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**Summary record of the 115th meeting**

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

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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.*

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*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.

3. Cables were a different matter. It ought to be sufficient in the case of cables to stipulate that waters superjacent to the continental shelf remained within the régime of the high seas. But a special provision could be added if necessary. He would like to ask Mr. François whether he was prepared to delete the mention of pipelines.

4. Mr. FRANÇOIS thought the text should be retained so far as submarine cables were concerned. The Commission was not drafting a convention at the moment, but establishing a number of principles. It did not greatly matter that the rules laid down were themselves derived from a general principle. He thought it would be useful to draw the attention of governments to the various problems to which the notion of a continental shelf might give rise.

5. With regard to pipelines, Mr. Hudson was much better informed than he was himself. Personally he did not think the matter of any practical importance, though in view of what Mr. Hudson had just said, he wondered whether pumping stations might not give rise to difficulties in the future. It might be preferable not to make any mention of pipelines in the article, and to state in the commentary that, as the consequences would be only hypothetical, the Commission had not felt it necessary to mention pipelines in the text of the article.

6. Mr. YEPES pointed out that the idea of a pipeline between Mexico and Canada was not an invention of his. It was a possibility contemplated by experts. He did not wish to force the example; but since even a country like Colombia had a pipeline 1,000 kilometres long, it was not inconceivable that in the future there might be pipelines of between 3,000 and 6,000 miles long.

7. Mr. AMADO saw no reason why the question should be mentioned in the report. He suggested that it be left until events made it a practical issue.

8. Mr. FRANÇOIS thought that the attention of governments might be drawn to the question, so that they could make their comments.

9. Mr. SCALLE thought that the provision in article 4 would be enough, since it covered the question of pipelines.

10. Mr. EL KHOURY, supported by Mr. CORDOVA, thought it would be better to keep the word "pipelines". After all, it was impossible to say what the future would bring. Supposing petroleum were extracted from below the continental shelf of Syria in the neighbourhood of Cyprus, and it was found convenient to transport it to Cyprus for refining. If the intention was to draw up general rules for future use, it would be better to leave the word "pipelines" as it stood. There seemed no reason to delete it in favour of merely mentioning it in a report.

11. Mr. HUDSON said that by so doing, the Commission would indicate that it had not ignored the question, and would make it clear why it had not been included in the text.

12. The CHAIRMAN saw no very great difference between the two methods.

*It was decided by 4 votes to 1 to delete the word "pipe-*

*lines" from the text of article 3, but to mention it in the comment.*

13. The CHAIRMAN read out the text as it stood, following the decision just taken:

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

14. Mr. HUDSON thought the term "submarine cables" should be used, as in the Convention of 1884.

*It was so decided.*

15. He also considered that if the word "pipelines" were deleted, the last part of the text beginning with the words "subject to" should also be deleted, as they were not concerned with the establishment or maintenance of cables.

16. Mr. FRANÇOIS and Mr. ALFARO thought the last part of the text essential, on the grounds that the establishment of cables might hamper the exploitation of the continental shelf.

17. Mr. CORDOVA suggested the following wording:

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

18. It was a text referring specifically to cables. It might be wrongly interpreted as constituting an exception to the general rule laid down in the original article 4 — which was not the case. It was a question merely of allowing the coastal State to decide who should have the priority.

19. Mr. HUDSON recalled that Mr. François had agreed to state in the comment that the question of submarine cables was in fact already dealt with in article 4. Admittedly he had supported the insertion of the words which he now wanted to have deleted. But on reflection he had felt that there was no point in keeping them, and that it would be better to explain the situation in the comment.

20. Mr. FRANÇOIS said that clearly the whole thing proceeded from the principle established in article 4, and if that fact were carried to its logical conclusion, there would be nothing left but that article, and the rest of the provisions would be included in the report. He thought it preferable to mention in the articles as well the main consequences arising out of the principle. He was in favour of keeping the latter part of the text beginning with the words "subject to".

21. Mr. HUDSON pointed out that in that case article 4 would have to be subject to the same reservation. The exploitation of the natural resources might be hampered by shipping.

22. The CHAIRMAN thought that, while the words were not absolutely essential, it might be desirable to keep them. There was nothing against doing so. He was in favour of turning the text round, as Mr. Córdova had proposed.

23. Mr. ALFARO was entirely in favour of Mr. Córdova's proposal.

24. Mr. HUDSON said he would not press his point if the Chairman and the Rapporteur preferred to keep the text.

*It was decided to retain the text in the form proposed by Mr. Córdova.*

#### Article 6

25. The CHAIRMAN observed that the words "outside the territorial waters" in the second line had been deleted.<sup>2</sup> He asked what were the seismic operations referred to.

26. Mr. FRANÇOIS explained that he was referring to a prospecting technique. He had borrowed the text from the International Law Association's report.

27. Mr. HUDSON explained that an instrument was used on the surface for recording earthquakes and thus locating the mounds on the sea-bed below which petroleum-bearing sand was to be found. Incidentally that technique alone was not sufficient.

28. Mr. SCELLE added that the question of seismic operations might arise not merely in connexion with the search for petroleum but in prospecting for other mineral resources. The question was whether it was to be made clear that the exploitation of the continental shelf must be carried out in such a way as not to prevent the exploitation of other submarine resources.

29. Mr. KERNO (Assistant Secretary-General), after hearing Mr. Hudson's and Mr. François' explanations, was no longer clear as to what the point was. The text started out with a general statement, after which it was explained that exploration and exploitation must not substantially interfere with shipping and fisheries. He could see the point of the proposal in regard to obstacles to shipping and pollution of waters; but he did not see why it should be necessary to make special mention of seismic operations.

30. Mr. HUDSON likewise saw no reason for the final phrase "or their disturbances by seismic operations". True, it was to be found in Mr. Feith's report, but he did not think it was accurate.

31. Mr. FRANÇOIS said that it was not merely in Mr. Feith's report, but in the report adopted by the drafting committee of the International Law Association.

32. Mr. HUDSON proposed the wording:

"The exercise by a coastal State of the right of control and jurisdiction over the continental shelf must not result in substantial interference with navigation along established traffic routes nor in pollution of the water for animal life."

33. Mr. CORDOVA asked why special mention should be made of established routes.

34. Mr. HUDSON explained that if any installation were set up on the surface of the water to exploit a well which had already been drilled, it must be laid down that no vessel had a right to navigate at that point.

Since the installation in question might be a matter of 100 sq. yards in area, a vessel could steer round it. But in the case of established traffic routes, the coastal State would be required, when exercising its right of control and jurisdiction as laid down for the purposes of exploiting the continental shelf, to avoid interfering with such traffic routes. The question of established sea routes would have to be taken up again when the subject of territorial waters was discussed. They must be taken into account, and he thought the word "established" could be kept.

35. Mr. FRANÇOIS said that if the Commission agreed to Mr. Hudson's proposal, it would be showing a more broad-minded attitude towards the exploitation of the continental shelf than the committee of the International Law Association. Mere deviation did not constitute substantial interference; one could only speak of substantial interference if navigation were hampered. He thought it would be enough to keep the words "substantial interference" without adding the reference to "traffic routes". If the words "traffic routes" were used, it would be argued that the provision did not apply in areas where there were no such routes.

36. Mr. HUDSON was willing to delete the words, which he had included in his text because they were to be found in the text proposed by the Rapporteur.

37. Mr. KERNO (Assistant Secretary-General) thought that all the members of the Commission were agreed that the régime of the high seas must be maintained as the general rule, but that an easement had been established in the interests of the coastal State, though the easement must not result in substantial interference with lawful activities on the high seas, namely shipping and fishing. He suggested the wording "in so far as it does not interfere substantially with shipping and fishing".

38. He saw no point in being more specific. In any case, he wondered whether there might not be other ill-effects besides pollution of the water. The noise of machinery might drive away the fish, for instance; examples might be mentioned in the comment.

39. At the request of Mr. YEPES, Mr. HUDSON amended his text to read: "... substantial interference with shipping or fishing".

40. Mr. ALFARO was in favour of adopting Mr. Kerno's suggestion.. It was always dangerous to include examples in an actual article. The examples could be given in the comment. He thought the article might read: "... substantial interference with navigation or fishing", and leave it at that.

41. Mr. SANDSTRÖM was quite prepared to agree to the use of the wording "navigation along established routes". It was reasonable enough to try to ensure that a right granted should not encroach on an established practice. But that argument would not hold good in the case of a practice which might grow up in the future.

42. He had realized what Mr. François was driving at. The previous articles had started out from the mere general principle of control and jurisdiction. Then, article 6 took up the question of exploration and exploitation. There were sound reasons for referring to more

<sup>2</sup> See summary record of the 113th meeting, paras. 47-48.

concrete measures of that kind; and he would like to see Mr. François' text kept.

43. Mr. HUDSON said he personally was quite willing. After all, article 2 spoke of "the exercise of the right of control and jurisdiction". He would be prepared to accept the wording: "the exploitation of the natural resources of the continental shelf must not create substantial interference...", or perhaps "the exercise by a coastal State of control and jurisdiction over the exploitation of the continental shelf...".

44. Mr. SCELLE did not understand the term "substantial interference". At what point did interference begin to be substantial? It was leaving a loophole for arbitrary action on the part of States. A powerful State would be able to indulge in substantial interference, whereas a minor State could not afford to commit the slightest interference. Any such provision was pointless unless the International Court of Justice were to be constantly intervening.

45. Mr. FRANÇOIS pointed out that if exploitation alone were mentioned, the impression might be given that the Commission did not have exploration in mind, in which case the article would not be applied satisfactorily.

46. In reply to an observation by the CHAIRMAN that the word "exploitation" included the notion of "exploration", Mr. FRANÇOIS, Mr. EL KHOURY, Mr. SPIROPOULOS, Mr. ALFARO and Mr. YEPES maintained that there could be exploration without exploitation, and that both words were necessary in article 6 as well as in article 2.

*It was so decided.*

47. Mr. YEPES pointed out that natural resources were not explored but exploited. What was explored was the sea-bed and subsoil.

48. Mr. HUDSON said that if the wishes of Mr. Yepes were to be met, the text would have to run as follows: "... exploration of the sea-bed and subsoil of the continental shelf and exploitation of its natural resources".

49. Mr. CORDOVA said the Commission was turning itself into a drafting committee. He suggested that it be left to the Rapporteur to draw up a text now that he had ascertained the views of the Commission.

50. Mr. YEPES thought that the Rapporteur should be given directives on a further point. He was thinking of Mr. Scelle's remarks concerning substantial interference. To forestall any difficulties which might arise, it might be as well to give a few examples, as Mr. François had done in the original text of the article, or as the International Law Association's report had done.

51. Mr. HUDSON said that the drawback there would be that the examples would appear to exclude other possibilities.

52. He requested the Secretariat to provide the members of the Commission with the amended text of the articles it had so far adopted. Some of the observations being made were only made because the members of the Commission did not have the adopted versions before them.

53. The CHAIRMAN asked Mr. François to submit a text at the next meeting.

#### Article 7

54. The CHAIRMAN thought the words "outside territorial waters"<sup>3</sup> should be deleted.

55. Mr. HUDSON thought that the article belonged to article 6, and saw no reason why it should be set out as a separate article.

56. He felt that sub-paragraphs (a) and (b) should be worded more generally: "that notice of such installations is given to all concerned and due regard maintained for warning apparatus".

57. The CHAIRMAN, supported by Mr. AMADO, thought that the wording of the text in question greatly depended on the wording of article 6, and that it would be well to wait and see what decision was taken in regard to article 6.

58. Mr. HUDSON, supported by Mr. YEPES, considered that notice should be given and warning apparatus maintained, whether the interference with shipping were substantial or not. The question was what minimum precautions must be taken. They must be specified, whatever was decided about article 6.

59. Mr. FRANÇOIS thought that the latter proposal was rather far-reaching. Should such measures be required even in waters where there was no shipping?

60. Mr. HUDSON said that if the general expression "traffic routes" were used, notice would have to be given to the users of such routes; but if no mention were made of shipping routes, there was no necessity to give notice to all and sundry. The expense involved would be unduly high. The special arrangements in the Persian Gulf for the upkeep of light signals were extremely expensive. Such notice would only have to be given in the case of traffic routes normally followed by shipping.

61. Mr. KERNO (Assistant Secretary-General) asked whether the use of the words "interested parties" did not already meet Mr. Hudson's objection. If there were no traffic routes, there would be no interested parties. It must of course be borne in mind that exploration and exploitation might create new sea routes.

62. Mr. HUDSON corroborated that statement, quoting the examples of Aruba and the coast of Saudi Arabia.

63. Mr. SANDSTRÖM wondered whether the precautionary measures in question ought not to be taken everywhere, even off the regular shipping routes. A vessel sailing by the point in question must equally have protection. A notification might be sent to governments.

64. Mr. SPIROPOULOS said that it was a question of general policy. Obviously if installations were set up at a given point in the sea they would be shown on navigators' charts, and that was all that was necessary. Hence the rule might be that the competent authorities in the various States should be notified.

65. Mr. FRANÇOIS said that he was sufficiently clear as to the views of the Commission to draft a revised text.

#### Article 8

66. The CHAIRMAN read out article 8 and the note to articles 7 and 8.

<sup>3</sup> *Ibid.*

67. Mr. HUDSON asked which were the countries referred to in the note. He wondered whether it referred to underwater drilling.

68. Mr. FRANÇOIS explained that it referred to drilling on dry land.

69. Mr. YEPES wondered whether the Commission was not going into too great detail. He thought it would be better to leave such matters to be dealt with by special police measures by States exploiting the continental shelf. However, he would not wish to stand in the way of the text being adopted.

70. Mr. HUDSON said there were two ideas embodied in the text. In the first place, States must be prevented from claiming that there was a belt of territorial water surrounding the installations on the grounds that such installations were in the nature of islands. He assumed that Mr. François had studied the legislation of Saudi Arabia on that point. Indeed, that legislation had given rise to a good deal of comment, and he thought that Saudi Arabia had been rather drastic.

71. Secondly, the installations must be protected. He felt that it would be going too far to include provisions covering non-permanent installations such as, for example, a platform established for two or three days.

72. Mr. FRANÇOIS argued that even there, protection was called for.

73. The CHAIRMAN said that all questions relating to territorial waters should be eschewed.

74. Mr. HUDSON considered that a safety zone of 500 metres was excessive. He did not think it was necessary to follow the International Law Association's report slavishly.

75. Mr. FRANÇOIS thought it would be a good thing to mention a zone of 500 meters in breadth so as to make it clear that the zone was to be very narrow and not something similar in extent to the territorial waters limit.

76. He did not regard it as a mere point of detail. It was most important to indicate whether the Commission felt that such installations, which were extremely costly, justified the establishment of a safety zone.

77. Mr. YEPES observed that the installations in question did not possess their own territorial waters. The safety question in the case in point was not a matter for the jurist but for the engineer.

78. Mr. EL KHOURY mentioned that, according to Moslem law, if a person sank a well in the desert, which was public property, no other person was entitled to sink a well within a radius of some 350 metre. In the present instance, the point was to prevent the establishment of a similar installation, or navigation or fishing, within a given radius.

79. Mr. AMADO thought the article was extremely important. Its purpose was to warn States having jurisdiction and control over such installations that they must not try to take advantage of the circumstances as a pretext for claiming rights similar to those deriving from territorial waters. All they could claim was the enjoyment of a safety zone, which was something recognized in international law. An island which came about naturally

immediately acquired the attributes belonging to its very nature. In the present instance, nothing more was involved than a man-made structure and a safety zone. He could not see how so obvious a matter could give rise to discussion.

80. What principle was to be applied in determining the breadth of the safety zone? The report had adopted the figure of 500 metres, and he wondered whether there were any precedents in international law. The difficulty was that the Commission was dealing with an entirely novel provision. Possibly it would be wise not to mention any actual distance. The International Law Association had seen fit to fix the breadth of the safety zone at 500 metres. Should that figure be accepted, or should the breadth of the zone be left undetermined? He saw no objection to adopting the figure unless very strong arguments were forthcoming against it.

81. Mr. CORDOVA pointed out that, within the safety zone, the coastal State would have full jurisdiction. It was an exception to the principle that the waters in question came within the régime of the high seas. The Commission was laying down the principle that the coastal State would have jurisdiction and control over a given zone. The determination of the extent of the zone was a matter for technical experts.

82. Mr. FRANÇOIS said that the right of jurisdiction and control referred to must be restricted to the purpose intended, which was solely to protect the installations.

83. Mr. SCHELLE entirely agreed with Mr. Amado. Unless precautions were taken, States would use the pretext of exploiting the continental shelf in order to set up installations sufficiently close to link them together and even to form a dyke, thus pushing its territorial waters a great distance seawards. Such a proceeding was by no means impossible, and must be guarded against. Napoleon had built a dyke off Cherbourg.

84. Mr. SPIROPOULOS said that the Commission was faced with two proposals. The more far-reaching proposal — Mr. Hudson's — favoured deletion of the whole of article 8, whereas Mr. François' proposal would lay down detailed rules covering every point. He personally considered that, now that the problem of the continental shelf had been tackled, the particular case in point must be settled.

85. The first part of Mr. François' text dealt with a special point. It stipulated that such installations must not be regarded as the equivalent of islands. That was surely obvious. It was feasible to create an island in shallow waters, but the article would state that that must not be done.

86. The second part of the text was equally justified. If provision was to be made for installations, regulations must be laid down for their protection. Hence a safety zone must be allowed for. It was a practical necessity, and must be protected. The coastal State could exercise its jurisdiction all round the installations.

87. As to the rights to be exercised in such zones, they would be such rights as were essential for the protection of the installations. He did not know whether it was desirable to go into detail and to define those rights.

It might be sufficient to call them "the rights necessary for the protection of such installations". A zone 500 metres in breadth, as proposed, struck him as reasonable. Possibly no mention might be made of a figure. But why not suggest one, say 500 or 800 metres? It would still be less than the width of the belt of territorial waters.

88. Mr. SANDSTRÖM liked the passage in the report which stated that installations could not be regarded as islands. The mention of such safety zones added an essential point to article 6. He had the impression that the creation of such safety zones implied some development of the law.

89. Mr. AMADO thought that there was some justification for fixing the distance in view of the fact that the interested parties were to be notified. They would be informed that an installation had been set up at such and such a point, and warned that within such and such a radius the area of the sea was under occupation. The figure could be 500 metres or some other distance, but a definite figure should be mentioned.

90. Mr. HUDSON read out the following text in which he had recast the ideas contained in articles 6, 7 and 8 of Mr. François' draft:

"The exploration of the continental shelf and the exploitation of its natural resources must not result in substantial interference with navigation or fishing.

"Due notice must be given to interests which may be affected of the construction of any installations above sea level, whatever their degree of permanence, and due means of warning of their presence must be maintained.

"No such installation shall have the status of an island for the purpose of delimiting territorial waters, but to reasonable distances safety zones may be maintained around such installations for their protection."

91. Mr. FRANÇOIS was quite willing to agree to the text proposed by Mr. Hudson, though he wondered whether it would not be as well to state in a comment that the extent of the safety zones should not exceed a matter of a few hundred metres.

92. Mr. YEPES was also in favour of Mr. Hudson's proposal, though he considered that the extent of the safety zone should be proportionate to the size of the actual installations and to the volume of shipping.

93. The CHAIRMAN and Mr. CORDOVA wondered who would be responsible for fixing any such proportion or such reasonable distances.

94. Mr. HUDSON suggested the coastal State, while Mr. EL KHOURY thought the interested parties would be more appropriate.

95. Mr. AMADO thought it would be better not to make any reference to the delimitation of territorial waters.

96. The CHAIRMAN held the opposite view. It was essential to make such a reference so as to avoid any misunderstanding.

97. Mr. KERNO (Assistant Secretary-General) thought Mr. Hudson's draft was excellent, as calculated to obviate a difficulty. Actually, article 8 as proposed by Mr.

François dealt with the control and jurisdiction exercised by a coastal State setting up installations of the kind envisaged in article 7. The expression "control and jurisdiction" was already to be found in article 2. But there, what was referred to was control and jurisdiction over the continental shelf, whereas in article 8 the control and jurisdiction concerned were those exercised over a stretch of water. Thus article 8 provided for a sort of easement over the régime of the high seas in favour of the coastal State, and there might be some confusion if the same expression were used in two different places.

98. Mr. FRANÇOIS, while pointing out that he had made it clear in article 8 that the control and jurisdiction in question were those "required for the protection of such installation", admitted that Mr. Hudson's text would avoid any confusion.

99. The CHAIRMAN suggested that the text submitted by Mr. Hudson be left with the Rapporteur, to be borne in mind when articles 6, 7 and 8 were drafted.<sup>4</sup>

*It was so agreed.*

#### Article 9

100. Mr. HUDSON found fault with the first sentence of Mr. François' text. The expression "interested in the same continental shelf" did not strike him as very happy, and he proposed that it be replaced by the following: "When the same continental shelf is contiguous to the territories of two or more States, boundaries of the area of the continental shelf should be fixed by agreement between such States."

101. Mr. CORDOVA pointed out that the sentence in question did not refer to a continental shelf contiguous to two or more States, but to continental shelves tangential one to another as for example those in the Persian Gulf. In his opinion there was not the slightest doubt that the extension below the sea of the frontier line between Mexico and the United States constituted the boundary between the continental shelf of the United States and that of Mexico.

102. Mr. AMADO read out the following passage from an article on "Further Claims to Areas beneath the High Seas" by Mr. Young, published in the *American Journal of International Law* (vol. 43 (1949), p. 790):

"In the Persian Gulf, in which there is, strictly speaking, no continental shelf, the claims have generally taken account of this fact and proceeded on a somewhat different theory, based on a concept of contiguity to the claiming State. This was the principle of the Saudi Arabian Royal Pronouncement of May 28, 1949. . . The formula there set forth has since been followed in actions by most of the British protected sheikdoms which lie along the Arabian side of the Gulf. . . It is fortunate that the claims so far advanced, by both Saudi Arabia and the sheikdoms, share a common approach. Each gives notice that some areas beneath the high seas off its coast are under its jurisdiction, but at the same time, it recognizes that boundaries must be determined on equitable principles by agreement with neighbouring Governments."

<sup>4</sup> See summary record of the 116th meeting, para. 106.

103. Mr. SPIROPOULOS considered that the case of two neighbouring States presented no difficulty. The boundary of the continental shelf over which each of them exercised control and jurisdiction was determined by a line perpendicular to the coast, at the point where the frontier between the two States reached the sea.

104. Mr. SANDSTRÖM said that, in his commentary on article 9, Mr. François had alluded to the Permanent Court of Arbitration's award relating to the sea frontiers between Norway and Sweden, and he explained that in Swedish private law, as a general rule the following principle was applied: where the waters extending in front of two properties had to be partitioned or divided, each owner took possession of the waters situated nearest his own territory. In the Permanent Court of Arbitration award, the boundary line had been taken as a line perpendicular to the coast at the point where the frontier between the two territories reached the sea.

105. By analogy one might take the demarcation line of the continental shelf as being a prolongation of the demarcation line of the territorial waters. There were, however, cases in which that would not be possible. In the case of Spain and France for example, where the coastline of the two countries formed an angle, the curve of the demarcation line of the continental shelf would be a diagonal.

106. Mr. CORDOVA suggested wording to the effect that the demarcation line between the continental shelf of contiguous States would be determined by the prolongation of the boundary line of territorial waters.

107. Mr. HUDSON pointed out a significant discrepancy between the two sentences constituting article 9. The first sentence was, as it were, the expression of a wish — the States interested in the same continental shelf should agree in fixing the boundaries of the part of the shelf belonging to each of them. In the second sentence, the Rapporteur endeavoured to provide a method by which the demarcation line could be determined in the event of the parties not reaching agreement. He thought Mr. François' text could stand, provided it was in the form of an expressed wish. After all, State proclamations were frequently in that form.

108. Mr. ALFARO thought the difficulty arose from the fact that Mr. François' text spoke of two or more States "interested in the same continental shelf". It would be better to put it that "where a continental shelf lies beyond the territorial waters of two contiguous States...". He would also like account to be taken of the case of two States whose coast lines faced each other.

109. Mr. SPIROPOULOS, supported by Mr. ALFARO, thought that the Commission should not speak of a common continental shelf. It would be better to say, in the case of contiguous States, that the boundary of the continental shelf is marked by the prolongation of the limit of territorial waters.

110. Mr. HUDSON asked what would happen if the States in question wished to establish a different boundary. Would it not be better to express the wish that the demarcation line should be fixed by agreement between the States?

111. Mr. SPIROPOULOS felt that the draft should fix the demarcation line, while at the same time allowing States, if they so desired, to establish it by mutual agreement. If they did not show any such inclination, however, the demarcation line of the continental shelf would automatically be the prolongation of the limit of territorial waters.

112. In the case of States whose coastlines faced each other and were separated by straits, say twice as wide as the limit of territorial waters, it might be agreed that half the continental shelf should belong to each of the two States, in the absence of some other division arrived at by mutual consent.

113. Mr. François' report was quite clear on that point, and all the members of the Commission were fundamentally in agreement on the question.

114. The CHAIRMAN was of a different opinion. The Commission should lay down the essential rule that it was the duty of States to reach agreement between themselves as to the demarcation line of their continental shelves.

115. Mr. SPIROPOULOS, supported by Mr. CORDOVA, did not agree. If States wished to establish the boundary line by common agreement, they might do so; but they should not be forced to proceed thus. The Commission should lay down the rule.

116. Mr. HSU thought that the course advocated by Mr. Spiropoulos, namely, prolongation of the boundary line of territorial waters, might lead to unfairness in the delimitation in the case of continental shelves of considerable extent.

117. Mr. SPIROPOULOS maintained that the geometrical problem involved would not give rise to any additional difficulty.

118. Mr. HUDSON took the example of the Persian Gulf, which had a continental shelf in the sense in which the Commission had defined the term. The waters were about 70 fathoms deep in most of the Gulf. Saudi Arabia and the Principality of Kuwait were two contiguous territories. Actually there was a neutral zone between them, but it could be disregarded for the sake of argument. There was a single continental shelf stretching in front of the two States as far as the coast of Iran opposite. If the demarcation line were traced between Saudi Arabia and Kuwait as Mr. François had suggested in article 9, the line would extend as far as the coast of Iran, while the demarcation line between the continental shelves of Saudi Arabia and Iran would be the median line between the two coasts.

119. The system advocated in article 9 struck him as inadequate, since in actual practice no demarcation of territorial waters was ever made. He knew<sup>5</sup> of only two cases to the contrary. A partial demarcation line had been fixed between the United States and Mexico.<sup>5</sup> The plotting of the line had in fact been the subject of a later agreement. In the case of the sea frontiers between Norway and Sweden referred to in the note to

<sup>5</sup> Treaty of Peace, Friendship, etc., signed at Guadalupe Hidalgo on 2 February 1848 (de Martens, *Nouveau Recueil général de Traités*, vol. XIV, p. 7).



article 9, the Permanent Court of Arbitration had adopted as demarcation line a line perpendicular to the general coastline. But that demarcation line did not constitute a prolongation of the land frontier. Such a prolongation might result in unfairness of delimitation if the land frontier met the coast at an angle. The arbitration award had been dictated by special considerations. He did not think that other States had adopted the method followed by the Permanent Court of Arbitration.

120. In the case of the Persian Gulf, there were several possibilities: either to prolong the land frontier, or to draw a perpendicular from the general line of the coast. Mr. Boggs, in his article on the delimitation of seaward areas,<sup>6</sup> put forward another suggestion, namely to draw a line equidistant from the territory of each of the States concerned. But that hardly seemed possible. At any rate it hardly seemed possible to prolong a crooked line.

121. Mr. SPIROPOULOS, on second thoughts, considered that it was impossible to find a satisfactory solution to the problem.

122. Mr. HUDSON said he had been studying the question for upwards of three years, and he was convinced that there were very few works on international law which dealt with it. The problem had been tackled mainly by geographers. The general tendency was to fix the limits by drawing a line perpendicular to the general coastline. There was no international law text which required States to accept a line constituting a prolongation of the line of demarcation of territorial waters. In any case, no such line existed either in law or in fact. To his knowledge, the sea frontiers between States had not given rise to any dispute with the exception of that between Norway and Sweden. No doubt Mr. Boggs could produce concrete examples in support of the method advocated by Mr. François. But he was still not convinced.

123. He was inclined to think, like Mr. Spiropoulos, that for the time being it was impossible to find a solution to the problem. One might perhaps state as follows: "Two or more neighbouring States to whose territory the same continental shelf is contiguous should (or may) establish boundaries in areas of the continental shelf by agreement between them." Some proclamations even stated that the establishment of such boundaries should be carried out on an equitable basis. For the time being it seemed impossible to go further than that.

124. Mr. YEPES, too, felt that the demarcation of the continental shelf should be fixed by agreement between the States. He cited the example of the delimitation of the continental shelf in the Gulf of Paria, which had been settled by agreement between Great Britain and Venezuela in 1942. The agreement was the first of its kind, and laid down the limit of jurisdiction of each of the parties. The demarcation line ran across the middle of the high sea area.

125. Mr. HUDSON pointed out that the treaty in question made no mention of the continental shelf, and

that the principle of the median line had not been applied in that treaty.

126. Mr. YEPES read out the following passage from the Secretariat memorandum on the régime of the high seas (A/CN.4/32, p. 57, mimeographed English text; para. 178, printed French text):

"This treaty" (Treaty of 26 February 1942 between the United Kingdom and Venezuela relating to the Submarine Areas of the Gulf of Paria) "marks a turning point in the history of the two uses of the continental shelf concept and the beginning of its application to the exploitation of natural resources, instead of as previously to the protection of fishing... The continental shelf concept... is not mentioned at all either in the actual text of the treaty or in the executive orders for its implementation."

127. Mr. FRANÇOIS said that, in making his proposal, he had felt that the course adopted by the Permanent Court of Arbitration could be used as a basis in international law. That viewpoint was challenged by Mr. Hudson, and possibly on good grounds. But unless that course were adopted, it was quite certain, as Mr. Spiropoulos had said, that it would be impossible to fix a boundary between two continental shelves unless agreement were forthcoming as to the demarcation of territorial waters.

128. Mr. CORDOVA pointed out that the United States and Mexico had settled satisfactorily the question of demarcation of their territorial waters, and the demarcation of the continental shelf should be effected in the same way as the demarcation of territorial waters. Possibly no such boundary line existed in a physical sense, but it unquestionably existed in a legal sense.

129. He was inclined to favour the idea put forward by the Rapporteur, that the prolongation of the demarcation line of territorial waters should be adopted in delimiting the continental shelf. That would solve the problem in regard to contiguous States.

130. Mr. HUDSON could not agree with Mr. CORDOVA's argument. The question was dealt with in the last few pages of the Secretariat memorandum on the régime of the high seas (A/CN.4/32). He had particularly favoured the concept put forward there (p. 109, mimeographed English text; paras. 337-338, printed French text) of a protective perimeter as "an indispensable adjunct to the idea of a demarcation of the continental shelf or of a demarcation of the areas allotted to the various States interested in the same shelf".

131. The CHAIRMAN thought the problem was worthy of careful consideration. Actually, it was a matter of geography rather than of law. It seemed to him impossible at the moment to draft a uniform rule which would be acceptable to all States.

132. Mr. HUDSON asked whether the Commission was prepared to report to the General Assembly on the question of the continental shelf.

133. Mr. FRANÇOIS thought that it was desirable, at any rate, to submit to the various governments a report on the question, accompanied by fairly lengthy comments.

<sup>6</sup> "Delimitation of Seaward Areas under National Jurisdiction", *American Journal of International Law*, vol. 44 (1951), pp. 240-266.

134. Mr. YEPES was entirely in favour of that course, in view of the complete novelty of the problem.

The meeting rose at 6.5 p.m.

## 116th MEETING

Tuesday, 3 July 1951, at 9.45 a.m.

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*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 9 (*continued*)

1. The CHAIRMAN said that he had just been re-reading the memorandum on the subject prepared by the Secretariat (A/CN.4/32), especially the concluding remarks on page 109 of the mimeographed English text (para. 339 of the printed French text): "in short the allotment should be made by agreements between the States concerned or by amicable arbitration, not by means of hard and fast rules for which the time is not yet ripe".

2. He found that a satisfactory conclusion. Any rule which the Commission laid down was bound to be arbitrary. It would be difficult for example to apply the principle of the median line in the Persian Gulf, since the line would pass through the territorial waters of the islands in the Gulf.

3. Mr. CORDOVA enquired whether the members of the Commission felt that, whatever method were used for determining the boundary of the continental shelf between two contiguous States, there was at any rate an understanding that the continental shelf of State A would terminate where it reached the sea-bed and subsoil below

the territorial waters of State B. That was one point. He would also like to know whether the Commission considered that when two States had defined by treaty or other agreement the boundaries of their territorial waters, it was to be understood that the same boundaries should be observed in respect of the continental shelf. There was for example the 1848 treaty between Mexico and the United States,<sup>1</sup> fixing the boundary between the two countries. In the Gulf of Mexico, the boundary went from the shore to a point three marine leagues out. Whatever system the Commission applied, if those two States had already accepted the principle in regard to their territorial waters, obviously the continental shelf beneath those waters up to a distance of three marine leagues would belong to Mexico or the United States respectively. At the previous meeting it had been argued that if there was an agreement, that agreement must be observed. He could not follow the Commission if it considered that the continental shelf of a given country could encroach on the sea-bed below the territorial waters of another country. From that point of view therefore, the boundaries of territorial waters had an effect on the continental shelf of contiguous States which must be taken into account, especially where the relevant questions had been settled by a treaty stipulating that the territorial waters of a State were delimited by a geographical line. In his view, treaties in such cases *ipso facto* delimited the continental shelves.

4. Mr. HSU said that the question was whether it was equitable to extend seawards the dividing-line between the territorial waters, since that line would vary according to the configuration of the coast. The dividing line would be relatively unimportant in the case of territorial waters, which were a narrow belt, but might take on great significance and cause injustice if applied to continental shelves which were sometimes of considerable extent. It was a problem which the Commission must deal with, for if it were left to the interested parties to determine the boundary-line of continental shelves, injustice would probably be done to the weaker State, and the stronger State would take the lion's share. Either the Commission could state that the continental shelf should be partitioned on an equitable basis, or it could go further and lay down precise rules.

5. Mr. SCELLE said he was sorry he could not entirely agree with the conclusions drawn in the Secretariat's memorandum (A/CN.4/32) to the effect that the continental shelf should be the subject of agreement between the two governments concerned. It was desirable that there should be agreement, but it might very well happen that there was none. The world was now living under a system of law which forbade the settlement of any dispute by force or the threat of force. He suggested that the Commission should state that, if two governments could not reach agreement as to the partition of the continental shelf, neither State was entitled to exploit it. They must either maintain the *status quo* or they would be under an obligation to refer the question to the International Court of Justice. He could not agree to stating bluntly that the two States must reach agreement.

<sup>1</sup> See summary record of the 115th meeting, footnote 5.