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**Summary record of the 329th meeting**

Topic:  
**Other topics**

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## 329th MEETING

Thursday, 7 July 1955, at 10 a.m.

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*Chairman*: Mr. S. B. KRYLOV, First Vice-Chairman of the Commission

*Rapporteur*: Mr. J. P. A. FRANÇOIS

*Present*:

*Members*: Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, 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.

**Draft report of the Commission covering the work of its seventh session (A/CN.4/L.59 and Add.1-3) (*resumed from the 328th meeting*)**

CHAPTER III: RÉGIME OF THE TERRITORIAL SEA  
A/CN.4/L.59/Add.2) (*resumed from the 328th meeting*)

DRAFT ARTICLES ON THE RÉGIME OF THE TERRITORIAL SEA (*resumed from the 328th meeting*)

*Article 7: (resumed from the 328th meeting)*

1. Sir Gerald FITZMAURICE said that he would not have opposed deletion of the fourth paragraph of the comment, although it contained a very clear statement on bays by Sub-Committee II of the 1930 Conference for the Codification of International Law,<sup>1</sup> but if Mr. García Amador's subsequent proposal to make some reference to the statement of the International Court of Justice concerning the ten-mile limit for the closing line of a bay were adopted, the passage quoted in the fourth paragraph should be retained, or at least summarized. He took that view because, as he had already pointed out during the discussion, the Court's pronouncement had been in the nature of an *obiter dictum* since the length of closing lines had never been an issue in

<sup>1</sup> The text of paragraph 4 was identical to the observations contained in the report of Sub-Committee II under the heading "Bays". League of Nations publication, *V.Legal, 1930.V.14* (document C.351.M.145.1930.V), pp. 131-132.

the Fisheries Case.<sup>2</sup> Moreover, the pronouncement had not been accompanied by any explanation which might lend it authority. At the 1930 Codification Conference there had been a very considerable measure of agreement between States on a maximum limit of ten miles for the closing line of bays. Indeed, some States had not even been prepared to go that far, except in the case of historic bays. The position had not materially changed since that date and as the whole question was still very much in doubt, some mention of the stand adopted at the Codification Conference was essential if there was to be a reference to the statement made by the Court.

2. Mr. FRANÇOIS (*Rapporteur*) wondered whether Mr. García Amador might be prepared to withdraw his proposal in the light of Sir Gerald Fitzmaurice's remarks. The passage quoted in the fourth paragraph could then be briefly summarized.

3. Mr. GARCÍA AMADOR wished to take the opportunity of renewing his regret at the way in which his intentions in submitting an alternative text to the original draft of article 7 had been misinterpreted. In taking over certain elements contained in the conclusions put forward by the United Kingdom in the Fisheries Case, he had been guided solely by the desire to be consistent with existing international law. He had not taken wording from the judgement itself because the Court had not in fact put forward any definite proposition on the subject and had simply stated that the ten-mile limit had not acquired the authority of a rule of international law. The Commission was bound to pay due regard to such authoritative sources of international law as the judgements of the Court. Moreover, in the present instance, the Court's judgement was of very much more recent date than the conclusions reached by the Codification Conference. Though the Court had in fact applied very imprecise criteria, it had allowed the drawing of closing lines between points separated by a considerably greater distance than ten miles.

4. As he did not wish to provoke a lengthy discussion, he would not press his proposal, though he believed that the comment should make clear that the stand taken at the Codification Conference had now been superseded.

5. Sir Gerald FITZMAURICE still felt that the passages deriving from the United Kingdom's conclusions in the Fisheries Case which Mr. García Amador had inserted in his text for article 7 were altogether misplaced, because the conclusions in question had been put forward for entirely different reasons.

6. Mr. FRANÇOIS (*Rapporteur*) proposed that the fourth paragraph of the comment be deleted altogether and that no mention be made of the Court's judgement in the Fisheries Case.

*It was so agreed.*

7. Mr. HSU proposed deletion of the words "not only because it denies the existence of a relationship between the width of the territorial sea and the length of the

<sup>2</sup> *I.C.J. Reports 1951.*

closing line" in the second sentence of the sixth paragraph, because it had already been made clear in the preceding paragraph that some members of the Commission formally denied any such relationship. There was no need to give undue emphasis to that point by repetition.

8. Mr. FRANÇOIS (Rapporteur) accepted Mr. HSU's amendment.

*The comment to article 7 was adopted, as amended.*

*Article 8: Ports*

9. Mr. FRANÇOIS (Rapporteur) pointed out that as the text of article 8 remained unchanged, no comment thereto was required.

*Article 9: Roadsteads*

*The comment to article 9 was adopted.*

*Article 10: Islands*

10. Mr. GARCÍA AMADOR proposed deletion of the words "at least" after the words "to abandon" in the third sentence of the second paragraph of the comment and substitution of the words "may be applicable" for the words "will sometimes apply" in the last sentence. The purpose of his second amendment was to eliminate any element of uncertainty in the comment about the applicability of the article.

*Mr. García Amador's amendments were adopted.  
The comment to article 10 was adopted, as amended.*

*Article 11: Drying rocks and shoals*

11. Mr. ZOUREK suggested that it might be advisable to explain in the comment that the words "which are wholly or partly within the territorial sea" referred both to drying rocks and drying shoals.

12. Mr. EDMONDS suggested that it was not appropriate to talk of "amendments" to the draft articles adopted the previous year; the process had been rather one of revision.

13. Mr. FRANÇOIS (Rapporteur) said that he would be prepared to substitute the word "modifications" for the word "amendments" in the comment to article 11 and throughout the text.

*On this understanding, and subject to the addition suggested by Mr. Zourek, the comment to article 11 was adopted.*

*Article 12: Delimitation of the territorial sea in straits*

14. Mr. FRANÇOIS (Rapporteur) pointed out that as article 12 was also unchanged, no comment thereto was again required.

*Article 13: Delimitation of the territorial sea at the mouth of a river*

15. The CHAIRMAN suggested in the interests of clarity that the words "next session" be substituted for the words "second reading" at the end of the comment to article 13.

*It was so agreed.*

*The comment to article 13 was adopted as amended.*

*Article 14: Delimitation of the territorial sea of two States, the coasts of which are opposite each other*

*The comment to article 14 was adopted.*

*Article 15: Delimitation of the territorial sea of two adjacent States*

*The comment to article 15 was adopted.*

*Introductory comment to articles 16-26*

16. Mr. LIANG (Secretary to the Commission) suggested that the words "in the former draft" be inserted before the words "method of grouping" in the first paragraph.

*It was so agreed.*

*The introductory comment to articles 16-26 was adopted as amended.*

*Article 16: Meaning of the right of innocent passage*

17. Mr. ZOUREK pointed out that Mr. Sandström's amendment whereby paragraph 3 of article 16 was to read: "Passage is innocent so long as the vessel does not use the territorial sea for committing any acts prejudicial to the security of the coastal State or contrary to the present rules or to other rules of international law", and which had been adopted at the 324th meeting,<sup>3</sup> had not been incorporated in the final text.

18. Mr. SANDSTRÖM said that although no formal vote on his amendment had been taken the Chairman, as was his frequent practice, had interpreted the absence of any objection as approval.

19. Mr. SALAMANCA said that according to his recollection the Commission's intention had been to refer Mr. Sandström's amendment, together with certain others, to the Drafting Committee for possible incorporation in a revised text. Certainly, Mr. Sandström's amendment had not been discussed at length.

20. The CHAIRMAN, speaking in his personal capacity, said that he had gained the impression that Mr. Sandström's text had met with general support; the Special Rapporteur had specifically pointed out that it met Mr. Zourek's criticism of article 19 on the ground that that article failed to safeguard the security interests of the coastal State. He feared that the failure to incorporate Mr. Sandström's amendment was due to an oversight on the part of the Drafting Committee.

21. Mr. FRANÇOIS (Rapporteur) said that he did not remember the amendment having been referred to the Drafting Committee but would personally have no objection to it.

22. Mr. SALAMANCA expressed a preference for the present text of paragraph 3<sup>4</sup> because Mr. Sandström's wording would require the coastal State to interpret the rules of international law and because of the imprecise-

<sup>3</sup> 324th meeting, paras. 100-102.

sion of the expression "other rules of international law". Surely the Commission's main preoccupation had been to protect the right of innocent passage, and if it wished to substitute for paragraph 3 something on more general lines, as proposed by Mr. Sandström, that would be more than a mere drafting change.

23. Mr. ZOUREK did not think there could be any doubt that the Commission had adopted Mr. Sandström's amendment at the 324th meeting.

24. The CHAIRMAN ruled that Mr. Sandström's amendment to paragraph 3 should be incorporated in article 16, in accordance with the decision taken at the 324th meeting. In view of Mr. Salamanca's remarks, however, he would put his ruling to the vote.

*The Chairman's ruling was upheld by 9 votes in favour.*

*The comment to article 16 was adopted.*

*Article 17: Duties of the coastal State*

*The comment to article 17 was adopted.*

*Article 18: Rights of protection of the coastal State*

*The comment to article 18 was adopted.*

*Article 19: Duties of foreign vessels during their passage*

25. Mr. EDMONDS felt that the last part of the comment was drafted in a misleading manner.

26. Mr. FRANÇOIS (Rapporteur) proposed that Mr. Edmonds' point be met by the substitution of the words "the rules concerning" for the words "ban on conducting".

*It was so agreed.*

*The comment to article 19 was adopted as amended.*

*Article 20: Charges to be levied upon foreign vessels*

27. Mr. FRANÇOIS (Rapporteur) pointed out that as article 20 remained unchanged, no comment was necessary to that article either.

*Article 21: Arrest on board a foreign vessel*

*The comment to article 21 was adopted.*

*Article 22: Arrest of vessels for the purpose of exercising civil jurisdiction*

*The comment to article 22 was adopted.*

*Article 23: Government vessels operated for commercial purposes*

28. Mr. FRANÇOIS (Rapporteur) pointed out that no comment was required to article 23, which also remained unchanged.

*Article 24: Government vessels operated for non-commercial purposes.*

*The comment to article 24 was adopted.*

#### *Article 25: Passage*

29. Mr. FRANÇOIS (Rapporteur) said that the word "subject" should be inserted after the words "the territorial sea" in the first sentence of the English text of the comment to article 25.

30. Mr. ZOUREK considered that the last paragraph of the comment should be deleted because some States might adopt general regulations concerning the right of passage once and for all whereas others might follow another system of granting authorizations.

31. Sir Gerald FITZMAURICE hoped that the last paragraph of the comment would be retained because it would go far towards making article 25, and particularly paragraph 1, more acceptable to those States which did not consider that the passage of warships should be subject to prior authorization. Their opposition was not due to their wish to deny to coastal States the right to require such authorization but to their belief that such a provision might be interpreted to mean that no warship could traverse even a short distance of territorial sea without having gone through the long and vexatious process of seeking authorization. Naturally the coastal State was always free to require special authorization in a particular case but the whole article would be less unpalatable to certain States if a general authorization were the normal practice.

32. The CHAIRMAN, speaking in his personal capacity, considered that the paragraph could be retained because it obviously expressed the view of the majority.

33. Mr. ZOUREK contended that the paragraph weakened the force of the article. If not deleted it should at least be modified so as to indicate that the view therein expressed was only held by some members of the Commission.

34. The CHAIRMAN pointed out that the words "the Commission takes the view" and similar passages elsewhere in the report referred to the majority of members.

35. Mr. FRANÇOIS (Rapporteur) agreed with the Chairman but pointed out that in other parts of the commentary the words "the majority of members" had been used. In the particular case under discussion, however, the majority had been so considerable that it seemed appropriate to refer to the Commission as such. However, Mr. Zourek's point might perhaps be met by substituting the words "expresses the hope" for the words "takes the view".

36. Mr. ZOUREK said that he would be satisfied with that amendment.

37. Faris Bey el-KHOURI was opposed to any mention of a majority because it implied that, where the report referred simply to "the Commission", decisions had been unanimous.

38. Mr. SCALLE wished to record his regret that the Commission had not accepted his concept of innocent passage as passage which was innocent not only as far

<sup>4</sup> It read as follows: "Passage is innocent so long as the vessel uses the territorial sea without committing any act contrary to the present rules."

as the coastal State was concerned but also from the point of view of international law. He did not wish to press his point of view too emphatically because the interests of other States had not been entirely overlooked in articles 16 to 26 but nevertheless felt it necessary to point out that to define innocent passage purely in terms of its relationship to the coastal State was an unduly narrow approach.

*The comment to article 25 was adopted as amended by the General Rapporteur.*

*Article 26 : Non-observance of the regulations*

39. Mr. FRANÇOIS (Rapporteur) said that the opening words of the comment to article 26 should be corrected to read: "Paragraph 1 of the article adopted at the previous session has become superfluous"; instead of "Paragraph 1 of this article is superfluous".

*With that correction, the comment to article 26 was adopted.*

40. The CHAIRMAN called for a vote on Chapter III as a whole and as amended.

41. Mr. EDMONDS said he would vote for the chapter with a reservation which he would express when the report as a whole was voted.

42. Sir Gerald FITZMAURICE said he had also reservations to make when the report as a whole came to be voted.

43. Mr. ZOUREK also gave notice of his intention to put reservations on record.

44. The CHAIRMAN said that the vote on Chapter III as a whole would be taken on the understanding that members wishing to put their reservations on record would do so at the next meeting.

45. The Commission would deal beforehand, *inter alia*, with the question of dissenting opinions.

*On that understanding, Chapter III of the draft report was adopted unanimously, as amended.*

CHAPTER II: RÉGIME OF THE HIGH SEAS (A/CN.4/L.59/Add.1) (*resumed from the 327th meeting*)

DRAFT ARTICLES CONCERNING THE HIGH SEAS  
(*resumed from the 327th meeting*)

*Article 2 : Freedom of the high seas*  
(*resumed from the 326th meeting*)

46. The CHAIRMAN invited the Commission to consider the addition to the comment on article 2 proposed by the Rapporteur in order to give satisfaction to Mr. Scelle.<sup>5</sup> The new text, which was to follow the fourth sentence of the comment, read as follows:

"Freedom to fly over the high seas is mentioned in this article because the Commission considers that it follows directly from the principle of the freedom of the sea. The Commission had refrained from for-

mulating rules on air navigation, however, since the task it set itself for this phase of its work is confined to the codification of maritime law proper.

"The list of freedoms of the high seas contained in this article is not restrictive; the Commission has merely specified the four main freedoms. It is aware that there are other freedoms, such as freedom to explore or exploit the subsoil of the high seas and freedom to engage in scientific research therein. It is evident that the latter freedoms can only be exercised in the high seas covering a continental shelf subject to any rights over that shelf which the coastal State can invoke. The Commission did not study this problem in detail at the present session."

47. Mr. SCELLE declared himself satisfied with the addition proposed by the Rapporteur.

48. Mr. HSU believed that the Commission should be more noncommittal in the latter part of the first sentence in the second paragraph of the proposed addition, so as not to over-emphasize the four freedoms listed in article 2.

49. Mr. FRANÇOIS (Rapporteur) believed it was correct to refer to "the four main freedoms" in view of the content of article 2.

50. Mr. SANDSTRÖM doubted whether it would be advisable to retain the penultimate sentence in the second paragraph of the text proposed, since that sentence spoke only of safeguarding the rights of the coastal State over the continental shelf and did not mention other rights which might be exercised on the high seas.

51. Mr. LIANG (Secretary to the Commission) wondered whether the last two sentences of the text might be deleted, since they did not appear to have any close connexion with the rest.

52. Mr. FRANÇOIS (Rapporteur) felt that the last sentence at any rate should be retained.

53. Mr. SCELLE agreed.

54. Mr. SALAMANCA said that he would not favour the deletion of the last two sentences since the text would then be inconsistent with the Commission's decisions on the continental shelf.<sup>6</sup> He therefore supported the text as proposed by the Rapporteur.

55. Mr. ZOUREK proposed deletion of the words "or exploit" in the second sentence of the second paragraph because the question of exploitation of the subsoil of the high seas had not been discussed at the present session and furthermore no such right existed in international law.

56. Mr. SCELLE said that he knew of no rule prohibiting the exploration and the exploitation, where possible, of the subsoil of the high seas. Such exploration

<sup>5</sup> 326th meeting, paras. 32-52.

<sup>6</sup> "Report of the International Law Commission covering the work of its fifth session" (A/2456), paras. 64-91, in *Yearbook of the International Law Commission, 1953*, vol. II.

and exploitation were simply not yet possible, but in view of technical progress it was improbable that they would remain so. The text seemed, therefore, perfectly acceptable.

57. Mr. ZOUREK maintained that it was premature to include such a statement when the question had never been discussed.

58. Sir Gerald FITZMAURICE endorsed Mr. Scelle's remarks concerning the point raised by Mr. Zourek. An additional reason for retaining the words "or exploit" was that the greater part of the continental shelf lay under the high seas.

59. Expressing sympathy with the objection made by Mr. Hsu, he suggested that it be met by re-drafting the latter part of the first sentence in the second paragraph to read: "the Commission has merely specified four of the main freedoms."

60. Mr. FRANÇOIS (Rapporteur) accepted Sir Gerald Fitzmaurice's amendment.

61. He could not agree on the other hand to deletion of the words "or exploit" and hoped that the whole of the second paragraph would be accepted unchanged.

62. Mr. ZOUREK withdrew his amendment, stating that he would vote against the whole text.

*The Rapporteur's text, as amended by Sir Gerald Fitzmaurice, was adopted by 9 votes to 1 with 1 abstention.*

*Proposed addition to the introduction*

63. Mr. FRANÇOIS (Rapporteur) proposed that the following text be added at the end of the introduction to Chapter II:

"In accordance with General Assembly resolution 821 (IX) of 17 December 1954, the Commission had before it the records and other documents of the meetings of the *ad hoc* Political Committee at which the complaint of violation of the freedom of navigation in the China seas was considered. The documents referred to in the above-mentioned General Assembly resolution were issued to the members of the Commission. The Commission also had before it a memorandum concerning freedom of navigation of the high seas, submitted on behalf of the Government of the People's Republic of Poland by Mr. Jan Balicki, official Polish observer at the seventh session of the Commission. After an exchange of views, the Commission decided that it was not competent to examine the facts set forth in the documents transmitted by the General Assembly and referred to in the memorandum submitted on behalf of the Government of the People's Republic of Poland (A/CN.4/L.53).

"On the general question whether acts committed by warships can be regarded as acts of piracy, the Commission has stated its position in article 14 of the present draft."

64. Mr. Zourek had proposed the first paragraph of that addition. He (Mr. François), however, had added the second paragraph because he felt that a reference was necessary to the fact that the Commission had dealt with the general question as to whether acts committed by warships could be regarded as acts of piracy; in doing so, the Commission had taken into consideration the facts adduced in the Polish memorandum.

65. Mr. SANDSTRÖM said it was perhaps not essential to insert a reference to the matter in the Commission's report.

66. Mr. FRANÇOIS (Rapporteur) said that the Commission had taken a formal decision on the question; that decision had gone on record,<sup>7</sup> and it was therefore necessary to include a reference in the report to it.

67. Mr. ZOUREK said the discussion on the Polish memorandum was very closely bound up with the discussion on the general question whether warships could commit acts of piracy.

68. Mr. HSU proposed that the word "charges" be substituted for the word "facts" in the fourth sentence of the first paragraph. To speak of "facts set forth" in the Polish memorandum would imply that those facts were not disputed as such.

69. Mr. SANDSTRÖM said that the term "facts" appeared in the relevant summary record.

70. The CHAIRMAN pointed out that the record was only a provisional one and that, in any case, it was always open to the Commission to adopt a different wording.

71. Mr. ZOUREK said he could not accept Mr. Hsu's proposal.

*The Commission, by 6 votes to 2, with 2 abstentions, adopted Mr. Hsu's proposal to substitute the word "charges" for "facts" in the fourth sentence of the first paragraph of the proposed addition.*

72. Mr. HSU also proposed that the beginning of the second paragraph of the proposed addition be amended to read:

"On the general question whether warships can commit acts of piracy".

73. Mr. FRANÇOIS (Rapporteur) accepted Mr. Hsu's proposal.

*The proposed addition to the introduction to Chapter II was adopted as amended.<sup>8</sup>*

CHAPTER IV: OTHER DECISIONS OF THE COMMISSION  
(A/CN.4/L.59/Add.3)

74. Mr. FRANÇOIS (Rapporteur) said that Chapter IV was mainly the work of the Secretariat; the Secretary to the Commission would introduce the discussion on its various paragraphs.

<sup>7</sup> 290th meeting, *ad para.* 25.

<sup>8</sup> It became para. 16 of the "Report" of the Commission.

*I. Amendments to the Statute of the Commission  
Transfer of the Commission's headquarters from New*

*York to Geneva (paragraphs 1-2)*

*Paragraph 1 [25] \**

75. Mr. LIANG (Secretary to the Commission) said that the last sentence of the paragraph before the quotation should read: "The text of the amended article *would be* as follows" instead of: "... *is* as follows".

*Paragraph 1 was adopted as amended.*

*Paragraph 2 [26]*

76. Mr. LIANG (Secretary to the Commission) said that in the fourth line the words "called upon" should be substituted for the inadequate term "required".

77. The Secretariat would welcome any other suggestions for improving the text of paragraph 2.

78. Mr. EDMONDS said that the description of New York as one of the great political centres of the world was not altogether satisfactory. Perhaps a better word would be "governmental centre".

79. After further discussion, the CHAIRMAN suggested that the best course would be to delete the phrase "one of the great political centres of the world", which was in any case redundant.

80. Mr. LIANG (Secretary to the Commission) said that the Chairman's suggestion was all the more appropriate in that the sentence already contained reference to "the political contingencies of the moment".

*The Chairman's suggestion was adopted.*

*Paragraph 2 was adopted as amended.*

*Term of office of members of the Commission (paragraph 3 [27])*

81. Mr. LIANG (Secretary to the Commission) said that in the same way as in paragraph 1 the last sentence of paragraph 3 preceding the quotation should read: "the text of the amended article *would be* as follows" instead of: "... *is* as follows."

82. Sir Gerald FITZMAURICE said it was desirable to give the reason why the Commission suggested that its members be elected for five years—namely, that experience had shown that a three-year period was not sufficient to enable a special rapporteur to complete his work on a given subject.

83. Mr. FRANÇOIS (Rapporteur) agreed to the inclusion of a sentence to that effect.

84. Mr. LIANG (Secretary to the Commission) suggested that perhaps a better way of expressing the reason for the recommendation regarding a five-year period would be to say that such a period would be beneficial to the continuity of the work of the Commission, particularly as concerned the preparation of

reports and their submission to the Commission by the special rapporteur in each case.

*Paragraph 3 was adopted as amended and subject to the inclusion of a sentence along the lines suggested by the Secretary to the Commission.*

*II. Date and place of the eighth session (paragraphs 4-5)*

*Paragraph 4 [29]*

*Paragraph 4 was adopted without comment.*

*Paragraph 5 [30]*

85. Mr. LIANG (Secretary to the Commission) suggested that paragraph 5 be amended to read:

"5. With regard to the duration of the session, the Commission wishes to emphasise that ten weeks is the indispensable minimum period it requires to carry out the work entrusted to it under General Assembly resolution 899 (IX) [namely, to complete its study of the regime of the high seas, the regime of territorial waters and of related problems and submit its final report in time for the General Assembly to consider them as a whole, in accordance with resolution 798 (VII), at its eleventh session in 1956;] and to begin consideration of the items of its agenda held over from this session."\*

*The above text of paragraph 5 was adopted.*

*III. Organization of the Commission's future work (paragraph 6 [31])*

86. Mr. LIANG (Secretary to the Commission) pointed out a number of minor typographical errors in the text of paragraph 6 as appearing in document A/CN.4/L.59/Add.3. The correct text was:

"6. The Commission decided to begin the study of two topics: "State Responsibility" and "Consular Intercourse and Immunities".

*Paragraph 6 was adopted in that form.*

*IV. Appointment of three special rapporteurs (paragraphs 7-9 [32-34])*

*Paragraphs 7-9 were adopted without comment.*

*V. Publication of documents of the International Law Commission (paragraph 10 [35])*

87. The CHAIRMAN said that the Commission desired its documents to be published separately. If, however, that proved too difficult, they should be included in a Juridical Yearbook of the United Nations.

*Paragraph 10 was adopted.*

*VI. Collaboration with the Inter-American bodies (paragraph 11 [36])*

*Paragraph 11 was adopted without comment.*

*VII. Question of stating dissenting opinions (paragraphs 12-13 [37-38])*

88. Mr. LIANG (Secretary to the Commission) said that, in spite of some doubts, the question of stating

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

° Drafting changes within brackets.

dissenting opinions had been included in the report as had been done on a similar occasion in the 1953 report.<sup>10</sup>

89. The bare statement in paragraph 13 that Mr. Zourek's proposal had been rejected was not sufficient. It was desirable to include a sentence to say that the Commission had preferred to retain its existing rule that detailed explanations of dissenting opinions should not be inserted in the report but merely a statement to the effect that, for reasons given in the summary records, a member was opposed to the adoption of a certain article or of a particular passage of the report.

90. That would be similar to what had been said on the subject in the 1953 report.

91. Sir Gerald FITZMAURICE approved of Mr. Liang's suggestion. In that manner, the report would indicate to some extent the reasons why the Commission had rejected Mr. Zourek's proposal; also that that rejection did not imply that there was no means of stating dissenting opinions in the report.

92. Mr. GARCÍA AMADOR said it was undesirable to make specific reference to the rejection of Mr. Zourek's proposal. It was not customary for the Commission to include in its report reference to the rejection of a particular proposal.

93. The CHAIRMAN said that the question of stating dissenting opinions had to be included in the report because it had been one of the items on the Commission's agenda.

94. He agreed with Mr. García Amador's remarks, and suggested that the words "This proposal was rejected" be deleted from paragraph 13. That paragraph would thus consist only of the statement suggested by the Secretary to the Commission.

95. Mr. SALAMANCA said that the whole of Mr. Zourek's proposal (A/CN.4/L.61) should be reproduced, and not merely the operative part.

96. Mr. ZOUREK agreed.

*Paragraph 12 was adopted subject to the inclusion therein of the full text of Mr. Zourek's proposal.*<sup>11</sup>

97. Mr. LIANG (Secretary to the Commission) suggested the following text for paragraph 13:

"13. However, the Commission reaffirmed the existing rule adopted at the third session, that detailed

<sup>10</sup> "Report of the International Law Commission covering the work of its fifth session" (A/2456), para. 163, in *Yearbook of the International Law Commission, 1953*, vol. II.

<sup>11</sup> Original text of paras. 12-13 read as follows:

"12. The Commission considered a draft resolution submitted by Mr. Jaroslav Zourek (A/CN.4/L.61) on the question of stating dissenting opinions. The operative part of this draft reads as follows:

"Any member of the International Law Commission shall have the right to add a short statement of his dissenting opinion to any decision taken by the Commission on draft rules of international law, if the said decision does not in whole or in part express the unanimous opinion of the members of the Commission."

"13. This proposal was rejected."

explanations of dissenting opinions should not be inserted in the report, but merely a statement to the effect that, for reasons given in the summary records, a member was opposed to the adoption of a certain article or of a particular passage of the report."

98. Mr. GARCÍA AMADOR formally proposed adoption of the text suggested by the Secretary.

*Paragraph 13 was adopted in that form.*

#### VIII. Representation at the General Assembly (paragraph 14 [39])

99. The CHAIRMAN said that it had not been considered appropriate to make any reference to the matters in respect of which the Commission desired its Chairman to represent it at the General Assembly.

110. Mr. SALAMANCA proposed that in the English text the words "for purposes of consultation" be substituted for the words "in a consultative capacity".

101. Mr. LIANG (Secretary to the Commission) said Mr. Salamanca's proposal corresponded to the English text adopted in previous reports. The words "in a consultative capacity" were due to a mistranslation.

102. Mr. FRANÇOIS (Rapporteur) also expressed agreement to the change.

*Paragraph 14 was adopted as amended by Mr. Salamanca in the English text.*

*Chapter IV of the report was adopted as a whole.*

*Further consideration of the Commission's report was adjourned.*

The meeting rose at 1.10 p.m.

### 330th MEETING

Friday, 8 July 1955, at 10 a.m.

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*Chairman:* Mr. S. B. KRYLOV, First Vice-Chairman of the Commission

*Rapporteur:* Mr. J. P. A. FRANÇOIS

*Present:*

*Members:* Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi