

Document:-  
**A/CN.4/SR.114**

**Summary record of the 114th meeting**

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

Extract from the Yearbook of the International Law Commission:-  
**1951 , vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

129. Mr. HUDSON preferred the formula employed in article 2. Some States might not, in fact, wish to exercise the right.

130. The CHAIRMAN remarked that article 2 made no reference to the question of sovereignty; but the concept of control and jurisdiction was not far removed from that of sovereignty.

131. Mr. HUDSON said that control and jurisdiction were only admissible for a specific purpose.

132. Mr. FRANÇOIS said that, hitherto, the notion of sovereignty had been considered to include sovereignty over the sea and in the air. As it was not the intention of the Commission to accord sovereign rights in regard to the sea and the air, it might, for that reason, be better not to use the term in that connexion.

133. Mr. HUDSON wondered whether sovereignty was divisible. He was only aware of one case where such a notion had been adopted, and that was in regard to certain underground coalmines in the Maastricht district which belonged to the Netherlands, although they were situated in German territory. That question did not, however, arise in relation to the matter under consideration. For that reason, he preferred not to use the word "sovereignty".

134. While the CHAIRMAN did not wish to press the matter, he still considered that a comment would serve a useful purpose.

135. Mr. SCELLE remarked that the question was not of great practical importance. In his opinion the new notion of the continental shelf was destructive of the old concept, according to which the sea, including its bed, was common property. It completely upset the principle of the freedom of the high seas. If it were said that States had absolute sovereignty over the continental shelf, that would mean that they were free to refrain from exploiting the natural resources of the subsoil of the sea should they not wish to do so. But the Commission's purpose in studying the question of the continental shelf was to facilitate the exploitation of natural resources. In bringing the notion of absolute sovereignty into article 2, it would therefore be acting against its declared purpose.

136. The CHAIRMAN said that, in view of the importance of the question, the Commission would continue its study at its next meeting.

The meeting rose at 1 p.m.

## 114th MEETING

Friday, 29 June 1951, at 9.45 a.m.

### CONTENTS

	<i>Page</i>
Régime of the high seas: report by Mr. François (item 6 of the agenda) (A/CN.4/42) ( <i>continued</i> )	
Chapter 11: Continental shelf ( <i>continued</i> )	
Article 2 ( <i>continued</i> ) . . . . .	274
Article 3 . . . . .	275
Article 4 . . . . .	275
Article 5 . . . . .	277
Article 3 ( <i>resumed</i> ) . . . . .	277

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

#### *Present:*

*Members:* Mr. Ricardo J. ALFARO, 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. 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.

#### **Régime of the high seas: report by Mr. François (item 6 of the agenda) (A/CN.4/42) (*continued*)**

##### CHAPTER 11: CONTINENTAL SHELF (*continued*)

##### *Article 2 (continued)*

1. The CHAIRMAN recalled that a number of alterations had been made during the previous meeting to the text of article 2, which now read as follows:

"2. The continental shelf is subject to the exercise by the coastal State of control and jurisdiction for the purposes of exploring it and exploiting its natural resources."

2. Mr. SANDSTRÖM again raised the question whether it might be desirable to mention that control and jurisdiction by the coastal State would be exclusive.

3. Mr. FRANÇOIS said that most regulations did not include any such qualification, but he had no objection to it.

4. Mr. EL KHOURY thought it would be better to insert the word "exclusive".

5. Mr. SCELLE was of the opposite opinion.

*It was decided not to insert the word "exclusive".*

6. Mr. HUDSON asked Mr. François whether he considered that the sense would be changed if the words "exploring it and" were deleted.

7. Mr. FRANÇOIS did not think so.

8. Mr. ALFARO was afraid that, if the word "exploring" were deleted, difficulties might arise in the event of a State wishing, prior to undertaking the exploitation of natural resources, to carry out certain

exploratory operations which other States might regard as prejudicial to the freedom of the seas.

9. Mr. HUDSON pointed out that that matter was dealt with under article 7.

*It was decided to delete the words "exploring it and".*

10. Mr. HUDSON said that Mr. François had informed him that Mr. Young, the author of the study on "The Legal Status of Submarine Areas beneath the High Seas", published in the *American Journal of International Law*, vol. 45 (1951), appeared to be in favour of the general concept of submarine areas (page 227), basing his preference on the treaty of 26 February 1942 concluded between the United Kingdom and Venezuela on the subject of the submarine areas in the Gulf of Paria. Without wishing to go back on the definition of the continental shelf accepted under point 1, and which incidentally he personally preferred, he pointed out that in the treaty in question the whole of the Gulf of Paria had been partitioned without any reference to the depth of the water. With regard to the terminology, he preferred the term "continental shelf".

11. Mr. FRANÇOIS saw one advantage at least in Mr. Young's argument, namely, that the notion of submarine areas enabled shallow waters to be included more easily in the term "continental shelf", even where there was no continental shelf as such. Possibly it might be better to use a new term, although the expression "continental shelf" was by now in current use.

12. Mr. AMADO wondered whether it would not be feasible to say "the continental shelf or the submarine areas".

13. The CHAIRMAN thought the point might be dealt with in the commentary. His own opinion was that it would be better to continue to use the term "continental shelf", which was already a classic term.

14. Mr. SANDSTRÖM thought that the continental shelf and shallow waters might each be dealt with in a separate article. When the term continental shelf was used, a certain natural area was circumscribed. From that circumscription certain conclusions could be drawn in regard to shallow waters. It might perhaps be preferable to postpone the discussion until the Commission came to study the question of successive contours.

15. Mr. HSU thought the expression "submarine areas" was preferable, as being more accurate. Moreover, "continental shelf" was a recent term and could quite easily be replaced by some other expression.

16. Mr. KERNO (Assistant Secretary-General) did not see how the expression "submarine areas" could constitute a definition, since it would cover all parts of the sea-bed and not merely those constituting the continental shelf.

17. Mr. AMADO thought it would be well for the moment to keep to the formula "continental shelf", subject to a possible revision at the conclusion of the discussion.

*It was so decided.*

*Article 2 was adopted as amended.*

### Article 3

18. Mr. HUDSON thought article 3 unnecessary.

19. The CHAIRMAN thought it would be more appropriate to examine article 3 after articles 4 and 5.<sup>1</sup>

*It was so decided.*

### Article 4

20. Mr. HUDSON thought that the wording used for article 1 might be adopted for article 4, which would then read as follows:

"The exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the legal status of the superjacent waters as high seas."

21. Mr. AMADO argued that the expression "régime of the high seas" had become traditional and should be kept. He did not particularly like the English word "status", even though the International Law Association had used it in its report.

22. Mr. HUDSON said that the word "status" meant juridical régime.

23. Mr. KERNO (Assistant Secretary-General) appreciated Mr. Hudson's reasons for submitting his proposal. But all the members of the Commission were agreed that the right of control and jurisdiction by the coastal State was exercised not over the waters but over the sea-bed and its subsoil. It was true that in certain instances installations were necessary to reach the exploitation area, and that the régime of the high seas would thus be subject to certain easements. But such easements were delimited under articles 6 and 7. Hence there was no reason why article 4 should not remain as it stood.

24. Mr. SCELLE did not imagine the Commission was proposing to lay down the principle that access to the continental shelf would only be permissible via territorial waters. So long as it did not do that, there was no risk of violating the principle of freedom of the high seas.

25. Mr. FRANÇOIS said that in the Gulf of Mexico drilling operations had been carried out in the open sea.

26. Mr. SCELLE said that with him it definitely went against the grain to admit the concept of a continental shelf. He was afraid that it would be impossible to avoid some encroachment on the high seas.

27. Mr. AMADO, supported by Mr. CORDOVA, thought that article 4 as worded in Mr. François' report was sufficient, since all that mattered was that it should be made clear that the waters covering the continental shelf came under the régime of the high seas.

28. Mr. SCELLE wondered whether it was any more than a pious wish.

29. Mr. FRANÇOIS thought that all the members of the Commission were in agreement. It was merely the formulation of a principle, not an article of a convention. The wording he was proposing could not give rise to any misunderstanding.

30. Mr. YEPES thought there was a serious contradiction between article 4 and article 1 as accepted by the Commission the day before. The continental shelf had

<sup>1</sup> See para. 67 et seq. below.

been defined at the previous meeting as consisting of the sea-bed and the subsoil of the submarine areas contiguous to the coast. But according to article 4, the waters covering the continental shelf were subject to the régime of the high seas. Hence, there were two completely different régimes involved.

31. Under which régime then would sedentary fisheries come? In his opinion, while the notion of sedentary fisheries was bound up with that of the sea-bed, it was also bound up with that of the high seas.

32. Mr. FRANÇOIS agreed that certain difficulties could indeed arise in connexion with sedentary fisheries. It would be necessary to consider what régime should apply to them. Incidentally the problem was discussed in the report he had drawn up. No doubt a special régime would have to be adopted for sedentary fisheries, but as that type of fishing was carried on in comparatively few places, the difficulties could not be tremendous. He did not think it was necessary to consider the continental shelf and sedentary fisheries at the same time.

33. Mr. YEPES thought the Commission had made a great mistake by adopting the definition of the continental shelf it had accepted at the previous day's meeting. He considered that the question of the continental shelf could not be dealt with separately from that of sedentary fisheries.

34. The CHAIRMAN thought that the sea-bed and whatever covered it were two quite distinct problems.

35. Mr. FRANÇOIS was not so sure.

36. Mr. HUDSON shared Mr. François' doubts. There were for example certain types of fish, known to fishermen as bottom fish, which did not live attached to the sea-bed but moved about in the water. Hence the paragraph would have to be drafted very carefully so as to ensure that sedentary fish, pearls, etc., as well as bottom fish, were not placed under the control and jurisdiction of the coastal State.

37. Mr. KERNO (Assistant Secretary-General) said he too had pondered the question. Possibly a distinction might be established similar to that in civil law between movables and real estate. The sea-bed proper would come under the régime of the continental shelf, while all movables, i.e., anything not attached to the sea-bed, would come under the régime of the high seas.

38. The question might be studied closely when sedentary fisheries were discussed.

39. Mr. SCELLE said he was waiting impatiently to see whether the Commission would be bold enough to remove all distinction between the sea-bed and the sea itself. In his opinion it was well-nigh impossible to establish any distinction such as Mr. Kernó had suggested. The notion of a continental shelf was entirely incompatible with that of the high seas, and was calculated to destroy it completely. Mr. Kernó's observations were very significant in that respect. How in fact would it be possible to exploit submarine petroleum and coal without creating a disturbance which would oust the underwater fauna?

40. Mr. AMADO thought there was no question but

that sedentary fisheries should come under the régime of the high seas.

41. Mr. SANDSTRÖM considered that the difficulty could be overcome by specifying which were the natural resources referred to in article 2.

42. The CHAIRMAN did not think the suggestion was practicable. There was no telling what resources scientific progress would make it possible to exploit in the future.

43. Mr. FRANÇOIS, supported by Mr. EL KHOURY, thought it would be better to adjourn the discussion. Mr. Yepes could reserve the right to come back to the definition of the continental shelf when the Commission studied the problem of sedentary fisheries.

44. Mr. ALFARO admitted that Mr. Scelle's and Mr. Yepes' arguments were sound. But it must be remembered that the question of the continental shelf was a very recent one, and properly speaking had to do with the development of international law. There was on the one hand the principle of the freedom of the seas; on the other hand, scientific progress had shown that the legitimate right to exploit the sea-bed and its subsoil could not be exercised without to some extent interfering with the principle of the freedom of the seas.

45. Hence it might be necessary to state in one of the articles of the draft under consideration by the Commission that the principles of international law relative to the freedom of the seas would normally apply, subject to the requirements for the exploitation of the natural resources of the continental shelf.

46. Mr. SANDSTRÖM asked whether "natural resources" meant anything more than mineral resources. He pointed out that the article on the subject by Mr. Boggs referred only to "mineral resources".

47. Mr. HUDSON thought that the interpretation of the term "natural resources" should not be restricted so narrowly. Kelp gathering for example was an industry of some importance in parts of France and Ireland.

48. Mr. YEPES said that in his proclamation of 28 September 1945, President Truman had had in mind only "mineral resources", petroleum in particular.

49. Mr. AMADO referred to the summary records of the second session of the Commission. The question of sedentary fisheries had been studied the previous year;<sup>2</sup> and it had been made quite clear then that sedentary fisheries came under the régime of the high seas and had nothing to do with the exploitation of the continental shelf.

50. Mr. KERNO (Assistant Secretary-General) thought that the question of sedentary fisheries should be studied later. It ought to be possible to find a solution for it, and ease the minds of certain members of the Commission.

51. Mr. SCELLE did not think that Mr. Kernó's analogy between movables and real estate and the subsoil of the sea-bed and the high seas was a sound one. The high seas could not be regarded as property, since they

<sup>2</sup> See summary record of the 66th meeting, para. 6 onwards, especially para. 32.

were public, i.e., for the use of all and sundry, and included what was to be found both in the sea and under the sea.

52. The more deeply the question of the continental shelf was studied, the more evident it would become that the notion of the continental shelf destroyed the notion of public property. A choice would have to be made — either to regard the high seas as public property, or to apply the régime of the continental shelf, and it was impossible to forecast what the consequences of the latter course would be.

53. Mr. FRANÇOIS said that President Truman in his proclamation had referred to “natural resources”, but that the preamble referred only to “mineral resources”. Hence the exploitation of natural resources might perhaps be restricted to mineral resources, as Mr. Sandström had suggested.

54. Mr. YEPES was strongly in favour of that suggestion.

55. Mr. AMADO pointed out that article 6 covered all the questions that had been raised during the present discussion.

56. Mr. CORDOVA thought that article 4 was sufficient. In regard to the waters covering the continental shelf, all the regulations constituting the régime of the high seas would apply, including those connected with sedentary fisheries.

57. The CHAIRMAN again suggested that study of the question be postponed.

*It was decided to adjourn for the time being the discussion of the question of sedentary fisheries.*

*It was also decided to postpone consideration of the question whether the word “mineral” should be substituted for “natural” in article 2.*

58. Mr. HUDSON thought that the text of article 4 was too condensed and not sufficiently clear. He again read out the text by which he proposed to replace it:

“4. The exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the legal status of the superjacent waters as high seas.”

59. Mr. FRANÇOIS accepted the redraft.

60. Mr. AMADO thought that the redraft added nothing to the version proposed by Mr. François; it was merely more wordy. But he would not object to it.

*Mr. Hudson's redraft for article 4 was adopted.*

61. Mr. SCELLE was anxious that the English term “legal status” should be rendered in French by the word “régime”.

#### *Article 5*

62. Mr. HUDSON wondered whether article 5 was really necessary. The air above the waters of the high seas was not subject to any control or jurisdiction.

63. Mr. FRANÇOIS, supported by Mr. ALFARO, agreed that the article was not strictly necessary, but he thought it useful as an indication that no restriction on the freedom of the air would be permissible.

64. Mr. HUDSON did not like the expression “free air”. He suggested that the text of article 5 be replaced by the following, which was in keeping with the text of the preceding article:

“5. The exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the legal status of the air-space above the superjacent waters.”

65. On reflection he agreed that an article of the kind had some point, in view of the progress being made daily in aviation.

66. Mr. FRANÇOIS was prepared to accept the redraft.

*Mr. Hudson's redraft for article 5 was adopted.*

#### *Article 3 (resumed)<sup>3</sup>*

67. The CHAIRMAN pointed out that article 3 of Mr. François' draft would be renumbered 5.

68. Mr. FRANÇOIS said that in drafting the text of that article, he had used the actual wording of the International Law Association's report. He considered that text most valuable.

69. Mr. HUDSON said he could not accept the text as it stood. He did not like the word “recognition”; and he wondered what was meant by “the existing international law with regard to the laying and operation of cables or pipelines on the sea-bed”. Surely anyone had the right to lay and operate cables or pipelines. He did not think there was any rule of international law on the subject. In any case, there could not be very many pipelines laid on the sea-bed.

70. However, if the Commission considered that an article of the sort would be useful, he suggested that it be drafted as follows:

“3. The exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the legal status of cables or pipelines on the sea-bed, subject to the right of the coastal State to take reasonable measures in connexion with the exploitation of the natural resources.”

71. Mr. FRANÇOIS thought that if it were felt desirable to recognize the right to lay and operate cables or pipelines on the sea-bed, it would be a good thing to say so explicitly. Incidentally, the International Law Association report from which he had borrowed the text of the article had been prepared by highly qualified experts. If they had seen fit to introduce such an article, no doubt it was because they had felt that it would be useful.

72. Mr. CORDOVA asked Mr. François what would happen if a coastal State wished to exploit the sea-bed and its subsoil and erected installations, and another State then wished to lay a pipeline. The coastal State might be given the right to do whatever it wished, but then there would be a clash of interests between the two States.

73. Mr. FRANÇOIS replied that the words “subject to...” had been used. The right to lay a pipeline was

<sup>3</sup> See paras. 18 and 19 above.

recognized, but in certain circumstances the track of the pipeline might have to be changed. The coastal State's right of control and jurisdiction would have priority.

74. The CHAIRMAN asked the Commission whether it wished to keep the article. It was a matter to which a great many people had given much thought, and it was desirable that some rule should be laid down.

75. Mr. YEPES supported Mr. François' argument. The article was most useful. Should Mexico for example not be allowed to reserve the right to construct a pipeline if she so wished, so as to export petroleum to Canada across the continental shelf of the United States?

*It was decided to keep the article.*

76. The CHAIRMAN said that Mr. Hudson was in touch with a member of the Venezuelan delegation in Geneva, Mr. Hagen, who was very well informed on the question. The Commission might perhaps invite Mr. Hagen to give a talk, so as to give the members some idea of the special difficulties encountered by engineers in carrying out such operations.

*After a short intermission, the Commission listened to an informal talk by Mr. Hagen.*

77. Mr. HUDSON read out article I of the *Convention for the Protection of Submarine Cables*, which was signed on 14 March 1884 and came into force in 1895:

"The present Convention shall be applicable, outside of the territorial waters, to all legally established submarine cables landed in the territories, colonies or possessions of one or more of the High Contracting Parties."

78. He mentioned that the Convention spoke of "landed" cables and did not mention the laying of cables. The Convention appeared to assume that the laying of cables was unrestricted. It was the only text he was aware of on the subject.

79. Mr. CORDOVA said that, according to Mr. François, the laying of cables was unrestricted under the existing law.

80. The CHAIRMAN read out the text proposed by Mr. Hudson for article 3:

"3. The exercise of a coastal State of control and jurisdiction over the continental shelf does not affect the legal status of cables or pipelines on the sea-bed, subject to the right of the coastal State to take reasonable measures in connexion with the exploitation of the natural resources."

81. The new text merely made a few slight changes to the text proposed by Mr. François.

82. Mr. ALFARO observed that the English term "legal status" appeared to refer only to existing cables or pipelines, whereas the main concern was to protect the right to lay down new cables or pipelines.

83. Mr. FRANÇOIS had the same impression as Mr. Alfaro.

84. Mr. HUDSON said he would not interpret his text in that way; but the comment could explain the sense to be given to it. The terminology used in article 3 as proposed by him was very similar to that used in his versions of articles 4 and 5.

85. Mr. ALFARO observed that the term "superjacent waters" was a reference to something which had always existed.

86. Mr. CORDOVA had a similar feeling about the use of the word "status", which referred to something which existed.

87. Mr. SCELLE said that for him, the interesting point in article 3 was the necessity for a concession from the coastal State. Concession after all implied monopoly. Could concessions for the exploitation of the continental shelf be reconciled with the installation of new pipelines or cables? It seemed to him that a concession restricted the entire area of the sea-bed. It was true that the words "subject to" were used, but the endeavour seemed to be mainly to protect the exploitation of the resources of the sea and not the right of thirty party States to operate a pipeline or a cable. That was the difference.

88. Mr. CORDOVA had been under the impression that a coastal State had priority in any decisions relating to applications for concession.

89. Mr. SCELLE maintained that if the coastal States were given priority, the freedom of the high seas was destroyed.

90. The CHAIRMAN pointed out that what was involved was a minor restriction of no great importance. A third party State wishing to lay a cable would merely have to change its track slightly.

91. Mr. SCELLE said that the Commission was giving coastal States Sovereignty over the sea. The main question was: who was at liberty to exploit the high seas, the international community or the coastal State?

92. Mr. CORDOVA said that what was being established was an easement over the high seas.

93. Mr. HUDSON said that when he had submitted his proposal, he had kept the latter part of Mr. François article 3, though he had hesitated about the words "reasonable measures". After all, one could prove almost anything by reasoning. The expression was not satisfactory; he suggested instead:

"Subject to the right of the coastal State to take the necessary measures for the exploitation of the natural resources."

94. Mr. FRANÇOIS accepted the new version.

95. There was a general exchange of views as to the most suitable way of stating that the right to lay, exploit and repair cables and pipelines remained intact, subject to the right of the coastal States to take measures to protect the exploitation of the natural resources of the continental shelf, such measures to be kept down to a minimum as inevitably bound to restrict the freedom of the high seas.

96. Mr. HUDSON said that article 4 would become article 3; article 5 would become article 4, and article 3 would become article 5. The new articles 4 and 5 would be special applications of the general principle laid down in the new article 3, and would not affect the freedom of the high seas. The comment would explain all that in detail. He did not think any more should be

said in article 5 than: "the laying and maintenance of cables and pipelines on the sea-bed".

97. Mr. SANDSTRÖM had some slight misgivings as to the order of the articles. Article 4 of Mr. Hudson's proposals mentioned superjacent waters, which had nothing at all to do with the régime of the high seas, whereas the new article 3 spoke of cables and pipelines in connexion with the sea-bed. If the words "the superjacent waters as high seas" were kept, it would be more logical to put article 3 first, since it referred more directly to the sea-bed. The superjacent waters would be mentioned next, and finally the air.

98. Mr. SCALLE did not see the point of the second half of the sentence, beginning with the words "subject . . . to". It stated only too clearly that the right to lay cables and pipelines was dependent on the goodwill of the coastal State. The first half of the sentence proclaimed the freedom of the seas, while the second half cancelled it out. He was in favour of the first half of the sentence, but could certainly not accept the second.

99. The CHAIRMAN and Mr. FRANÇOIS maintained that that attitude was in direct contradiction to the principle of the continental shelf which Mr. Scelle and the rest of the members of the Commission had accepted the previous year.

100. Mr. SCALLE replied that he had thought the matter over since the previous year.

101. Mr. AMADO said he would like to ask his old teacher Mr. Scelle, on what grounds a State should be prevented from reaching agreement with another State.

102. Mr. SCALLE replied that Mr. Amado was envisaging a situation different from that referred to in the text under consideration. If there were agreement between the States, he could accept the text; but the proposed version implied "provided the coastal State permits".

103. Mr. AMADO took the instance of a coastal State installing machinery on the continental shelf, and another State requesting permission to lay a cable. The coastal State would indicate that the pipeline should follow a particular track. There was no reason why a State should wish to lay a cable precisely at the point where another State had installed its equipment.

104. Mr. SCALLE saw no objection to that procedure provided the States concerned were agreed. But the Commission recognized that the coastal State had a priority right over the high seas, and he wanted to know why it should have such a sovereign right. Actually the Commission had just agreed that the régime of the high seas must remain intact, and now it was stated that the coastal State had sovereignty over the high seas. It must be one way or the other. If the coastal State were regarded as having sovereignty over the high seas, the term high seas no longer had any meaning. An attempt must be made to reconcile the régime of the continental shelf with the freedom of the high seas. The members of the Commission seemed inclined to sacrifice the latter concept to the interests of coastal States. That way lay anarchy.

105. He reiterated that a choice must be made between the one concept and the other. If the freedom of the high seas was to be thrown overboard, the Commission should say so. In that case there would be no more high seas, and there would be no progress, but retrogression.

106. Mr. KERN (Assistant Secretary-General) thought there was no virtue in carrying out a discussion in a vacuum. While in theory it was difficult to reconcile the viewpoints, from the practical point of view it was not so difficult to arrive at a compromise. It would always be possible for a friendly agreement to be reached between a party wishing to carry out drilling and another party anxious to lay a cable or a pipeline.

107. He thought the Commission had discussed the article sufficiently. It had adopted articles 3 and 4 in Mr. Hudson's version, and he suggested that it should adopt a text stating that "the exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the laying and operation of cables and pipelines". He did not think it necessary to add "on the sea-bed".

108. The CHAIRMAN thought the words "on the sea-bed" should be deleted.

*It was so decided.*

109. Mr. SCALLE maintained his point. He could not agree to the second half of the sentence, which contradicted the first half.

110. Mr. HUDSON suggested that the first half of the text, up to the word "subject", be put to the vote.

111. Mr. FRANÇOIS and Mr. CORDOVA said they could not accept the first half of the sentence without the second.

112. The CHAIRMAN asked the members to choose between the expression "reasonable measures" and "necessary measures" to express the idea in the second half of the article.

*On two occasions there was an equality of votes.*

113. Mr. ALFARO thought that, unless the word "measures" were qualified, the coastal State would be given an unconditional right in regard to the laying of cables and pipelines. That was not the Commission's intention. It was proposing "reasonable measures", i.e., measures compatible with law and justice. He was prepared to vote for either word. He had voted against the word "reasonable" because he preferred the word "necessary"; but as a way out of the impasse, he was prepared to vote for the word "reasonable".

114. Mr. HUDSON suggested deleting the second half of the sentence and replacing it by the words: "provided that exploitation of the natural resources is not thereby interfered with unduly".

115. The CHAIRMAN did not feel that that text was any better than the preceding one.

116. Mr. HUDSON said he had submitted it to enable Mr. Scelle to take part in the voting and as a way out of the difficulty. He agreed that the word "unduly" was not very satisfactory.

117. Mr. SCELLE said he would still not vote, though he preferred that the continental shelf should be subject to the principle of the freedom of the seas.

118. The CHAIRMAN asked the Commission to decide on Mr. Hudson's new wording.

119. Mr. AMADO suggested with Mr. Hudson's permission that the wording should not be put to the vote. He did not care for it.

120. Mr. EL KHOURY thought the word "reasonable" was nearer to Mr. Scelle's idea. He had voted in favour of the word.

*The word "reasonable" was adopted by 6 votes.*

*The second half of the sentence was adopted.*

121. Mr. SCELLE said he would constitute a small minority.

122. Mr. HUDSON explained that the exercise by the coastal State of control and jurisdiction over the continental shelf did not prevent the laying of a pipeline by other States. Indeed it was often essential for an operator to have a pipeline. Hence the article should read:

"The exercise by a coastal State of control and jurisdiction over the continental shelf does not preclude the laying or operation of a pipeline or cable by other States."

123. Mr. ALFARO thought it would be better not to refer to other States. The party in question might be a private company.

124. Mr. HUDSON on second thoughts imagined a pipeline running from Brownsville (Texas) to Havana (Cuba). It might cross the Mexican continental shelf, and it would be necessary to state that "the exercise of control and jurisdiction shall not affect the laying of a pipeline".

125. He realized that his formula did not cover such an eventuality, and he suggested discarding it.

The meeting rose at 1.05 p.m.

## 115th MEETING

*Monday, 2 July 1951, at 3 p.m.*

### CONTENTS

	<i>Page</i>
Régime of the high seas: report by Mr. François (item 6 of the agenda) (A/CN.4/42) ( <i>continued</i> )	
Chapter 11: Continental shelf ( <i>continued</i> ) . . . . .	280
Article 3 ( <i>continued</i> ) . . . . .	280
Article 6 . . . . .	282
Article 7 . . . . .	283
Article 8 . . . . .	283
Article 9 . . . . .	285

*Chairman:* Mr. James L. BRIERLY

*Rapporteur:* Mr. Roberto CORDOVA

*Present:*

*Members:* Mr. Ricardo J. ALFARO, 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. 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.

**Régime of the high seas: report by Mr. François (item 6 of the agenda) (A/CN.4/42) (*continued*)**

### CHAPTER 11: CONTINENTAL SHELF (*continued*)

#### Article 3 (*continued*)

1. The CHAIRMAN referred to the text of article 3 (to be re-numbered article 5) adopted by the Commission at the previous meeting:

"The exercise by a coastal State of control and jurisdiction over the continental shelf does not affect the establishment or maintenance of cables or pipelines, subject to the right of the coastal State to take reasonable measures for the exploitation of the natural resources."

2. Mr. HUDSON suggested that it was quite useless to consider the question of pipelines. Doubtless the reason why Jonkheer P. R. Feith had dealt with them in his report for the International Law Association was that he was the adviser to a petroleum company. He himself had carefully read Mr. Boggs' article and the letter accompanying it and had come to the conclusion that the Commission was in no way obliged to deal with the question of pipelines outside territorial waters. The only circumstances in which a practical problem arose were when petroleum was extracted from an area of the continental shelf and the producer required pipelines to carry the petroleum to the shore. Mr. Yepes had mentioned the hypothetical case of a pipeline between Mexico and Canada.<sup>1</sup> The example was no more than a figment of the imagination. A pipeline of the sort would be 3,000 miles long. The longest pipeline in the world — in the Middle East — was 1,067 miles in length, and the longest pipeline in Canada was 1,023 miles long. Moreover those were overland pipelines. To conceive of a submarine pipeline from Mexico to Canada, via either the Atlantic or the Pacific, was surely fantastic. At the present time there were no pipelines under the high seas. The one between Dahrhan and Bahrein was inside territorial waters all the way, and hence did not raise any problem. It might of course be argued that possibly one day a technique would be evolved for laying pipelines in deep waters, but when one considered that pumping stations had to be installed at intervals along the pipeline (for example along the pipeline between Saudi Arabia and Lebanon there were five pumping stations and five others were being planned, all for a pipeline of 1,067 miles) it was a pertinent question how such stations would be constructed in the case of pipelines on the bed of the ocean.

<sup>1</sup> Summary record of the 114th meeting, para. 75.