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Summary record of the 132nd meeting

Topic:
Other topics

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94. Mr. HUDSON proposed the following text.

“Where the same continental shelf is contiguous to the territories of two or more adjacent States, boundaries may be necessary in the area of the continental shelf. Such boundaries should be fixed by agreement among the States concerned. It is not feasible to lay down any general rule which States should follow; and it is not unlikely that difficulties may arise. For example, no boundary may have been fixed between the respective territorial waters of the interested States, and no general rule exists for such boundaries. It is proposed, therefore, that if agreement cannot be reached and a prompt solution is needed, the interested States should be under an obligation to submit to arbitration *ex aequo et bono*.”

The last sentence in paragraph 31 of Mr. François' draft could then follow on.

95. Mr. FRANÇOIS accepted that drafting.

96. Mr. YEPES wondered whether the text ruled out other means of peaceful settlement.

97. The CHAIRMAN explained that the States concerned could always resort to other means. The text applied only in the absence of agreement.

Mr. Hudson's text was adopted.

Paragraph 32 (annex to the “Report”, Part I, art. 7, com., para. 2)

98. The CHAIRMAN and Mr. SCALLE both wondered whether the paragraph was necessary.

99. Mr. HUDSON said that the demarcation line between continental shelves might generally coincide with a certain median line. At times, however, the latter might be difficult to establish, as had been pointed out by Mr. R. Young in the case of the Persian Gulf.²

100. He thought it might perhaps be better to say in the second sentence:

“However, in such cases the configuration of the coast might give rise to difficulties in drawing any median line, and such difficulties should be referred to arbitration.”

101. Mr. CORDOVA would prefer no mention to be made of the median line.

102. Mr. FRANÇOIS thought that it was none the less desirable to lay down as a general rule that the boundary would be the median line.

103. Mr. SCALLE objected that the Commission had previously said it was impossible to lay down any general rule.

104. Mr. HUDSON explained that, on that occasion, it had been neighbouring States which were involved. In the case before them, however, the States concerned were those separated by an arm of the sea, such as Iran and Saudi Arabia.

105. Mr. CORDOVA pointed out that two States situated on different sides of an arm of the sea might have continental shelves of very different extent.

106. Mr. FRANÇOIS said that the hypothetical case envisaged by Mr. Córdova did not correspond to that covered by article 7. The article envisaged the existence of a single continental shelf such as that between France and the United Kingdom. Article 7 was appropriate both for States on opposite sides of a stretch of sea and for neighbouring States. Paragraph 31 applied to the latter and paragraph 32 to the former. Territorial waters raised no problem except between neighbouring States. In the case of States on opposite sides of a stretch of sea, there were no difficulties.

107. Mr. CORDOVA was in favour of leaving the whole question to arbitration and not introducing the idea of the median line.

108. Mr. EL KHOURY, supported by Mr. CORDOVA, pointed out that, since the geographical distribution of the continental shelf was uneven, any division by means of a median line was an arbitrary one.

109. Mr. HUDSON did not wish paragraph 32 to be separated from paragraph 31. He referred to the opinion of Mr. S. F. Boggs, that the principle of the median line should be applied in such a case.³ He recalled the difficulties which arose in the Persian Gulf. It was necessary to decide from what territory the median line was to be measured. When there were islands, account must be taken of their ownership, but it was also possible to trace a median line which left islands out of account.⁴ He would vote in favour of retaining the principle of the median line.

110. Having heard that Mr. Kerno (Assistant Secretary-General) had to leave Geneva to lecture to the Academy of International Law at the Hague, he would like to pay tribute to the very valuable assistance given by Mr. Kerno during the whole of that session.

111. The CHAIRMAN and the other members of the Commission associated themselves with Mr. Hudson's tribute.

The meeting rose at 1.0 p.m.

132nd MEETING

Wednesday, 25 July 1951, at 9.45 a.m.

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² “Legal status of submarine areas beneath high seas”, *American Journal of International Law*, vol. 45 (1951) p. 236.

³ “Delimitation of seaward areas”, *ibid.*, pp. 256-258.

⁴ *Ibid.*, p. 261.

Chairman: Mr. James L. BRIERLY
Rapporteur: Mr. Roberto CORDOVA

Present:

Members: Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jesús Maria YEPES.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Examination of the draft report of the Commission covering its third session (continued)

CHAPTER VII. REGIME OF THE HIGH SEAS (A/CN.4/L.27) (continued)

Continental shelf

Article 7 (continued)

Paragraph 32 (annex to the "Report", Part I, art. 7, com., para. 2) (continued)

1. The CHAIRMAN recalled that, when the previous meeting had risen, the Commission had been considering the question of the median line between the continental shelves of two States on opposite shores. He thought that the Commission might adopt the following text:

"Where the territories of two States are separated by an arm of the sea, the boundary of their continental shelves would generally coincide with some median line between the two coasts. However, in such cases the configuration of the coast might give rise to difficulties in drawing any median line, and such difficulties should be referred to arbitration."

The above text was adopted.

Paragraph 33

Paragraph 33 was deleted.

Resources of the sea

Article 1

2. The CHAIRMAN observed that some specific number of miles should be mentioned in article 1.

3. After some discussion, in which Mr. HUDSON, Mr. FRANÇOIS and Mr. YEPES took part — the first-named favouring a short distance and the last-named the distance of 200 miles already stipulated in proclamations by certain Latin American States — Mr. EL KHOURY suggested a distance of 100 miles.

It was decided to substitute "100" for "X" (miles) in the fourth sentence of article 1.

Article 2

4. Mr. LIANG (Secretary to the Commission) drew attention to what he considered a contradiction between the beginning of the text of article 2 and article 1, doubtless due to the fact that the texts had been adopted independently. The statement at the beginning of

article 2 that the "FAO should confer competence on a permanent body..." was not mentioned in the comment in paragraph 34. If it was a recommendation to FAO, it should perhaps be worded differently. Furthermore, the desirability of imposing a task on FAO without previous consultation was questionable. He would prefer the following wording:

"A permanent body should be established to conduct continuous investigations on an international basis..."

The comment could state that the Commission regarded FAO as the organization most competent to establish such a body.

5. Mr. HUDSON supported by the CHAIRMAN and Mr. HSU fully agreed with Mr. Liang. Article 2, as it stood, was not an article concerning the resources of the sea, but a hope expressed by the Commission that someone would do something; it should preferably be included in the comment. He did not think that FAO should be told what to do.

6. Mr. FRANÇOIS pointed out that at the 119th meeting he had not voted for the present article 2, but for another and more far-reaching text. Those members who had voted for article 2 had considered that it formed an integral whole with article 1. If the principle of compulsory arbitration were dropped from the article, its supporters were faced with quite a different situation. It had even been the Commission's intention to set up a body whose decisions would be binding.

7. Mr. HUDSON thought that the aim was, not to set a standard, but to express a vague aspiration. The Commission could not define the powers of a body which it was not creating. He would repeat that the whole of article 2 should be transferred to the comment.

8. Mr. FRANÇOIS said that Mr. Hudson's proposal would represent a substantive amendment to the draft.

9. Mr. HUDSON suggested the deletion of the words "and for the prevention of water pollution".

10. Mr. FRANÇOIS said that the question of water pollution was important, not only for the protection of fish, but also for that of sea-birds, for the prevention of fire in harbours etc.

11. Mr. HSU, holding that the question was one of drafting, submitted the following amended text:

"A permanent body should be set up by such competent international organization as the FAO to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them, for the information of the public. It shall also draw up regulations for conserving marine resources and the prevention of water pollution for use by the States referred to in article 1. Pending adoption of regulations by their own accord, the said States shall provisionally enforce the regulations drawn up by the permanent body."

12. The CHAIRMAN thought that article 2 might begin with the words: "Competence should be conferred on a permanent body to conduct...", while Mr. CORDOVA proposed: "A permanent international body should be established..."

13. Mr. HUDSON requested Mr. Hsu to clarify the meaning of the last sentence in his proposal.

14. Mr. HSU explained that the proposed body would have the right to prepare regulations which would be applied pending inter-State agreement.

15. Mr. CORDOVA asked whether regulations prepared by an international body could be changed as a result of an agreement between States whose nationals engaged in fishing. He thought it would be preferable to state that regulations were a matter for the States concerned, but that if the latter could not reach agreement the permanent body would take action.

16. Mr. HUDSON considered that the text submitted by Mr. Hsu contradicted Mr. François' draft.

17. Mr. EL KHOURY pointed out that the Commission had adopted article 2 and he saw no reason for its reversing its decision.

18. Mr. FRANÇOIS said that he would also prefer, on the same grounds, that no substantial amendments should be made to the text. He requested Mr. Hsu not to press his proposal.

19. Mr. HSU withdrew his proposal.

20. The CHAIRMAN asked what decision the Commission intended to take with regard to the second sentence in article 2.

21. Mr. CORDOVA thought that, if the second sentence were retained, the proposed permanent body would be competent to deal with the cases referred to in article 1. But since the Commission apparently did not intend to retain the sentence, the gist of it should at least be given in the comment.

22. Mr. FRANÇOIS thought that the sentence should be retained.

23. Mr. LIANG (Secretary to the Commission) asked whether the sentence implied that arbitration should be resorted to in the event of a dispute between two States. He suggested that the sentence begin with the phrase "In case of disagreement such body should occupy itself . . .".

24. The CHAIRMAN, supported by Mr. SCALLE and Mr. LIANG (Secretary to the Commission) thought that the sentence referred, not to arbitration, but to the right to lay down regulations.

25. Mr. CORDOVA disagreed, since where States whose nationals fished in certain areas could not agree as to the measures to be adopted, there were no regulations for the conservation of marine fauna and the proposed body could take compulsory measures in the case of fisheries.

26. Mr. SANDSTRÖM understood that in the event of dispute between States the proposed body would be competent to regulate. In a nutshell, its competence would cease when States reached agreement.

27. Mr. CORDOVA thought that the sentence should begin: "Such body should not regulate the case referred to in article 1 except in case of disaccord . . .".

28. The CHAIRMAN explained that the regulations established by such a body applied only to the cases

referred to in article 1, and then only if the States failed to reach agreement.

29. Mr. SANDSTRÖM thought that it was preferable to make no reference to arbitration at that point, but to confirm the right of the body to establish quite independent regulations.

30. The CHAIRMAN read out the following text:

"Such regulations, however, should not apply in the cases referred to in article 1 unless the States whose nationals are engaged in fishing in any particular area are unable to agree among themselves."

31. Mr. LIANG (Secretary to the Commission) pointed out that the cases mentioned in article 1 were stated in general terms. He did not think that there were any measures mentioned in article 1 which were not conservatory measures. Since article 2 concerned the same measures, it must refer to article 1.

32. Mr. HUDSON proposed the following text:

"Competence should be conferred on a permanent international body to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them, and to make regulations for conservatory measures to be applied by the States whose nationals are engaged in fishing in any area of the high seas, and for the prevention of water pollution, unless such States reach agreement otherwise.

However he thought it preferable that water pollution should be the subject of a separate article. Mr. François' intentions were doubtless excellent, but orderly work was essential.

33. The CHAIRMAN suggested the following text:

"Competence should be conferred on a permanent international body to conduct continuous investigations of the world's fisheries and the methods employed in exploiting them. Such body should also be empowered to make regulations for conservatory measures to be applied by the States whose nationals are engaged in fishing in any particular area, where the States concerned are unable to agree among themselves."

34. Mr. FRANÇOIS regretted the elimination of the question of water pollution from the article since it was one which the States claiming control of the waters overlying the continental shelf had had in mind. He saw no reason for eliminating it.

35. Mr. HUDSON explained that the Economic and Social Council had recently transmitted a questionnaire on water pollution to governments. He was doubtful as to the advisability of stating that the proposed body should deal with that question separately. He asked whether the Secretariat had any information concerning the action taken by the Economic and Social Council.

36. Mr. LIANG (Secretary to the Commission) thought that no statement was possible so long as the replies to the questionnaire had not been examined. The problem could be solved by stating in the commentary that the Economic and Social Council was dealing with the question of water pollution.

37. Mr. AMADO asked whether it was really impossible to include a short article on the question.

38. Mr. HUDSON said that, although he would agree to such an article, it would be difficult to word. The conference held at Washington in 1926, like the efforts of the League of Nations, had proved fruitless. Moreover, it was doubtful whether the same body should deal with both fisheries and water pollution. In his view, that was impossible.

39. Mr. FRANÇOIS agreed, but added that the working of the subsoil could pollute waters.

40. Mr. HUDSON knew of no case in point, either in the Gulf of Maracaibo or in the Gulf of Mexico. It could only happen if, for example, there was a leak in an oil well at sea.

41. Mr. FRANÇOIS thought that it would nevertheless be wise to consider such a possibility.

42. Mr. LIANG (Secretary to the Commission) suggested that it might be considered when the Commission reviewed the draft in the following year. The Economic and Social Council might have reached a conclusion by that time.

43. Mr. FRANÇOIS agreed and said that he would merely mention the question in the comment.

44. The CHAIRMAN, referring to the difficulty of indicating the competent body to deal with the question, said that a body solely concerned with fisheries might clearly not be the appropriate body. He proposed that it be stated in the commentary that the Commission had taken note that the Economic and Social Council had taken up that question, which affected fisheries.

It was so agreed.

Article 2, as amended by the Chairman's proposal (see paragraph 33 above), was adopted.

Paragraph 34 (annex to the "Report", Part II, art. 2, com., para. 1)

45. Mr. FRANÇOIS drew attention to an inaccuracy in the second half of the penultimate sentence of paragraph 34 and proposed the deletion of the words: "it is one of the fourteen items ... selected for codification".

It was so agreed.

46. Mr. HUDSON proposed the deletion of paragraph 34 and the substitution of the following text:

"The conservation of the resources of the sea has been connected with the claims to the continental shelf advanced by some States in recent years, but the two subjects seem to be quite distinct, and for this reason they have been separately dealt with."

47. The CHAIRMAN noted that the redraft proposed by Mr. Hudson was much shorter and did not alter the meaning of the paragraph concerned.

48. Mr. FRANÇOIS had no objection to the proposed amendment.

49. Mr. SANDSTRÖM observed that the text proposed by Mr. Hudson omitted the idea contained in the following sentence from the text prepared by Mr. François: "The Commission fully recognizes that the conservation of the resources of the sea is a matter of capital importance which requires an early solution; ..."

50. Mr. HUDSON thought that there was no point in judging the importance of the question.

Mr. Hudson's proposal was adopted.

Paragraphs 35 and 36 (annex to the "Report", Part II, art. 2, com., para. 2)

51. Mr. HUDSON proposed the following text to combine paragraphs 35 and 36:

"The protection of marine fauna against extermination is needed in the interest of conserving the world's supply of food. The States whose nationals are engaged in fishing in a particular area have a special responsibility, therefore, and they should reach agreement on the regulations to be applied in that area. Where only nationals of a single State are thus engaged in an area, the responsibility rests on that State. Yet the exercise of power to ordain conservatory measures should not exclude participation in fishing in any area by new-comers. Where a fishing area is close to a coast, so that any regulation might affect the fishing in the territorial waters of a coastal State, that State should be entitled, even though its nationals are not engaged in fishing in the area, to participate in making the regulations to be applied."

52. Mr. AMADO asked why territorial waters were mentioned.

53. Mr. HUDSON explained that it was because the regulation of fishing in the areas in question might affect fishing in territorial waters.

54. Though he wished to point out that the text to which Mr. Hudson proposed the above amendment had been adopted by a sub-committee of which Mr. Hudson had been a member, Mr. FRANÇOIS, supported by Mr. EL KHOURY and Mr. YEPES, said that he was satisfied with Mr. Hudson's new text.

It was decided to substitute for paragraphs 35 and 36 of the draft the new text proposed by Mr. Hudson.¹

Paragraph 37 (annex to the "Report", Part II, art. 2, com., para. 3)

55. Mr. HUDSON thought that the introductory phrase "The Commission is quite aware that ..." and also the last sentence should be deleted. The paragraph was consistent with the amended text of article 2, and he saw no objection to the reference to the question of water pollution which it contained.

It was decided to delete the introductory phrase "The Commission is quite aware that ...".

56. After some discussion, in which Mr. HUDSON, Mr. CORDOVA and the CHAIRMAN took part, it was decided to include in the draft a short paragraph on the prevention of water pollution.^{1a}

57. Mr. LIANG (Secretary to the Commission) pointed out that the Commission should consider whether the international body mentioned in paragraph 37 was, in fact, the body which would be competent to deal with

¹ See summary record of the 134th meeting, para. 57.

^{1a} See summary record of the 133rd meeting, paras. 13-14.

the question. It was stated in the memorandum presented by the Secretariat on questions concerning the regime of the high seas which were under study by other organs of the United Nations or by specialized agencies, of 23 June 1950 (A/CN.4/30), that the Transport and Communications Commission of the Economic and Social Council had noted that "the Inter-Governmental Maritime Consultative Organization (IMCO) . . . would be the competent agency to handle this subject" and had proposed the adoption by the Economic and Social Council of a resolution instructing the Secretary-General to transmit a questionnaire to the States Members of the United Nations. No information was so far available as to the action taken that year by the Economic and Social Council on the question of water pollution. In addition, the attention of the Commission should be drawn to the functions of the Food and Agriculture Organization of the United Nations in that field, as laid down in its Constitution. Under article I, paragraph 2 (c) of the latter that organization was responsible for "the conservation of natural resources and the adoption of improved methods of agricultural production", while article I, paragraph 1, stated that "the term 'agriculture' and its derivatives include fisheries, marine products . . .".

58. Mr. AMADO thought that the Commission might recommend that FAO should continue its study of the question.

59. The CHAIRMAN and Mr. HUDSON proposed the following text:

"This matter would seem to lie within the general competence of FAO."

60. Mr. FRANÇOIS accepted the above text.

The above text was adopted in substitution for the last sentence of paragraph 37.

Paragraph 37 was adopted as amended.

Paragraph 38 (annex to the "Report", Part II, art. 2, com., para. 5)

61. Mr. HUDSON considered that the feelings of the Commission should not be reported to the General Assembly. In his view, paragraph 38 was incompatible with article 2. It might very well be included in the general report, but was out of place in the comment on that article.

62. Mr. FRANÇOIS observed that, whereas the general report was not transmitted to governments, the present draft must be submitted to them. The comment recorded the view that the coastal State should be granted the right to frame regulations, which was much further than the draft article went. He was strongly in favour of leaving that text in the comment.

63. Mr. HUDSON thought that, if the text was retained, the comment would cease to be a comment. If he were a delegate to the General Assembly reading such a text, he would assume that the Commission did not believe what it stated in article 1.

64. The CHAIRMAN, however, thought that the General Assembly would note that the Commission had

studied that possibility without actually sponsoring it — the very words used at the end of the paragraph.

65. Mr. CORDOVA pointed out that the text gave a true account of the proceedings.

66. Mr. FRANÇOIS was under the impression that the Commission had decided to insert the text in the report. Six members of the Commission had agreed, as a compromise, to accept the text of the article, provided that the other proposal was included in the report.

It was decided, by 6 votes to 2, to retain paragraph 38.

67. Mr. EL KHOURY said that he would prefer the introductory phrase to read: "Some members of the Commission were in favour of granting . . ."

68. Mr. LIANG (Secretary to the Commission) was very doubtful whether the result of the vote should be given in the paragraph, as it was in the last sentence.

69. Mr. HUDSON thought that the last sentence only referred to the breadth of the contiguous zone, but Mr. FRANÇOIS explained that it referred to the whole paragraph.

70. Mr. LIANG (Secretary to the Commission) was of opinion that the paragraph should first state the problem and then mention that the Commission had discussed it, adding some reference or other to the fact that only some members had favoured the proposal. The paragraph might begin with the sentence:

"The Commission discussed the question concerning the right to frame . . . pending the establishment of the body referred to in article 2."

71. Mr. HUDSON thought that the statement might read:

"It was proposed that pending the establishment of the body referred to in the previous paragraph a coastal State should have power to enact regulations to be applied in a zone contiguous to its own territorial waters."

72. The CHAIRMAN proposed the substitution of the following text for the first sentence in paragraph 38:

"The Commission discussed a proposal that a coastal State should be empowered to lay down conservatory regulations to be applied in a zone contiguous to its territorial waters, pending the establishment of the body referred to in the previous paragraph."

The Chairman's text was adopted.

73. The CHAIRMAN said that the Commission had to decide whether to state in the comment that there had been a tied vote or merely to mention that the proposal concerned had not been adopted.

74. Mr. FRANÇOIS thought that the last sentence of the paragraph should be retained.

It was decided by 6 votes to retain the last sentence of paragraph 38.

Paragraph 38 was adopted as amended.

Sedentary fisheries

75. Mr. HUDSON thought it might be useful to insert the general heading "Related Questions" before the individual headings which followed the study of the

continental shelf. It might also be desirable to adopt one system of numbering for all the articles.

It was so decided.

Paragraph 39 (annex to the "Report", Part II, art. 3, com., para. 1)

76. After reading out the text of paragraph 39, the CHAIRMAN pointed out that in line 5, the words "of either" should be transposed and in line 6, the word "of" should be inserted after the word "or".

77. Mr. HUDSON proposed the substitution of the following text for paragraph 39:

"This article deals with fisheries regarded as sedentary due to the species of fish caught and the nature of the equipment used. It is concerned only with such fisheries located upon the high seas.

"The regulation of sedentary fisheries presents a problem which is quite distinct from that of the exploitation of the natural resources of the continental shelf, and for this reason it has been dealt with separately."

78. Mr. FRANÇOIS pointed out that the text proposed by Mr. Hudson combined the ideas contained in paragraphs 39 and 40. After some discussion, in which Mr. YEPES and Mr. AMADO took part, Mr. HUDSON agreed with Mr. FRANÇOIS that "mineral resources" would be more accurate than "natural resources".

After some further discussion *it was decided to retain the text of paragraph 39 as contained in the draft.*

Paragraph 40 (annex to the "Report", Part II, art. 3, com., para. 2)

79. Mr. HUDSON thought that paragraph 40 should be deleted, but agreed, in reply to an observation by Mr. FRANÇOIS, that it might be retained if amended as follows:

"The question of sedentary fisheries can give rise to legal difficulties only when such fisheries are situated beyond the outside limit of territorial waters."

Paragraph 40 was adopted as amended.

Paragraph 41 (annex to the "Report", Part II, art. 3, com., para. 3)

80. Mr. HUDSON proposed the substitution of the following text for paragraph 41:

"Banks where there are sedentary fisheries, situated in areas contiguous to but seaward of territorial waters, have been regarded by some coastal States as under their occupation and as forming part of their territory. Yet this has rarely given rise to complications."

81. Mr. CORDOVA observed that sedentary fisheries did not form part of the territory of the coastal State.

82. Mr. HUDSON emphasized the moderate tone of the words which he had used. His text concerned, not sedentary fisheries, but the banks on which they were established and stated that only "some" coastal States regarded them as forming part of their territory.

83. Mr. FRANÇOIS, observing that Mr. Hudson had deliberately refrained from using the word "property"

in his proposal, said that the Government of the United Kingdom had used that term in defining the rights which it claimed over the banks in question. In support of this statement he read out the following passage from the reply by the Government of the United Kingdom to a questionnaire of the Preparatory Committee of the Conference for the Codification of International Law of 1930:

"There are certain banks outside the three-mile limit off the coasts of various British dependencies on which sedentary fisheries of oysters, pearl oysters, chanks or bêtes-de-mer on the sea bottom are practised, and which have by long usage come to be regarded as the subject of occupation and property."²

84. Mr. HUDSON observed that such a property claim was a survival of the theories of Vattel.

85. Mr. AMADO said that he favoured the text as contained in the draft, which he considered unobjectionable.

86. After some discussion in which, among others, the CHAIRMAN and Mr. CORDOVA took part, the text proposed by Mr. Hudson was adopted.

Paragraph 42 (annex to the "Report", Part II, art. 3, com., para. 3)

87. In reading out the text of paragraph 42 the CHAIRMAN observed that the word "private", in the first sentence should be deleted.

88. Mr. HUDSON proposed the deletion of the last sentence, which he regarded as valueless. So far as concerned oyster fisheries, special rights might be justified in the case of edible oysters, but not in that of pearl oysters.

89. The CHAIRMAN said that, in his view, such special rights should not be based on a special situation. He favoured the "occupation" theory.

90. After some discussion *it was decided* to insert a full stop after the word "restricted" in the third sentence and to delete the remainder of the sentence. The following amendments of form were *approved*: the substitution of the words "reference to" for the words "definition of", in the first sentence; of the word "special" for the word "peculiar", and of the word "areas" for the word "territories", in the second sentence; and the deletion of the word "special", in the third sentence.

Paragraph 42 was adopted as amended.

Paragraph 43 (annex to the "Report", Part II, art. 3, com., para. 4)

91. Mr. HUDSON proposed the deletion of the first sentence of paragraph 43.

It was decided by 6 votes to retain the first sentence of paragraph 43.

92. Mr. HUDSON proposed the deletion of the word "all" before "purposes", in line 3, and of the phrase

² Publications of the League of Nations. Bases of Discussion drawn up for the Conference for the Codification of International Law, of 1930. Vol. II, p. 162.

“at the point”, in line 4, which had no equivalent in the French text.

It was so agreed.

Paragraph 43 was adopted as amended.

Paragraph 44

93. Mr. HUDSON, supported by Mr. FRANÇOIS, proposed the deletion of paragraph 44.

It was decided to delete paragraph 44.

94. The CHAIRMAN said that he wished to point out, on completion of the reading of the section of the report devoted to sedentary fisheries, that he was far from accepting the premises on which the relevant rules formulated by the Commission were based. In his view, sedentary fisheries became a subject of occupation and ceased to form, legally speaking, a part of the high seas.

Contiguous zones

Paragraph 45 (annex to the “Report”, Part II, art. 4, com., para. 1)

95. On an observation by Mr. FRANÇOIS, the CHAIRMAN proposed the insertion of the phrase “for certain purposes” after the word “jurisdiction”.

96. On an observation from Mr. LIANG (Secretary to the Commission) the CHAIRMAN proposed the substitution for the final clause of the wording “without extending the seaward limits of those waters”.

97. Mr. HUDSON proposed the substitution for the phrase “a belt of sea situated beyond territorial waters” of the phrase “a belt of the high seas contiguous to their territorial waters”.

The above amendments were adopted.

98. Mr. HUDSON also proposed that the opening of the paragraph be reworded to read: “At the present time, international law...”.

99. The CHAIRMAN said that he preferred the original wording. The Commission should not affirm too dogmatically a principle which was not accepted by certain governments — for instance, the Government of the United Kingdom.

100. After some discussion, in which Mr. EL KHOURY, Mr. AMADO and Mr. LIANG (Secretary to the Commission) took part, *the rewording proposed by Mr. Hudson was accepted*, subject to the deletion of the words “At the present time”.

Paragraph 45 was adopted as amended.

Paragraph 46 (annex to the “Report”, Part II, art. 4, com., para. 2)

101. On the proposal of Mr. AMADO, *it was decided* to delete the words “A great” at the beginning of the paragraph.

102. Replying to an observation by Mr. HUDSON, Mr. FRANÇOIS explained that it was indeed the principle that had been adopted by many States, since there were States that had accepted control for fiscal and customs purposes by other States.

103. Mr. HUDSON proposed the deletion of the second

sentence of paragraph 46, beginning with the words “In the Commission’s view...”.

After some discussion, *it was decided to retain the second sentence of paragraph 46.*

104. On the proposal of Mr. FRANÇOIS, *it was decided* to substitute the words “may be” for the words “might still be some” in the second sentence.

105. On an observation by Mr. FRANÇOIS, *it was decided* to substitute the phrase “is in favour of fixing” for the phrase “feels that it would be reasonable to fix” in the third sentence.

106. On an observation by Mr. FRANÇOIS, the CHAIRMAN, supported by Mr. AMADO, proposed that the phrase “will prove insufficient” in the fourth sentence, be replaced by the phrase “is insufficient”.

107. Mr. SCELLE observed that the words “slight extension”, in the fifth sentence were open to a dangerous interpretation. They would enable the contiguous zone to be extended for considerable distances, for example, 80 or 90 miles.

108. The CHAIRMAN agreed with Mr. Scelle and proposed the deletion of the whole of the sentence, beginning “If so, the Commission would have no objection...”.

The Chairman’s two amendments were adopted.

109. Mr. EL KHOURY having proposed that the distances be stated in kilometres, Mr. HUDSON pointed out that nautical practice was to measure distances in miles.

Paragraph 46 was adopted as amended.

Paragraph 47 (annex to the “Report”, Part II, art. 4, com., para. 3)

110. Mr. HUDSON proposed that the sense of paragraph 47 should be conveyed affirmatively by substituting for the clause beginning “... the Commission sees no reason...” the words “... the Commission believes that, in view of the connexion between customs and sanitary regulations, the contiguous zone of 12 miles should be recognized for the purposes of sanitary control as well”.

111. After some further discussion in which Mr. FRANÇOIS and Mr. LIANG (Secretary to the Commission) took part, *the text proposed by Mr. Hudson was adopted.*

Paragraph 48 (annex to the “Report”, Part II, art. 4, com., para. 4)

112. A discussion took place as to whether the Commission should state in its report that it felt that there was no occasion to set up contiguous zones for security purposes.

113. Mr. FRANÇOIS pointed out that the Conference for the Codification of International Law, held at The Hague in 1930, had considered security purposes in connexion with contiguous zones. If the Commission deleted all reference to the question of security, its report would be incomplete.

114. Mr. HUDSON proposed that paragraph 48 begin with the following sentence:

"The proposed contiguous zones are strictly limited. They are not intended for purposes of security or of exclusive fishing rights."

115. Mr. AMADO, supported by Mr. CORDOVA, considered that security purposes should not be mentioned and requested a vote on the matter.

It was decided by 6 votes to 4 to retain the reference to security purposes.

The amendment proposed by Mr. Hudson was adopted.

116. Mr. HUDSON proposed the deletion of the word "Even", in the third sentence, and the substitution of the words "offered no prospect" for the words "did not suggest the prospect", in the third sentence.

117. The CHAIRMAN proposed the deletion of the word "appreciably" at the end of the paragraph.

118. Mr. FRANÇOIS accepted the above amendments.

Paragraph 48 was adopted as amended.

Paragraph 49

119. On the proposal of Mr. HUDSON, *it was decided to delete paragraph 49.*

Paragraph 50

120. On the proposal of Mr. FRANÇOIS, supported by Mr. AMADO, *it was decided to delete paragraph 50.*

Paragraph 51 (annex to the "Report", Part II, art. 4, com., para. 5)

121. Mr. HUDSON proposed that the first sentence of paragraph 51 be reworded as follows:

"The recognition of special rights to the coastal State in a zone contiguous to its territorial waters for customs, fiscal and sanitary purposes, will not affect the legal status of the air-space above such a zone."

It was so agreed.

122. The CHAIRMAN proposed the deletion from the second sentence of the words "Possibly" and "at present".

It was so agreed.

123. On an observation by Mr. HUDSON, Mr. LIANG (Secretary to the Commission) proposed the substitution for the words "rules on maritime law", in the last sentence, of the words "the regime of the high seas."

It was so agreed.

124. The CHAIRMAN said that, on the completion of the first reading of Chapter VII of the general report of the Commission, he had to express the Commission's warm thanks to Mr. François for his valuable assistance in preparing the special reports and the draft general report on the régime of the high seas. He paid tribute to the conciliatory spirit displayed by Mr. François during the reading of the draft, the final version of which he had had to produce in particularly difficult working conditions, and assured him of the Commission's whole-hearted gratitude.

125. Mr. SCILLE said that he wished to point out that he would not vote on the report concerning the regime of the high seas owing to the articles which it

contained concerning the continental shelf. The ground for his abstention, which must not be interpreted as a criticism of that chapter of the report, was that he was opposed to the continental shelf doctrine, which was contrary to the freedom of the seas.

The meeting rose at 1.20 p.m.

133rd MEETING

Thursday, 26 July 1951, at 9.45 a.m.

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Chairman: Mr. James L. BRIERLY

Rapporteur: Mr. Roberto CORDOVA

Present:

Members: Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCILLE, Mr. Jesús Maria YEPES.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Appointment of special rapporteurs

1. The CHAIRMAN reminded the Commission that it had still to appoint special rapporteurs "for the questions of nationality, including statelessness", and of the revision of the Commission's statute.

(a) *Appointment of a special rapporteur for the study of nationality, including statelessness*

2. Mr. SANDSTRÖM proposed Mr. Hudson as rapporteur for the question of nationality.

3. Mr. HUDSON observed that the projected study was mainly concerned with the elimination of the problem of statelessness. Although the Commission had decided to undertake a study of nationality as a whole, it was with questions connected with the elimination of statelessness that they were concerned at the moment.