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Summary record of the 296th meeting

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Extract from the Yearbook of the International Law Commission:-
1955 , vol. I

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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".

Commission to reconsider its articles on the continental shelf, his proposal had been rejected on the ground that the articles in question had already been submitted to the Sixth Committee of the General Assembly. It would seem that the same notion should apply in the case of fisheries, and that the Commission could not do better than abide by the three articles it had already adopted at its fifth session.

8. Mr. GARCÍA AMADOR said that, following the adoption by the General Assembly of resolution 899 (IX), it was open to Mr. Scelle to make any proposal he wished concerning reconsideration of the articles on the continental shelf before the Commission drafted its final report on the régime of the high seas, the régime of the territorial sea and all related problems. On the question of fisheries, however, the General Assembly had adopted a specific resolution—900 (IX)—paragraph 6 of which explicitly invited the International Law Commission to take into account the report of the Rome Conference, and to reconsider in its light the question of fisheries. The General Assembly had convoked the Rome Conference, not to satisfy scientific curiosity, but to provide the Commission with the necessary data to enable it to reconsider the three articles adopted in 1953.

9. Mr. SCELLE said that he had admitted that, once they had been submitted to the General Assembly, the Commission's drafts were no longer its own property. If, as he was now informed, that was not the case, he reserved the right to revert to the articles on the continental shelf. He had never suggested that Mr. García Amador should not be heard on the proposals he had drafted in the light of the Rome Conference.

10. Mr. SANDSTRÖM pointed out that, although there was a special General Assembly resolution inviting the Commission to re-examine the question of fisheries, no such decision had been taken in the case of articles on the continental shelf.

11. Mr. AMADO said that the matter was made quite clear by paragraph 102 of the Commission's report on its fifth session: the Commission had recommended that the General Assembly should adopt the draft articles and should consult with FAO with a view to the preparation of a draft convention incorporating the principles adopted by the Commission.

12. It would be a great advantage at that stage if the Commission could hear the views of Mr. García Amador, who had acted as Deputy Chairman of the Rome Conference.

13. The CHAIRMAN thought that the matter of the continental shelf could be left on one side for the time being.

14. The issue before the Commission was that of fisheries, and in that respect the position was quite clear; the Commission had to examine the report of the Rome Conference. It had also to hear Mr. García Amador's proposal for a set of articles to replace articles 1, 2 and

3 adopted by the Commission at its fifth session. In the light of the ensuing discussion, the Commission would have to decide whether it wished to amend its articles on fisheries, which it was the Commission's duty to re-examine, although it was not, of course, obliged to change them. Such was the meaning of paragraph 6 of General Assembly resolution 900 (IX), to which Mr. García Amador had specifically referred.

15. Sir Gerald FITZMAURICE said that the problem of fisheries on the high seas and that of the conservation of fisheries were in practice identical. So far as international law was concerned, the high seas were free for all to fish. It was therefore obvious that the problem of the conservation of the living resources of the sea in the interest of all mankind could only be taken up in conjunction with the regulation of fisheries on the high seas. Such conservation could only be effected by regulating fisheries.

16. Mr. GARCÍA AMADOR submitted the following draft articles on fisheries:

"Whereas:

"1. The development of modern techniques for the exploitation of the living resources of the sea has exposed some of these resources to the danger of being wasted, harmed or exterminated;

"2. It is necessary that measures for the conservation of the living resources of the sea should be adopted when scientific evidence indicates that they are being or may be exposed to waste, harm or extermination;

"3. The primary objective of conservation of the living resources of the sea is to obtain the optimum sustainable yield so as to obtain a maximum supply of food and other marine products in a form useful to mankind;

"4. When formulating conservation programmes, account should be taken of the special interest of the coastal State in maintaining the productivity of the resources of the high seas contiguous to its coast;

"5. The nature and scope of the problems involved in the conservation of the living resources of the sea are such that there is a clear necessity that they should be solved primarily on a basis of international co-operation through the concerted action of all States concerned, and the study of the experience of the last fifty years and recognition of the great variety of have to be applied clearly indicate that these programmes conditions under which conservation programmes can be more effectively carried out for separate species or on a regional basis;

" Article 1

"If the nationals of two or more States are engaged in fishing in any area of the high seas, the States concerned shall prescribe by agreement the necessary measures for the conservation of the living resources of the sea.

“ Article 2

“If, subsequent to the adoption of the measures referred to in article 1, nationals of other States engage in fishing in the area and those States do not accept the measures so adopted, the question shall, at the request of one of the interested parties, be referred to the methods and procedures of settlement provided in articles 6 and 7.

“ Article 3

“If a coastal State has a special interest in the maintenance of the productivity of the resources of the high seas contiguous to its coast, such State is entitled to take part on an equal footing in any system of regulation, even though its nationals do not carry on fishing in the area.

“ Article 4

“Where the States concerned have not agreed as to the measures for conservation, and if the coastal State has a special interest of the productivity of the resources of the high seas contiguous to its coast, such State may adopt whatever measures of conservation are appropriate.

“ Article 5

“The measures which the coastal State adopts under article 4 shall be valid as to other States only if the following requirements are fulfilled:

“(a) That scientific evidence shows that there is an imperative and urgent need for such measures.

“(b) That such measures are based on appropriate scientific findings.

“(c) That such measures do not discriminate against foreign fishermen.

“ Article 6

“In case of differences between the coastal State and other States concerned, or between States which are parties to an international agreement and third States, either on the scientific and technical justification for the measures adopted, or on their nature or scope, such differences shall be settled according to the findings of suitably qualified and impartial experts chosen for the special case by the States concerned, as provided in article 7.”

17. A draft article 7, which would cover the same ground as article 3 of the draft on fisheries adopted by the Commission at its fifth session, would be submitted at a later stage of the discussion.

18. He had represented Cuba at the Rome Conference, which has been attended by the representatives of no less than forty-five countries. He did not now pretend to speak on behalf of the Conference, a role which more properly belonged to its Rapporteur. However, in the draft he had just proposed he had drawn inspiration

from the Conference's work, to which he would refer in the course of the discussion.

19. The purpose of the Commission's re-examination of its articles on fisheries and thus of his own draft was to make provision for the need for conserving the living resources of the sea, and to adapt to that purpose, so far as was necessary and practicable, the traditional principles of the international law of the sea. With that end in view, it was interesting to examine the objectives of fishery conservation as defined by the Rome Conference. On that crucial question, two tendencies had become manifest during the course of that Conference: one represented the view of States possessing an important fishing industry; the other represented the interests of the coastal State.

20. In laying down the objectives of fishery conservation, in chapter II of its report, the Rome Conference had emphasized the scientific and technical character of conservation problems, invoked by all the representatives of the large fishing States, stating in the first sentence of paragraph 3: “The principal objective of conservation of the living resources of the seas is to obtain the optimum sustainable yield so as to secure a maximum supply of food and other marine products”. But it had gone on to say, in the same paragraph, in deference to the second tendency: “When formulating conservation programs, account should be taken of the special interests of the coastal State in maintaining the productivity of the resources of the high seas near its coast.”

21. Examining in the light of those objectives of fishery conservation the articles adopted by the Commission in 1953, it was apparent that article 1, by establishing a system of international co-operation, tended to achieve the principal objective of conservation, while adding in the comment that “the system proposed by the Commission protects, in the first instance, the interest of the coastal State which is often most directly concerned in the preservation of the marine resources in the areas of the sea contiguous to its coast”. In fact, article 1 allowed a coastal State, in common with any other state, to regulate fisheries only in areas where its nationals alone were engaged in fishing. The special interests of the coastal State or States were acknowledged only by article 2, under which such States were entitled, in any area situated within 100 miles of the territorial sea, “to take part on an equal footing in any system of regulation even though their nationals do not carry on fishing in the area”; and the comment added that that provision was “considered to safeguard sufficiently the position of the coastal State”.

22. The 100-mile criterion was not a satisfactory one for assessing the interest of the coastal State. The extent of that interest depended on the marine species concerned and on the area in which fishing took place. Moreover, there were cases where the coastal State had no interest at all in fisheries within the 100-mile zone, and any regulation of a right to participate in the regulation of fisheries in that zone might lead to its taking action with other purposes in view.

23. The interest of the coastal State was undeniable if its nationals were engaged in fishing in the area contiguous to the coast. But that interest also existed even if its nationals were not so engaged, in cases where its economic activities or the feeding of its population depended upon the maintenance of the productivity of the fishing preserve concerned.

24. It was necessary to substitute such equitable criteria for the arbitrary one-hundred-mile limit. In adopting these criteria, the Commission would also, as suggested in his article 3, obviate the danger of giving States not really interested in a fishery some influence over its regulation on the sole ground of its geographical proximity.

25. The Commission's draft articles were based on the thesis that all States were under an obligation to conclude an agreement on conservation regulations in areas where their nationals were engaged in fishing. But the only obligation thus implied was one to negotiate. The Commission could not lay an obligation upon States to agree. It would be enough for one interested State to refuse to sign a treaty agreed to by all other interested States, to frustrate the international regulation of fisheries with a view to conservation. The report on the Commission's work at its fifth session attempted to solve the problem by laying down, in article 3 of the draft articles on fisheries, that, in the event of agreement not being reached, the regulations would be issued "with binding effect, by the international authority envisaged in that article". In theory that solution would certainly be the best. But, unfortunately, in international relations the best solution was not always feasible. The idea of setting up an international authority of the type envisaged in article 3 of the Commission's 1953 draft had not been well received by States Members of the United Nations: some were not prepared to delegate their powers on fishery regulation to an international body; others were sincerely convinced that conservation problems, being regional and even local in character, called for an *ad hoc* system. But even were a majority of States Members to accept the proposal for an international authority with compulsory jurisdiction, the problem would still arise of how to enforce the decisions of such an authority on States which did not accept its jurisdiction. The Commission's draft provided no answer to that problem.

26. It was clear, therefore, that circumstances would necessarily arise, unless and until international agreement on conservation was reached, in which no effective international regulation existed, although conservation measures were necessary. It would clearly be most undesirable in such a case to allow unrestricted fishing in the high seas. Such an abuse of freedom of fishing on behalf of private commercial interests had already been referred to by the Commission in its fifth report, when it had stated that it was "contrary to the very principle of the freedom of the seas to encourage or permit action which amounts to an abuse of a right and which is apt to destroy the natural resources whose preservation and common use have been one of the main objects of the

doctrine of the freedom of the sea" (A/2456, para. 100).

27. That concept, outlined by the Commission, of preventing the abuse of a right conferred upon States by international law, was vital in the present circumstances. In past centuries, the abuse of the right to fish had been inconceivable; but with modern technical equipment, it was imperative to put a stop to the depletion of the living resources of the sea. And where the coastal State was vitally interested, for its economic existence or for feeding its population, in the fishery resource in question, it should be authorized to take unilateral measures.

28. A proposal for a recommendation to acknowledge that right to the coastal State had already been made by Mr. H. Rolin at The Hague Codification Conference in 1930.

29. Gidel himself went very far in the same direction in proposing unilateral action by the coastal State to the exclusion of any other form of regulation—his reason being that he did not expect international co-operation to lead to a practicable system.

30. In the Special Rapporteur's second report (A/CN.4/42, p. 37) the suggestion had been made that "Every coastal State shall be entitled to declare, in a zone 200 sea miles wide contiguous to its territorial waters, restrictions necessary to protect the resources of the sea against extermination and to prevent the pollution of those waters by fuel oil." Unfortunately, that realistic and appropriate proposal, when voted upon by the Commission at its fifth session, had been rejected as the result of equality in the number of votes cast for and against it.

31. The Rome Conference, when dealing with the objectives of conservation, had acknowledged the special interests of the coastal State (A/CONF.10/6, chapter II, para. 3). In the general conclusions to its report the Conference had stated: "The Conference notes with satisfaction conservation measures already carried out in certain regions and for certain species at the national and international level" (A/CONF.10/6, chapter VII, para. 1). It had thus acknowledged the role of conservation measures taken on a national plane by coastal States. Finally, the Rome Conference had, by a majority of only a single vote, disclaimed competence to examine a proposal, introduced jointly by the Cuban and Mexican delegations, to regulate the coastal State's right to adopt unilateral conservation measures.

32. The foregoing facts clearly showed that there were solid grounds for acknowledging the right of the coastal State to adopt unilateral measures. His draft articles aimed at laying down strict limits for that unilateral action, which in the present state of international relations was an inescapable reality.

33. The preamble to his draft articles recapitulated the facts, and made reference in paragraphs 3 and 4 to the results of the Rome Conference, while stressing, in paragraph 5, the necessity for conservation systems to be based on international co-operation.

34. His article 1 corresponded to the third sentence of article 1 of the Commission's 1953 draft, while his article 2 embodied the final portion of that same article. His article 3 aimed at providing, as a condition for action by the coastal State, the requirement that it should have a special interest in maintaining the productivity of the resource involved. His article 4 laid down a further condition, namely, the absence of agreement by the interested States. The coastal State's action was an interim action, subject, furthermore, to the strict conditions laid down in his article 5 (scientific evidence in support of the proposed measures and non-discrimination against foreign fishermen). Finally, his article 6 provided that all disputes between States (including the coastal State) be submitted to the compulsory jurisdiction of the authority to be specified in article 7 which he would put in concrete terms at a later stage of the discussion.

35. Mr. FRANÇOIS (Special Rapporteur) said there was a close connexion between the problem of fisheries conservation and claims to exclusive fishing rights. When claiming sovereign rights over a maritime zone, States were primarily concerned with conservation measures rather than with reserving exclusive fishing rights to their nationals. It was clear that if the coastal State's right to promulgate fishery conservation measures were acknowledged, that would permit the disclaimer of any right of the coastal State to proclaim exclusive fishing privileges.

36. He recalled that article 3 of the draft articles on the continental shelf adopted by the Commission read: "The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas."

37. It was necessary, in view of that provision, to reassure States about their right to adopt conservation measures in those superjacent waters. Hence the proposed regulation in his second report, which acknowledged the right of every coastal State to declare, in a zone 200 miles wide contiguous to its territorial sea, the restrictions necessary to protect the living resources thereof. He and the other supporters of the coastal State's special position had found themselves in equal numbers with those members of the Commission who held a different view. The result had been the adoption of the three draft articles at the Commission's third session in 1951 (A/1858, annex). Few governments had commented on the draft articles, and at its fifth session the Commission had formally adopted them.

38. There were three good reasons why the Commission should reconsider the draft articles at the present session. First, General Assembly resolution 900 (IX) explicitly invited the Commission to make a reappraisal of the fisheries question. Secondly, when dealing with the problem of the territorial sea, a sharp divergence of views between States concerning its breadth had become apparent. Recognition of the coastal State's rights in the matter of conservation regulation would perhaps bring those diversing views on the territorial sea closer together. Finally, the results of the Rome Conference

had shown that there was an equal division between the advocates of the special interest of the coastal State and their opponents. Clearly, therefore, the matter was a controversial one, and the Commission should ponder whether the decision it had adopted by such a small majority at its fifth session should not be reconsidered.

39. Mr. SCELLE said that it was impossible to make a fair appraisal of Mr. García Amador's draft on fisheries until he had submitted his article 7 in concrete terms. That article should describe accurately the "suitable qualified and impartial experts", lay down the limits of their jurisdiction and state whether their pronouncements were to be mere recommendations or binding decisions.

40. For him (Mr. Scelle) the crucial question was whether Mr. García Amador's article 7 would follow the same lines as the Commission's draft article 3, or whether it would depart from it and, if so, in what way.

41. Progress in international law could only be achieved by limiting the jurisdiction of individual States, just as all public law within States had been established by superseding the privileges emanating from the feudal system. International society was still in the feudal stage, and there were two courses open to the Commission: it could either acknowledge at every stage the sovereignty of States and codify international anarchy, or it could take action to encourage the development of international law by recognizing and expanding the role of international authorities. Those international authorities could be either of the judicial or of the administrative kind. The first was the case when the Commission provided for compulsory arbitration; the second was the case when the Commission recognized the right of an international authority within the framework of the United Nations to prescribe regulations applicable to all. The Commission had occasionally taken certain timid steps forward in those two directions; he strongly urged it to follow that path in the case of fisheries, and not the path of proclaiming freedom of unilateral action on the part of States, coastal or otherwise. Should the Commission follow that unfortunate course, there was no doubt that most, if not all, governments would approve of its work, because it would be suggested that they were free to do as they pleased. But the Commission would thereby be abandoning its duty to do constructive work in the field of international law.

42. Mr. EDMONDS said that the Commission was faced with a procedural problem. It seemed to him that in its resolution 900 (IX) the General Assembly had made it clear that certain topics closely connected with the régime of the high seas and with that of the territorial waters must be fully explored before the Commission presented its final drafts. Indeed, the Rome Conference had been deliberately convened early enough to enable it to report to the present session of the Commission, which must accordingly re-examine the question of fisheries in the light of the conclusions reached at Rome.

43. Mr. AMADO asked whether Mr. García Amador's text was intended to replace the three articles adopted by the Commission at its fifth session, or whether the two drafts were to be discussed concurrently. In the meantime he urged him to submit the text of article 7 as soon as possible, since in its absence the precise implications of his draft could not be known.
44. He had observed a tendency in the discussion to revert to the thesis upheld by Gidel and the Special Rapporteur at The Hague Codification Conference of 1930.
45. The CHAIRMAN suggested that the procedural issue might be left aside until the general discussion had been concluded.
46. Mr. GARCÍA AMADOR, referring to the procedural question, reminded the Commission that he had already indicated in his introductory statement that his draft articles were intended as an amendment to those adopted by the Commission, which must be regarded as the basic text to be reconsidered in the light of the conclusions reached by the Rome Conference. Although his preamble was admittedly new, it was not at variance with the essential elements of the Commission's own text.
47. Mr. SCELLE, referring to Mr. Amado's remarks, pointed out that at The Hague Codification Conference, Gidel had explained the theory of contiguous zones, as distinct from a single contiguous zone, for the protection of specific interests. It had been precisely on the question of a contiguous zone for fisheries that the Conference had failed to reach agreement. He urged that authorities should not be invoked in a general way without specifying precisely which of their theses substantiated a particular argument.
48. Mr. ZOUREK said that, after a somewhat rapid perusal of Mr. García Amador's text, he had reached the conclusion that it was superior to the articles already adopted. It was generally consistent with the recommendations adopted by the Rome Conference and showed a sense of reality by taking into account the views of States, which should not be overlooked in any work of codification, if the drafts were to have any chance of acceptance. Furthermore, he considered that the text was consistent with international law. Unlike Mr. Scelle, who had eloquently expounded his objections to certain decisions in the light of what he considered to be progress, he (Mr. Zourek) considered that article 3 adopted by the Commission at its fifth session would destroy the principle of the sovereignty of States, the corner-stone of international law.
49. He had resolutely opposed those articles at the time, and Mr. García Amador had effectively brought out their weakness, indicating that most members of the General Assembly had shown themselves hostile to the provision contained in article 3. As Mr. García Amador had argued, even if that article were accepted the problem would not be solved, since it would only be binding on signatory States.
50. For those reasons he was inclined to sympathize with Mr. García Amador's text, but before taking a final stand he must study article 7, which would presumably be framed in the sense of the recommendations adopted at Rome.
51. Mr. FRANÇOIS (Special Rapporteur) observed that he had withdrawn articles 30 to 32, concerning fisheries because the question had already been dealt with in the Commission's report to the eighth session of the General Assembly. Mr. García Amador's text was accordingly a new proposal, and could not be regarded as an amendment.
52. Mr. GARCÍA AMADOR remarked that in his opinion, that he was submitting an amendment to the three articles adopted by the Commission at its fifth session.
53. Mr. SCELLE drew the attention of Mr. Zourek to the opening words of article 3 already adopted by the Commission, which read: "States shall be under a duty to accept, as binding upon their nationals..." The only construction he could place upon such words was that the article was binding upon all States without exception; otherwise it would be meaningless, since it would refer only to States which had already shown themselves willing to accept a system of regulation of fisheries.
54. Mr. ZOUREK observed that article 3 was part of a draft submitted to the General Assembly, and even if approved by that body would not thereby be endowed with the binding force of a rule of international law. His arguments were therefore valid.
55. Sir Gerald FITZMAURICE said he must have time for further study of Mr. García Amador's text before commenting on it, but asked in the meantime for clarification of the position with regard to the three articles adopted by the Commission at its fifth session. He wished to know in particular whether the Commission was entitled to alter a text already submitted to the General Assembly and to substitute a new one for it.
56. The CHAIRMAN replied that when Mr. Scelle had asked whether the draft articles on the continental shelf could be modified, he (the Chairman) had indicated that as a general rule, and unless specifically asked to do so, the Commission could not reconsider texts which it had already placed before the General Assembly. However, the case of fisheries was a special one because the General Assembly in its resolution 900 (IX) had instructed the Commission to take into account the technical contribution made by the Rome Conference to its study of the régime of the high seas, the régime of the territorial waters and all related problems. He believed that that view was shared by several members of the Commission.
57. Mr. SCELLE observed that Mr. García Amador had already stated that the Commission might have to modify other articles, including those relating to the continental shelf, in the light of the recommendations of the Rome Conference.

58. Mr. LIANG (Secretary to the Commission) considered that General Assembly resolution 900 (IX) might be interpreted as meaning that the Commission should consider subjects other than those on which it had already submitted texts to the General Assembly, or that it could modify the latter after studying the report of the Rome Conference. But at all events, since the Commission was not bound by the rigid procedure of a judicial tribunal, it could in the present instance regard itself as free to reconsider texts already adopted.

59. Mr. SANDSTRÖM agreed with the Chairman that the Commission could reconsider its articles on fisheries in the light of the recommendations of the Rome Conference; moreover, the latter might not affect the draft very greatly, since they dealt mainly with technical measures for the conservation of the living resources of the sea. On the other hand, if the special case of fisheries were used as a pretext for reopening discussion on other articles, the Commission's authority might be impaired unless there were very cogent reasons for modifying texts already adopted.

60. With regard to the procedural question raised by Mr. Amado, he observed that the Commission now had two texts before it designed to serve the same purpose. After a general discussion had been held, it should be possible to decide which was the more satisfactory.

61. Mr. GARCÍA AMADOR expressed the view that, as the Commission had already adopted the three articles on fisheries, it was no longer open to the Special Rapporteur to withdraw them.

62. The CHAIRMAN said that, given the form in which Mr. García Amador had presented his draft articles, it might be difficult to consider them as an amendment under the terms of rule 92 of the General Assembly's rules of procedure. If the Commission decided that the draft articles constituted a separate proposal, the procedure to follow would be that laid down in rule 93. In the meantime, the most practical course would be to examine both texts from the point of view of the principles involved, and subsequently, if necessary, to request the Drafting Committee to prepare a new version.

63. Mr. LIANG (Secretary to the Commission) did not consider that the articles adopted by the Commission at its fifth session, and now before the General Assembly, could be treated on the same footing as Mr. García Amador's text. The General Assembly's rules of procedure in the present instance had little relevance. Perhaps the Commission might for the time being confine itself to an examination of Mr. García Amador's draft articles, which, if approved, would replace those already adopted. Alternatively, the Special Rapporteur and Mr. García Amador might later find it possible to submit a new text jointly.

64. The CHAIRMAN said he did not feel that there was any substantial divergence of view on the procedural issue. It was true that the articles adopted at the fifth session were before the General Assembly, but

they could always be put forward by a member of the Commission as a counter-proposal to that of Mr. García Amador.

65. Mr. FRANÇOIS (Special Rapporteur) considered it essential that Mr. García Amador circulate the text of article 7 as quickly as possible, if the discussion was to be fruitful.

The meeting rose at 6 p.m.

297th MEETING

Tuesday, 24 May 1955, at 10 a.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 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, A/CONF.10/6) (*continued*)

NEW DRAFT ARTICLES ON FISHERIES (*continued*)

1. Mr. HSU agreed with the views expressed at the previous meeting both by Mr. García Amador and by Mr. Scelle. He considered that they were perfectly reconcilable, since Mr. Scelle, though pressing for the establishment of an international authority to regulate fishing activities, did not deny that more weight should be given to the views of coastal States, while Mr. García Amador admitted that the final word must lie with the international authority.

2. The draft articles submitted by Mr. García Amador represented a new proposal which was worthy of support, because, as in the case of the continental shelf, it recognized the interests of the coastal State. He was unable to see how those States which had put forward excessive claims for the width of their territorial sea could be induced to take a more moderate line unless the Commission was prepared to make some such concession, and surely everything possible ought to be done to protect the freedom of the high seas from encroachment.