Document:-
A/CN.4/SR.357

Summary record of the 357th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1956, vol. I

fications introduced in article 29 had altered the position to any great extent and he therefore favoured the retention of article 28, so that the coastal State would still have the choice of either negotiating with others concerning the regulation of fisheries or taking unilateral action. That would meet Sir Gerald Fitzmaurice's contention [12] that when regulations agreed upon between two or more States existed in an area contiguous to the coast of another State, only in case of emergency could the last State promulgate other regulations without first trying to reach agreement with the signatories to the existing regulations.

94. Mr. SPIROPOULOS explained that when he had originally moved his proposal combining articles 28 and 29 he had omitted the requirement contained in article 29, paragraph 2 (*a*), but now that it had been reinstated he was no longer in favour of deleting article 28.

95. Mr. SANDSTRÖM agreed that article 28 should be retained, but did not entirely share the Special Rapporteur's opinion that articles 28 and 29 presented the coastal State with two alternative procedures; the latter article had a narrower application and the rights it conferred could be exercised only if there was urgent need for conservation.

96. Faris Bey el-KHOURI considered that the Drafting Committee's attention should be drawn to the inaccuracy of the expression " an area of the high seas contiguous to a coast ". The high seas could only be contiguous to the outer limit of the territorial sea.

97. Mr. FRANÇOIS, Special Rapporteur, agreed that the expression was an unfortunate one. The Drafting Committee should also be requested to substitute throughout the whole draft on conservation some other word for " contiguous ", so as to eliminate any possibility of confusion with " the contiguous zone ". Perhaps the word " adjacent " might serve.

98. Mr. SCELLE agreed that two different words were necessary for the articles on conservation and for the provisions relating to the contiguous zone.

99. Mr. ZOUREK reaffirmed his opinion [13] that since the expression " contiguous zone " had acquired a definite technical connotation, some other term was needed for the present draft.

It was agreed to refer the points raised by Faris Bey el-Khouri and the Special Rapporteur to the Drafting Committee.

Article 28 was adopted.

Article 29 (resumed from the 353rd meeting)

100. Mr. SANDSTRÖM proposed that the Drafting Committee be requested to consider the possibility of deleting the word " scientific " in paragraph 2 (*a*).

The meeting rose at 1.5 p.m.

[12] A/CN.4/SR.355, para. 56.

[13] A/CN.4/SR.349, para. 84.

357th MEETING

Thursday, 31 May 1956, at 9 a.m.

CONTENTS

Chairman: Mr. F. V. GARCÍA-AMADOR.
Rapporteur: Mr. J. P. A. FRANÇOIS.

Present:

Members: Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. L. PADILLA-NERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

Also present: Mr. M. CANYES, Representative of the Pan-American Union.

Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97/Add. 3, A/CN. 4/99 and Add. 1-7) (*continued*)

Conservation of the living resources of the high seas (continued)

Article 29 (continued)

1. The CHAIRMAN invited the Commission to consider a number of outstanding points arising out of the draft articles relating to the conservation of the living resources of the sea.

2. Speaking as a member of the Commission, with reference to the point made by Mr. Sandström at the previous meeting regarding the different applications of articles 28 and 29,[1] he said he interpreted article 28 as being intended to meet the normal non-urgent case where the coastal State, in view of its special interest, was allowed to take part in any system of research and regulation in an area of the high seas contiguous to its coast even though its nationals did not carry on fishing there; article 29, on the other hand, dealt with the special case where the parties had failed to agree and there was urgent need for conservation measures.

[1] A/CN.4/SR.356, para. 95.

3. Mr. EDMONDS agreed with the Chairman's interpretation of the two articles, each of which had a particular and definite purpose. He therefore did not favour the deletion of article 28, and emphasized that the rights conferred upon the coastal State in article 29 could be exercised only if the need for conservation measures was so urgent that they could not wait upon negotiations with other States.

4. Mr. PAL also considered that both articles were necessary and pointed out that, following the adoption of Mr. Padilla-Nervo's amendment [2] to article 29, the opening words of article 28 should now read " A coastal State has a special interest ".

5. The CHAIRMAN observed that such consequential amendments could be entrusted to the Drafting Committee.

Article 29 was referred to the Drafting Committee.

Article 30

6. The CHAIRMAN drew the Commission's attention to the alternative text for article 30 submitted by Mr. Edmonds, which read:

1. Any State which, although its nationals are not engaged in fishing in an area of the high seas, has a special interest in the conservation of the living resources in that area, may request the State or States whose nationals are fishing there to take the necessary measures of conservation.

2. If satisfactory action is not taken upon such a request within a reasonable period, such requesting State may initiate the procedure provided for in article 31.

3. The arbitral commission shall, in procedures initiated under this article, reach its decision and make its recommendations on the basis of the following criteria:

(*a*) Whether scientific evidence shows that there is a need for measures of conservation to make possible the maximum sustainable productivity of the particular stock or stocks of fish; and

(*b*) Whether the conservation programme of the States fishing the resource is adequate for conservation requirements.

4. Nothing in this article shall be construed as a limitation upon any action taken by a State within its own boundaries.

7. He suggested that the criteria set out in the above text should be mentioned in the comment in order to explain which criteria would be applied by the arbitral commission in the cases mentioned in the second sentence of article 32, paragraph 1, and asked for the views of members.

8. Mr. EDMONDS thought that, in the interests of clarity and precision, it would have been preferable to state in each of the relevant articles the criteria applicable. However, he would be prepared to accept the Chairman's suggestion, though it was not an ideal solution.

9. Mr. FRANÇOIS, Special Rapporteur, asked whether the Chairman's intention was that the criteria should be mentioned in the comment without any expression of opinion by the Commission.

10. The CHAIRMAN, speaking as a member of the Commission, replied that he could accept some expression of support for the criteria in the comment in the case of article 26, for instance, when the vote had been equally divided.[3]

11. Mr. FRANÇOIS, Special Rapporteur, thought that amounted to going back on the Commission's decision not to express an opinion on the validity of the criteria. If the Chairman's suggestion were followed, the Commission would have to reopen the discussion, in which event it might after all be concluded that it would be preferable to embody the criteria in the text of the articles themselves.

12. The CHAIRMAN, speaking as a member of the Commission, observed that although there was substantial agreement on the criteria themselves, some members, including himself, considered that there were strong objections to inserting them in the body of the text.

13. Mr. HSU observed that at its previous meeting [4] the vote had only been on the question of whether specific criteria should be inserted in article 26; no decision had been taken on the general question of whether criteria should be included in the articles or in the comment, so that there was no procedural objection to discussing the latter point, as suggested by the Special Rapporteur. Perhaps, as the criteria were not of a technical nature, an acceptable solution might be found.

14. Mr. SANDSTRÖM, endorsing Mr. Hsu's remarks, said that it might be possible to simplify the criteria and make them applicable in all cases.

15. Sir Gerald FITZMAURICE said that he could accept a reference to the criteria in the comment.

16. Mr. PAL considered that the criteria should be mentioned in the comment without any expression of opinion, since the Commission had taken no decision as to their substance.

17. Faris Bey el-KHOURI considered that the criteria should be embodied in the text itself and should be applicable in all cases. He saw no purpose in inserting them in the comment, which would have no binding force and was purely designed to assist jurists in interpreting the Commission's draft.

18. The CHAIRMAN suggested that Mr. Edmonds might be requested to prepare a text for insertion in the comment. The Commission could then decide whether it wished to express approval of the criteria.

It was so agreed.

Article 30 was adopted.

Question raised by the Norwegian Government

19. Mr. FRANÇOIS, Special Rapporteur, felt that the Commission should give some consideration to the Norwegian Government's question, in its comments on articles 24-33 (A/CN.4/99/Add.1) about the effect on existing treaties of the arbitration procedure prescribed in the draft articles. In his opinion, the answer would

[2] A/CN.4/SR.351, para. 74.

[3] A/CN.4/SR.356, para. 29.

[4] *Ibid.*, para. 23.

depend on the final form given to the present draft. If the rules being prepared by the Commission were eventually embodied in a convention, a provision would have to be included to explain how it affected existing treaties.

20. Mr. SPIROPOULOS said that it was self-evident that the present draft, though it might influence the development of international law, had at the moment no other standing than that of a scientific work. Only an international convention could affect existing treaty obligations.

21. Mr. ZOUREK said that the question was relevant to all the other drafts prepared by the Commission. In the present instance, since the draft would constitute the basis for future discussion, whether at the General Assembly or at a special international conference, an additional article was needed to explain the relationship between a new general convention and existing bilateral or multilateral treaties, many of which might contain provisions which were at variance with the proposed articles. In view of the variety and special nature of the interests involved, it should be laid down that the provisions of a new general convention would only be applicable when matters had not already been regulated by existing treaties. Such a provision should facilitate the adoption of a new convention since States would not like being forced to abandon existing treaties and would prefer to be free to denounce them if they felt it necessary. For that reason, and because the new rules proposed by the Commission could not settle all problems, his suggestion of an additional article deserved consideration.

22. Mr. SPIROPOULOS did not think that the Commission, whose primary task was to codify, need concern itself with a complex problem which was usually dealt with at the concluding stages of drafting a convention or treaty.

23. Mr. EDMONDS considered that a complete reply to the Norwegian Government's question was provided in article 24.

24. Mr. SCELLE failed to understand why the Norwegian Government should have raised the question in connexion with a particular draft since it was a well-known fact that if a general convention conflicted with any of the provisions of existing treaties, on ratification of the convention such provisions were superseded *ipso facto*. There was therefore no need for the insertion of a special article.

25. Mr. FRANÇOIS, Special Rapporteur, considered that the principal question at stake was whether, if the present draft were eventually ratified in the form of a convention, its arbitration provisions would come into play if differences arose in connexion with existing treaties.

26. Mr. SCELLE considered that States must bear that possibility in mind.

27. Mr. ZOUREK thought that if there was a general treaty establishing special controls, as in the case of the International Convention for the Regulation of Whaling, it should not be affected by the present draft, which could not possibly embrace all the particular problems pertaining to different species. He added that the draft should not be restricted, as it appeared to be at present, to fishing, but must also explicitly cover whaling and sealing.

28. Mr. SCELLE agreed with Mr. Zourek.

29. Mr. KRYLOV said that it was premature to decide the question raised by the Norwegian Government. The International Convention for the Regulation of Whaling dealt with a special question and would not be affected by the present draft.

30. The CHAIRMAN said that the question raised by the Norwegian Government could not be considered at present, as the Commission did not yet know what final form its draft articles would be given. Instead of being incorporated in a convention, they might be adopted by the General Assembly as recommendations.

Other questions

31. Mr. SPIROPOULOS said that he wished to raise another question connected with the draft articles relating to conservation—namely, the precise meaning of the words in article 24, " All States may claim for their nationals the right to engage in fishing on the high seas ". Taking, for example, the case of Mr. Onassis, who was of Argentine nationality, whose vessels sailed under the Panamanian flag and were manned by German crews, would the claim be made for him, for his fishing fleet or for its crews? The question deserved consideration.

32. Mr. SANDSTRÖM considered that Mr. Spiropoulos' question would be answered when the draft articles, if embodied in a convention, came to be applied. There was, however, another matter raised earlier [5] by Mr. Spiropoulos that must be discussed sooner or later —namely, that of provision for the revision of conservation measures.

33. *The CHAIRMAN declared the discussion on the draft articles relating to conservation of the living resources of the high seas closed.*

34. He then called on the Secretary to the Commission to make a statement on item 10 of the agenda, Co-operation with Inter-American bodies.

Co-operation with inter-american bodies (item 10 of the agenda)

35. Mr. LIANG, Secretary to the Commission, said that, in accordance with the resolution adopted by the Commission at its previous session,[6] he had attended the third meeting of the Inter-American Council of Jurists and had presented a report (A/CN.4/102) which contained more than a routine account of what had taken place, since, in addition to the question of co-operation between the Council and the Commission, it also dealt with matters of special interest to the latter connected with the law of the sea and reservations to multilateral treaties. He hoped that the section on maritime questions would

[5] A/CN.4/SR.355, para. 45.

[6] *Official Records of the General Assembly, Tenth session, Supplement No. 9* (A/2934), para. 36.

be particularly useful, as the record of the debates of the Inter-American Council of Jurists had hitherto been available only in Spanish.

36. In a statement [7] concerning co-operation made in a plenary meeting before the Inter-American Council of Jurists, he had expressed the view that while the work of the Council was similar in character to that of the Commission, there was little scope for co-ordination and that it would be preferable for both bodies to proceed on parallel lines as before since there could be no question of duplication. The results achieved on both sides would contribute towards the development of international law. He hoped that his opinion on that point would be shared by both bodies.

37. Mr. CANYES (representative of the Pan-American Union), speaking at the invitation of the CHAIRMAN, thanked the Secretary for his comprehensive report, which summarized the essential features of the discussions at the third meeting of the Inter-American Council of Jurists concerning questions of the territorial sea and reservations to multilateral treaties.

38. He believed it might be useful to describe briefly the method of work of the Inter-American Council of Jurists and its relation to the work of the Commission. With the signature of the Charter of the Organization of American States (OAS) at the Ninth International Conference of American States held at Bogotà in 1948, the Organization had acquired a new legal status of a more formal character and the functions of its six organs had been more precisely defined. The Council of OAS had its permanent seat at Washington and included all twenty-one members of the Organization. Like the other two organs of the Council, the Inter-American Economic and Social Council and the Inter-American Cultural Council, the Inter-American Council of Jurists, which had replaced the body previously entrusted with the work of codification, possessed some technical autonomy. It met every two or three years and between sessions its standing body, the Inter-American Juridical Committee of Rio de Janeiro, carried out the preparatory work on different questions. After its drafts had been submitted to governments for comment through the Council of Jurists, they were given a second reading in the Council in the light of those comments. That procedure, which was similar to the procedure followed by the International Law Commission, dated back to 1906. In considering their particular problems, the American States had always sought to bear in mind general trends in the development of international law and to apply universal principles, a policy which was consistent with the declaration made by the American Institute of International Law in 1925. It was noteworthy that certain Latin-American countries were now participating both in the work of the Council and in that of the Commission.

39. In conclusion he assured members that the Secretariat of the Inter-American Council of Jurists would be pleased to co-operate with the Commission in every way possible.

40. Mr. PADILLA-NERVO, thanking Mr. Canyes for his statement, hoped that the relations which had been established with the Inter-American Council of Jurists would be further strengthened. Attendance by representatives of the secretariat of each body at meetings of the other would be to the advantage of both and would make it possible for them to keep informed about each other's work. He agreed that their spheres of competence were not mutually exclusive.

41. The CHAIRMAN suggested that the Special Rapporteur, in conjunction with the Secretary, be requested to prepare a passage for inclusion in the Commission's report, expressing its satisfaction that Mr. Canyes should have attended some of its meetings and welcoming the resolution adopted by the Inter-American Council of Jurists, which had reciprocated the Commission's own resolution of the previous year. The Commission should also take note with satisfaction of the Secretary's report. The two bodies had similar duties to develop and codify international law and should benefit from each other's work.

It was so agreed.

Regime of the high seas (item 1 of the agenda) (A/2456, A/CN.4/99/Add.1 and A/CN.4/102/Add.1) (*resumed from above*)

The continental shelf

Article 1

42. Mr. FRANÇOIS, Special Rapporteur, introducing the draft articles on the continental shelf, recalled that they had been adopted at the Commission's fifth session after re-examination in the light of observations from Governments.[8] Since then the United Kingdom Government, in its comments on the provisional articles concerning the regime of the high seas and the draft articles on the regime of the territorial sea, had included certain observations on the continental shelf (A/CN.4/99/Add.1, pages 71-74), which called for consideration. He would suggest that the Commission take up the articles *seriatim*.

43. In article 1, the United Kingdom, though not rejecting outright the 200-metre line as the criterion for the outer edge of the continental shelf, considered that the 100-fathom line would be preferable, since that was the line already marked on most charts of those countries producing charts covering the whole world. He was in two minds about that proposal, for he doubted whether the difference was an important one. The point, however, should be considered. The United Kingdom further proposed the insertion of the word "immediately" before the word "contiguous".

44. In addition, there were the Chairman's amendments to the draft articles, which read as follows:

1. The articles would be preceded by the following preamble:

Whereas;

Progress in scientific research, as well as technical progress,

[7] A/CN.4/102, paras. 91-94.

[8] *Official Records of the General Assembly, Eighth session, Supplement No. 9* (A/2456), p. 12.

has rendered possible the exploration and utilization of the natural resources of the soil and subsoil of the submarine areas adjacent to continents and islands;

There is a geological continuity and physical unity between the continental and insular territory of each State and the submarine areas adjacent to it;

By reason of these circumstances, international law recognizes the exclusive (or sovereign) rights of each State over the submarine areas adjacent to its territory for the purpose of the exploration and utilization of the natural resources existing in, or that may be found in, the soil and subsoil of the said areas, without prejudice to the rights of other States under the principle of freedom of the seas;

The International Law Commission has adopted the following articles:

2. Article 1 would be drafted as follows:

Article 1

1. As used in these articles, the expression " submarine areas " refers to the soil and subsoil of the submarine shelf, continental and insular terrace, or other submarine areas, adjacent to the coastal State outside the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

2. Likewise, as used in these articles, the expression " natural resources " refers to the mineral riches of the soil and subsoil of the submarine area, as well as to the living resources which are permanently attached to the bottom.

3. In the other articles of the draft, the expression " submarine areas " would be substituted for the expression " continental shelf."

45. The CHAIRMAN, speaking as a member of the Commission and introducing his proposal, said that consideration of the preamble might suitably be deferred.

46. He would stress that neither of the two paragraphs in article 1 entailed any change of substance. The draft adopted at the fifth session had contemplated only 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 200 metres. There were, however, other areas contiguous to the coast of a State that were both explored and exploited. He had accordingly circulated to members the " Terminology and Definitions approved by the International Committee on the Nomenclature of Ocean Bottom Features " adopted by the International Committee of Scientific Experts at Monaco in 1952. Those definitions were as follows:

1. *Continental Shelf, Shelf Edge and Borderland*

The zone around the continent, extending from the low water line to the depth at which there is a marked increase of slope to greater depth. Where this increase occurs, the term " shelf edge " is appropriate. Conventionally, the edge is taken at 100 fathoms (or 200 metres), but instances are known where the increase of slope occurs at more than 200 or less than 65 fathoms. When the zone below the low water line is highly irregular, and includes depths well in excess of those typical of continental shelves, the term " continental borderland " is appropriate.

2. *Continental Slope*

The declivity from the outer edge of the continental shelf or continental borderland into great depths.

3. *Borderland Slope*

The declivity which marks the inner margin of the continental borderland.

4. *Continental Terrace*

The zone around the continents, extending from low water line, to the base of the continental slope.

5. *Island Shelf*

The zone around an island or island group, extending from the low water line to the depths at which there is a marked increase of slope to greater depths. Conventionally, its edge is taken at 100 fathoms (or 200 metres).

6. *Island Slope*

The declivity from the outer edge of an island shelf into great depths.

47. The essence of his proposed paragraph 1 was, first, the distinction drawn between the continental shelf and the continental terrace; the latter had not been included in the draft article. He explained that the continental terrace was formed by the right-angled triangle, the hypotenuse of which was the continental slope, the other two sides being the perpendicular dropped from the outer edge of the continental shelf and the horizontal line joining the base of that perpendicular and the base of the continental slope.

48. Paragraph 1 of the operative part of the resolution on the subject adopted at the Inter-American Specialized Conference at Ciudad Trujillo was drafted on that basis, whereas the Commission's draft excluded both the continental terrace and, in certain instances, other submarine areas also. In addition, the Ciudad Trujillo resolution took account not only of the legal, but also of the economic and scientific aspects of the question. It would be seen that that resolution had adopted not only the International Committee's terminology, but, in respect of the areas excluded from the Commission's concept of the continental shelf, the criterion of exploitability adopted at the third session.

49. The Inter-American Specialized Conference had, moreover, added the criterion of equality. The Commission was aware that the concept of the continental shelf had been the subject of criticism, because there were several States, such as the countries on the Pacific coast of Latin America and the Dominican Republic, off whose coasts there was no continental shelf, which exploited other adjacent submarine areas. In some cases, for instance, the sea-bed was exploited for coal-mining purposes up to a depth of 1,100 metres, whereas the Commission had restricted the rights of a coastal State to a depth of 200 metres. The considerations guiding the Commission's choice were explained in paragraph 64 of the report of the fifth session (A/2456). To a certain extent, the element of arbitrariness in the provisions had been mitigated in paragraph 66 which recognized the principle of equality, to which effect was given in the Ciudad Trujillo resolution, for it envisaged the possibility of reasonable modifications of the 200-metre figure. His proposal amounted to explicit recognition of that principle in the text of the article.

50. Nor did his proposed paragraph 2 involve any

change of substance. In 1953, the Commission had extended the concept of " natural resources " to include the products of sedentary fisheries (A/2456, para. 70). The purpose of his proposal was to transfer that decision from the comment to an article in order to define natural resources, just as paragraph 1 defined the expression " submarine areas ". The Inter-American Specialized Conference had set up a Working Party to study the question of the relationship between the various species of living resources of submarine areas—including the continental shelf. Adopting a biological approach, the Working Party had classified three types of organism. The first two, classified as sedentary species, were benthos permanently attached to the bottom, and other benthos though still adhering to the sea-bed, which were mobile. The third type comprised floating plankton. Certain species changed their habits during their lifetime, but the organisms attached to the bottom were the most vulnerable. The first two types constituted an integral part of the sea-bed, whereas the plankton, completely mobile, belonged to the superjacent water.

51. The establishment of such a classification was important, for in determining the rights of the coastal State there was no uniformity of definition of the term " natural resources ". Sometimes the term was interpreted as meaning sedentary fisheries, but that term, too, had been given a broader scope and even been taken to include as much as 85 per cent of the total production of world fisheries, a fact which underlined the importance of drawing a clear distinction. His purpose, therefore, was simply to retain the criterion adopted by the Commission at its fifth session and to embody it in an article.

52. Mr. FRANÇOIS, Special Rapporteur, referring to the Chairman's proposal to substitute " submarine areas " for " continental shelf," recalled that a similar proposal had been rejected by the Commission at its third session.[9] That attitude had been maintained at the seventh session, because the term " continental shelf " was in common use and generally recognized. He therefore doubted the wisdom of making a change at that stage. Moreover, the Chairman's proposal was itself vague since it included " other submarine areas " which were not defined.

53. As for the term " continental and insular terrace ", he was not sure of its real meaning. It must not be forgotten that the Commission's draft was not intended for study only by experts: consequently, if its terms were not clear to members of the Commission, how could the lay public be expected to understand it?

54. The second proposal, extending the limit of the area in which a coastal State would have exclusive rights to beyond the 200-metre limit, was not objectionable in itself, but the contingency of practical exploitation in such submarine areas was so remote that he doubted the necessity of providing for it in an article.

55. The definition of natural resources in paragraph 2 was of greater importance, and the idea of inserting in an article the inclusion of marine organisms permanently attached to the bottom was acceptable. The term " living resources ", however, gave rise to some doubts and was liable to cause misunderstanding.

56. The CHAIRMAN, replying to the Special Rapporteur and referring to his proposal in paragraph 1, explained that his main concern was to anchor the definition of the area of the sea-bed and subsoil to an established scientific criterion of recognized importance, and he would again stress the distinction between the continental shelf and the continental terrace. The Special Rapporteur had rejected the term " submarine areas " on the ground that " continental shelf " was in common use. It was a fact, however, that about 50 per cent of national legislations referred to both continental shelf and continental terrace, whereas the Commission had disregarded the latter term completely. Again, the term " submarine areas " was used in a treaty between the United Kingdom and Venezuela[10] and in other official documents. It was a generic term which included the continental shelf, the continental terrace and other areas which, on account of their depth, did not fall within either of those categories. Since the point was already covered in paragraph 66 of the report of the fifth session (A/2456), it seemed logical in the final draft to deal with it in an article.

57. Mr. AMADO was not convinced by the argument for excluding from the draft the term " continental shelf ", which had been made familiar by wide usage and had a perfectly clear connotation for both jurists and the general public. While appreciating the Chairman's distinction between the continental terrace and the continental shelf, he could not accept the proposal to substitute " submarine areas " for " continental shelf ".

58. Mr. HSU was in favour of the expression " submarine areas ", because in so far as it referred to areas subtracted from the high seas there was a scientific basis for their determination. " Continental shelf ", on the other hand, was an inaccurate and unscientific term. Moreover, many States did not have a continental shelf in the scientific sense and would therefore welcome a change of nomenclature, as would also the lay public. While appreciating the desire of the Special Rapporteur to retain a familiar term, he would suggest that the conservatism of jurists should not be blind to valid scientific reasons for change.

59. Sir Gerald FITZMAURICE deprecated Mr. Hsu's suggestion of an area being taken from the high seas. The continental shelf had no relevance whatever to the superjacent waters. What was envisaged was merely the sea-bed and subsoil, and neither the status of the waters above nor fishing or other rights in regard to those waters were affected or included.

60. Mr. HSU explained that he had meant to convey that a contiguous zone—although it had not the extent of the territorial sea—was taken from the high seas. As to the point that it was only the sea-bed and subsoil and not the superjacent waters that were affected, he would agree that that was the purpose of the draft. Whether

[9] *Official Records of the General Assembly, Sixth session, Supplement No. 9* (A/1858), Annex, article 1, para. 3.

[10] Treaty between the United Kingdom and Venezuela relating to the Submarine Areas of the Gulf of Paria, 26 February 1942.

the distinction could be maintained in practice was another matter.

61. The CHAIRMAN said that the question raised by Mr. Hsu was covered by article 3, and he would have the opportunity of raising the point again when that article was discussed.

62. Mr. SALAMANCA said that he did not see the legal importance from the standpoint of the draft of adopting the terminology approved by the International Committee on the Nomenclature of Ocean Bottom Features. Mr. Amado had been to a large extent right in saying that the Commission, in adopting its definition of the continental shelf, had been interpreting a current of opinion which had already fixed the sense of the term. The Chairman, in advocating the use of other concepts to be found in scientific publications, had not made it clear why they must be adopted. The term " submarine areas " covered a variety of things whereas the term " continental shelf " referred to a definite area.

63. If the idea was accepted that the continental shelf extended as far as it was practicable to exploit the natural resources of the sea-bed, the only point that remained to be discussed was whether an individual State could exploit those resources beyond a depth of 200 metres. He knew of no rule of international law which prevented it from doing so, subject, of course, to the reservations set forth in draft article 6.

64. There remained the cases of countries without continental shelves—Chile, for instance—where exploitation of the sea-bed was carried out from the land to a depth of 1,000 metres. But such cases, though not without importance, were exceptional, and he saw no point in attempting to cover them in article 1.

65. If such terms as " continental slope " and " continental terrace " had any scientific value, the Commission should include them in the comment on the article, saying why it had done so. In the remote eventuality of a dispute between States concerning rights over the continental shelf, such esoteric scientific terms might be of some relevance.

66. Mr. PAL said that he would confine his remarks for the moment to the question of the substitution of the term " submarine areas " for the term " continental shelf ". He did not see how the change would improve matters at all. If the provisions of the draft resulted in any restriction of the domain of the high seas, the restriction would be made regardless of whether the term used was " continental shelf " or " submarine areas ".

67. The object of the Chairman's proposal might be to avoid a certain confusion in terms. Scientists employed the term " continental shelf " for part of the submarine area only, using the terms " continental borderland " and " continental slope " to designate other parts of the area. The Commission used the term " continental shelf " for a much larger area. It might, therefore, avoid confusion if the term " continental shelf " were dropped.

68. However, since 1951, the Commission had taken a certain number of decisions on the matter. It had submitted its draft to the General Assembly and to governments for their comments and it might be argued that in recommending that the General Assembly adopt by resolution the draft articles on the continental shelf, it had taken a final decision on the matter under rule 23 of its Statute. The Commission had submitted a very clear definition of the continental shelf and he did not think that States would find any difficulty in accepting it. So far he had heard nothing to justify any change in terminology.

69. Mr. SANDSTRÖM pointed out that the Commission, when defining the term " continental shelf " in article 1, had deliberately departed from the geological concept. The only real difference between the text submitted by the Chairman and that previously adopted by the Commission appeared to be that the Chairman's text also included submarine areas beyond the depth of 200 metres where exploitation of the natural resources was possible. He could see no ground for making such a change.

70. Mr. SCELLE observed that, as he did not attribute any scientific value, far less any legal validity, to the concept of the continental shelf, he welcomed any discussion which might further obscure the concept and thereby lead to its rejection.

71. Mr. SALAMANCA agreed with Mr. Sandström that the essential difference between the Chairman's text and that of the Commission was that the former extended the limit of the continental shelf to the maximum depth at which exploitation of the natural resources of the sea-bed and subsoil was possible. He approved of that change and proposed that the Commission retain the text of its draft article as far as the words " outside the area of the territorial sea ", and then continue with the words " to where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil ". If the coastal State had the right to exploit the resources of the continental shelf, it must be allowed to carry exploitation as far as practicable. Such a solution would be in conformity with the criteria defended by a number of States at various conferences.

72. The technical terms relevant to the question of the continental shelf could be explained in the comment to the article.

73. Mr. PAL said that if the Chairman's addition to the definition of the continental shelf were adopted, the concept might, with the advance of technique, be broadened to embrace practically the whole submarine area of the high seas. The comments of governments disclosed general approval of the use of the term " continental shelf " in a sense differing from its juridical or scientific sense and connoting only an area within a specified distance of the coast. Indeed the term " continental shelf " had the merit of suggesting at least some juridical basis for the new claim. He could not see any legal justification for the extension of coastal territory to an area which was otherwise *res communis*, unless the area could be regarded as a continuation of the continental territory. When the Commission decided to adopt the name and to limit the area to an arbitrarily specified depth of 200 metres, discarding the test of exploitability, it did so advisedly. The freedom of the high seas was

only an incident of a higher right—namely, the right of property of the nations enjoying that freedom. That being so, he failed to see how an area which, as a submarine area of the high seas, was the common property of all, could change its character and become the property of the coastal State alone as soon as it became available for different use. He was not unaware that there had been claims by coastal States and that as yet no protest had been made by other States, but there was a real danger if further encroachment in that direction was attempted. He was not in favour of changing the definition and thereby reopening the whole question.

74. Faris Bey el-KHOURI said that, as the term " continental shelf ", in French " plateau continental " could not be rendered by an exact equivalent in Arabic, the concept was expressed by words conveying the idea of " continental terrace " or " continental projection ". It was therefore a matter of indifference to him whether the term " continental shelf " was retained or not, since whatever term was adopted would have to be freely rendered in Arabic.

75. Mr. PADILLA-NERVO said that although the terminology proposed by the Chairman might be scientifically more correct, he did not see that it carried any different legal implications. It might therefore be wiser to retain the accepted term.

76. He wished to propose that, when it came to a vote on the Chairman's amendment, article 1, paragraph 1, as far as the words " to a depth of 200 metres " should be put to the vote first, in order to ascertain whether the Commission agreed to the substitution of the term " submarine areas " for the term " continental shelf ". The Commission would then vote on the rest of the paragraph, containing the concept of exploitability taken from the 1951 draft. He himself would prefer to have that concept combined with the geological criterion of 200 metres. He accordingly thought the wording proposed by the Chairman should be used, " or beyond that limit etc.", which was found both in the 1951 draft and in the resolution adopted by the Inter-American Specialised Conference.

77. Mr. ZOUREK said that the reasons prompting the Chairman's amendment were praiseworthy, since its purpose was to adapt the terminology of the draft to that used in the sciences. Logically speaking, it would have been better to have adopted the geological definition of the continental shelf from the start, as he had advocated in 1953; in that way, terminological difficulties would have been avoided. The Commission had, however, preferred a special, legal definition which differed somewhat from the geological concept, since, as the International Committee on the Nomenclature of Ocean Bottom Features had recognized, the depth at which the edge of the continental shelf began was in some cases less and in others more than 200 metres. As, however, the term was already accepted by the scientific world and by governments, he was not in favour of changing it at that stage, unless absolutely necessary.

78. In view of the decision already taken by the Commission and of the practical considerations involved, he wondered whether it would not be the wisest course to include a more precise definition of the term " continental shelf " in the comment on article 1.

79. He could not see what significance the term had for States which, having no continental shelf, were unable to exploit the natural resources of the sea-bed. He was, of course, leaving aside the different question of exploitation of submarine areas from the land, the Commission having agreed at its third session that its draft articles on the continental shelf in no way affected the exploitation of submarine areas by means of tunnels from the land.

80. Sir Gerald FITZMAURICE said that the term " continental shelf " was an unscientific one and he would prefer the term " submarine areas ", or more precisely " adjacent submarine areas ". The term " continental shelf " was not a legal term but a geological one which had come to be adopted for two reasons: partly because it was a convenient expression, but mainly because of the coincidence that the edge of the continental shelf roughly coincided with the depth at which it was possible at the moment to exploit the resources of the sea-bed and subsoil of the submarine areas.

81. It might be wondered why, from the legal standpoint, it had been necessary to fix a limit at all. The answer was that it was an essential principle that no sovereignty could be exercised over a territory, whether above or below the surface, which the State claiming sovereignty was not in a position to control. If, however, science advanced sufficiently to make it possible to exploit the natural resources at much greater depth, there would be no reason at all to place any depth limit on the area of the continental shelf, at least within reasonable proximity of the coast. Indeed, had it been possible to exploit the sea-bed at greater depths, the limit of 200 metres would never have been adopted. Thus, the definition given in article 1 was unscientific and might lead to difficulties in the future. Subject to certain reservations as to drafting—the term " continental terrace ", for example, required some explanation—he supported the amendment submitted by the Chairman.

82. Mr. KRYLOV regretted that he could not support the amendment. Each science had its own terminology and jurists could not slavishly follow the scientists. Legal terminology would always lag behind scientific advance, and jurists could not change their terms after every conference on nomenclature.

83. As the Special Rapporteur had pointed out, the Chairman's terminology was vague. In any case, paragraph 1 of the Chairman's amendment to article 1 tended to define " *idem per idem* "; it said that the expression " submarine areas " referred, *inter alia*, " to other submarine areas ". The Commission had chosen the term " continental shelf " and should retain it.

84. Incidentally, much the same difficulties had been experienced in expressing the term " continental shelf " in Russian as in rendering it into Arabic.

85. Mr. AMADO said that the term " continental shelf " was a conventional one and, though not corresponding to the geological concept, had a clear connotation in the

mind of the public. He was firmly opposed to substituting any other term for it in the draft.

86. On the other hand, he was in favour of the other innovation contained in article 1, paragraph 1, of the Chairman's amendment. Jurists from the American continent appreciated the problems of those countries which had no continental shelf, and he felt that the Commission could not prevent such countries exploiting the natural resources of the sea-bed at a greater depth than 200 metres if exploitation were possible.

87. Mr. FRANÇOIS, Special Rapporteur, said that the limit at which it was technically possible to exploit the resources of the sea-bed was at the moment 60 to 70 metres and not 200 metres. The limit of 200 metres had been adopted by the Commission partly, as Sir Gerald Fitzmaurice had pointed out, because that was the point at which the slope down to the ocean bed normally began, but also because such a limit made sufficient allowance for future technical development. A fixed limit was to be preferred to the very vague limit established in the Chairman's amendment, since doubts would always persist as to the actual depth at which it was technically possible to exploit the natural resources of the sea-bed.

88. Mr. SALAMANCA said that the Commission had no proprietary rights in the term " continental shelf". The term had existed before the draft and had been used by President Truman in his famous proclamation on the subject. The Chairman's proposal to substitute the expression " submarine areas " was an improvement only from the standpoint of the English text, since in Spanish the term " plataforma " had been used and not the Spanish equivalent for " shelf ".

89. Mr. SCELLE said that, after hearing Sir Gerald Fitzmaurice, the Special Rapporteur and Mr. Amado, he was merely confirmed in his disbelief in the scientific nature of the concept of the continental shelf. There was no such thing as a continental shelf, but merely a vast expanse of sea-bed supporting the mainland. It was not surprising that difficulty was experienced in evolving a precise definition of a term which was essentially indefinable. Adoption of the concept whereby the continental shelf extended as far as exploitation of the natural resources of the sea-bed was possible would tend to abolish the domain of the high seas.

90. Sir Gerald FITZMAURICE said that, though he would hesitate to accept the statement that no exploitation of any kind was possible at the moment below a depth of 70 metres, he did not think that such a consideration really affected his argument. It had been a mere coincidence that a limit of 200 metres had been adopted, that being the depth at which, as far as could be reasonably foreseen, it might be possible to exploit the natural resources of the sea-bed. No such limit would have been adopted had it been possible to foresee the likelihood of exploitation at an even greater depth. Provided the areas to be exploited were within reasonable proximity to the coastal State, he saw no reason why a State's activities should be confined to the continental shelf.

91. An additional advantage of the term " submarine areas " was that it avoided the difficulty due to the presence of deep pockets and other irregularities in the continental shelf.

92. Mr. SANDSTRÖM pointed out that the term " submarine areas " appeared in the draft adopted by the Commission in 1953. The term, however, did not convey very much, the only fact giving it some significance being the depth limit fixed. The Commission had envisaged the possibility of adopting the depth at which exploitation was practicable as the limit of the continental shelf, but on further consideration, had decided on a limit of 200 metres. Such a limit made considerable allowance for future developments and should be retained.

93. Mr. SPIROPOULOS said that he would have preferred to retain the text of the Commission's draft, though not out of any consideration for " scientific " terminology. The determination whether a term was scientific or not was a highly subjective one. In any case, the Chairman's proposal, though apparently concerned with terminology, in fact involved an important question of substance. The only argument in favour of the 200-metre limit was that it was sufficient for the moment. Greece had no continental shelf, and he had no strong feelings on the matter of depth. He proposed to abstain from voting.

94. Faris Bey el-KHOURI said he assumed that, since all States were free to exploit the natural resources in the bed of the high seas, the depth limit of 200 metres affected only the exclusive right of coastal States to exploit such resources. Any coastal State would be free to exploit resources lying at a greater depth than 200 metres on equal terms with other States.

95. The CHAIRMAN, in reply to Mr. Scelle, pointed out that the words " adjacent to the coastal State " in his proposal placed a very clear limitation on the submarine areas covered by the article. The adjacent areas ended at the point where the slope down to the ocean bed began, which was not more than 25 miles from the coast.

The meeting rose at 1 p.m.

358th MEETING

Friday, 1 June 1956, at 9.30 a.m.

CONTENTS

Chairman: Mr. F. V. GARCÍA-AMADOR.

Rapporteur: Mr. J. P. A. FRANÇOIS.