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Summary record of the 234th meeting

Topic:
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Mr. Yepes' proposal was rejected by 5 votes to 2, with 4 abstentions.

Paragraph 6 was approved by 8 votes to 2, with 2 abstentions.

91. Mr. YEPES asked that a footnote be inserted in the Commission's report to the effect that he had voted against paragraph 6 for the reasons he had given during the discussion on it.

The meeting rose at 1 p.m.

234th MEETING

Friday, 7 August 1953, at 9.30 a.m.

CONTENTS

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Giberto AMADO, Mr. Roberto CÓRDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

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

Consideration of the draft report of the Commission covering the work of its fifth session (*continued*)

CHAPTER III: RÉGIME OF THE HIGH SEAS (A/CN.4/L.45/Add.1)* (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the chapter on the régime of the high seas in the draft report covering the work of its fifth session (A/CN.4/L.45/Add.1).

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter III.

*Paragraph 7 (64)***

2. Mr. SANDSTRÖM proposed the insertion, after the first two sentences of paragraph 7[1] referring to the change in the method of delimiting the continental shelf, of a sentence reading as follows:

> "Some members of the Commission wanted to maintain the previously adopted text even in this respect for the reason *inter alia* that it corresponds better to the purpose of the draft not to adopt a fixed limit for the continental shelf but to let the territorial extension and the exercise of the powers to be given the coastal State depend on the practical possibilities of exploiting;"

The text should then continue: "The majority of the Commission, following the considerations adduced by the Special Rapporteur..." instead of "The Commission, following the considerations adduced by the Special Rapporteur...". He also proposed the deletion of the last sentence, reading: "The text thus adopted is not arbitrary, for, as already stated, it also coincides generally with the practical possibilities of exploration and exploitation." The practical possibilities of exploration and exploitation were at present generally limited to a depth of 30 metres, not 200 metres.

3. Mr. YEPES appealed to the Commission's understanding and to the General Rapporteur's sense of fair play to devise a generally acceptable formula for what was the most important paragraph in the whole chapter. He was strongly in favour of the draft articles, but he could not vote in favour of the report unless it was a faithful account of what had actually occurred. He did not see why the Commission should not frankly state that it had changed its mind, since such was the case. Mr. Lauterpacht had not been present at the third session and it was therefore understandable that he should fail to realize how complete was the change

** The number within parentheses indicates the paragraph number in the "Report" of the Commission.

[1] Paragraph 7 read as follows:

"7. In defining, for the purpose of the Articles adopted, the term "continental shelf" as referring "to the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of the territorial sea, *to a depth of two hundred metres*", the Commission adhered literally to the definition adopted in 1951 except with regard to the passage reproduced in italics. The relevant passage of Article 1 as then adopted referred to the area "where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil". The Commission, following the considerations adduced by the Special Rapporteur in the light of observations of governments, has come to the conclusion that the text previously adopted does not satisfy the requirement of certainty and that it is calculated to give rise to disputes. On the other hand, the fixed limit of two hundred metres — a limit which is at present sufficient for all practical needs — coincides with widely accepted practice and is in conformity with the fact that it is at that depth that the continental shelf, in the geological sense, generally comes to an end. It is there that the continental slope begins and falls steeply to a great depth. The text thus adopted is not arbitrary for, as already stated, it also coincides generally with the practical possibilities of exploration and exploitation."

which had been made. In its report on that session, however, the Commission had clearly stated, with regard to the article defining the continental shelf: "This article explains the sense in which the term 'continental shelf' is used for present purposes. It departs from the geological concept of that term".[2] Having placed its views publicly on record in that way, the Commission could not pretend that it had not changed them in coming round to those which he had himself expressed in 1951, and adopting a geological definition.

4. As he had mentioned at the previous meeting[3] he accordingly now proposed that paragraph 7 be amended to read as follows:

> "In defining — after lengthy discussion — for the purpose of the articles adopted, the term 'continental shelf' as referring 'to the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the area of the territorial sea, to a depth of two hundred metres', the Commission made a substantial change and abandoned the criterion of exploitability that it had adopted in 1951 in favour of that of a depth of two hundred metres, as laid down in article 1 of the draft. The relevant passage of article 1 as adopted in 1951 referred to the area 'where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil'. The Commission, following the considerations adduced by the Special Rapporteur in the light of observations of certain Governments, has come to the conclusion that the text previously adopted does not satisfy the requirement of certainty and that it is calculated to give rise to disputes. On the other hand, the fixed limit of two hundred metres — a limit which is at present sufficient for all practical needs — has been fixed because it is at that depth that the continental shelf, in the geological sense, generally comes to an end. It is there that the continental slope begins and falls steeply to a great depth. The text thus adopted is not arbitrary for, as already stated, it also coincides generally with the practical possibilities of exploration and exploitation. Nevertheless it may be added, in order to be absolutely objective, that some hold the view that even this limit is an arbitrary one, particularly in cases where exploitability extends beyond a depth of two hundred metres."

5. He also proposed that the following new paragraph be inserted after paragraph 7:

> "During the Commission's discussions it was argued that the criterion of depth violated the principle of equality of States in law, since — according to the exponents of that view — certain States, such as the South American Republics on the Pacific Coast, in particular Chile and Peru, whose waters reached a depth of 200 metres at a very short distance from the shore, would have practically no continental shelf if that concept were defined according to depth. It was also argued that the criterion of depth was in no way consistent with the 'declarations' on their respective continental shelves made, since 1945, by several American Governments. One member of the Commission considered that the germ of a veritable customary law on the continental shelf was already apparent in those declarations."

6. The CHAIRMAN, speaking as Special Rapporteur, said, with regard to Mr. Yepes' first proposal, that "cases where exploitability extends beyond a depth of two hundred metres" did not at present exist. As Mr. Sandström had said, the limit of exploitability was usually no more than 30 metres; with the scientific and technical progress which it was at present possible to foresee, the limit might be extended to 60 or 70 metres, but no deeper. The Commission had therefore been extremely generous in fixing the depth at 200 metres, since no practical possibility of exploitation below that depth could be even remotely foreseen. It was, of course, true that if ever the limit of exploitability exceeded a depth of 200 metres, the limit which the Commission had fixed would become arbitrary, but he thought it went without saying that the definition which the Commission had adopted was designed to meet present and foreseeable needs.

7. Mr. YEPES replied that, whatever might be said for or against the argument contained in the last sentence of his text, that argument had been advanced during the discussions and should therefore be reflected in the report, the sole purpose of which was to give an accurate account of the discussions. If, however, he was the only member of the Commission who supported that argument, he would have no objection to the words "some hold the view" being replaced by the words "one member of the Commission maintained".

8. Mr. CÓRDOVA, after mentioning that he had unfortunately been absent when the method of delimiting the continental shelf had been under discussion, stated that in his view the definition which had been adopted in 1951 was not satisfactory, but neither was that which the Commission had adopted at the present session entirely satisfactory either.

9. With regard to paragraph 7, he suggested that for the sake of accuracy the word "usually" should be inserted after the words "the continental slope" in the sentence reading: "It is there that the continental slope begins and falls steeply to a great depth".

10. Mr. HSU said that it was his intention to abstain from voting on all the paragraphs in section B of the draft chapter, and consequently on all the amendments submitted to them. He must say, however, that Mr. Yepes' complaint was largely justified. It was, of course, textually correct to say that the Commission had adhered literally to the definition adopted in 1951, subject to one exception. That exception, however, was all-important; the two definitions were in fact based on two entirely different and irreconcilable conceptions.

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[2] "Report of the International Law Commission covering the work of its third session", *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858). Also in *Yearbook of the International Law Commission, 1951*, vol. II, p. 141.

[3] See *supra*, 233rd meeting, para. 73.

11. Mr. SCELLE pointed out that the Commission was not at present discussing the scientific value of the draft articles, but whether the report accurately reflected what the Commission had done. In paragraph 6 it was stated that the Commission had adhered to the basic considerations underlying the articles provisionally adopted in 1951; in fact, it had departed from them in two respects: with regard to the nature of the rights exercised by the coastal State, and in the definition of the continental shelf. The change which had been made in the definition was a radical change, whatever might be said to the contrary in paragraph 7, and he was also quite unable to subscribe to the statement in paragraph 11 that "Essentially the difference between the exercise of control and jurisdiction and the exercise of sovereign rights is one of emphasis", although he agreed with the succeeding sentence, which read: "So is the difference between 'sovereign rights' and 'rights of sovereignty'".

12. The changes which had been made by the Commission during the present session were of great importance, and while he had been unable to vote for the draft articles in 1951 for the reason that they were dangerous, he was unable to vote for them in their new form for the reason that they were catastrophic.

13. Mr. LAUTERPACHT said that, as it had been his aim to submit a draft which accurately reflected the Commission's decisions, he was perturbed to find that some members of the Commission seemed to think that he had failed in his purpose.

14. Mr. Scelle claimed that the decision to replace the term "control and jurisdiction" by the term "sovereign rights" constituted a radical departure from the principles of the 1951 draft, but he (Mr. Lauterpacht) felt that that claim was difficult to sustain when it was borne in mind that most of the articles were devoted to qualifying the coastal State's "sovereign rights".

15. Mr. SCELLE drew attention to the penultimate sentence of paragraph 12, which read: "Such rights [the sovereign rights of the Coastal State] include full jurisdiction, in particular in connexion with the suppression of crime and, if necessary, regulation of civil status". Leaving aside the question whether it was not rather ridiculous to provide for the contingency of births on the continental shelf, the rights referred to had no connexion with control and jurisdiction for the purpose of exploring and exploiting its natural resources; they were the normal rights of sovereignty.

16. Mr. LAUTERPACHT said that, even under the terms of the text approved in 1951, the coastal State would have had to exercise jurisdiction in connexion with the suppression of crime and, if necessary — as it well might be — in connexion with the regulation of civil status. There was no difference, therefore, between the two texts in that respect.

17. To revert to paragraph 7, however, the fact that Mr. Sandström thought it went too far while Mr. Yepes thought that it did not go far enough provided a measure of the difficulty he had had in drafting it. He agreed, however, that the first sentence was open to the reproach that it was somewhat dialectical, and also that the last sentence, reading "The text thus adopted is not arbitrary for, as already stated, it also coincides generally with the practical possibilities of exploration and exploitation" might be so amended as to give some satisfaction to Mr. Yepes. If the Commission agreed, he would submit a re-draft.

18. Mr. YEPES supported Mr. Lauterpacht's suggestion.

19. Mr. AMADO said that he had little to add to what the Special Rapporteur and Mr. Lauterpacht had already said. He personally considered that the first sentence of paragraph 7 faithfully reflected the various stages in the Commission's consideration of the matter. On the other hand, he could not agree with the statement that the fixed limit of two hundred metres "coincides with widely accepted practice", and he would suggest to the General Rapporteur that in his re-draft those words be replaced by the words "is in accordance with practice".

20. Mr. YEPES agreed with Mr. Amado that it was incorrect to state that the fixed limit of two hundred metres "coincides with widely accepted practice", and pointed out that those words were omitted in his own re-draft.

21. The CHAIRMAN pointed out that, even if the General Rapporteur submitted a re-draft of paragraph 7, it would not cover the additional paragraph proposed by Mr. Yepes, which the Commission had, therefore, still to consider.

22. Speaking as Special Rapporteur, he could not understand the first sentence of that proposal, which stated that "the criterion of depth violated the principle of equality of States in law"; for the depth of the superjacent waters had been taken as the criterion in the 1951 draft, as well as in that adopted at the present session. The only difference lay in the manner in which the depth was defined. He also objected to the last sentence, since it was not only "one member of the Commission", but many, including himself, who had expressed the view stated; but that view was no argument against the so-called "criterion of depth".

23. Mr. YEPES pointed out that the criterion which the Commission had adopted in 1951 was not the purely geological criterion of depth, but depth plus exploitability.

24. Whatever could be said for or against them, however, the arguments which were reproduced in the additional paragraph which he proposed had been advanced during the discussions, and should therefore be mentioned in the Commission's report. He would, however, have no objection to the addition of a sentence reading: "The other members of the Commission did not accept these views".

25. Mr. CÓRDOVA said that he was opposed to the additional paragraph proposed by Mr. Yepes, since it was nonsense to say that "the criterion of depth violated

the principle of equality of States in law", or to argue that the criterion which the Commission had chosen for the purpose of delimiting the continental shelf was responsible for the fact that Chile and Peru would have none. It might as well be argued that the definition adopted for the territorial sea was unfair to Bolivia; it was not the definition which deprived Bolivia of a territorial sea, but the fact that it was a land-locked State.

26. If Mr. Yepes insisted on his views being indicated in the report, every other member of the Commission would have the right to insist that their views should be indicated too, which would make the report quite unmanageable.

27. Mr. SPIROPOULOS agreed that Mr. Yepes' proposal for an additional paragraph was unacceptable. The Commission was not responsible for geological factors which would deprive his own country, Greece, as well as the two countries referred to in Mr. Yepes' proposal, of a continental shelf. He also agreed with Mr. Córdova that it would be impracticable for the report to indicate the views of individual members of the Commission.

28. Mr. KOZHEVNIKOV supported the proposal that further discussion of paragraph 7 be deferred until the General Rapporteur had submitted a re-draft. He thought the Commission could also defer further discussion of Mr. Yepes' proposal for an additional paragraph, since the General Rapporteur's re-draft might make it unnecessary. He would therefore merely say, with regard to the substance of Mr. Yepes' proposal, that although he attached the greatest importance to the principle of the equality of States in law, that principle could clearly not be invoked by a State which had no continental shelf for the purpose of claiming one, any more than it could be invoked by an inland State for the purpose of claiming a territorial sea.

29. He had already pointed out on a number of occasions that in his view it was essential for the report to reflect the minority's views on fundamental questions. That did not mean, however, that the report should indicate every minor divergence of view on the part of every individual member of the Commission. For example, he still preferred the definition which he had suggested to that adopted by the Commission, but he had not asked that his views on that question should be indicated in the report. If the views of other members who had not entirely agreed with the Commission's decision were to be included in the report, however, he might feel obliged to make a similar request.

30. Mr. ALFARO said that he, too, was unable to accept Mr. Yepes' proposal for an additional paragraph. The "geographical equality" of States was no concern of the Commission's, and the statement that "One member of the Commission" considered that the germ of a veritable customary law on the continental shelf was already apparent in the declarations made by several American governments would place the other Latin-American members in a very embarrassing position.

31. On the other hand, he agreed that the first sentence of paragraph 7 should be modified, not because it did not state the facts exactly, but because it went further and gave what might appear to be an appreciation of them. Such appreciations should be avoided. It would be preferable to state simply that the Commission had departed from the definition adopted in 1951 to the extent shown.

32. Mr. YEPES said that although, in point of fact, it was he who had advanced the arguments referred to in the additional paragraph he proposed, he appreciated the fact that the suggested wording might prove embarrassing to other members. He would therefore have no objection to replacing the words "One member of the Commission" by "Some members of the Commission".

33. The CHAIRMAN suggested that the General Rapporteur should be requested to submit a re-draft of paragraph 7 taking into account the amendments proposed by Mr. Sandström and Mr. Yepes, and also taking into account, so far as might prove possible, Mr. Yepes' proposal for an additional paragraph.

The Chairman's suggestion was adopted.[4]

Paragraph 8 (65)

34. Mr. SANDSTRÖM said that in his view a depth of 200 metres was not an essential feature of the geographical configuration of the continental shelf, and therefore suggested that the words "if, as is the case in the Persian Gulf, the submarine areas never reach the depth of 200 metres" be replaced by the words "if, as is the case in the Persian Gulf, there exists only a more or less level submarine area without any marked drop".

35. Mr. LAUTERPACHT said that he would bear Mr. Sandström's suggestion in mind in preparing the final text.

On that understanding, *paragraph 8 was approved by 9 votes to none, with 3 abstentions.*

Paragraph 9 (66)

Paragraph 9 was approved by 9 votes to 2, with 1 abstention.

36. Mr. KOZHEVNIKOV, explaining his vote, said that although he could accept the principle laid down in paragraph 9, he could not accept the suggestion that any disputes on the matter must necessarily be submitted to arbitration.

Paragraph 10 (67)

37. Mr. KOZHEVNIKOV asked whether, in the sentence reading "It covers also the submarine areas contiguous to islands regardless of their size", the last four words were not redundant.

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[4] See *infra*, 238th meeting, para. 1.

38. Mr. SCELLE said that there was no doubt that the Commission had intended the expression "continental shelf" to cover the submarine areas contiguous to islands regardless of their size. He could not therefore object to paragraph 10, but would merely point out that the Commission's decision incalculably diminished the freedom of the high seas, for the smallest rock, the merest patch of sand, might be the culminating point of a huge submarine plateau. The implications of the Commission's decision thus served to strengthen his opposition to the draft articles as a whole.

39. Mr. SPIROPOULOS felt that it made no difference at all whether the words "regardless of their size" were deleted or retained. An "island" was an island regardless of its size, without the necessity for saying so.

40. The CHAIRMAN, speaking as Special Rapporteur, agreed.

41. Mr. AMADO proposed that, as they were clearly superfluous, the words "regardless of their size" should be deleted.

Mr. Amado's proposal was adopted by 8 votes to 1, with 3 abstentions.

Paragraph 10, as amended, was approved by 9 votes to none, with 1 abstention.

Paragraph 11 (68)[5]

42. Mr. HSU said that, having at the previous meeting[6] commented on paragraph 11 from his own point of view, he would now try to comment on it from the Commission's. Although he had abstained from voting on the other paragraphs, he would have to vote against paragraph 11 unless it were amended, for it did not describe the situation accurately. It stated that the Commission did not consider the change effected by the substitution of the term "sovereign rights" for the words "control and jurisdiction" to be of fundamental importance. Many members of the Commission, however, did consider it to be of fundamental importance, although perhaps for somewhat different reasons. The General Rapporteur wrote that "the difference between the exercise of control and jurisdiction and the exercise of sovereign rights is one of emphasis". It was in fact just as much a difference of emphasis, but no more so, as was the difference between marriage and co-habitation.

43. His other main objection to paragraph 11 concerned the last sentence, which read: "In adopting the article in its present formulation the Commission desired to avoid language lending itself to interpretations alien to an object which the Commission considers to be of decisive importance, namely, safeguarding the principle of the full freedom of the superjacent sea and the air-space above it". That sounded very fine, but not so fine when it was considered that the Commission had regarded it as of much less importance to safeguard the continental shelf itself against the claims of the coastal State. Having thrown out the baby, the Commission should not pride itself on having kept the bath-water.

44. Mr. LAUTERPACHT said that it was a question of appreciation whether the substitution of "sovereign rights" for "control and jurisdiction" was a change of fundamental importance. He did not believe that the majority of the Commission shared Mr. Hsu's views on that point.

45. Mr. Hsu had also implied that the main purpose of the draft articles was not to safeguard the principle of the freedom of the seas at all, but to parcel them out. The acquisition of certain rights over the continental shelf was, however, a fact. The principal maritime States had made certain claims in that respect, and those claims had never been seriously contested; indeed, many believed that they were not incompatible with the desirability of developing the mineral and other resources of the world to the full. The purpose of the great majority of the draft articles, however, was to limit the possibly injurious effects such claims would have.

46. Mr. HSU remained unconvinced. It was true that no serious protests had yet been made, but he had already pointed out that it took time for protests to become articulate, particularly in cases where the interests of one particular State were not concerned, but only the interests of the collectivity of States.

47. Mr. SANDSTRÖM drew attention to the fact that the choice of the expression "sovereign rights" was the result of a compromise between those members who supported the original draft and those who supported the inclusion of the phrase "rights of sovereignty". The latter phrase, therefore, should not be reinstated by means of a statement in the report to the effect that the change was not of fundamental importance and that the expression "rights of sovereignty" had been preferred by some governments and some members of the Commission, without any reference to the fact that other governments and other members had preferred a different wording.

48. He therefore proposed that the sentence beginning "The Commission does not consider the change..." and ending "...preferred by some governments and some members of the Commission" should be replaced by the following text:

> "The change was arrived at as a compromise between those members who wanted to maintain the expression in the original draft and those who preferred the expression 'rights of sovereignty'."

49. Mr. ALFARO was inclined to support Mr. Sandström. Referring to the General Rapporteur's

[5] Original paragraph 11 read as follows:

"The Commission does not consider the change thus effected to be of fundamental importance. Essentially the difference between the exercise of control and jurisdiction and the exercise of sovereign rights is one of emphasis. So is the difference between 'sovereign rights' and 'rights of sovereignty'. The latter expression was preferred by some governments and some members of the Commission...." [Last sentence as in para. 68 of the "Report"].

[6] *Ibid.*, para. 64.

statement that it was rather a matter of appreciation whether or not the change in the phraseology to "sovereign rights" was a matter of fundamental importance, he said that the report should be concerned with facts rather than with their appreciation.

50. He thought that the difference between "sovereign rights" and "the rights of sovereignty" was that the former were any rights that happened to be exercised by the sovereign State, whereas the latter included all rights comprehended in the concept of sovereignty. The draft articles on the continental shelf only gave specific rights to the coastal State, and thus the expression "rights of sovereignty" would not have been appropriate as a description of them; but when "control and jurisdiction" was exercised by a sovereign State, the phrase "sovereign rights" was applicable.

51. Mr. SPIROPOULOS supported Mr. Sandström and Mr. Alfaro; the General Rapporteur might present a new text taking account of their views.

52. Mr. LAUTERPACHT said he was prepared to consider re-drafting his text, but that it would be meaningless merely to state that a certain wording was a compromise; the theses and antitheses must be described. There was, however, a difficulty in following Mr. Spiropoulos' suggestion inasmuch as whereas Mr. Sandström suggested that the paragraph be compressed, Mr. Alfaro appeared to wish it to be expanded.

53. In his view, a purely factual report would be inadequate. The purpose of the Commission's report on its work during any particular session was to increase both its own prestige and the usefulness of that work by explaining its intentions and the meaning of the drafts it proposed to the General Assembly.

54. Mr. SPIROPOULOS said that it might be undesirable to state in so many words that any decision was the result of a compromise, but it should be possible by describing the exact process from which the decision had resulted, to convey the same idea.

55. Mr. AMADO said that the General Rapporteur's sentence to the effect that the Commission did not consider the change in phraseology from "the exercise... of control and jurisdiction" to "exercises... sovereign rights" to be of fundamental importance was somewhat elliptic. He approved Mr. Sandström's suggestion that the Commission's reports should describe exactly the aims of those advocating various texts.

56. The CHAIRMAN asked the General Rapporteur to present a new text of paragraph 11 at the next meeting.[7]

It was so agreed.

[7] It was not submitted until the 238th meeting. See *infra* 238th meeting, para. 8.

Paragraph 12 (69)[8]

57. Mr. SCELLE said that considerations similar to the views which had been expressed on paragraph 11 also obtained in the case of paragraph 12. Perhaps the General Rapporteur could present a re-draft of that paragraph too.

It was so agreed.[9]

Paragraph 5 (62) (resumed from the 233rd meeting)

58. The CHAIRMAN said that, as Mr. Spiropoulos would not be present the following week, he proposed to take a vote on the complete text of the draft articles on the continental shelf; they were to be found in paragraph 5.

59. Mr. KOZHEVNIKOV, referring to article 6 of the draft articles, said that the text given in paragraph 5 was not the same as that formally adopted by the Commission.

60. The CHAIRMAN and Mr. LIANG (Secretary to the Commission) explained that the changes in question had been made by the Drafting Committee only to render the style more elegant.

61. Mr. KOZHEVNIKOV expressed his satisfaction with that explanation, on the assumption that the sense of the text as adopted had been preserved.

62. Mr. SANDSTRÖM asked what was the exact meaning of the phrase "fish production". Did it refer to breeding, or to the results of fishing?

63. The CHAIRMAN said that the phrase "interference... with fish production" in article 6 (1) referred to any interference with the fish, whether by pollution of the sea, by taking excessive quantities of young fish, or by other means.

64. Mr. LAUTERPACHT recalled that there was a special convention on fish breeding.

65. Mr. AMADO said that, although he would vote for the draft articles as a whole, he was opposed to the wording of article 6. In his view the word "fishing" included the idea of fish production. The Special Rapporteur had insisted on the inclusion of the latter phrase, although he (Mr. Amado) regarded it as superfluous.

66. Mr. KOZHEVNIKOV asked whether it would be in order for him to vote for the draft articles as a whole, but to enter reservations on articles 7 and 8.

[8] Paragraph 12 read as follows:

"12. On the other hand, the reference to the 'sovereign rights' of a coastal State is deemed to serve a useful and probably essential purpose inasmuch as it leaves no doubt as to the completeness of the rights of the coastal State necessary for and connected with the exploration and the exploitation of the natural resources of the continental shelf. Such rights include full jurisdiction, in particular in connexion with the suppression of crime and, if necessary, of regulation of civil status. They naturally include the exclusive rights of exploration and exploitation."

[9] See *infra*, 238th meeting, para. 10.

67. The CHAIRMAN said that that would be entirely in order and in accordance with precedent.

Paragraph 5 was approved and the draft articles on the continental shelf accordingly adopted by 11 votes to 2.

68. Mr. KOZHEVNIKOV requested that it be recorded that, in voting for the draft articles on the continental shelf, he maintained his disagreement in principle with articles 7 and 8, for reasons which he had explained in the course of discussions on those articles.

69. Mr. SCELLE said that he had not felt able to vote in favour of the draft articles, because they gave legal expression to what were nothing more than governmental pretensions that were mutually contradictory, and which were not based on any rule of customary or conventional law. In his opinion, the text was in flagrant violation of existing international law concerning the high seas and the sea-bed. The draft was liable to increase international friction and disturb peaceful relations, because it enlarged without any defined limit the area of anarchy resulting from the separate existence of sovereign States.

70. He regretted, further, that a specialized agency of the United Nations had not been given responsibility for determining what governments or undertakings might be permitted to apply for and be granted concessions for the exploration and exploitation of the bed of the high seas, and for controlling the use made of such concessions.

71. Mr. ZOUREK explained that he had voted for the draft articles on the continental shelf as a whole, because he had felt able to agree with the basic articles of the draft concerning the legal status of the continental shelf. Nevertheless, his vote should not be interpreted as implying that he agreed with article 7, relating to the delimitation of the continental shelf; he maintained his opposition for reasons that he had given at the 204th meeting.[10] Nor should his vote be interpreted as indicating his agreement with article 8, which was concerned with the compulsory referral of disputes to arbitration, which he was also unable to accept for reasons of principle. He was convinced that it was improper to impose on States only one of the various means existing in international law for the peaceful settlement of international disputes. Further, he considered that in the prevailing circumstances, States should not be exposed to the risk of being brought compulsorily before a tribunal for frivolous reasons without adequate means of defending themselves.

72. Mr. YEPES explained that he had voted in favour of the draft articles on the continental shelf as a whole because he thought it was necessary to codify international customary law regarding the continental shelf. The development of that law had begun with the treaty of 26 February 1942 between the United Kingdom and Venezuela relating to the Gulf of Paria, and been continued in the "proclamations" by the United States of America and Mexico in September and October 1945, by Argentina and Panama in 1946, by Chile and Peru in 1947, and then by Brazil in 1950, by the Central American Republics, by certain United Kingdom colonies in the western hemisphere, by the Philippines, by Pakistan, and by various governments in the Persian Gulf. Admittedly the manner in which that customary law had been established was something of an innovation, but it none the less amounted to a new creation of law which must be taken into account.

73. However, the definition of the continental shelf contained in article 1, as adopted by the Commission, was not in conformity with the law as stated in those international instruments. That definition, in his opinion, was contrary to the principle of the legal equality of States, which was fundamental to international law, for the reason that the adoption of depth as the criterion for determining the boundaries of the continental shelf discriminated against those States whose coastal seas reached a depth of 200 metres a very short distance from the coast. It would have been preferable to maintain the criterion of exploitability as indeed the Commission had decided at its third session after a detailed study of the problem. So far as he knew, that criterion had given rise to no serious objections on the part of governments. If that criterion could no longer be retained, the Commission should have chosen a definition sufficiently flexible to permit all States to enjoy the benefits of the doctrine of the continental shelf.

74. Despite that drawback, he considered that, taken as a whole, the draft articles adopted by the Commission represented a real step forward in international law.

75. Mr. HSU explained that he had voted against the draft articles on the continental shelf because he considered that the recognition of the sovereign rights of coastal States over the submarine area contiguous to their coast line was harmful to the interests of the community of nations, and unscientific in its conception. The submarine area or continental shelf, together with the superjacent water and air-space, formed a part of the high seas, and was therefore not subject to the sovereign rights of coastal States, despite the claims made by a number of States in the last decade to exercise "sovereign rights" or "control and jurisdiction" over it. In order to explore and exploit the natural resources of the submarine area, the Coastal State needed a right; and since the area was adjacent to the State, it was reasonable that that right should be exclusive. But it was unnecessary to recognize sovereign rights over the submarine area merely because the coastal State needed an exclusive right to explore and exploit its natural resources, as it would be unnecessary to recognize the sovereign rights of a State to a "contiguous zone" merely because the State had to apply customs, fiscal and immigration

[10] See *supra*, 204th meeting, paras. 18, 19 and 59.

regulations. Further, the recognition of sovereign rights to the submarine area without their recognition in respect to the superjacent water and air-space was unrealistic; for the exploration and exploitation of the sea bed and subsoil would necessarily involve the use of that water and air-space. If they were not subject to the sovereign rights of the coastal State, why should the sea bed be so subject? And if the sea bed was subject to the exercise of sovereign rights, how could the coastal State be prevented from claiming also to exercise the same rights over the superjacent water and air space?

76. It was unscientific to recommend the recognition of unnecessary and unrealistic rights. Further, the recognition of sovereign rights over the submarine area was a denial of the principle of the freedom of the high seas, and thus conflicted with the interests of the community of nations. The principle of the freedom of the high seas was time-honoured, and it was somewhat surprising, to say the least, that the Commission, a learned organ of the United Nations, should have acted to infringe that principle.

77. It was regrettable, too, that the term "continental shelf" should have been chosen in preference to the term "adjacent submarine area", because although the latter included the former, the former did not include the latter. It was often unavoidable in legal definitions to employ terms requiring qualification, but since the law of the "adjacent submarine area" was a new subject, it seemed unwise to adopt a term requiring immediate qualification at the outset, the more so as the use of the term "continental shelf" had naturally influenced the thoughts of members of the Commission.

Paragraph 13 (70)[11]

78. Mr. SANDSTRÖM proposed the insertion at the beginning of the paragraph of the following passage:

"A minority of the Commission was in favour of replacing, as had been proposed by several governments, the term 'natural resources' by the expression 'mineral resources'. Only these resources had earlier been envisaged."

79. He proposed also the addition of the following sentence at the end of the paragraph:

"The minority meant that even if the term 'natural resources' was used, it could not comprise what was not a natural part of the continental shelf, i.e. of the sub-soil, including the sea-bed."

80. Mr. AMADO suggested that the last sentence of the General Rapporteur's draft reading "These are not natural resources" was superfluous, and could be deleted.

81. Mr. LAUTERPACHT agreed.

82. Referring to Mr. Sandström's suggestion, he asked whether the Commission wished to have a full statement of the minority view of each issue included in each paragraph of the draft report. If so, was the view of only a substantial majority also to be included?

83. Mr. AMADO hoped that it might be possible to find some less awkward means of expressing the views of the Commission than the full statement of the views of the majority and minority. He pointed out that the minorities embraced different members on different issues.

84. Mr. SANDSTRÖM said that he had not intended to imply that there was a permanent minority of the Commission, consisting always of the same members.

85. Mr. AMADO disapproved of dividing the Commission into majority and minority. Might it not be better to use the phrase "some members of the Commission"? For it was evident that members of the Commission, representing as they did different legal systems, would differ in their conclusions one from the other, though the lines of cleavage would not necessarily be identical on different issues.

86. Mr. ZOUREK said that the reports of other commissions of the United Nations summarized the different opinions expressed by their members on important questions; in his view, the same procedure should be followed in the case of the Commission's reports, though he agreed with Mr. Amado that it would be unfortunate to refer to minorities and majorities.

87. Mr. LIANG (Secretary to the Commission) recalled that in previous years the Commission's reports had occasionally referred to the minority and the majority. Nevertheless, the forms of words "The Committee decided..." or "The Committee was of the view that..." which were used throughout the text could not be held necessarily to imply unanimity; they meant merely that after a discussion, the Commission had reached a certain conclusion by way of a vote.

88. Mr. SPIROPOULOS agreed with Mr. Amado and Mr. Zourek that the views of different members on important questions ought to be stated in the Commission's report, but felt that the procedure adopted should vary from case to case.

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[11] Paragraph 13 read as follows:

"13. For the latter reason the Commission decided, after considerable discussion, to retain the term "natural resources" as distinguished from the more limited term "mineral resources". This means, having regard to the fact that the continental shelf comprises also the bed of the sea, that natural resources permanently attached to the bed of the sea are subject to the exclusive right of exploitation and exploration of the coastal State. The requirement of permanent attachment implies, on the other hand, that the natural resources of the sea-bed, which are subject to the exclusive rights of the coastal State, do not include so-called bottom-fish and other fish which, although living in the sea, occasionally has its habitat at the bottom of the sea or is bred there. On the other hand, as the exercise of the sovereign rights of the coastal State is confined to exploration and exploitation of natural resources, it follows that those rights do not cover objects such as wrecked ships and their cargoes (including bullion) lying on the sea-bed or covered by the sand of the sub-soil. These are not natural resources."

89. Mr. KOZHEVNIKOV said that the Commission's report should summarize the discussions accurately and completely. It followed that it should reflect the opinion of any particular minority on any particular issue; but precisely how that was done must depend on the circumstances attending each case.[12]

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*resumed from the 233rd meeting*)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS AND DRAFT CONVENTION ON THE REDUCTION OF FUTURE STATELESSNESS (*resumed from the 233rd meeting*)

Vote on the texts of both draft conventions

90. The CHAIRMAN said that the Commission had now to vote on the texts of the draft Convention on the Elimination of Future Statelessness and the draft Convention on the Reduction of Future Statelessness. As had been decided at the previous meeting, the vote was to be taken on the two texts together.[13]

91. Mr. KOZHEVNIKOV suggested that the reference, in the preamble to the draft Convention on the Elimination of Future Statelessness, to " the evil of statelessness " raised an unnecessary moral issue.

92. Mr. AMADO agreed with Mr. Kozhevnikov, and said that the Commission's object was to eliminate statelessness itself.

93. Mr. LIANG (Secretary to the Commission) thought that the English text was satisfactory because it was ambiguous. It could either refer to the evil results of statelessness or mean that statelessness itself was an evil. The former was what had been intended, and the French text should be amended accordingly.

94. Mr. SCELLE said that the French text should refer to *" les maux qui resultent de l'apatridie "*.

It was so agreed.

The texts of the draft Convention on the Elimination of Future Statelessness and the draft Convention on the Reduction of Future Statelessness were adopted by 10 votes to 3.

95. Mr. YEPES explained that he had voted in favour of the texts of both conventions because it was not only desirable, but also necessary, that effective measures should be taken to reduce the evil of statelessness. Nevertheless, he was unable to accept article 1 of the draft Convention on the Elimination of Future Statelessness, according to which the nationality of the State on whose territory an otherwise stateless child was born was conferred on that child. According to his conception of nationality, even States applying the principle of *jus soli* had the right to make the acquisition of nationality by that principle subject to conditions over and above the simple material fact of a child's being born in their territory.

96. Mr. SCELLE explained that he had voted in favour of the texts of both conventions, although he regretted that neither convention provided a remedy for existing statelessness.

97. Mr. HSU said that he took the same position as Mr. Scelle.

98. Mr. CÓRDOVA recollected that it had been in order to fill the gap mentioned by Mr. Scelle that he had been asked to prepare a working paper dealing with the problems of existing statelessness; it would be presented at the next meeting.

99. Mr. KOZHEVNIKOV asked that it be placed on record that he had voted against the texts of both conventions for reasons which he had repeatedly given during the relevant discussions.

100. Mr. ZOUREK explained that he had voted against the texts of both draft conventions, primarily because he considered that they were unrealistic, as questions of nationality were considered by every State to be important issues essentially within their domestic jurisdiction.

101. Further, the drafts expressed an entirely unilateral concept of nationality deriving exclusively from the wish to safeguard the interests of the individual, and completely neglecting the interests of the national collectivity; they emphasized the rights of nationals but passed over in silence their duties to the State of which they were nationals.

102. Another reason why he had voted against the draft conventions was that their coming into force would necessarily oblige States applying the principle of *jus sanguinis* to confer, by reason of the simple fact of birth, their nationality on foreigners who were not in any way attached to them, but who happened to be born in their territory. That ran counter to the fundamental ideas of those States.

103. Finally, he opposed the draft conventions because they contained certain provisions implying a diminution of the powers of States which were not indispensable to the safeguarding of their interests.

104. Faris Bey el-KHOURI said that he had voted against the drafts of both conventions because they would impose on children of stateless refugees the compulsory loss of the nationality of the States from which they and their parents had been driven. Such a rule would be unjust to hundreds of thousands of refugee children.

The meeting rose at 1.10 p.m.

[12] Consideration of paragraph 13 was resumed at the 235th meeting.

[13] See *supra*, 233rd meeting, para. 61.