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Summary record of the 69th meeting

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

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to wait until the littoral States had made a claim, the reason being that in a great many instances it was impossible to determine the boundaries of the continental shelf. He reminded those members of the Commission who had voted in favour of point 3 of his proposal that there were great variations in the matter of the continental shelf—for example, there were waters such as the Persian Gulf where there was no continental shelf, and where the littoral States were entitled to have their rights over the submarine areas recognized. It must be granted that such States had those rights.

53. The CHAIRMAN agreed that it was not possible to vote on Mr. Hudson's fourth proposal. But the Commission had to decide as to the scientific basis of its attitude; hence, it would be a good thing all the same to take a vote on point 4 to see which Members were in favour of the principle it laid down.

After some discussion, the Commission decided that it need not vote on point 4.

The meeting rose at 11.45 a.m.

69th MEETING

Monday, 17 July 1950, at 3 p.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 CORDOVA, 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 22: THE CONTINENTAL SHELF (continued)

Questions 3 and 4

1. The CHAIRMAN observed that the decisions

adopted at the last two meetings had already answered questions 3 and 4 on the last page of Mr. François' report.

Question 5

2. The CHAIRMAN read out the text of question 5: "Is a right of sovereignty involved, or merely rights of control and jurisdiction?"

3. Mr. HUDSON recalled that the Commission had used the terms "control and jurisdiction", and had thereby decided to leave aside the concept of sovereignty.

4. Mr. FRANÇOIS agreed that the Commission had set aside the concept of sovereignty on that point.

Question 6

5. The CHAIRMAN read out the question: "What is the competence of the littoral State in the areas in question (continental shelf or contiguous zone) in regard to:

- (a) Working the mineral resources of the sub-soil;
- (b) Marine resources?

How far may nationals of the riparian State be given special treatment?"

He pointed out that, according to the Rapporteur, the question concerned the continental shelf and the contiguous zone.

6. Mr. HUDSON pointed out that the Commission had not discussed the question of the contiguous zone, and had left in abeyance the question of the exercise of control and jurisdiction by the littoral State in the submarine areas where there was no continental shelf. He hoped that the Commission would leave things as they stood. He considered that the Commission should not deal with sub-paragraph (b), since marine resources were contained in the waters of the sea and not in its subsoil. The right of control and jurisdiction referred to in that context applied to the sea bed and the subsoil. When he (Mr. Hudson) had submitted his text at the 68th meeting, Mr. François had raised no objection to the use of the words "sea bed".

7. The CHAIRMAN confirmed that the Commission was dealing with the sea bed and the subsoil, and was not discussing the rights exercised by littoral States over the waters.

8. Mr. HUDSON recalled that the Commission had stated that control and jurisdiction should not affect either navigation or fishing.

9. Mr. SANDSTRÖM said that was clear from paragraph 2 of the text proposed by Mr. HUDSON at the 67th meeting.

10. Mr. FRANÇOIS favoured a clarification of the rights enjoyed by littoral States over the waters lying above the continental shelf. It was not enough, he thought, to say that such control and jurisdiction must not affect either navigation or fishing.

11. Mr. HUDSON thought that those waters should continue to be subject to the regime of the high seas.

12. Mr. FRANÇOIS stated that there was of course no right of sovereignty over those waters. He asked to

be enlightened as to the meaning of the words: "must not . . . affect . . . nor the right of free fishery in such waters". He wished to know whether the littoral State was entitled to lay down regulations for the protection of fish.

13. Mr. HUDSON pointed out that the right to regulate fishing was not related to the question of the continental shelf.

14. Mr. FRANÇOIS observed that proclamations subsequent to the second proclamation of the President of the United States dated 28 September 1945, concerning coastal fisheries in certain areas of the high seas, linked that question with the continental shelf.

15. Mr. SANDSTRÖM recalled that the Commission had already discussed the question of fisheries in connexion with the contiguous zone.

16. Mr. YEPES considered that the question of the continental shelf was distinct from that of fisheries and navigation in the contiguous zone. The former, in fact, represented the underwater continuation of the land-mass.

17. The CHAIRMAN asked whether the Commission agreed with Mr. Hudson that the question should not be discussed.

18. Mr. FRANÇOIS said that he personally would be very sorry if the question were not discussed. The Argentine proclamation of 11 October 1946 went so far as to claim sovereignty over the waters covering the submarine platform.

19. Mr. BRIERLY said the Commission was under no obligation to accept the Argentine proclamation. Moreover, it had already adopted resolutions which were in contradiction with that proclamation.

20. Mr. KERNO (Assistant Secretary-General) pointed out that the continental shelf should be taken to mean the sea bed and the subsoil, and to exclude the waters covering them. He had previously drawn attention to the fact that it might be desirable to specify what the regime of those waters would be.

21. Mr. FRANÇOIS thought that Mr. Hudson considered that the Commission had already defined its attitude by stating that there was no sovereignty over those waters and no restriction of freedom of fishing and navigation.

22. Mr. el-KHOURY confirmed that the Commission had decided that the waters covering the continental shelf and lying outside territorial waters constituted the high seas.

23. The CHAIRMAN shared that impression.

24. The CHAIRMAN asked what was meant by the "areas in question"; did that relate to the waters or the sea bed?

25. Mr. FRANÇOIS replied that they covered both, since marine resources comprised the waters, the fisheries, etc.

26. Mr. HUDSON pointed out that the Commission was dealing only with the sea bed and the subsoil, and should therefore leave fishing out of account, unless it wished to mention the catching of fish living at the

bottom of the sea. He thought that those problems were subject to the rules governing the high seas.

27. Mr. BRIERLY felt that, there being no single answer to the whole question, it should be divided up, the continental shelf being taken first and the contiguous zone left aside for the time being.

28. Mr. HUDSON considered that mention of the contiguous zone was needed for cases where there was no continental shelf. The Rapporteur would try to find a wording which would be equally applicable to cases where there was no continental shelf.

29. Mr. FRANÇOIS recalled that the first paragraph of the text adopted by the Commission at its 67th meeting was not confined to the continental shelf.

30. Mr. HUDSON replied that the text adopted at the 68th meeting was limited to the continental shelf. It was, in fact, worded as follows: "The submarine area (sea bed and subsoil) of the continental shelf off the coast of a littoral State and outside the area of its territorial waters is subject *ipso jure* to the control and jurisdiction of the littoral State."

31. Mr. FRANÇOIS was afraid some ambiguity might arise from the fact that paragraph 1 was not limited to the continental shelf, and that paragraph 3 spoke only of the continental shelf.

32. The CHAIRMAN repeated his question regarding the sense of the word "area" in question 6.

33. Mr. HUDSON replied that the texts adopted concerned only the sea bed and the subsoil. It was no longer necessary to reply to the first sub-paragraph of question 6.

34. Mr. FRANÇOIS felt that it might be necessary to deal with the question of the nature of the rights concerning marine resources hidden in the waters covering the continental shelf.

35. Mr. HUDSON said that those rights were the same as those existing on the high seas.

36. Mr. SANDSTRÖM explained that the littoral State had rights for the protection of fishing but that question was separate from that of the continental shelf.

37. Mr. FRANÇOIS accepted the interpretation that, as the littoral State's right of control and jurisdiction applied only to the sea bed and the subsoil, it would have no special rights over the waters covering the continental shelf.

38. The CHAIRMAN observed, in connexion with the second sub-paragraph of question 6, that at previous meetings the members of the Commission had already decided to recognize that if rights were reserved to the littoral State, it was the latter's nationals that would enjoy them.

Question 7

"Where the continental shelves—or contiguous zones as the case may be—of the different States overlap, how should they be delimited?"

39. Mr. HUDSON pointed out that the International Law Association's committee on rights to the sea bed

and its subsoil had stated in its report that, when continental shelves overlapped, criteria for their delimitation should be studied.¹ Custom and theory gave no enlightenment on the subject, and in his view the question should therefore be set aside.

40. Mr. ALFARO pointed out that, the previous day, the Commission had agreed to say "the littoral State" instead of "a littoral State", in the first paragraph of Mr. Hudson's proposed text, and that there was therefore no problem to settle.

41. Mr. el-KHOURY stated that, as a general rule, when two States were separated by waters, the frontier was fixed in the middle of those waters. When continental shelves overlapped, they should be divided.

42. Mr. HUDSON considered that there was no such principle. In the case of rivers, the thalweg was followed. He pointed out that the States concerned must come to an agreement.

43. Mr. YEPES observed that the case mentioned by Mr. el-Khoury was provided for in President Truman's first proclamation of 28 September 1945 concerning the continental shelf. Agreements would be concluded between States to determine the boundaries of their continental shelves. He considered the solution advocated by President Truman to be the best one.

44. The CHAIRMAN asked what would happen in cases where the States concerned failed to reach agreement.

45. Mr. AMADO recalled that, in the case of the utilization of the water power of a frontier river, the countries concerned had failed to reach agreement at the Barcelona Conference. Nor at the Pan-American meetings at Havana in 1928 and at Montevideo in 1933, had some South American States been able to agree on that point. It might in fact happen that a State more highly developed economically than its neighbour State might draw off all the water power of a river, thus impairing the development of its neighbour. He considered that in the matter of the sea, recourse must be had in each instance to an arbitral authority which would examine the situation and give a ruling on the particular case. It was impossible to adopt a general principle.

46. The CHAIRMAN asked whether the Commission agreed to admit the principle of compulsory arbitration for the solution of such difficulties.

47. Mr. AMADO had not meant to go so far.

48. Mr. ALFARO pointed out that Mr. Hudson's proposal as adopted by the Commission provided that control and jurisdiction should belong to the littoral State to the exclusion of other States. He asked how the question would be settled between littoral States situated on one and the same sea, such as, for example, in the Gulf of Mexico.

49. Mr. YEPES thought that the resolution was for States to conclude agreements. In the absence of such agreements recourse would be had the means pro-

vided under international law for the settlement of disputes between States.

50. The CHAIRMAN observed that merely amounted to pushing the difficulty a little further away.

51. Mr. HUDSON read out a passage from the previously mentioned report of the Committee on "rights to the sea bed and its subsoil": "Criteria for the division of the sea bed (and subsoil) of a continental shelf shared by two or more coastal States should be developed, taking into account factors such as the configuration of the coastlines, the economic value of proven deposits of minerals, etc."² The problem was bound up with that of the division of territorial waters between two adjoining States.

51 a. At The Hague Conference in 1930, the United States delegation had canvassed a scientific formula for the division of territorial waters. The "American Journal of International Law" for 1930 contained an article on the subject.³ There might also be one or two books on the subject. Nevertheless there could not be said to be a principle governing the establishment of frontiers in territorial waters, nor a principle enabling the continental shelf to be divided up between two adjoining States, such as between Mexico and the United States, for example. He doubted the possibility of establishing a general principle at the present time.

52. Mr. KERNO (Assistant Secretary-General) observed that Mr. Hudson had just quoted a passage from the report to be submitted to the International Law Association's conference, to the effect that it would be desirable to develop criteria. At the same time, Mr. Hudson had stated that it was not possible at present to establish a criterion of general ability. He asked whether the Commission agreed with Mr. Hudson's view, or whether the Rapporteur might examine the question and attempt to submit proposals.

53. Mr. HUDSON said he would hesitate to establish a criterion. Geographical differences prevented the formulation of a general principle. The littoral States on the Persian Gulf were trying to fix a frontier by negotiation. The 1942 Treaty between the United Kingdom and Venezuela concerning the Gulf of Paria did not enunciate a general principle but merely defined a line.

54. Mr. FRANÇOIS said that all he could do was to study the question and see whether he could propose something the following year.

55. The CHAIRMAN suggested that the Commission might perhaps put forward a recommendation.

56. Mr. SPIROPOULOS thought the Commission was engaged in codification and not in the drafting of a convention. Recommendations could not be included in a codification. The Commission would remember that the Hague Conference of 1930 had failed to reach agreement on the extent of the territorial sea. In the present case where it had nothing to work on, how could the Commission establish principles on the mode of

² International Law Association, *Report of the Forty-fourth Conference*, Copenhagen, 1950, p. 135, sub-para. (3).

³ S. Whittemore Boggs, *Delimitation of the territorial sea*, pp. 541 - 555.

¹ International Law Association, *Report of the Forty-fourth Conference*, Copenhagen, 1950, p. 125.

measuring the continental shelf, etc. ? Such a proceeding would be pure legal speculation which would jeopardize the whole of the Commission's work.

The Commission decided to omit question 7.

Question 8

57. The CHAIRMAN read out the text of question 8: "Do works and installations established in the waters in question for working the soil have territorial waters of their own? If not, may special safety zones be claimed for them?"

58. Mr. FRANÇOIS read out paragraphs (4) and (5) of the report previously mentioned (para. 39 above):

(4) The coastal State which is erecting or has erected any installation of the description referred to in I (5) above, being an installation which reaches above sea-level, should be entitled to exercise over a limited portion of the waters above the continental shelf such control and jurisdiction as is required for the protection of such installation, but no such installation should of itself be considered as an "island" or an "elevation of the sea bed" for the purposes of international law. Such limited portions of the high seas above the continental shelf should be referred to as "safety zones".

(5) Each safety zone should normally be defined by a circle with a radius of 500 metres around the installation in question."

That text denied by implication that such installations had territorial waters of their own, and quite rightly so; on the other hand, the States concerned needed to be able to take certain precautions in respect of a certain area so as to prevent ships from damaging the installations. A safety zone of 500 metres around such installations was quite acceptable.

59. Mr. SANDSTRÖM thought that the establishment of such a zone was inherent in the right of control granted to the littoral State. That, he thought, was obvious, and there was no need to give a ruling on the point.

60. Mr. FRANÇOIS pointed out that the Commission had not recognized any right of control and jurisdiction above the continental shelf; some provision must therefore be made.

61. Mr. HUDSON considered that the answer to the first part of question 8 should be in the negative, and the answer to the second part in the affirmative. There were territorial waters around the coasts of a State, but installations established in the waters were temporary and should not have territorial waters. All that was necessary was to make provision for safety measures.

62. Mr. el-KHOURY cited the solution adopted in Moslem law. A well dug in the desert enjoyed an easement. It was forbidden to dig another well within a radius of 300 metres. He thought that an affirmative answer should be given to the second part of the question so as to ensure the safety of such installations and prevent competition. Delimitation of the safety zone was a matter for experts.

63. The CHAIRMAN asked whether the Commission was agreed to reply in the negative to the first part of

the question and in the affirmative to the second part without seeking to decide, in other terms, whether it was agreed merely to accept the principle.

It was so agreed.

Question 9

64. The CHAIRMAN read out the text of question 9. "To what extent can there be any question in this connexion of rights already recognized under existing international law?"

65. Mr. FRANÇOIS said that the Commission had already answered that question by accepting the formula submitted by Mr. Brierly, according to which the international right of control and jurisdiction of the littoral State existed *ipso jure*.

66. Mr. BRIERLY disagreed. He thought that the question of the continental shelf was a matter which concerned the development of international law, and he had submitted his formula in the hope that it might serve as a basis for a right to be determined later.

67. Mr. HUDSON considered that the Rapporteur had all the data he needed for drafting his text, and that there was no point in discussing those questions.

68. Mr. FRANÇOIS observed that, after the explanation furnished by Mr. Brierly, the two sections of the Commission were not so far apart.

69. Mr. el-KHOURY explained that, in voting for the text containing the words "*ipso jure*", he had thought, not that the Commission was confirming existing law, but that it was indicating what the law should be and that it would be preferable to grant such control and jurisdiction to the littoral State. It was a question, in his opinion, of making a recommendation.

70. Mr. AMADO stated that international law arose from custom and agreement. Custom evolved. The point to be established was whether a declaration created custom. The Commission should note that such or such a rule already existed in custom. If it could not do so, it should merely note the evolution of international law.

71. Mr. YEPES thought, on the contrary, that the Commission should create law. Otherwise there would never be any progress.

72. The CHAIRMAN pointed out that if Napoleon had clung to the attitude adopted by Mr. Amado, they would never have had a civil code. Codification was not just compilation. It could also abolish or create law.

73. Mr. AMADO thought that what was true in the case of the codification of municipal law was not necessarily true in respect of the codification of international law.

74. Mr. el-KHOURY draw the Commission's attention to a passage in article 15 of its statute, in which it was stated that "In the following articles the expression 'progressive development of international law' is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States." The General Assembly was expecting the Commission to do something. The Commission should

not merely record existing law—it could also create law.

75. Mr. KERNO (Assistant Secretary-General) wished to make a friendly protest against Mr. Amado's view that the Commission had no authority. The Commission was an important United Nations body, consisting of fifteen members "who shall be persons of recognized competence in international law" (article 2 of the Statute).

76. Mr. AMADO protested in his turn. He had said that, in his opinion, international law was made up of custom and agreement and could not be created out of scientific opinions. He wished to state that he was full of respect for the United Nations and the Commission.

77. Mr. YEPES asked whether he could take it that the proposal⁴ he had submitted at the previous meeting had been adopted.

78. The CHAIRMAN was under the impression that by its decision at the previous meeting the Commission had adopted Mr. Yepes' proposal by implication.

79. Mr. HUDSON was of the opinion that the Commission had not adopted the proposal, but had merely given an affirmative answer to a question on the same subject. He himself had expressed the view that the proposal in question should be clarified. The Commission was in fact dealing solely with the sea bed and its subsoil. He personally agreed with Mr. Yepes.

80. The CHAIRMAN asked whether any member had further questions to raise, particularly on the subject of contiguous zones.

81. Mr. FRANÇOIS pointed out that the Commission had merely accepted the existence of submarine areas outside territorial waters. It was difficult to go further in the matter. He thought that the Commission need not go into greater detail.

82. The CHAIRMAN recalled that, in connexion with section 21 of the report, it had been decided to pass over the following three questions:

- a. Sedentary fisheries
- b. Installations on the high seas
- c. Subsoil of the high seas,

on the understanding that it might revert to them after discussion of the continental shelf. The Commission had therefore not defined its attitude on those subjects.

83. Mr. HUDSON thought that the Commission had defined its attitude with regard to sedentary fisheries and installations on the high seas, and that the only question to which the Commission had decided to revert was sub-paragraph (c) (subsoil of the high seas). There was no reason, in his view, to take a decision with regard to the sea bed of the high seas.

84. Mr. FRANÇOIS pointed out that, once the principle of the existence of rights over the continental shelf had been adopted, those questions lost some of their importance.

85. Mr. BRIERLY pointed out that the Commission had decided to revert to section 20 after examining the question of the continental shelf.

86. Mr. FRANÇOIS considered that to some extent the Commission had taken a decision by stating in connexion with the right of control and jurisdiction of the sea bed and subsoil of the submarine areas outside territorial waters, that it: "... must not substantially affect..." The provision applied to contiguous zones since it was not limited to the continental shelf. By implication, the Commission had recognized the existence of contiguous zones.

87. Mr. HUDSON could not accept that interpretation. He thought that the Commission's decision related solely to the sea bed and subsoil. Contiguous zones only concerned the waters. He recalled that a United States law of 1790 had instituted a contiguous zone for the surface of the actual waters. The Commission might define its attitude on that point.

88. Mr. AMADO thought that the contiguous zone related to certain administrative prerogatives of States. Over territorial waters, the State had complete sovereignty. In the contiguous zone, the State merely exercised certain fiscal, customs or sanitary activities. The contiguous zones were distinguished from the territorial waters in that they belonged to the high seas. He thought that the Commission should say: "A sovereign State may exercise specific administrative powers beyond the limit of its territorial waters in order to protect its fiscal or customs interests."⁵ When the United States had gone over to prohibition the contiguous zone had assumed tremendous importance. The United States had wished to protect itself against the smuggling of alcoholic beverages.

89. Mr. BRIERLY considered that the question differed from that of rights over the contiguous zone. The latter was chiefly concerned with the protection of fishing, and was taken in that sense in President Truman's second proclamation of 1945 in which he claimed the right to protect fishing in the contiguous zone.

90. Mr. AMADO pointed out that, in issuing his proclamation concerning the continental shelf, President Truman had laid down the principle that the United States was entitled to exercise control and jurisdiction over a part of the high seas, though he had explained that he did not seek to infringe navigation and fishing rights.

91. Mr. HUDSON read out the final passage of Mr. Truman's proclamation concerning fishing:

"In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control

⁴ See 68th meeting, para. 20 a.

⁵ See 64th meeting, footnote 1, para. 5.

of the United States. Where such activities have been or shall hereafter be legitimately developed and maintained jointly by nationals of the United States and nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any State to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected."

91 a. The proclamation, he continued, applied to the zones contiguous to the United States. Those were the zones referred to in paragraph 20 of Mr. François' report. They were the zones in which a State could take measures normally relating to its fiscal, customs and sanitary protection. President Truman's proclamation, however, related to the conservation of fish in those waters, and to that end established certain rules applicable to vessels flying the United States flag.

92. Mr. FRANÇOIS observed that the term "contiguous zone" had been used by The Hague Codification Conference in 1930, but the questions dealt with at that time in connexion with the contiguous zone did not include the conservation of fish.⁶ He thought it difficult at that stage to consider the contiguous zone and the area referred to in President Truman's proclamation as being identical.

93. Mr. SPIROPOULOS thought that, judging by the text of the proclamation read out by Mr. Hudson, the question it dealt with had nothing to do with that of the contiguous zone. The proclamation dealt with the conservation and protection of fish. Furthermore, the proclamation even contained a reference to the high seas. The interesting point about President Truman's proclamation was that it laid down rules concerning fisheries which applied solely to United States nationals. A government's right to control its own nationals was fully acceptable; furthermore, President Truman did not claim the right to exercise any control over foreigners, but envisaged the conclusion of agreements on the subject with States concerned. There was therefore no question of claiming special rights. However that might be, the subject dealt with in President Truman's proclamation had, he felt, no connexion with the question of the contiguous zone.

94. Mr. AMADO thought that the Commission might leave the Rapporteur free to examine the problem and to submit fresh conclusions the following year. The Rapporteur should be enlightened by the views expressed during the discussion.

95. Mr. HUDSON pointed out in reply that the Commission had not defined its attitude on section 20 of

the report. At a previous meeting, it had decided to leave the question in abeyance, and to consider it a later stage, after examining the paragraph concerning the continental shelf. So far, it had not resumed consideration of paragraph 20.

96. Mr. AMADO asked Mr. Hudson whether he intended to submit a proposal.

97. Mr. HUDSON replied that he would like to propose the following text.

"A littoral State may exercise its fiscal, customs and sanitary laws on a region of the high seas extending to a limited distance outside its territorial waters."

He would put his proposal in writing for subsequent distribution to the Commission. He could not say what limit might be fixed for that area. It might be ten, fifteen or twenty nautical miles.

97 a. His proposal, moreover, did not apply to the question he had mentioned earlier concerning the right of States to adopt measures for the protection and conservation of fish. That question had already been dealt with by The Hague Conference of 1930 and more recently by a conference of South Pacific countries held in the Philippines. It was important not to confuse the two questions arising at that stage; firstly, the question of the contiguous zone, and secondly, the entirely separate question of fish protection and conservation. He thought that the proposal concerning the first of those questions as roughly drafted by himself would doubtless be accepted by Mr. Amado.

98. Mr. BRIERLY asked whether Mr. Hudson's suggestion concerning the protection and conservation of fisheries related solely to the contiguous zone.

99. Mr. HUDSON replied that, judging by the measures taken in the United States, the zone under consideration was a larger one. The United States had asked foreign vessels fishing in the areas south of Newfoundland to take measures for fisheries conservation and protection and had suggested the conclusion of agreements on the subject.

100. Mr. BRIERLY observed that the case in point represented a complete innovation. Nevertheless, while it did not relate, he thought, to *the* contiguous zone as hitherto conceived, it did relate to *a* contiguous zone.

101. The CHAIRMAN noted that Mr. Hudson's proposal tacitly implied the recognition of contiguous zones.

102. Mr. FRANÇOIS considered that the proposal was a very useful one, and in keeping with the principle unanimously agreed by The Hague Conference. That principle should also be formulated by the Commission. He noted that the proposal did not mention control of fishing, which was a different matter. He proposed the adoption without discussion of Mr. Hudson's proposal in the form read out by the Chairman.

103. Mr. el-KHOURY accepted the proposed text as a principle. It represented a first step in the direction of the development of international law in the matter of the protection of marine resources against all forms of unrestrained exploitation. It should be inserted in the report.

⁶ See A/CN.4/17, para. 92 (printed text), p. 30 (mimeographed English text).

104. Mr. SPIROPOULOS felt that there was nothing new in the proposal, but that it was very skilfully formulated. He questioned the desirability of retaining the word "limited", which was too vague.

105. The CHAIRMAN thought it necessary to avoid giving the impression that the area might be unlimited. The word "limited" should therefore be maintained. He asked Mr. Hudson whether he wished to go further and specify a limit.

106. Mr. HUDSON said he had not wished to establish a precise rule; his proposal was intended to serve as a guide to the Rapporteur in his consideration of the problem.

107. Mr. KERNO (Assistant Secretary-General) felt that certain members of the Commission had misgivings with regard to fisheries and fish protection, and felt that the latter question was quite unrelated to that of the contiguous zone.

108. Mr. FRANÇOIS thought that was true, particularly so far as President Truman's proclamation was concerned. But there were other proclamations, such as, for example, that of the Government of Chile, in which the latter "confirms and proclaims its national sovereignty over the seas adjacent to its coasts whatever may be their depths, and within those limits necessary in order to reserve, protect, preserve and exploit the natural resources of whatever nature found on, within and below the said seas, placing within the control of the Government especially all fisheries and whaling activities with the object of preventing the exploitation of natural riches of this kind to the detriment of the inhabitants of Chile and to prevent the spoiling or destruction of the said riches to the detriment of the country and the American continent". That proclamation, he continued, went much further than that of President Truman and applied to a much wider area.

109. The CHAIRMAN said he thought it essential for the Commission to define its attitude in face of a proclamation of that kind.

110. Mr. CORDOVA thought that the Chilean proclamation related primarily to an extension of Chile's territorial waters since it claimed sovereignty over the seas it mentioned. It was therefore not a matter of a contiguous zone.

111. Mr. BRIERLY said Mr. Córdova was right. The Chilean proclamation represented a claim to extend the country's territorial waters to a very large area.

112. The CHAIRMAN thought that the Commission could not countenance such a claim.

113. Mr. CORDOVA asked Mr. François whether the proclamation by Chile actually claimed sovereignty over all the waters adjacent to its territory.

114. Mr. FRANÇOIS replied in the affirmative. Chile had, however, herself fixed the limit at a distance of 200 nautical miles from her shores. Further, Chile did not claim sovereignty for all purposes, but solely for the purpose of protecting natural riches so as to prevent their being spoiled or destroyed to the detriment of the country and the American continent. The Chilean proclamation related solely to that precise point.

115. Mr. HUDSON pointed out that the Chilean proclamation comprised several paragraphs. The first paragraph proclaimed the national sovereignty of Chile over all the continental shelf adjacent to the continental and island coasts of Chilean territory. The second proclaimed the sovereignty of Chile over the seas adjacent to its coasts for the purpose of preserving the natural resources found on, within or below the waters. The third established immediately the demarcation line of the protection zone which it fixed at 200 nautical miles from the coasts, with the reservation that it might be amplified or modified at a later date to conform with the progress of knowledge, the interests of Chile, etc. The fourth stated that the proclamation in no way disregarded the similar legitimate rights of other States and did not affect the rights of free navigation on the high seas. It did not therefore represent a mere proclamation of full rights of sovereignty.

116. Mr. CORDOVA thought that the Commission had been agreed to formulate a principle concerning the protection of fishing and fish. He asked the Rapporteur whether he thought it possible to provide for a principle for the protection of certain species of fish. Littoral countries were extremely interested in the protection and conservation of those species which represented a source of income and food for their peoples. He thought that the Rapporteur would be able to draft a text which would take into account, not only the protection of fish, but also the problem of the police rights which could and should be exercised by littoral States. Such a text might form the basis for future international regulations.

117. Mr. HUDSON thought that President Truman's proclamation represented a better solution than that adopted by Chile, since it provided for the regulation of fisheries on the basis of agreements concluded between the countries engaging in fishing. Of course, if a country was unwilling to conclude such an agreement, nothing could be done about it.

118. Mr. FRANÇOIS thought the difficulty in practice would be precisely that of obtaining the consent of all the countries engaged in the fishing operations. That solution was therefore not a very effective one.

119. The CHAIRMAN thought the Commission might provide that, in the contiguous zone, the protection of fisheries could be carried out by the littoral States but that the question of the right of policing fishing on the high seas should be settled by means of agreements concluded between the States concerned.

120. Mr. FRANÇOIS pointed out that The Hague Conference of 1930 had not even discussed the establishment of a contiguous zone within which fishing rights would be regulated by the littoral State, because its Preparatory Committee had concluded that it would not be possible to reach agreement on the subject.

121. Mr. CORDOVA said that the Food and Agriculture Organization was also concerned with the question of fish protection. He suggested that the Rapporteur might study the Food and Agriculture Organization's activities in that field, and give the Commission his views on the subject next year. His personal view was

that, at the present stage, it would be premature to decide whether or no the littoral State had any rights in the matter.

122. Mr. FRANÇOIS said that he would try to do as Mr. Córdova suggested. It would, however, be very useful for him to have the views of other members of the Commission, so as to ensure that next year he did not submit a proposal on which the Commission could not agree, as had happened in 1930 at The Hague.

123. Mr. CÓRDOVA replied that the 1930 Conference had been a conference of government delegates who had been obliged to act in accordance with their instructions. Their failure to reach agreement did not mean that the Commission, which was composed of non-governmental experts, would not succeed in so doing.

124. The CHAIRMAN thought provision might be made for the establishment of two zones. In the first, the right of police and control would be exercised by the littoral State. In the second and wider zone, the exercise of control would be regulated by international agreements.

125. Mr. FRANÇOIS was afraid that making provision for the establishment of a second zone of that kind would not lead to the desired results. It would be precisely the countries which fished indiscriminately that would be unwilling to conclude agreements. In his view, it would be advisable to delimit a contiguous zone in which the littoral States would have certain rights under certain conditions and subject to certain reservations.

126. The CHAIRMAN asked Mr. François whether it was an extensive zone that he had in mind.

127. Mr. FRANÇOIS replied in the affirmative. He thought that such a zone might be delimited by an international body of experts.

128. Mr. KERNO (Assistant Secretary-General) thought that the Commission should be clear as to its intentions. It had decided that a littoral State could exercise fiscal, customs and sanitary control in a limited area of the high seas up to a certain distance outside its territorial waters. In the case of fish conservation, protection could not be limited to a certain zone. Mr. Córdova had asked the Commission to enunciate the principle that fish should be protected and conserved and to say how and to what extent such conservation could be ensured. Such conservation would probably be best ensured by the littoral State adjacent to the areas in question. He thought that to be the sense of the Commission's discussion, and those were the questions it wished to submit to the Rapporteur.

129. The CHAIRMAN agreed with Mr. Kerno. He added that, in his view, the zone should be limited.

130. Mr. CÓRDOVA thought it essential to lay down a limit but felt that the Commission was not in a position to fix one. What were the waters in which certain fish were found? Where were the fish banks? Those waters were usually near the coasts, at places where the sea was not too deep. But the Commission was totally uninformed on such subjects. It should there-

fore wait until the Rapporteur supplied it with information so that it could reach a decision with full knowledge of the facts.

131. Mr. el-KHOURY noted that Mr. Hudson's proposal related solely to fiscal, customs and sanitary control, which could be exercised on the high seas within a certain distance of the territorial waters of a State. In that respect, two possibilities needed to be considered: either the distance was uniform for all States and all coasts; or the distance could vary from case to case. Coasts were not always the same, nor was the depth of the waters off the coasts. In present circumstances he thought it impossible for the Commission to continue the discussion. It should wait until the Rapporteur supplied it with fresh information concerning the limits laid down by the various States.

131 a. As for the control of fishing, the Commission should not make a distinction between the contiguous zone and the high seas. The question of fishing was entirely separate from that of fiscal, customs and sanitary control. He thought that, for the time being, the question of fish protection should be left in abeyance, owing to the absence of precise data on which the Commission might base its conclusions.

131 b. Asked by Mr. François whether he had declared in favour of freedom of fishing, and against measures of fish conservation and protection, he replied that he had merely meant that in his view no distinction should be drawn between fishing in the contiguous zone and fishing on the high seas.

132. Mr. FRANÇOIS said that fish protection measures were particularly necessary near the coasts. The waters near the coasts contained the young fish, and that was why protection was required. At the present time, there were no rules of international law on the subject.

133. Mr. HUDSON mentioned the Convention of 8 February 1949 establishing an International North-West Atlantic Fisheries Commission.

134. Mr. FRANÇOIS observed that in the case of that convention, protective measures would only be compulsory for the contracting States.

135. Mr. CÓRDOVA pointed out that it was usual for States to protect their commercial interests, but fish protection and conservation both in the coastal areas and on the high seas were of the greatest importance to humanity. Such measures had been necessary for the protection of seals and whales. Without such regulations, those species would have been doomed to early extinction. He thought it desirable to grant littoral States special rights for the protection of fish near the coasts, having regard to their particular interests, but the problem must also be studied from the general standpoint of the interests of humanity.

136. Mr. SPIROPOULOS thought the Commission should be careful not to confuse its two tasks—namely, the codification of international law and the progressive development of international law. The Commission's main task was codification, which must always relate to the law in force. It was, of course, sometimes possible to fill in gaps in existing law and even to pro-

mote the progress of law. As for the protection of humanity's major interests—that, he thought, could not be ensured by international codification. The Commission was dealing with the protection of mariner sources and particularly with the conservation of fish. In his view, such protection was a matter to be dealt with under the administrative law of the various countries concerned, and the Commission had no power to carry out codification work in that field. He did not dispute the need for protecting certain of humanity's interests, but if the Commission tried to ensure such protection, its reports and draft codes would be encumbered with a plethora of detailed provisions, with the sole result that they would become unacceptable for governments precisely because of the accumulation of rules they contained.

136 a. The Commission was at that moment discussing the proclamations of President Truman and the Government of Chile. Could it accept President Truman's suggestions? Was it prepared to agree to the limit of 200 nautical miles claimed by Chile for its protection zone? The Commission, he thought, could not accept such rules as standards of international law for the protection of particular interests.

137. Mr. HSU reminded Mr. Spiropoulos of the terms of article 23 of the Commission's Statute. He asked why that article had been included if the purpose had not been to enable the Commission to fill in gaps in existing international law, to develop international law and to see whether and to what extent such development was acceptable. Article 23 had been given its present wording precisely because the Commission had a task of a very varied nature. It even enjoyed the right to recommend the General Assembly to convoke a conference to conclude a convention based on texts drawn up by the Commission. He therefore did not share the fears of Mr. Spiropoulos. There was no danger in the Commission's wishing to take action in another field. The Commission's task was to examine the subject and try to reach the best possible results.

138. Mr. SANDSTRÖM agreed with Mr. Spiropoulos' view that a particular code should not be a conglomeration of miscellaneous ingredients and particularly of administrative details. In the present instance, it was not the Commission's task to lay down protective measures, which were a matter for administrative decision, but to decide whether there was a right to adopt such measures and how far that right extended.

139. Mr. KERNO (Assistant Secretary-General) pointed out that, in pursuing its work of codification, the Commission should make a distinction between (1) zones for the protection of marine resources, and (2) zones of fiscal, customs and sanitary control. A large number of countries had found themselves insufficiently protected by territorial waters in fiscal, statute customs and sanitary matters and there was therefore "extensive State practice" in the matter of the contiguous zone.

139 a. Thus, in adopting Mr. Hudson's proposal, the Commission had carried out a task of codification proper. In the case of fish protection, the situation was

different, and the Commission was faced instead with a question of progressive development. The Rapporteur could therefore examine the question and make suggestions the following year. One point to be established was whether littoral States should be given a kind of "trustee" role which they would perform in the general interest. It should be added that, in principle, the need for the protection of marine resources was felt everywhere, even outside a "contiguous" zone.

140. The CHAIRMAN shared Mr. Spiropoulos' view that the Commission should not go into too much detail. But in the present instance the questions before them were far from matters of detail. The Commission was enquiring into the extent of the competence of States in the matter of fishery control. The Commission was not exceeding its functions in seeking to establish and delimit the right of control which countries could exercise in the matter of fish protection and conservation. That was a point of prime importance on which it should define its attitude.

141. Mr. FRANÇOIS thought that the discussion they had just had would provide him with sufficient data from which to draw up his report for the following year.

142. The CHAIRMAN concluded by saying that at its next session the Commission would attempt, on the basis of Mr. François' further report, to discover a formula defining the rules concerning the competence of littoral States in the matter of fish protection and conservation in the waters of the contiguous zone and the high seas, on the understanding that provision would have to be made for a limit within which such right of protection could be exercised.

The CHAIRMAN declared the general discussion on Mr. François' report closed, and agreed that the Commission should take up consideration of his report at the next meeting.

The meeting rose at 5.55 p.m.

70th MEETING

Tuesday, 18 July 1950, at 10 a.m.

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Chairman: Mr. A. E. F. SANDSTRÖM.

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-