



FIRST MEETING - WASHINGTON, D. C. - APRIL 2, 1951

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MINUTES OF THE
SECOND EXECUTIVE SESSION

TIME: Wednesday, April 4, 1951, 10:00 a.m.
PLACE: Louis Seize Room, Shoreham Hotel
CHAIRMAN: Dr. Hilary J. Deason (U.S.A.)

THE CHAIRMAN (DR. DEASON): If we now may proceed with the formal Executive Session this morning, the Chair recognizes the observer from FAO, Dr. Finn, who wishes to make a statement at this time.

DR. FINN (FAO): Thank you, Mr. Chairman, for giving me this opportunity of bringing the greetings and the good wishes of the Director General who charged me, at a convenient occasion, to bring you this message. He also asked me to set forth FAO's position with respect to this Commission. I felt that this might be an appropriate time to do so, because you are now in committee, working in committees, and it might be useful to know what the Director General's position is in this respect.

So, if I may, I would just like to follow my instructions and read these few items explaining the position of FAO:

"The concept of wise utilization and maintenance of the sustained yield of a fishery is part of the FAO objectives. Indeed, we have given expression to this in the formation of Regional Councils for Fisheries in certain parts of the world. Originally, it was our intention to seek the creation of such a Council for the Northwest Atlantic, but since certain member nations of FAO felt that the above objective might best be implemented by the establishment of another international body, namely the Northwest Atlantic Fisheries Commission, we have allocated the money which was to be used for a Northwest Atlantic Council to other parts of our work.

"If circumstances should, at any time, be conducive to bringing the Northwest Atlantic Fisheries Commission within the framework of FAO, under Article X, paragraph 2 of your Convention, FAO would welcome such a development and be prepared to undertake the responsibilities involved, as soon as the necessary financial resources become available, either out of FAO's regular budget or from contributions from the interested countries. Such a development would be in keeping with the repeated recommendations of the FAO Conference, that new technical organizations should not be created and that existing international agencies should be fully utilized to carry out the work for which they have been established.

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"Pending any such development, FAO would be happy to render to the Northwest Atlantic Fisheries Commission all active assistance and cooperation that is financially possible. Since financial restrictions have made it necessary for us to limit our programs, this cooperation must, of necessity, be limited to consultation and advice. It is felt that this might be valuable, particularly in the field of production statistics in which we have gained considerable experience.

"Should the cooperation sought involve the assigning of one or more workers more or less exclusively to the problems of the Commission, we would be pleased to undertake it, providing the Commission would bear the expense of securing the additional workers."

This is the sense of the message, and I felt that it might be useful for your committees who are considering ways and means of bringing into being the work of this Commission.

Thank you very much.

THE CHAIRMAN (DR. DEASON): Thank you very much, Dr. Finn. On behalf of the Commission, may I say the Commission appreciates the statement of the Director General of FAO, and it will be taken into consideration in the work of the committees, and later on, when we reach Item 22 of the Agenda, "Consideration of means for establishing and maintaining working arrangements with other public international organizations".

The Commissioner from Denmark desires to make a statement to the Commission. I recognize the Commissioner from Denmark, Mr. Dinesen.

MR. DINESEN (DENMARK): Mr. Chairman, I should like to make an announcement upon the question of Danish representation on the various panels which are to be formed. I need hardly point to the fact that, according to the Annex attached to the Final Act, Denmark indicated its desire to be represented in Panels 1, 2, and 3. Furthermore, from our side, we are fully aware that by notifying the Depository Government during the period between the signing of the Convention and the date of its entry into force, we might have been able to withdraw from any panel.

When the delegation, who acceded to the Convention on behalf of the Danish Government, returned from the Conference in February 1949, this problem was discussed, and it soon became evident to the members of the Danish Government, as well as to the Fishery Administration and the scientists within the fisheries research work, that, as far as Denmark is concerned, the greatest interest must be centered on Panel 1, and that our interests in Panel 2 and 3 are of secondary importance.

The question of ratification—by the Danish Government—of the Convention, was laid before Parliament after 1st October, 1950, thus after the entry into force of the Convention on July 3, 1950.

In Denmark—as in any other country governed on a parliamentary basis—the responsibility lies with the Minister, and in Denmark the Minister is not allowed to anticipate a Parliament decision by making a statement such as the one mentioned in the Annex, except on an ad referendum basis. In doing so, he would bind the Government and thereby put a pressure on Parliament as regards the ratification.

However, when the matter was discussed in Parliament, in First and Second Chamber, the Minister of Fisheries stated that, for the time being, Denmark would only maintain the claim for representation in Panel 1, and it is on this assumption that the ratification was decided in the Danish Parliament.

Even if the notification of Denmark's withdrawal from Panels 2 and 3 was not handed in in time, I beg you to understand that technically we had no possibility of informing the American Embassy in Denmark at an earlier date of our attitude towards the Danish representation in the panels.

However, it appears to me that we, who drew up the Convention, should have realized the technical difficulties, and I for my part can only regret that at that time I did not see that any such problem might arise.

In view, therefore, of the position taken by my government, I must inform you that Denmark is not in a position at this time to participate in any but Panel 1.

THE CHAIRMAN (DR. DEASON): Thank you very much, Mr. Dinesen.

The Commission takes note of the statement read by the Danish Commissioner, and, without objection, the Commission will proceed accordingly.

MR. DINESEN (DENMARK): Thank you.

THE CHAIRMAN (DR. DEASON): Among the assignments given to the Drafting Committee yesterday, was consideration of incorporating the Rules of Procedure governing operation of the panels within the Rules of Procedure for the Commission. I am informed that the Drafting Committee has encountered a little difficulty and desires further instruction on this point.

MR. KNOLLENBERG (UNITED STATES): Mr. Taylor has a statement to make on that point, and I would like him to have the opportunity of making it now.

THE CHAIRMAN (DR. DEASON): Mr. Taylor.

MR. TAYLOR (UNITED STATES): Mr. Chairman, when the question of the Commission adopting one set of rules of procedure applicable to both the Commission and the panels was first raised, it was considered by the United States delegation that it might be possible under the terms of the Convention. However, the State Department's treaty experts have since been consulted in the matter, and in view of the language of Article IV, paragraph 3 of the Convention, it is their opinion that it is the prerogative of the panels to adopt their own Rules of Procedure, and the Commission may not assume the right to act for the panels on the point.

Nevertheless, it is believed that the desired end may be achieved consistently with Article IV, paragraph 3 of the Convention. Accordingly, the Commission, in adopting its Rules of Procedure, may wish to consider recommending to the panels that they adopt the Commission's Rules of Procedure for their purposes, with such additions thereto and deviations therefrom as in the opinion of the panels are necessary. In this way, no legal questions are posed, since the panels will in effect be determining their own rules of procedure.

THE CHAIRMAN (DR. DEASON): Does any other delegation desire to make any observations on the statement made by the United States?

MR. GUSHUE (CANADA): Mr. Chairman, I would say that in the discussion yesterday of the drafting committee, we encountered very considerable difficulty in dealing with the suggestion put forward by Mr. Dobson of the United Kingdom, on the grounds which have just been referred to in the statement made, and therefore we felt that it would have to be returned to the Commission.

I think I can speak for the whole drafting committee, that our feeling was also that virtually the same result could be achieved, in the manner which has been referred to, by the Commission adopting a model set of panel regulations, but preserving to the panels the right which is expressed in the Articles, of amendment at any time.

And there was also a further point in the draft which came before the Committee yesterday, to the effect that rules passed by a panel were to be approved by the Commission--Rule 21. We felt some difficulty about that also,

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and felt it was not in accordance with the Articles of the Convention. Unfortunately, or perhaps fortunately, I don't know which, on the Drafting Committee there were two people who belong to the most learned of all professions, and perhaps the oldest but one, and we were therefore forced to the conclusion which we reached. But I think I can speak for the Committee in saying we would agree to the statement that was just made by the United States Delegation on behalf of the Committee.

THE CHAIRMAN (DR. DEASON): Thank you, Mr. Gushue.

MR. DOBSON (UNITED KINGDOM): Mr. Chairman, at the expense of having my official reputation ruined, I am extremely impressed by the important array of legal luminaries, and I would like to accept honorable defeat.

I would like to say I appreciate the attention given and am gratified by it. I was gratified by Mr. Taylor's words. He has obviously given great attention to it.

THE CHAIRMAN (DR. DEASON): Thank you, Mr. Dobson.

Are there further observations on this point?

Might we suggest that, in order to give the Drafting Committee some further work to do and perhaps facilitate consideration of Rules of Procedure of the Panels, that the Drafting Committee consider the matter of panel rules in line with the statement made by the United States Delegation--in which the Canadian delegation has concurred, and the British delegation apparently concurs also--and produce a suggested draft of Rules of Procedure for Panels, which can be handed to the panels when they convene, for their consideration.

I believe such advance preparation on the part of the Drafting Committee, and the eminent legal components thereof, might facilitate the work of the panels. Is there any objection to such a procedure?

MR. GUSHUE (CANADA): Mr. Chairman, would the procedure be, if the Committee is asked to act in that way, for the Committee to return the draft to the Commission for the Commission's recommendation to the panels, or would it be directly between the Drafting Committee and the panels?

THE CHAIRMAN (DR. DEASON): I believe the correct procedure would be the first alternative you suggested, sir, namely, the recommendation to the Commission for referral to the panels by the Commission for their consideration.

THE CHAIRMAN (DR. DEASON): Mr. Castleman.

MR. CASTLEMAN (UNITED STATES): Is it then, consistent with Mr. Gushue's earlier remarks, to be the understanding of the Drafting Committee that a modification might be made in Rule 21 to eliminate the formal action of approval by the Commission of the panel Rules of Procedure? Is that the sense of the Commission?

THE CHAIRMAN (DR. DEASON): I believe that is the sense; that, since that position was based on eminent legal opinion, the Drafting Committee would so report, and bring in a revision of the rule referred to that would incorporate the suggested language.

At the meeting of the Committee on Finance and Administration yesterday, it was the sense of that committee that it should confine its deliberations to the substance of Rules 10, 11, 13, 14, 15, 16, and 17 which had been referred to it, and that after the committee had considered substance and intent, the actual changes in wording would become the job of the Drafting Committee. Without objection, the rules considered by the Committee on Administration and Finance now will be referred to the Drafting Committee for refinement in language, so that when we consider the Rules of Procedure we can have one revised document to look at. I think it will make the procedure much more orderly.

DR. BATES (CANADA): It wasn't so much, Mr. Chairman, a matter of getting orderliness, but the members of the Finance and Administration Committee, lacking any presence of the learned professions, felt that they had to bow to this other committee's final judgment in all matters.

THE CHAIRMAN (DR. DEASON): I concur.

MR. GUSHUE (CANADA): I wish to thank you, Mr. Chairman, on behalf of the Drafting Committee, for the words used.

MR. DOBSON (UNITED KINGDOM): Mr. Chairman, that means the Drafting Committee won't meet at the same time, now, as the Finance Committee, will it?

THE CHAIRMAN (DR. DEASON): I believe that the Committee on Administration and Finance, except for possibly a very small part of its charge on these various rules, is all ready to turn over some things to the Drafting Committee.

MR. CASTLEMAN (UNITED STATES): Mr. Chairman, I might also observe, at this point, that the Commission has assigned to the Drafting Committee the job of bringing in a model set of panel rules, a good deal of which could be done even in the absence of any further recommendations from the Committee on Administration and Finance.

THE CHAIRMAN (DR. DEASON): A meeting of the Drafting Committee has been scheduled upon the termination of this Executive Session. It is within the province of the Chairman of that Committee to decide whether he wishes to have a meeting at that time or at another time.

Among the papers which were distributed to the delegations this morning, were the minutes of the First Plenary Session on Monday, and the First Executive Session on Tuesday (Documents 12 and 13). It is hoped that the delegations will find an opportunity to review those minutes as soon as possible, and hand to the Secretariat any suggestions for correction or amendment. Upon receipt of such corrections,

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the Secretariat, if necessary, will prepare a corrigendum; and when the corrigendum, if any, becomes available, probably tomorrow or at the earliest plenary session after today, motions for adoption of Documents 12 and 13 will be in order. I think that such a procedure will facilitate consideration of these minutes, and will save us the difficulty of reviewing them in detail on the floor.

The Technical Secretary has an announcement to make.

THE TECHNICAL SECRETARY (MR. CHANEY): Arrangements are being made for transportation, by private automobile to College Park, Maryland, of those delegates who have been invited to luncheon on Friday by the Director of the Fish and Wildlife Service. You will be notified tomorrow concerning assignments to private cars. It is assumed that all those invited plan to attend the luncheon.

If anyone is unable to attend, it is hoped that he will inform any member of the United States delegation by tomorrow noon, so that transportation arrangements may be adjusted accordingly.

THE CHAIRMAN (DR. DEASON): Is there any further business to come before this Executive Session?

The suggestion has been made that those scientists who will not be engaged in the committees which are to meet forthwith might get together and continue the informal discussions which were begun last night. Is there a committee room available for them?

THE SECRETARY GENERAL (MR. WHEELER): Yes, there is Committee Room B, which can be used. It is just off Committee Room A. Or you can meet right here.

THE CHAIRMAN (DR. DEASON): At your pleasure.

If there is no further business to come before this session, I declare it adjourned.

(Whereupon, at 10:55 a.m., the meeting was adjourned.)

