recognized that the coastal State possessed the necessary authority to take fishery conservation measures, it would not need to make any extensive claims to a wider territorial sea.

56. By adopting its provisional articles on the continental shelf, the Commission had recognized that the

coastal State enjoyed certain rights over the soil and subsoil of the sea beyond the territorial sea.⁷ States which had thus seen their legitimate interests in the soil and subsoil of the sea protected would no longer feel any urge to make excessive claims to the epicontinental sea.

57. If the rights and interests of coastal States in the matter of fisheries were protected as, to some extent, they had been in the matter of the continental shelf, certain States would no longer need to insist on a considerable extension of the breadth of the territorial sea: hence the usefulness of discussing fisheries before taking up the question of the breadth of the territorial sea.

58. Mr. FRANÇOIS (Special Rapporteur) feared that the Commission might become caught in a vicious circle. At the 294th meeting, at Mr. García Amador's request, it had decided to postpone discussion of fisheries. Now it was being asked to postpone discussion on the breadth of the territorial sea until fisheries had been dealt with. The two questions were obviously interdependent, and the Commission must decide which it would deal with first.

59. Mr. HSU thought the Commission might at that stage take a provisional decision on the breadth of the territorial sea.

60. The CHAIRMAN, in reply to a question by Mr. GARCÍA AMADOR, said that if a provisional decision were taken at that stage, it could be reviewed later in the light of the discussion on fisheries without a two-thirds majority being necessary.

61. Mr. GARCÍA AMADOR pointed out that the request he had made at a previous meeting that the discussion on fisheries be deferred had been prompted simply by the fact at that time the Commission had not yet received the report (A/CONF.10/6)⁸ of the Rome Conference on the Conservation of the Living Resources of the Sea. He had taken part in the work of that Conference and felt that his fellow members would need to read and study the report before they could usefully discuss the question of fisheries.

62. Sir Gerald FITZMAURICE said that Mr. García Amador's suggestion merited very serious consideration. It was clear that a great many of the States which had claimed extensive bounds for the territorial sea had done so only for reasons principally connected with fisheries. In fact, some of those States had even gone so far as to disclaim any pretensions to jurisdiction in matters other than the control and regulation of fisheries. It would therefore appear that their real objective was not so much an extension of their territorial sea as something in the nature of a contiguous zone in which they could control fishing. They were simply applying to the subject of fisheries a concept similar to the special rights (outside the territorial sea properly

so-called) already claimed by many States in sanitary, fiscal and other matters.

63. The discussion would be greatly simplified if Mr. García Amador's proposal were adopted. If the Commission succeeded in regulating the problem of fisheries in a manner satisfactory to certain States, that of the somewhat excessive claims being made by those States would become less urgent.

64. He therefore urged that the Commission defer further consideration of article 3 until it had completed its discussion on fisheries, although not necessarily until a vote had been taken on that question.

65. Mr. FRANÇOIS (Special Rapporteur) proposed that at its next meeting the Commission deal with the Report of the International Technical Conference on the Conservation of the Living Resources of the Sea.

66. Mr. SANDSTRÖM said that the report in question appeared to be mainly technical in character, and would probably not take up much of the Commission's time.

67. Mr. GARCÍA AMADOR said that, although it was true that the report was largely technical, its conclusions and recommendations to the International Law Commission were much broader in scope; they involved social and economic issues and might well bring about a change of attitude on the part of the Commission in the matter of fisheries.

68. He suggested that the Special Rapporteur should indicate which articles of his draft depended on the Commission's decision on the breadth of the territorial sea, in order to enable it to deal with the other articles forthwith.

*It was unanimously agreed to postpone further discussion of article 3 and to discuss the Report of the International Technical Conference on the Conservation of the Living Resources of the Sea at the next meeting.*⁹

Article 8 [8]: Ports

69. Mr. FRANÇOIS (Special Rapporteur) said that article 8 had given rise to only one criticism by a government. That was the suggestion made in its *note verbale* dated 1 February 1955 by the United Kingdom Government to the effect that certain installations, such as a pier seven miles long then under construction in the Persian Gulf, should be treated on the same basis as artificial installations on the continental shelf; such installations would thus be entitled to a relatively limited navigational safety zone rather than to a belt of territorial waters.

70. The case seemed too special to warrant the Commission's amending the general principle it had adopted. The United Kingdom Government seemed to fear an extension of the territorial sea, but the rule adopted by the Commission in draft article 8 would result in only a very limited extension of the territorial sea in the case of a narrow pier such as that described.

⁷ *Ibid.*, para. 62.

⁸ United Nations publication, Sales No.: 1955.II.B.2.

⁹ Discussion of article 3 was resumed at the 308th meeting.

71. Sir Gerald FITZMAURICE, emphasizing that he was not speaking on behalf of the United Kingdom Government, said his personal feeling was that the matter was of no great importance, and he would therefore not take it up formally. He wished, however, to explain the motive behind the United Kingdom Government's suggestion. The Commission's rule that jetties and piers be treated as part of the coastline had been based on the assumption that those installations would be of such a type as to constitute a physical part of such coastline; it would indeed have been inconvenient to treat that kind of installation otherwise than in the manner advocated by the Commission. But huge piers of the type being constructed in the Persian Gulf were more closely related to artificial constructions on the continental shelf, and it would be inadvisable to invoke them as grounds for an extension of the territorial sea; it would be more appropriate for the Commission to treat them in the manner in which it had dealt with oil derricks and artificial islands erected on the continental shelf. It had been acknowledged that such artificial installations had no territorial sea of their own.

72. In view of the fact that the United Kingdom Government's suggestion had not been formally taken up by a Member, the CHAIRMAN called for a vote on article 8 as proposed by the Special Rapporteur.

Article 8 was adopted unanimously.

Article 9 [9]: Roadsteads

73. Mr. FRANÇOIS (Special Rapporteur) said that his proposal for article 9 was, with two drafting changes suggested by the United Kingdom and Netherlands Governments, similar to the text adopted by the Commission at its sixth session except for the addition of a new paragraph which read:

"Such an extension to the territorial sea shall not increase the area of inland waters."

That new paragraph had been added to meet the suggestion of the United Kingdom Government.

74. The only other important point was the suggestion by the Brazilian Government that the outer limits of roadsteads should be included in the base line from which the width of the territorial sea was to be measured. The effect of such a provision, if adopted, would be to turn the waters of roadsteads into inland waters, instead of territorial sea.

75. He recalled that at the 1930 Codification Conference a proposal similar to the present Brazilian suggestion had been made by the Netherlands Government.¹⁰ It had, however, not met with the approval of the majority, and the Conference had adopted a text along the lines of his present proposal. He still favoured the inclusion of roadsteads in inland waters, but felt it was unlikely that the majority of the Commission would reverse its

earlier decision which itself confirmed the provision adopted by the 1930 Conference.

76. Mr. AMADO said that the Brazilian Government's comments were based on the fact that there were a number of roadsteads along the Brazilian coast which virtually served as ports. Basis of Discussion No. 11, drawn up by the Preparatory Commission for The Hague Conference for the Codification of International Law,¹¹ had taken the view that the outer limit of such roadsteads should be included in the base line for measuring the breadth of the territorial sea, instead of having such roadsteads included in the territorial sea itself. The Hague Conference, in rejecting that view, had merely stated that the claim made on behalf of roadsteads was excessive, but had not adduced any real arguments in support of its rejection. The Commission, at its sixth session, had done likewise.

77. He did not feel very strongly about the suggestion, because the case of roadsteads was somewhat exceptional and its importance was likely to decrease as new ports were developed and old ones improved. Those ports would benefit from the provision of article 8, just adopted by the Commission, by which the waters of a port up to a line drawn between the outermost installations formed part of the inland waters of the coastal State. He urged, however, that serious consideration be given to the Brazilian Government's carefully considered views on the matter of roadsteads.

78. Mr. SCALLE said that the proposed new paragraph, which the Special Rapporteur had included following the United Kingdom Government's suggestion, appeared to be quite superfluous; moreover, its wording was somewhat confusing.

79. Sir Gerald FITZMAURICE said that the difficulty raised by the Brazilian Government's suggestion was not so much that of considering roadsteads as inland waters; it was rather that of the increased breadth of the territorial sea which would result from the use of the outer limit of the roadstead as part of the base line from which the breadth of the territorial sea was to be measured. That was the reason why the 1930 Conference had not taken up the Netherlands suggestion regarding roadsteads.

80. In connexion with the proposed new paragraph, he would not press for its formal consideration, and hoped that Mr. Amado also would be able to agree to article 9 as it stood, that was, to the text adopted by the Commission at its sixth session, with the two drafting changes proposed by the Special Rapporteur.

81. Mr. AMADO said that, as Sir Gerald Fitzmaurice had not urged the adoption of the proposed new paragraph, he in turn would not formally propose the adoption of the Brazilian Government's suggestion concerning roadsteads.

¹⁰ League of Nations publications, *V. Legal*, 1929.V.2. Conference for the Codification of International Law (Document C.74.M.39.1929.V), p.,177.

¹¹ League of Nations, Conference for the Codification of International Law, *Territorial Waters, Bases of Discussion* (Document Conf. C.D.I., Commission Eaux territoriales/1).

Article 9 with the Special Rapporteur's new drafting changes but without the new paragraph was adopted by 12 votes to 1.

82. Mr. SCALLE said he had voted against article 9 because he could not approve any provision which would needlessly extend the territorial sea.

The meeting rose at 1.10 p.m.

296th MEETING

Monday, 23 May 1955, at 3 p.m.

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Chairman : Mr. Jean SPIROPOULOS

Rapporteur : Mr. J. P. A. FRANÇOIS

Present :

Members : Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCALLE, Mr. Jaroslav ZOUREK.

Secretariat : Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

Communication from the Director-General of the Food and Agriculture Organization of the United Nations

1. The CHAIRMAN asked the Commission to take note of a communication received from the Director-General of the Food and Agriculture Organization (FAO), dated 20 May 1955, to the effect that FAO was sending an observer to the present meeting in view of its interest in the technical aspects of fisheries conservation.

Communication from Mr. Padilla Nervo

2. At the request of the CHAIRMAN, Mr. GARCÍA AMADOR, Second Vice-Chairman, read out a cable from Mr. Padilla Nervo, dated 20 May 1955, in which he informed the Commission that he was arranging to take part in its work at the earliest possible moment.

Order of business

3. The CHAIRMAN said that when the Commission had finished its examination of the régime of the high seas and of the territorial sea, it would go on to examine either the laws of treaties or the question of diplomatic

intercourse and immunities (items 4 and 5 of the agenda respectively). He proposed that Sir Gerald Fitzmaurice be appointed Rapporteur for item 4, in view of his special qualifications in the matter of the law of treaties, in place of his predecessor on the Commission, Mr. Lauterpacht.

It was so agreed.

Régime of the high seas (item 2 of the agenda) (A/CN.4/79, A/CONF.10/6)

(resumed from the 295th meeting)

NEW DRAFT ARTICLES ON FISHERIES

4. Mr. FRANÇOIS (Special Rapporteur) recalled that for articles 30, 31 and 32, relating to fisheries, he had followed the text of the three articles on fisheries adopted by the International Law Commission at its fifth session, and commented on in the report covering its work at that session.¹ He had withdrawn those articles for the time being² because he wished the Commission to examine the proposals to be submitted by Mr. García Amador in the light of the report³ (A/CONF.10/6) of the International Technical Conference on the Conservation of the Living Resources of the Sea, held recently at Rome.⁴

5. Mr. SALAMANCA considered that the problems of fisheries and of conservation could be dealt with separately; indeed, in the Special Rapporteur's draft, the latter was dealt with only incidentally. The sole common ground between the two was the international authority to be created within the framework of the United Nations. In that respect, the Special Rapporteur seemed to have been too optimistic in interpreting the silence of many governments on the three draft articles submitted to them by the Commission as tacit agreement to the proposal concerning the establishment of the international authority. What their silence really implied was, probably, indifference. The Rome Conference had done little more than recognize the bare necessity for conservation; it had given no indication of the way in which such conservation should and could be ensured. He would like the Special Rapporteur to give the Commission his views on the report of the Rome Conference, and also to state whether, in his opinion, the Commission could usefully examine the difficult problem of conservation at that stage.

6. Mr. FRANÇOIS (Special Rapporteur) thought that it would be better if he made known his views after Mr. García Amador had introduced his proposals relating to fisheries.

7. Mr. SCALLE recalled that, when he had requested the

¹ "Report of the International Law Commission covering the work of its fifth session" (A/2456), paras. 94-104, in *Yearbook of the International Law Commission, 1953*, vol. II.

² See *supra*, 291st meeting, para. 62.

³ A/CONF.10/6 (United Nations publication, Sales No.: 1955.II.B.2).

⁴ Hereinafter referred to as "the Rome Conference".