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Summary record of the 65th meeting

Topic:
Law of the sea - régime of the high seas

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permitted to the general principle which forbade, in time of peace, any interference in the navigation of ships of another nationality om the high seas, unless there was serious ground for suspecting that the ship was engaged in piracy.

122. Mr. HUDSON drew the attention of the Commission to the control measures taken by the coastal State in the contiguous zone to prevent infringement of its customs or sanitary laws or regulations, or interference with its security by foreign vessels. He wondered whether such measures could be applied by a State when, for example, a ship was trans-shipping its cargo on the high seas for delivery at one of its ports. If the Rapporteur considered that the right of approach was allowed in such cases only within a certain distance from the ports, he might declare himself in agreement, but he would like the report to be more definite on the point.

123. Mr. FRANÇOIS asked whether Mr. Hudson would agree to accept the principle formulated by Pearce Higgins, which he had reproduced in his report—namely:

> " Any interference with a foreign vessel on the high seas is, apart from treaty, an act for which the State may have to answer; it is allowable only if there is reasonable ground for suspicion that the character of the ship is feigned ",

or Gidel's formulation quoted in the previous paragraph.

124. Mr. HUDSON replied that he was in agreement neither with Pearce Higgins nor with Smith, who was also quoted in the same paragraph. He tended rather to agree with Gidel, though the latter did not go far enough. Before committing himself, he would like to have further information on more recent developments. However, he was basing his opinion neither on Higgins nor on Smith nor on Gidel. He wished to ascertain the practice of States.

125. The CHAIRMAN observed that when the Commission came to examine the question of the continental shelf it would discover that that point was also liable to give rise to difficulties with regard to smuggling.

126. Mr. BRIERLY thought that the whole question was in principle related to the problem of the continental shelf and the contiguous zone, and that the Commission might discuss it when it came to examine those points. He wondered whether the rules enunciated in the report were not sufficient for the high seas.

127. Mr. HUDSON thought that there was, in practice, greater latitude in the application of rules of police; a warship meeting a ship on the high seas could call for verification of the flag.

128. Mr. FRANÇOIS replied that there was no international regulation on that question and that the French had always contested the practice.

129. Mr. AMADO remarked that the discussion showed the importance attached to the nationality of a ship. It was for that reason that he had formulated his proposal. States often doubted whether the flag denoted the true nationality of a ship.

130. The CHAIRMAN noted that the right of approach was not in doubt; but that the longer the Commission considered the point, the more it was forced to the conclusion that there were a large number of exceptions to the rule. He thought that the Commission could enunciate a principle on the right of approach, adding that there were a number of exceptions to the right which it would consider later.

131. Mr. AMADO observed that reference had been made to the continental shelf and the contiguous zone. Those points would be considered later and the question at the moment was that of police of the high seas.

132. The CHAIRMAN thought that the two questions mentioned came within the regime of the high seas.

133. Mr. FRANÇOIS affirmed that right of approach outside of the territorial waters and of the contiguous zone should exist. There were cases in which there was a presumption of piracy, of slave trade or of arms traffic in which it was necessary to be able to exercise a control and to take the appropriate measures.

134. Mr. AMADO said that in case of doubt as to the nationality of a ship, any State had the right of approach.

135. The CHAIRMAN replied that such a right did exist, but not the right of investigation; it was sufficient for a ship to show its flag in order to satisfy the provisions relating to the right of approach.

136. Mr. SPIROPOULOS thought that the right of verification of the flag did exist. Mr. François could inform the Commission the following year on any exceptions to the right of approach.

137. Mr. FRANÇOIS declared that he did not admit the right of verification of the flag.

138. The CHAIRMAN thought that the Commission was agreed to postpone detailed examination of the question of the right of approach until the following year, and that it was preferable not to formulate any principle that year.

The meeting rose at 6 p.m.

65th MEETING

Tuesday, 11 July 1950, at 10 a.m.

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Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO (Assistant Secretary-General in charge of the Legal Department); Mr. Yuan-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Regime of the High Seas: Report by Mr. François (item 7 of the agenda) (A/CN.4/17) (continued)

SECTION 13: POLICE OF THE HIGH SEAS (*continued*)

1. The CHAIRMAN read out sub-paragraph (b) of paragraph 2 of the principles proposed by Mr. Amado [1] " Every ship shall have the right to ascertain the nationality of vessels of doubtful nationality (right of approach) and to exercise the right of visit and search in the case of ships without nationality. In the event of international conflict, warships shall also have the right of visit and search in respect of ships of enemy nationality in order to ascertain whether the rules concerning contraband and blockade are being observed. "

2. Mr. FRANÇOIS thought that the second part of the text could be deleted since the Commission was not dealing on that occasion with the law of war. He also thought that ships of neutral nations ought to have been mentioned as well because it was particularly in connexion with neutrals that warships had the right of visit.

3. Mr. AMADO agreed to the deletion of the second part of his text.

4. Mr. FRANÇOIS felt the first part of the text was every widely phrased. He agreed to it provided that it really applied to ships without nationality. He thought it would be better if the first line were to read " Every warship ", since merchant ships did not possess the rights granted in the text to warships.

5. Mr. BRIERLY was of the opinion that the words " of doubtful nationality " could be deleted, because warships always had the right to ask a vessels' nationality.

6. Mr. AMADO pointed out that a case might arise in which a warship asked a vessel to hoist its flag and then found afterwards that the vessel had previously flown a different flag; that was why a warship had the right not to confine itself to a request for the flag. The right of visit clearly restricted the principle of freedom of navigation, but it was impossible to know whether or not the ship was a pirate unless it were visited. He proposed that the Rapporteur collate the texts and come to a decision.

7. The CHAIRMAN pointed out that Mr. Amado's text was only a suggestion and the Rapporteur remained entirely free.

8. Mr. YEPES wished to know how the principle would be worded.

9. The CHAIRMAN replied that it would be worded according to the classical law on the matter. " Every warship may ascertain the nationality of ships it encounters and exercise the right of visit if the ship is of doubtful nationality. "

10. Mr. YEPES doubted whether the general principle was that warships had the right of visit.

11. The CHAIRMAN stated that in effect the right of visit did not exist.

12. Mr. SANDSTRÖM wished to know whether the right to examine papers were not the right of visit.

13. Mr. FRANÇOIS replied that the right was exercised on the responsibility of the State under the flag of which the warship was sailing.

14. The CHAIRMAN felt that the Commission could leave it to Mr. François to draft the rule.

15. Mr. HUDSON did not believe that States had the right of visit. It would be regrettable if it were granted to warships. The text was not sufficiently explicit. Ortolan, who was not a jurist but a naval officer, was less severe.

15 a. Mr. FRANÇOIS, at Mr. Hudson's request, read out a passage from " Le Droit international public de la mer ", (1932, vol. I, p. 300) by Professor Gidel: " Ortolan concluded on the same cautious note: ' In time of peace exercise of the right to verify the flag of a foreign merchant vessel must usually be confined, unless in exceptional circumstances and where justified by necessity, to obliging the vessel to hoist its flag. In certain cases a right also exists to stop and examine the vessel provided it is not put off its course '. "

16. Mr. YEPES felt that the principle was drafted in very general terms. It was undesirable to allow it to be understood that a warship had the right to examine papers.

17. The CHAIRMAN declared that all members of the Commission were in agreement on that point.

18. Mr. HUDSON asked why Ortolan was not to be followed more closely.

19. Mr. YEPES read out the corresponding article in Bluntschli's Code: " No State has the right, in time of peace, to detain ships on the high seas, to send its officials on board, to demand the production of the ship's papers, or to carry out a search of the ship.

" When there are grave reasons for suspecting that the ship is not sailing under its true nationality a right of visit exists, but on the responsibility of the State exercising it."

20. The CHAIRMAN and Mr. ALFARO thought that the wording of the principle could be left to the Rapporteur.

SECTION 14: SLAVE TRADE

21. The CHAIRMAN felt that no purpose would be served by reviving that archaic question.

22. Mr. HUDSON was not sure that it was unnecessary to do so. He had studied the question and wished

[1] See previous meeting, footnote 1.

to pay a tribute to the part played by the British Government in connexion with it. He did not know whether it would be possible to formulate a general principle, but he thought it desirable to try to do so. Conventional law had long contained special provisions for certain areas such as the Persian Gulf and the east coast of Africa. He did not know whether those provisions could be generalized. He hoped it would be possible to make a general declaration on the subject. He requested the Rapporteur to look into the conventional rules so as to produce from them a general principle applicable to ships engaged in the slave trade. The slave trade still existed.

23. Mr. BRIERLY supported Mr. Hudson. He thought that the matter might be left to the Universal Declaration of Human Rights.

24. Mr. HUDSON still felt that it should be dealt with in " The regime of the high seas ", not left to the Declaration of Human Rights. It ought not to be omitted.

The Commission decided that the subject be retained.

SECTION 15: ARMS TRADE

25. Mr. HUDSON observed that that was another question covered chiefly by conventional law. The St. Germain Convention of 1919 [2] had only come into force between a small number of States. The Geneva Convention of 17 June 1925 relating to the Supervision of the International Trade in Arms and Ammunition and in Implements of War, applied to special areas. Moreover, it had not come into force. He did not think that principles suitable for codification could be drawn from conventional law.

26. The CHAIRMAN felt that it was nevertheless a similar question to that of the slave trade.

27. Mr. HUDSON pointed out that the conventions on the trade in arms applied to special areas.

28. Mr. FRANÇOIS thought that there was a difference between the slave trade and the trade in arms. In his opinion the matter did not lend itself to codification.

The Commission decided that the subject be omitted.

SECTION 16: SUBMARINE TELEGRAPH CABLES

29. The CHAIRMAN read out paragraph 3 of Mr. Amado's text: " All States shall have the right to lay submarine telegraph or telephone cables on the high seas."

30. Mr. HUDSON thought that the provisions of the Convention of 14 March 1884 mentioned in Mr. Amado's text had given rise to criticism. What was of most importance in connexion with telegraph cables was their terminal points. If both points occurred on the territory of the same State no difficulty arose. But for a case in which one of the points occurred in the territory of a foreign State the principle was worded too widely.

31. Mr. AMADO stated that section 16 of the report contained the words: " As far as we know, the provisions of the Convention have not been subjected to criticism. " He had assumed that the Rapporteur had made a thorough study of the subject.

32. Mr. HUDSON proposed that the question be left to the International Telecommunication Union.

33. Mr. SPIROPOULOS agreed with Mr. Amado on the matter. The principle involved was very important, as important as freedom of navigation and the freedom to fish. If two States could conclude a treaty on a submarine cable it was because the principle just read out gave them the right to do so.

34. Mr. HUDSON felt that it was meaningless to say that a cable might be laid on the high seas; the cable must end somewhere. He asked whether the actual right to lay cables had ever been questioned. The conventions only referred to protection of a cable that had been laid.

35. Mr. SPIROPOULOS stated that many of the principles being laid down by the Commission had not been questioned. Nevertheless they had to be formulated. It would be a mistake to leave out the present principle; it must be retained.

36. Mr. ALFORA supported Mr. Amado's proposal. The principle was a sound one. It concerned one of the uses to which the sea could be put. The question of the terminal points of cables was a different matter. The laying of a cable involved two things: use of the sea bottom and the establishment of terminal points.

37. Mr. HUDSON asked why, if the Commission wished to retain the principle, it might not be extended. There were also pipe-lines, and they were very important. During the war one ran between England and France. There was also the question of tunnels. There had long been talk of a tunnel between France and Great Britain and of another between Spain and Morocco.

38. Mr. AMADO reminded the Commission that its task wat to codify principles recognized in the practice of States. The principle of the right to lay cables freely was admitted by all writers. It could not be omitted. The laying of pipe-lines and the excavation of tunnels did not as yet form part of the peaceful practice of States. The Commission's present work was confined to recording the principles of international law in time of peace.

39. Mr. SANDSTRÖM wondered whether the principle proposed by Mr. Amado might not have disadvantages. Mr. Hudson had mentioned the other types of installations which might be established on the high seas. To mention only one type might be dangerous: it would give the impression that the text was restrictive, which it was not. The freedom to lay cables followed from the principle of non-sovereignty. He did not see any need to insert the provision.

40. Mr. HUDSON thought the Commission ought to establish the principle that once a cable was laid it must be protected. Protection was more important than the right to lay. The same applied to pipe-lines. It was possible to imagine a pipe-line running from the coast of Iran to Dahran.

[2] Convention for the Control of the Trade in Arms and Ammunition, signed at St. Germain-en-Laye, 10 September 1919.

41. The CHAIRMAN remarked that Mr. Amado had quoted a provision concerning protection of cables occurring in the 1884 Convention.

42. Mr. AMADO stated that in the first place there was the principle of freedom of the seas, from which arose freedom of navigation, the freedom to fish and the right to lay submarine cables; writers unanimously accepted those three consequences. A number of conventions, such as the London Conventions of 20 January 1914 and 31 May 1929 for safety of life at sea, introduced limitations to those principles. In his opinion it was unthinkable that the principle sanctioning the right to lay submarine cables should not be introduced into the codification of the regime of the high seas.

43. The CHAIRMAN believed that the Commission accepted the principle. He thought mention should also be made of measures to protect cables. He asked the Rapporteur if he would be willing to introduce something to that effect in his preliminary draft.

44. Mr. FRANÇOIS replied that he was willing to do so.

45. Mr. KERNO (Assistant Secretary-General) felt that it would be well to consult the International Telecommunication Union on the point. Article 25, paragraph 1, of the Statute of the Commission read as follows:

> "The Commission may consult, if it considers necessary, with any organs of the United Nations on any subject which is within the competence of that organ."

and paragraph 1 of article 26:

> "The Commission may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions."

45 a. He thought that the Commission ought to profit by the interval between the second and third sessions to effect such consultations. On many special subjects the organs of the United Nations or international organizations could provide much valuable information and assist the work of the third session.

46. Mr. FRANÇOIS thought that was a very useful suggestion.

47. The CHAIRMAN asked whether the Commission wished the principle to be extended, that was to say whether mention should be made of pipe-lines and tunnels.

48. Mr. YEPES held that the question of tuunels raised by Mr. Hudson differed from that of cables. Tunnels related to the subsoil of the high seas. Cables related to the sea. The two questions must be kept apart, and if tumels were mentioned they should be dealt with separately.

49. Mr. SPIROPOULOS was not sure that he agreed. Those questions were everywhere dealt with in connexion with constructions on the ocean bed. The constructions belonged to those who built them. A tunnel therefore belonged to whoever had excavated it. That it was excavated in the subsoil was not material. The question of tunnels was bound up with that of the high seas.

50. Mr. FRANÇOIS felt that the question was closely bound up with those of the subsoil and the continental shelf. He would rather the question were omitted for the moment and taken up again after study of the continental shelf.

51. Mr. SPIROPOULOS did not know whether the Commission would retain the idea of the continental shelf, which was still a political one. A tunnel was already contemplated between France and Great Britain. The Commission might be able to speak of constructions on the sea bed. If the Rapporteur preferred, the question could be deferred till later.

52. The CHAIRMAN thought that the Commission could in practice confine itself to what took place in the water; the question of pipe-lines might therefore be retained.

The Commission decided that the principle applying to cables should also apply to pipe-lines.

SECTION 17: POLICING OF FISHERIES

53. Mr. HUDSON observed that in counexion with that subject the report had very properly mentioned the important 1882 Convention. An important development had recently taken place. The Government of the United States had adopted a very active fisheries policy, since fish constituted an important item of human diet. It had concluded agreements with a number of governments, including the Convention of 8 February 1949, which was not mentioned in the report and which regulated the fisheries of the north-west Atlantic. The States signing that Convention, the United States, Canada, France, the United Kingdom, Denmark, Italy etc., had accepted the measures it contained for the protection of fisheries. They were States whose nationals engaged in fishing in the north-west Atantic. No attempt had been made to forbid nationals of other States access to those fisheries. The signatory States exercised a certain supervision over their own nationals in order to protect fish in that area. All States which might desire to fish in the area would be permitted to become parties to the Convention.

53 a. The United States had also concluded conventions with Mexico, Costa Rica and Canada for the preservation of certain fish in certain areas: in particular, tuna, which was fished on a large scale. A number of States had attempted to take part in that fishery and there had been no thought of preventing them, in spite of their not being signatories to the Convention. It should be noted that the 1949 Convention did not allow a State to prevent nationals of another non-signatory State from engaging in certain practices.

54. Mr. FRANÇOIS felt there was some misunderstanding. He had mentioned the Conventions referred to by Mr. Hudson, in section 19 of his report, which read: "In 1920 the Committee of North American Fisheries was instituted in America; there are also joint committees of the United States, Canada and Mexico. A Convention of 8 February 1949 established an International North-West Atlantic Fisheries Commission".

54 a. The paragraph being considered by the Commission dealt with policing of fisheries, that was to say, the means whereby observance of the Conventions was to be supervised on fishing grounds. No special provision on the matter appeared in the Convention mentioned by Mr. Hudson. Only the Concentions of 1882 and 1887 provided for some form of policing.[3] The question raised by Mr. Hudson might be held over until the Commission came to section 19.

55. Mr. HUDSON asked whether the two subjects ought to be separated. The conservation measures decreed in 1949 involved policing.

56. Mr. FRANÇOIS thought that there was a great difference between the two subjects. The creation of supervisory bodies was a step further than the prohibition of certain practices. That was why he wished to insist on the special character of police measures, but he did not deny that they were related to the questions mentioned by Mr. Hudson.

57. Mr. HUDSON pointed out that the 1882 and 1887 Conventions only applied to a special area and doubted whether a general principle could be drawn from them.

58. The CHAIRMAN stated that those Conventions applied to the North Sea and that all the littoral States except Norway had become parties to them. He wished to know what the difference was between the Conventions mentioned in section 17 and the Convention relating to protection of marine resources.

59. Mr. FRANÇOIS replied that the difference lay in the nature of the supervision. The purpose of the 1882 Convention was to stop the trade carried on by the boats known as " floating cabarets " and the operations of certain fishing vessels which destroyed competitors' nets. It was to combat those practices that policing had been instituted. Protection of marine resources was a separate matter.

60. Mr. CÓRDOVA felt there was hardly any difference between the two questions. Policing of fisheries was to prevent fishermen from harming one another and to regulate fishing, but it would also extend to protecting marine resources so as to prevent the fishermen from exhausting them. The latter activity might be regarded as bound up with the idea of policing. In a case in which two countries had signed a convention concerning tuna fishing in order to protect the tuna, what would happen if another State claimed that its nationals had the right to go and fish in the areas to which the convention applied without observing its restrictive provisions ?

61. Mr. HUDSON pointed out that the United States and Mexico were not attempting to exclude other countries.

62. Mr. CÓRDOVA thought that there was no object in trying to protect tuna if nationals of other countries were able to go and fish it. It would be different if the signatories of the treaty had the right to police the fisheries.

63. The CHAIRMAN stated that what was in question was a treaty, and treaties only bound those who had signed them. The same applied to conventions concerning the North Sea. Police powers could not be exercised over nationals of non-signatory States.

64. Mr. CÓRDOVA thought that something must be done in connexion with third States. The conventions under discussion amounted to laws of the high seas.

65. Mr. HUDSON held that treaties had a different basis. If Japanese fishermen appeared on tuna fishing grounds an attempt would be made to obtain the co-operation of Japan. If the attempt were not successful the fishery would be less profitable for American and Mexican vessels.

66. Mr. CÓRDOVA reminded the Commission that in point of fact the United States had proposed to Mexico that provision be made to exclude fishermen of every other country from the fisheries in order to ensure respect for the provisions of the convention. It had finally been decided however that existing international law would not allow it. Means must be found to enable those treaties which protected resources required by mankind to become applicable to all. That meant developing, not codifying international law.

67. Mr. YEPES believed that Mr. Córdova was right. Natural resources were in danger of exhaustion. But nothing more could be done in the present state of international law. Exercise of supra-national authority would be required.

68. Mr. SPIROPOULOS understood what Mr. Córdova meant. What Mr. Córdova proposed involved, as he had said, further development of international law. It meant introducing a new rule. It was not a matter of applying a bilateral convention to all States, but of distilling from that convention a principle to be applied to all States. He wondered whether a rule of that kind would stand any chance of being adopted. He thought that it would be premature: difficulties would be encountered and many States would be prevented from accepting the draft code. He suggested that the Rapporteur should study the problem.

69. Mr. SANDSTRÖM was also considerably attracted by Mr. Córdova's idea. The following appeared towards the end of section 2 of the Report:

> " Are you in favour of recognizing the existence of a zone on the high sea contiguous to the territorial sea in which the coastal State will be able to exercise the control necessary to prevent, within its territory or territorial sea, the infringement of its Customs or sanitary (or if need be: ' fishing ') laws or regulations or interference with its security by foreign vessels ? "

He asked if that were what was referred to.

70. Mr. FRANÇOIS replied that is was.

71. The CHAIRMAN was most interested in what Mr. Córdova had said. The proposal was not as revolutionary as it appeared. Something of the sort already existed for the Straits and the Suez and Panama Canals: certain States had signed conventions the provisions of which were applicable to all the States

[3] International convention for regulating the police of the North Sea Fisheries, signed at The Hague, 6 May 1882; International convention respecting the liquor traffic in the North Sea, signed at The Hague, 16 November 1887.

in the world. It meant delegating the power of the international community to those of its members who were on the spot. The idea was not entirely new; though it was bold there were precedents for it. The Commission would be doing a great service if it followed Mr. Córdova's lead.

72. Mr. SANDSTRÖM stated that the development would benefit everyone and the exception it involved to the principle of freedom of the high seas could therefore be accepted.

73. Mr. FRANÇOIS approved.

74. Mr. CÓRDOVA pointed out that once a treaty for policing fisheries was signed the other States observed its provisions.

75. Mr. HUDSON observed that Mr. Córdova's remark did not apply to the north-west Pacific. A development of the kind envisaged would be reactionary in connexion with fisheries. Fishing did not have the political implications of the Straits. He added that the Panama Canal was not the high seas.

76. The CHAIRMAN pointed out to Mr. Hudson that the principle of free navigation was applied to the Panama Canal.

77. Mr. CÓRDOVA found it hard to see how the idea of making all nations respect a treaty the purpose of which was to protect marine resources in the interests of mankind, could be called reactionary. When some States in the general interest signed a treaty whereby they undertook not to fish in such a way as to exhaust certain fish resources, it might be laid down as a principle of international law that other States had a duty, in the general interest, to observe that convention, which was the law of the high seas. The high seas were public property subject to international law. The United Nations, through one of its organs, such as the Economic and Social Council, might ensure that all countries observed the Convention. If it accepted the principle the Commission would be striking out into a new field.

78. Mr. KERNO (Assistant Secretary-General) stated that according to the Charter the United Nations was to develop and codify international law. Any decision to do pioneering work on the part of the Commission was therefore welcome. International law was not static; it must adapt itself to the changing needs of the community of nations. Mr. Córdova's suggestion deserved support.

79. The CHAIRMAN asked the Rapporteur if he was willing to extend his studies to the question of generalizing fishing treaties.

80. Mr. FRANÇOIS replied that he was, but wished to know what authority would decide whether or not a treaty was one in the general interest.

81. Mr. CÓRDOVA stated that that was a question which frequently arose in connexion with the application of laws. For a treaty to be general its object must be fish conservation. The matter could be settled by arbitration.

82. The CHAIRMAN remarked that the Rapporteur's objection was equally valid in many other cases. Frequently there was a kind of implicit recognition. Nobody had raised difficulties about recognizing the system of regulations applied to the Suez Canal.

83. Mr. HUDSON said that the Government of the United States spent large sums for the protection of salmon breeding on the coasts of Alaska. If another country were to station its fishermen at the mouths of rivers and begin to catch the salmon no provision of international law would prevent their doing so. Canada and the United States had signed a treaty. Did that treaty prevent a third country from fishing on the high seas?

84. Mr. CÓRDOVA reminded Mr. Hudson that the United States had proposed the insertion of a provision to that end in the treaty with Mexico, but it had been found that international law did not allow it. Since then, however, it had been realized that the only way to protect marine resources for the benefit of all was to lay it down as a principle that when a treaty was signed for the protection of marine resources, all States must abide by it.

85. The CHAIRMAN stated that the organs of the United Nations, in particular the Economic and Social Council, could rouse public opinion. He reminded the Council of the arbitration over fur seals. It was true that that arbitration took place between the parties to a Convention, but an arrangement had been arrived at which satisfied everybody.

86. Mr. HSU was much in agreement with the end Mr. Córdova had in view. But if two countries signed a treaty the other countries could not be bound by it. Like Mr. François he wondered who would act as judge in the event of the acceptance of an exception to the principle proposed by Mr. Córdova. The United Nations existed, however, and the case could be submitted to that body.

87. Mr. el-KHOURY thought that the point was whether or not the principle was of importance to mankind. If it was, an attempt must be made to put it into force. It would be difficult to accept that the signatories of the treaty bound themselves and left other States free to destroy valuable resources. All States must accept and observe the principle. In the particular case in point the difficulties could be surmounted. The United Nations was in existence and could overcome opposition. Treaties of the sort must be submitted to the United Nations for conversion into universal treaties. He asked that the Rapporteur should propose a procedure whereby such treaties could be made applicable to all.

88. Mr. LIANG (Secretary of the Commission) drew the Commission's attention to the memorandum submitted by the Secretariat (A/CN.4/30). Paragraph 3 showed that the United Nations was actually already concerning itself with protection of marine resources. During the past six months attention had frequently been drawn to the importance of the fact that the United Nations was taking increasing interest in the need for promoting such protection. The FAO, among other agencies, was concerning itself with the matter. Under the terms of its Constitution it was instructed to study the distribution of fishery products, and it was studying the question very carefully. Before the Commission formulated a general principle on the subject it would

be well advised to study the work done in that field by other bodies, the FAO in particular. Conservation and protection of the natural riches of the sea was an international problem of common interest to all nations. The document he had just mentioned might also be referred to in connexion with other questions. When the Commission came to examine the problem of pollution of the sea it would find that to be another question closely bound up with protection of the sea's natural riches.

89. The CHAIRMAN declared that work of great value had been accomplished at the meeting. The Commission had got out of the rut of mere codification to which it frequently allowed itself to be confined. He reminded the Commission that the Assistant Secretary-General had drawn its attention to the importance of consulting other organizations dealing with the protection of marine resources. Mr. Liang had just added his own remarks on the subject. If Mr. François agreed, as he thought he would, the question would be gone into more deeply; but not till the session of the following year. In the meantime Mr. François could study the question of protecting marine resources by generalizing the measures provided for in bilateral or multilateral treaties, a work which would benefit all mankind. The Commission would rely on him to bring back the following year conclusions from which principles could be formulated. He thanked Mr. Córdova for the leading role he had played during the meeting.

SECTION 18: RIGHT OF PURSUIT

90. The CHAIRMAN invited the Commission to consider section 18.

91. Mr. HUDSON said that he had read the report with great interest; the Rapporteur had assembled a large amount of material in it. He suggested, however, that it might well be extended, for example, to include the very important decisions taken at one time by Canada and the United States in connexion with alcohol smuggling. Nevertheless he did not feel that much of the Commission's time need be given to the question of the right of pursuit, since it had been studied very thoroughly by the Conference for the Codification of International Law at The Hague in 1930.

92. Mr. FRANÇOIS considered that Conference had reached satisfactory conclusions on the right of pursuit. Only a few points had given rise to controversy or been left unsettled. They were listed in section 18 of his report. He had however refrained from drawing conclusions in that connexion. If members of the Commission cared to make suggestions they would undoubtedly be most useful and he would examine them with care. All he had wished to do in his report was to present the question to the Commission, reserving the right to revert to it in greater detail in his report of the following year.

93. Mr. AMADO stated that the Commission was perfectly free to omit the proposal he had put forward in paragraph 2 (c) of his proposal (64th meeting, footnote [1]). He would be glad to accept any other solution that the Commission might wish to adopt.

94. The CHAIRMAN thought that the Commission was engaged at that moment in establishing principles, not in preparing detailed texts. He believed that the Commission agreed with him on that point and could therefore limit itself in the present year simply to formulating a general principle.

95. Mr. YEPES felt that the right of pursuit ought to be extended to offences committed not only in territorial waters but on land. That point was not covered by Mr. Amado's proposal. Mr. Amado did, however, speak of " a foreign vessel which has committed an offence ". The ship could not commit an offence, only the crew of the ship could do so. Mr. Amado's text ought therefore to be amended so as to read: " a foreign vessel the crew of which has committed an offence ".

96. Mr. FRANÇOIS held that the text could be accepted in the form Mr. Amado had drafted it. He thought it necessary to point out, however, that in his opinion it left unsettled the debatable points that he (Mr. François) had enumerated in his report.

97. Mr. HUDSON did not agree with Mr. Amado's proposal that the right of pursuit on the high seas should only exist when the pursuit commenced in the territorial waters of the pursuing ship. In the five points listed by Mr. François pursuit commenced outside territorial waters was also considered. In particular he mentioned the point dealing with the case of a ship which, while itself outside territorial waters, caused offences to be committed therein by her boats.

98. Mr. FRANÇOIS thought that it was not Mr. Amado's intention to exclude such cases. In view of the complexity of the problem of the right of pursuit, he urged that the question be left open till the following year. He thought it preferable for the Commission not to adopt a principle concerning the right of pursuit during the present year. More thorough study might make it possible to lay down rules concerning the extent of the right and exceptions thereto.

99. Mr. HUDSON stated that the wording of Mr. Amado's principle excluded the right of pursuit in the case of an offence committed on land by the ship's crew. He added that he had never heard of a ship being pursued as a result of an offence committed on land by its crew or a man belonging to its crew.

100. Mr. SPIROPOULOS thought members of the Commission were under a misapprehension. Mention had just been made of persons who had committed an offence in the territorial waters of, or within, a country. He agreed with Mr. Hudson that the rule of the right of pursuit applied only to ships, not to the crew. If a sailor committed an offence or crime in a port, the right of pursuit did not obtain.

101. The CHAIRMAN believed he was expressing the view of the Commission in saying that it was preferable to leave the question over till the following year. The Rapporteur would then be in a position to submit a new, more detailed report on the subject.

SECTION 19: PROTECTION OF THE PRODUCTS OF THE SEA

102. Mr. HUDSON pointed out that in item (a) " International bodies ", the Rapporteur was not proposing a principle for adoption by the Commission.

103. Mr. FRANÇOIS stated that the whole question of protection of the products of the sea (marine resources) was closely bound up with the problems of the continental shelf and contiguous zones. If the Commission could reach conclusions on those two problems, the whole question of pretection of marine resources would be settled too. It seemed to him very difficult to examine the problem of marine resources separately from that of the continental shelf. One of the chief difficulties arose from the fact that some countries insisted that the continental shelf be subject to rules concerning protection of marine resources. The two questions appeared to him so closely connected that he had made no concrete proposals regarding protection of the marine resources, since he felt the question ought to be settled at the same time as that of the continental shelf.

104. Mr. Hudson pointed out that at the end of item (c) " Protection of the large cetaceans " the Rapporteur had given no conclusion, probably because he thought there was no need for one. He asked the Rapporteur if the same applied to item (b) " Protection of seals ".

105. Mr. FRANÇOIS replied that he had given no conclusion on items (a), (b) and (c) because he thought that the Commission did not need to examine those items at the present time.

The Commission concurred.

106. The CHAIRMAN observed that, in that case, the Commission would proceed to examine item (d) " Pollution of the sea ".

107. Mr. FRANÇOIS proposed that that item should not be discussed because it was being considered by other bodies.

108. Mr. HUDSON stated that it concerned a purely technical matter which the League of Nations had caused to be examined at length in 1935 by the special committee of experts, which had drawn up a draft international convention. The conference which the League of Nations Council had wished to convene to deal with the matter had been unable to meet. He thought that the Commission ought not to broach the subject because there was no international legislation in connexion with it. There was consequently nothing to codify. He proposed therefore that item (d) of paragraph 19 should not be examined.

It was so decided.

SECTION 20: BREADTH OF THE TERRITORIAL SEA; CONTIGUOUS ZONE

109. Mr. HUDSON felt that the Commission could hardly deal with the question of the breadth of the territorial sea or methods of demarcating a line separating interior waters from territorial waters, because those questions were now before the International Court of Justice in the case between the United Kingdom and Norway concerning fisheries. The question had also been submitted to the 1930 Codification Conference. He had been struck by the divergence of the views expressed by various governments at that Conference. Moreover, a number of countries had instituted legislation concerning the contiguous zone and it appeared difficult to deny that they had rights in that zone. Many States however denied it.

109 a. At the end of section 20 of his report, Mr. François proposed to return to the question of the breadth of the contiguous zone when the Commission came to examine the items in his report dealing with the continental shelf. The Commission would be well advised to follow Mr. François' suggestion.

110. Mr. AMADO desired to explain why he had given his principle No. 5 the following wording:

> " A sovereign State may exercise specific administrative powers beyond the limits of its territorial waters in order to protect its fiscal or customs interests. The zone in which it may exercise these powers may not exceed twice the breadth of the territorial waters."

110 a. He was aware of the inherent difficulties of the subject and of the fact that States were not unanimous regarding the limits of territorial waters. The great majority accepted the limit of three nautical miles, others wished to establish a six-mile limit. The principle of the contiguous zone had been formulated by various scientific bodies and many writers had attempted a formulation. The great majority of writers held that the contiguous zone should not exceed twelve nautical miles. That twelve-mile limit had not been challenged by any writer except in cases in which certain States had concluded special agreements. The 1930 Codification Conference had accepted recognition of a zone of territorial sea beyond the three-mile limit in the case of certain specially mentioned States, and had adopted the principle of a contiguous zone which should not extend more than twelve nautical miles from the coast.

110 b. He had been unwilling to mention the figure of twelve miles himself because he knew that it would give rise to objections in the Commission. That was why he had said that the contiguous zone in which a State might exercise administrative powers might " not exceed twice the breadth of the territorial waters ". He thought the formula satisfactory and could imagine no other capable of taking its place.

110 c. The Commission had accepted Mr. Córdova's proposal that certain bilateral treaties should become laws which other States must observe. In the case of the contiguous zone he thought that an agreement already existed laying down that it was not to exceed twelve miles. He could not accept the principle that some States, in normal times, could establish the limit of the contiguous zone for defence purposes at 300 nautical miles, as had been done in Panama in 1939. Such decisions were measures for defence and protection taken as a result of war.

110 d. He reminded the Commission of the formula: The breadth of the supplementary zone may not exceed nine nautical miles. His proposed principle contained no mention of nine miles, or of the question of security. It referred simply to the right of sovereign States to exercise administrative powers in order to protect their fiscal and customs interests.

111. Mr. HUDSON said that within that zone a

sovereign State had also the right to protect its sanitary interests. A number of American States set great store by that principle. He asked Mr. Amado to agree to the word " sanitary " being inserted in his text.

112. Mr. AMADO agreed to the insertion.

113. Mr. HUDSON had no objection to the first sentence of Mr. Amado's proposed principle, provided the word " sanitary " were inserted in it. He found it difficult however to accept the second sentence. He had never heard of the breadth of the contiguous zone being formulated in the way Mr. Amado had formulated it. The variety of local conditions called for a variety of solutions. If the Commission wished to specify the breadth, its formula must take account of the interests of littoral States. Even if the Commission accepted the principle of the contiguous zone being delimited, it would not necessarily be able to specify the delimitation very precisely. The Hague Conference had very rightly refrained from doing so.

114. Mr. AMADO observed that in 1925 the American Institute of International Law had stated in a draft submitted to the Governing Council of the Pan-American Union, that: " The American Republics may extend their jurisdiction beyond the territorial sea parallel with such sea for an additional distance of . . . marine miles, for reasons of safety and in order to assure the observance of sanitary and customs regulations."

115. Mr. HUDSON pointed out that the American Institute of International Law had not said that the contiguous zone might be twice the breadth of the territorial waters.

116. Mr. AMADO agreed that the American Institute of International Law had not defined the zone in that manner; it was an innovation of his own. So far as he was aware the formula appeared for the first time in his proposed principle. He mentioned that he had stated at the beginning that he thought the Commission would not be ready to accept his formula. He believed, however, that it would be taken up in the future.

116 a. He pointed out that the Committee of Experts for the Progressive Codification of International Law set up by the League of Nations had also accepted the idea of the contiguous zone and declared that in that zone States might exercise administrative rights based on custom or on essential security requirements, but not rights to exclusive economic use. In face of the texts he had mentioned he thought he was right in saying that his formula was at the same time a modest and a practical one.

117. Mr. SPIROPOULOS congratulated Mr. Amado on the text he had submitted. He thought the first sentence of it completely satisfactory. The second sentence, establishing a limit to the contiguous zone, he felt, raised a question of the greatest importance, but one on which agreement would be extremely difficult. The first Codification Conference had broken down on that same question of the limits of the territorial sea. Fundamental differences had appeared between the great Powers, some of them wishing the limit to be twelve natical miles, others ten or six. Italy and Roumania, for example, together with a number of other Mediterranean powers, wished to fix it at six nautical miles, whereas Norway, for practical reasons, desired the limit to be four. He thought it unlikely that the Commission would be able to reach agreement. He wondered whether fixing a limit were really necessary. The difficulty was aggravated by the lack of international understanding on the matter and the fact that some States fixed several limits. Greece, for example, had established a number of contiguous zones, one for customs purposes, another for security, and so on.

117 a. He thought the simplest solution would be to follow Mr. Hudson's suggestion and delete the second sentence of Mr. Amado's proposed principle. Codification would clearly be more difficult if the sentence were left out; but if, in spite of the difficulties of reaching agreement, the Commission wished to undertake delimitation with a view to a subsequent codification, it ought perhaps to provide for several limits.

118. Mr. AMADO pointed out that the Institute of International Law had gone further at its 1928 session. It had stated that: " In a supplementary zone contiguous to the territorial sea a coastal State may take the measures required for its security, observance of its neutrality and its sanitary, customs and fishing policy. It has power to take cognizance of breaches of laws and regulations concerning those matters. The breadth of the supplementary zone may not exceed nine nautical miles. " (*translation*) (Article 12, *projet de règlement relatif à la mer territoriale*) [4] The words used by the Institute were not " contignous zone " but " supplementary zone ". He also drew attention to the fact that in some cases, in the text of the Institute of International Law, for example, the limit fixed was nine nautical miles. He did not insist however on his proposed principle being accepted in its entirety, although he would have liked the Commission to go a step further and fix a limit. In view of the difficulties that had been brought to light, he thought it better for study of the question to be deferred until the following year.

119. Mr. HUDSON pointed out that in the Rapporteur's opinion delimitation of the contiguous zone was bound up with the question of the continental shelf. He therefore asked that discussion of the question be deferred till the Commission came to examine the problem of the continental shelf.

120. Mr. CÓRDOVA thought that the question of the breadth of the contiguous zone was nevertheless bound up with that of the breadth of the territorial waters. If the Commission failed to fix a limit for the territorial waters it would be difficult for it to do so in the case of the contiguous zone. The Commission was not however required to consider zones of neutrality such as those established, for example, to protect the Panama

[4] *Annuaire de l'Institut de droit international*, 1928, p. 758. Original French text reads as follows: " Dans une zone snpplémentaire contiguë à la mer territoriale, l'Etat côtier peut prendre les mesures nécessaires à sa sécurité, au respect de sa neutralité, à la police sanitaire, douanière et de la pêche. Il est compétent pour connaître, dans cette zone supplémentaire, des infractions aux lois et règlements concernant ces matières. L'étendue de la zone supplémentaire ne peut dépasser neuf milles marins."

Canal; it was concerned solely with the contiguous zone to be delimited by littoral States. As far as the Commission was concerned the question of security did not arise. He thought that the subject ought to be left aside for the moment and considered when the Commission came to consider the continental shelf.

121. Mr. AMADO thought that the question of the contiguous zone ought not to be studied with that of territorial waters, but with that of the high seas. He had only referred to the Panama Canal as a matter of historical interest.

122. Mr. SPIROPOULOS failed to see why the Commission should consider the question of the contiguous zone with that of the continental shelf. He felt that the Commission could declare that States had certain administrative rights within a zone of up to three nautical miles in breadth and that they could take security measures in the contiguous zone. He held that the contiguous zone was not part of the territorial waters but of the high seas. In any event the question of the contiguous zone ought not to be considered with that of the continental shelf, which was an extremely difficult subject in itself.

123. Mr. FRANÇOIS admitted that he agreed in principle with Mr. Spiropoulos, but for practical reasons he would have preferred the discussion to be adjourned until consideration of the continental shelf.

124. Mr. HUDSON believed that no one denied that contiguous zones existed. The point in question was their breadth, and that breadth was connected with the continental shelf. He supported Mr. François' proposal.

125. Mr. AMADO was also of the opinion that the contiguous zone should not be considered at the same time as the continental shelf. He drew the Commission's attention to the following passage from a recently published book:

> " Navigation on the high seas is free for alle States. But in a zone of the high seas bordering the mainland, a State may decree such measures as may be necessary to enforce, within its territory or its territorial waters, the laws and regulations concerning customs, navigation, hygiene and policing required for its immediate security. " (*translation*)

125 a. As he had mentioned already, he felt that the issues ought not to be confused. The sea was a field for scientific study and activity. All that was at present in question was the limits to be fixed for the territorial sea or the contiguous zone. Mr. Hudson agreed with him that the State had the right to exercise certain administrative functions outside the zone of the territorial sea. The second sentence of his proposed principle failed to meet the approval of the majority of the Commission, but in the case of the first sentence he thought agreement might be reached.

126. The CHAIRMAN asked whether the Commission desired to continue discussing the contiguous zone.

127. Mr. FRANÇOIS thought that the Commission might accept the first sentence of Mr. Amado's proposed principle. In the case of the second sentence concerning the breadth of the contiguous zone he thought that a solution might perhaps be possible when the Commission had reached agreement on matters connected with the continental shelf.

128. The CHAIRMAN stated that in his opinion the territorial sea and contiguous zone were identical. Littoral States did not possess rights over those waters but merely a servitude. Nor, in his opinion, were questions relating to the continental shelf and territorial waters connected; occurrences in the one could, however, have consequences in the other.

129. Mr. HUDSON was sure that the Commission would be unable to reach agreement if it was its intention to delimit the breadth of the contiguous zone. In no circumstances would it be possible for it to lay down a rule concerning the maximum breadth of that zone. He thought that the Commission might accept the first sentence of Mr. Amado's proposed principle, but that it could not go further.

130. Mr. SPIROPOULOS thought that the Commission was not ready to settle the question during the present year. He suggested that the Commission request the Rapporteur to collect the fullest possible documentation on the limits fixed for the contiguous zone in different legal systems or in agreements between States.

131. Mr. CÓRDOVA felt that the Commission accepted the idea that States could exercise certain administrative powers in the territorial waters and the contiguous zone. Questions arising in connexion with those two zones were bound up with exercise of sovereignty on the part of littoral States. They ought not to be considered in connexion with the question of the continental shelf, since that was related to exploitation of the sea-bed. The question of the contiguous zone was more closely related to that of territorial waters and the régime of the high seas than to the problem of the continental shelf. He thought, however, that the Commission was not sufficiently well versed in maritime law to be able to arrive at conclusions at the present juncture. It would be preferable for consideration of all the questions to be deferred till the following year.

132. Mr. AMADO agreed that considerations should be deferred till the following year. He thought, however, that exercise of rights in the contiguous zone was not linked with the exercise of sovereignty by a littoral State. The full sovereignty of States could only be exercised in territorial waters.

133. Mr. HUDSON thought that such a position could hardly be held in 1950. Thirty years ago it might have been defended. But in view of the action taken by certain countries, such as Argentina, it had to be recognized that according to the ideas at present proclaimed by many governments, a State was justified in exercising its sovereignty over all maritime waters.

134. The CHAIRMAN stated that the discussion showed that the Commission desired to retain the first sentence of Mr. Amado's proposed principle, but was not agreed concerning acceptance of the second sentence dealing with the extent of the contiguous zone. In his opinion there were in reality several contiguous zones, as Mr. Spiropoulos had said. He thought that the time had come to bring discussion of the item to an end.

When the Commission came to examine the question of the continental shelf it would have an opportunity, if it wished, to return to the question of the breadth of the contiguous zone.

135. Mr. BRIERLY desired the Rapporteur to be requested to collect the fullest possible documentation concerning the claims made by States and the measures taken by them in connexion with rights in the territorial sea and in the contiguous zone. The documentation should include detailed information on the various limits set by States.

136. Mr. FRANÇOIS accepted Mr. Brierly's proposal. He pointed out, however, that in 1930 governments had been asked to make their views known on the matter and a number of replies had been received. The situation had changed since that time and in connexion with the item under discussion it would therefore be advisable to ask governments once again to reply to very specific questions about the contiguous zone. Relevant data could not in his opinion be found in books or other publications. Governments should be asked what rights they claimed in the contiguous zone and how wide they thought it ought to be.

137. Mr. YEPES said that the Commission had already discussed the advisability of sending out a questionnaire to governments and it had decided against it. In the case in point, however, such a questionnaire was justified because governments would only be asked for information concerning law and practice, not on matters of doctrine. He thought that the Commission would consequently obtain a certain amount of information from them.

138. Mr. KERNO (Assistant Secretary-General) thought he was right in saying that the United Nations was already collecting documentation on the subject.

139. Mr. LIANG (Secretary of the Commission) confirmed that the Secretariat was at the moment engaged in collecting conventions, laws, decrees, etc. concerning certain matters relating to the law of the high seas, including the continental shelf and the contiguous zone. The documentation would be at the disposal of the Commission and in the first place of the Rapporteur, whom the Secretariat would also be very glad to supply with any other information which might come to hand later. Such being the case he was not sure whether it was necessary to send out a questionnaire. He did not feel that the Commission ought to limit itself to examining the replies given by governments in 1930.

140. Mr. HUDSON reverted to Mr. François' statement to the effect that some governments had adopted a position on the matter twenty years before. He was sure that many of them had changed their attitude since. They must therefore be asked for fresh information.

141. Mr. FRANÇOIS also felt that a request should be made for information concerning fact and practice. It would also have been desirable to receive governments' views on doctrine, but if Mr. Yepes' fears were grounded governments might perhaps hesitate to reply.

142. Mr. SPIROPOULOS stated that if the Commission desired to consider the question of the contiguous zone, it must have full information on the subject.

143. Mr. KERNO (Assistant Secretary-General) said that the Secretariat would attempt to keep all the information up-to-date.

144. Mr. HUDSON asked whether the enquiries would be confined to matters of law or of practice.

145. Mr. LIANG (Secretary of the Commission) thought that it would be difficult to obtain replies from governments concerning their attitude on matters of doctrine.

146. The CHAIRMAN was sure that many States had changed their attitude since 1930. The Commission had need of more exact information. The Secretariat would be able to provide it. Other methods of obtaining the information, however, ought to be used as well. What was required was knowledge of law and practice, not of views on doctrine.

The meeting rose at 1 p.m.

66th MEETING

Wednesday, 12 July 1950, at 10 a.m.

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Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO (Assistant Secretary-General in charge of the Legal Department); Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Regime of the High Seas: Report by Mr. François (item 7 of the agenda) (A/CN.4/17) (continued)

SECTION 8: SAFETY OF LIFE AT SEA (*resumed from the 64th meeting*)

1. Mr. FRANÇOIS pointed out that the Commission had instructed him to ascertain the exact position with regard to the International Convention for the Safety of Life at Sea, 1948. He had found that the 1948 Conference had drawn up a Final Act which included the following: