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Summary record of the 358th meeting

Topic:

Law of the sea - régime of the high seas

Extract from the Yearbook of the International Law Commission:-

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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.

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.

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) (*continued*)

The continental shelf (continued)

Article 1 (continued)

1. The CHAIRMAN, speaking as a member of the Commission, said that he wished to reply to certain arguments adduced against his amendment to draft article 1 on the continental shelf before it was put to the vote. Contrary to what was alleged, there was really no question of abandoning the term " shelf ", since it appeared in the first paragraph of article 1 as amended by him. All that his amendment did was to add two other submarine areas, the continental and the insular terrace, which, in the legislations of certain States, were included in the area over which they claimed exclusive right of exploitation, and which had, moreover, been the subject of a resolution unanimously adopted by all American States. The distinction drawn between those areas and the continental shelf was no arbitrary one and was not at variance with scientific fact.

2. The fundamental question was whether coastal States had exclusive rights of exploitation of the sea-bed only up to a certain depth. By adding the term " continental terrace " to the definition in article 1, the Commission would be granting coastal States the exclusive right of exploitation up to a greater depth than 200 metres, for the foot of the terrace was generally at a depth of 500 metres.

3. Equally important was the question of coastal States whose adjacent submarine areas, owing to their configuration, did not constitute a continental shelf. It was a matter of elementary justice that such States should also be granted the exclusive right to exploit those areas. Indeed the Commission had recognized that right at its fifth session, while acknowledging that the term " continental shelf " could not be used in that connexion (A/2456, para. 65).

4. It had been argued that governments preferred the term " continental shelf " because it possessed a certain fixity. However, the comments by governments on the draft articles showed that very few—only six, in fact—were in favour of replacing the criterion adopted in the 1951 draft, where the only limit was the depth at which exploitation was practicable. How could the Commission attribute so much weight to the views of six governments and so little to the unanimous view of the governments of twenty-one States expressed in an international conference after a month of careful study of all the relevant facts?

5. In reality his proposal involved not the introduction of a new principle, but a mere change in presentation of ideas, since the Commission, in paragraphs 65 and 66 of its report covering the work of its fifth session (A/2456), had, like the Ciudad Trujillo Conference, recognized the exclusive right of States to exploit the resources of the sea-bed in adjacent areas which, owing to their geographical configuration, could not be regarded as forming part of the continental shelf.

6. He did not wish to press the part of his amendment introducing the concept of the continental terrace, since the adoption of the second point relating to the depth at which exploitation was practical would automatically bring that area within the general concept. He would, however, request the Commission to take a decision on the right of States to exploit the natural resources of the sea-bed in adjacent waters to whatever depth was practicable. With that addition, the article could be referred to the Drafting Committee.

7. Mr. HSU recalled that he had not yet spoken on the second point in the Chairman's amendment. Though quite sympathetic to the proposal, since it sought to give equality of rights to all States, he found it rather contradictory as at present worded. What was the point of mentioning a depth of 200 metres at all if States were to have exclusive rights of exploitation to any depth at which exploitation was possible? Furthermore, he must agree with Mr. Pal that the proposal looked very much like appropriation of a part of the high seas.

8. The trouble was that the whole question of the continental shelf had not been properly handled from the first. The Commission had started with three concepts —that of the continental shelf, that of mineral resources (it had had in mind mainly petroleum deposits), and finally that of sovereignty. Those three concepts had involved the Commission in difficulties and led to an excessively long text, which neither in form nor substance could be claimed to be good law. Such difficulties could nevertheless be avoided by concentrating on the fundamental interest of the coastal State in exploiting the sea-bed and subsoil and avoiding any reference to the continental shelf, mineral resources, or the concept of sovereignty. The principles could then be expressed in the following three paragraphs:

1. A coastal State may enjoy exclusive rights of exploration and exploitation of the natural resources of the sea-bed and subsoil of the contiguous high seas to a distance of, say, 24 miles.

2. Such exploration and exploitation must not result in any unjustifiable interference with navigation, fishing or fish production.

3. Any disputes which may arise from the assertion or enjoyment of such exclusive rights shall be submitted to arbitration at the request of any of the parties.

He did not wish, however, to press his proposal at that late stage in the discussion.

9. Sir Gerald FITZMAURICE said that he had already explained why he supported the Chairman's proposal to use the term " submarine areas " rather than " continental shelf ". In one of the first articles on the subject, entitled " Whose is the Bed of the Sea? ", by Sir Cecil

Hurst,[1] the continental shelf was hardly ever mentioned, and certainly not regarded as affording any legal basis for ownership over the bed of the sea.

10. He could not agree with Mr. Hsu that recognition of the exclusive right of coastal States to exploit the natural resources of the sea-bed beyond the depth of 200 metres, on condition that the areas were in adjacent waters and that exploitation were possible, was tantamount to appropriation of a part of the high seas. Such a statement implied a complete misunderstanding of the concept of the continental shelf and of submarine areas, neither of which had anything whatever to do with the waters above them. Adoption of the second criterion in article 1, paragraph 1, of the Chairman's amendment could not in any way affect the freedom of the seas, since the sea itself was not involved.

11. A further reason for dispensing with the term " continental shelf " was the tendency to use the concept for purposes for which it was never intended, as a foundation for claims to exclusive rights not only over the sea-bed and subsoil, but over the superjacent waters, as if the area were a sort of additional contiguous zone. Should that tendency persist, many States might be drawn to reject the whole legal concept of the continental shelf. And since that tendency was encouraged by the notion that the continental shelf was a geographically definable horizontal projection, it was one of the merits of the Chairman's proposal that it dispensed with the concept of a carefully defined area and substituted the correct notion of adjacent submarine areas lending themselves to exploitation.

12. Mr. FRANÇOIS, Special Rapporteur, said that he could not agree with Sir Gerald Fitzmaurice. The Commission, at its third session,[2] had in fact adopted the criterion of a limit based on the maximum depth at which exploitation was possible, but, at its fifth session, after careful reflection and consideration of the comments by governments, had abandoned that criterion in favour of a depth limit of 200 metres (A/2456, para. 62). The very fact that it had reached such a conclusion after mature consideration was a reason for not making the radical, and rather abrupt, change which the Chairman's amendment would involve.

13. The Commission had rejected the criterion of the maximum depth at which exploitation was possible because it considered it far too vague to serve as a limit. Each country would have its own ideas on the subject and the same difficulties might arise as with the limits of the territorial sea.

14. The claim that the Commission's draft would prevent States from exploiting natural resources at a depth of more than 200 metres was incorrect. All of the members had been agreed—and the fact might well be stated in the comment on article 1—that 200 metres should constitute the limit because it represented the maximum depth at which exploitation appeared to be possible but that, should it prove possible to exploit natural resources of the sea-bed at an even greater depth, then the figure would have to be revised.

15. With regard to Sir Gerald Fitzmaurice's apprehension that States might claim rights over the superjacent waters of the continental shelf, he must point out that the definition proposed in the Chairman's amendment would not obviate that danger either.

16. Both the Chairman and Sir Gerald Fitzmaurice attached great weight to the proviso that the submarine areas must be in adjacent waters. The term " adjacent " was admittedly not without a certain significance. There must undoubtedly be continuity between the mainland and the continental shelf, and the existence of a very broad channel between the mainland and adjacent submarine areas would prevent the latter from being regarded as a continental shelf. However, by including in the definition the concept of " adjacency " it could not be the intention to establish a horizontal instead of a vertical limit for the submarine areas—an entirely new idea completely foreign to those previously adopted by the Commission.

17. Faris Bey el-KHOURI observed that it was a general principle in Syrian municipal law that the owner of a property was the rightful owner of all above it to the summit of the sky and all below it to the bottom of the earth. If the principle were applied to the high seas, which belonged to no man, it must be admitted that both the sky above them and the sea-bed and subsoil below them belonged to no man, but were rather the public property of the entire world. The bed and subsoil of the continental shelf, however, despite the fact that the waters above them were part of the high seas, had been recognized by many States as being an exception to the general rule. Though the Commission had perforce accepted that exception, it should not now allow it to be extended indefinitely by dispensing with the 200 metres depth-limit, beyond which the bed of the sea would be nobody's property, but open to all to exploit on equal terms.

18. Mr. SCELLE said that he had hitherto been under the impression that " adjacency " with reference to the continental shelf was reckoned from the limit of the territorial sea. According to the Special Rapporteur, however, it appeared to be reckoned from the coast. If that were so, presumably coastal States would have no exclusive rights over the continental shelf, if parts of the shelf within the territorial sea were separated by waters of a greater depth than 200 metres.

19. Mr. FRANÇOIS, Special Rapporteur, confirmed that adjacency was reckoned from the coast. The answer to Mr. Scelle's question could be found in paragraph 66 of the Commission's report covering the work at its fifth session (A/2456), where it was stated that submerged areas, of a depth less than 200 metres, situated in considerable proximity to the coast but separated from the part of the continental shelf adjacent to the coast by a narrow channel deeper than 200 metres, must be considered as contiguous to that part of the shelf. In other words, the question turned on the width of the channel between the two parts of the continental shelf.

[1] *British Year Book of International Law*, Volume 4, 1923–4, p. 34.

[2] *Official Records of the General Assembly, Sixth session, Supplement No. 9* (A/1858), p. 17.

20. Mr. SCELLE observed that such considerations were a further practical objection to employing the concept of the continental shelf. He was convinced that if the concept were employed, the territorial sea and part of the high seas could not fail in time to be assimilated to it. It was idle to claim that the concept did not affect the freedom of the high seas. Perhaps in theory it did not but in practice, if the sea-bed were intensively exploited, there must be interference with the freedom of the high seas.

21. Mr. AMADO said that he had been struck by the Special Rapporteur's statement that the limit of 200 metres had been fixed with an eye on the present possibility of exploitation and could be increased at a later date. If that were so, then the only objection to the Chairman's amendment could be on the question of timing; its opponents might regard the proposal as premature.

22. The Commission could not, however, ignore the problem of the continental terrace and must ask itself whether it was in the interest of the community of nations to prevent that terrace being explored and exploited, if that were necessary.

23. Mr. FRANÇOIS, Special Rapporteur, said that the Commission had fixed the limit of 200 metres merely in order to prevent each State from claiming a continental shelf of whatever size it wished. The criterion proposed by the Chairman would be subject to so many different interpretations that there would in effect be no limit to the continental shelf.

24. As for the continental terrace, exclusive rights of exploitation of that part of it which lay at a depth of less than 200 metres were already recognized under the Commission's draft articles. The question of the right to exploit any parts of it which lay at a greater depth was of no significance, since such exploitation was for the moment physically impossible. The Commission had, however, admitted that if any State could demonstrate the possibility of exploiting the sea-bed at a greater depth, the limit of 200 metres could not be retained.

25. The CHAIRMAN remarked that the limit of 200 metres might well be exceeded in some twenty to thirty years. It was a purely conventional and entirely arbitrary limit, since, as the International Committee on the Nomenclature of Ocean Bottom Features had pointed out, the edge of the shelf was sometimes at more, sometimes at less than 200 metres. Moreover, it completely ignored the geological facts. Coal, for example, was already being mined at a depth of 1,000 metres twenty-five miles from the coast of Chile.

26. In many cases the bed of the continental terrace was of greater interest to the coastal State than the bed of the continental shelf, since a large amount of valuable substance was deposited on the terrace by the action of currents and could already be exploited.

27. Mr. AMADO, observing that it was the legitimate interest of States in exploiting the resources of the sea-bed and subsoil which had induced the Commission to undertake its present task, said that though by nature a conservative he had not been convinced by the Special Rapporteur's arguments and was inclined to favour the Chairman's proposal.

28. Mr. SANDSTRÖM said that the example of the coalmines in Chile was not really significant because the shafts were sunk on land and the mines exploited from the land. He asked whether in point of fact it was possible to exploit the resources of the sea-bed from the sea at a depth of over 200 metres.

29. Mr. FRANÇOIS, Special Rapporteur, replied that up to the present there was no such exploitation.

30. Mr. SANDSTRÖM considered that the area in which exclusive rights could be exercised by the coastal State should be limited in a precise manner, and therefore preferred depth as the criterion for the limitation.

31. Mr. ZOUREK suggested that the difficulties being encountered by the Commission were probably mostly due to the Chairman's attempt to apply the rules adopted for the continental shelf, as defined by the Commission at its fifth session, to cases where there was no shelf at all.

32. The only way of exploiting the sea-bed and subsoil at a depth of over 200 metres was by starting operations on *terra firma*. In view of the legitimate interests of coastal States without a continental shelf or terrace, perhaps it would suffice to insert a separate article on the special case of where there was no continental shelf but where it was possible to exploit the sea-bed and subsoil from land. It would then be possible to incorporate the idea put forward in the comment on the Commission's existing draft, that coastal States had the right to exploit the sea-bed and subsoil of the submarine areas contiguous to their coasts by means of shafts sunk on land up to the limit where the depth of the superjacent waters admitted the exploitation of the natural resources of the areas in question.

33. Mr. SCELLE said that a special article was unnecessary because there could be no doubt whatsoever that coastal States had such a right, since the sea-bed and subsoil of the submarine areas contiguous to a coast were public property; the right was analogous to the right to fish on the high seas.

34. But before authorizing the coastal State to exploit its continental shelf the Commission should give some consideration to the fact that it might take much longer to settle differences about where the shelf began than to develop modern techniques for exploiting the subsoil from the mainland.

35. Mr. EDMONDS did not attach much importance to the question of nomenclature. The picturesque and easily comprehensible term " continental shelf " had gained currency but if for scientific reasons it should be replaced by the expression " submarine areas ", he would have no objection. The question of extension beyond the 200-metre limit also did not seem to him of great moment, since exploitation beyond that limit was improbable in the foreseeable future.

36. The important part of the Chairman's proposal was contained in paragraph 2 where the rights to be conferred over the continental shelf were rightly defined in terms of the exploitation of mineral resources as well as of the

living resources permanently attached to the bottom. He particularly favoured that provision but would also support the remainder of the Chairman's text.

37. Mr. SANDSTRÖM considered it unnecessary to make special provision for exploitation starting on land, although there was a possibility of tunnels under the sea, from two adjacent coastal States, meeting.

38. Mr. PAL said that the discussion had confirmed his view that the Commission should not go beyond the text adopted at its fifth session and that it would be dangerous to reopen the whole issue. He would therefore oppose the Chairman's proposal.

39. The high seas being common property, submarine areas could not be partitioned off for the exclusive use of the adjacent coastal State to the exclusion not only of other coastal States not possessing a continental shelf but also of landlocked States. The only way out to support the right was to treat the continental shelf as an extension of the mainland, which was the only possible justification for admitting that the coastal State had a preferential claim to exploitation. The term " continental shelf " brought out that connexion with the land, and he saw no reason for abandoning it in favour of an expression which would sever that link. He had already given his reasons for opposing further extensions of the area, by introducing the concept of exploitability.

40. Mr. SALAMANCA pointed out that Professor Lauterpacht had stated in an article[3] that claims to the continental shelf put forward by numerous States had not evoked any protests.

41. If, as had been argued, such claims violated the principle of common property, then the Commission must decide how the interests of States possessing a continental shelf and those without one could be reconciled. If in fact the real interest at stake was the exploitation of petroleum deposits, then it was necessary to ensure that access to them was not denied to the less powerful States.

42. Faris Bey el-KHOURI observed that, if the Chairman's definition were accepted, the coastal State would be in a position to prevent other States capable of exploiting the resources in that area from doing so outside the 200-metre limit, a result which he believed would be contrary to the Chairman's intention that the resources of the sea should be used to the greatest possible extent.

43. Mr. PADILLA-NERVO supported the Chairman's proposal for the reasons given by its author, by Sir Gerald Fitzmaurice and by Mr. Amado, and did not think there were any legal grounds for opposing such an amplification of article 1.

44. The CHAIRMAN considered that the Commission could now vote on his proposed addition to article 1[4] He had already withdrawn[5] the part of his amendment introducing the concept of the continental terrace, while the question of the substitution of the term " submarine areas " for the term " continental shelf " could be referred to the Drafting Committee.

45. Mr. PADILLA-NERVO pointed out that what in fact the Commission had to vote on was the Chairman's proposal to incorporate in article 1 the concept contained in the words " or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas ".

The Chairman's proposed addition to article 1 was adopted by 7 votes to 5, with 3 abstentions.

46. Mr. HSU, explaining his vote, said that although he had some doubts about the Chairman's text he had supported it because it was the lesser of two evils.

47. Mr. ZOUREK could not agree that the changes proposed by the Chairman in the first part of his text for article 1, paragraph 1, were purely a matter of drafting.

48. The CHAIRMAN said that in that event the Commission must discuss the terminology to be used. Personally he favoured the expression " submarine areas " because it was appropriately general.

49. Mr. AMADO said he had understood that the whole question of terminology had been settled and that the Chairman had agreed to the term " continental shelf " being retained. Now that a vote had been taken, there was no need to reopen the discussion.

50. The CHAIRMAN observed that before putting his proposed addition to article 1 to the vote he had suggested that the question of terminology could be referred to the Drafting Committee. Mr. Zourek now opposed such a procedure on the grounds that a matter of substance was involved. That was the reason why he had opened the discussion on the question.

51. Mr. SCELLE insisted that the words " submarine areas " evoked an entirely different idea from that conveyed by the words " continental shelf " and that the decision could not be left to the Drafting Committee.

52. Mr. AMADO repeated his objection to reopening the discussion, since all members must have voted on the Chairman's proposed addition to article 1 on the assumption that, since he had admitted that the term " continental shelf " was now an accepted one, it would be retained.

53. Mr. ZOUREK suggested that the Commission's task would be simplified if it could agree to retain the term " continental shelf " and to deal in the comment with the other areas mentioned in the Chairman's proposal.

54. Mr. PADILLA-NERVO pointed out that the areas referred to by the Chairman at the beginning of paragraph 1 were to some extent the same as those covered by the final passage reading: " or, beyond that limit . . . said areas ". Perhaps the Chairman would be satisfied with the retention of the term " continental shelf " in the article and an explanation in the comment of what was

[3] " Sovereignty over Submarine Areas ", *British Year Book of International Law, 1950*, pp. 376-433.

[4] A/CN.4/SR.357, para. 44.

[5] See para. 6, above.

meant by " continental and insular terrace or other submarine areas ".

55. Mr. KRYLOV said that although, as Mr. Amado contended, it was true that the Commission had tacitly agreed to retain the term " continental shelf ", in order to give clear guidance to the Drafting Committee it would be preferable to take a formal vote on the point. The Special Rapporteur might then be requested to prepare a passage for inclusion in the comment elucidating some of the scientific terms discussed in connexion with the Chairman's proposal.

56. Sir Gerald FITZMAURICE said that the vote on the latter part of paragraph 1 in the Chairman's text had some bearing on the question of terminology because the Commission had now decided to extend the rights of coastal States to areas which, generally speaking, lay beyond the strict limits of the continental shelf. He therefore doubted whether it would be scientifically appropriate to retain that term as the central term in the draft, instead of adopting one which would cover both the shelf itself and certain adjacent areas.

57. Mr. SANDSTRÖM, disagreeing with Sir Gerald Fitzmaurice, maintained that the expression " continental shelf " provided a better description of what was meant than the expression " submarine areas ".

58. Mr. AMADO appealed to the Chairman not to override a decision which had already been implicitly taken.

59. The CHAIRMAN pointed out that he had only asked the Commission to consider the question of terminology because of Mr. Zourek's contention that a question of substance was involved and that the matter could not be referred direct to the Drafting Committee.

60. There was no escaping the fact that his proposed addition to article 1, which had already been adopted, referred to areas beyond the continental shelf, and that fact must be taken into account in deciding on the proper term.

61. Mr. KRYLOV said that on the principle *maxima pars pro toto* the term " continental shelf " could appropriately represent other submarine areas, following the practice of the Special Rapporteur. It was linguistically impossible always to discover a comprehensive term which would embrace all the ramifications of meaning.

62. Mr. EDMONDS, while considering that the distinction was not of particular significance, was inclined to support Sir Gerald Fitzmaurice's opinion that the term " submarine areas " would be more appropriate. In order to bring an unprofitable discussion to a close, he formally proposed that in article 1 the term " submarine areas " be substituted for " continental shelf ".

63. Mr. PAL suggested that the result of the previous vote in no way precluded the retention of the term " continental shelf ". His reasons for supporting the term still held good. Stripped of that name, the claim would be deprived of even the pretence of a juridical basis.

64. Sir Gerald FITZMAURICE said the reason why the term " continental shelf " should not be retained was simply that submarine areas beyond the 200-metre limit did not form part of the continental shelf. Consequently, the Commission should use a generic term embracing both the continental shelf and other submarine areas.

65. Mr. FRANÇOIS, Special Rapporteur, pointed out that, *pace* the Chairman and Sir Gerald Fitzmaurice, at its fifth session the Commission had, in accepting the term " continental shelf ", recognized a departure from the strict geological sense of the term (A/2456, paragraph 65). From that point of view, the amendment was of no consequence.

66. Mr. SALAMANCA deprecated the continuance of a sterile discussion. He had already pointed out [6] that esoteric scientific terms had no place in the text of an article. The simplest solution would be to retain the text as drafted and to mention in the comment that the Commission had not yet decided on the application of the technical concepts involved, stressing that the provisions of the article were of a general character.

67. The CHAIRMAN insisted that the problem was essentially one of drafting—i.e., without abandoning the use of the term " continental shelf "—of harmonizing the 1953 text with the addition that had been adopted.

68. He pointed out that he had already withdrawn [7] his proposal for the use of the expression " submarine areas ".

69. Mr. SANDSTRÖM proposed that the paragraph be completed by adding to the text of article 1 of the 1953 draft (A/2456) the last part—which had already been adopted—of the Chairman's suggested paragraph 1.

70. Mr. EDMONDS repeated his proposal [8] for the substitution of the term " submarine areas " for the term " continental shelf ".

71. Mr. ZOUREK, supporting Mr. Sandström's proposal, said that once it was agreed that there was a lack of congruency between the legal definition and the geological connotation, what was little more than a technical point could be satisfactorily explained in the comment.

72. The CHAIRMAN put to the vote Mr. Sandström's proposal to complete paragraph 1 by adding to the text of the 1953 draft of article 1 the words, already adopted, " or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas ".

Mr. Sandstrom's proposal was adopted by nine votes to three, with three abstentions.

73. The CHAIRMAN, speaking as a member of the Commission, explained that he had voted against the proposal because it was inconsistent, in that it disregarded the fact that there were submarine areas beyond the 200-metre limit that did not form part of the continental shelf.

74. Sir Gerald FITZMAURICE said he had voted against the proposal for the same reason as the Chairman.

[6] A/CN/4/SR.357, para. 65.

[7] See para. 44, above.

[8] See para. 62, above.

A contradiction had now been embodied, whereas the 1953 draft had been consistent. It should be stated clearly in the comment that the expression " continental shelf " was used as a term of convenience and did not relate to areas beyond the 200-metre limit.

75. Mr. FRANÇOIS, Special Rapporteur, said he had already mentioned the two United Kingdom proposals for the article.[9] With regard to the first, the substitution of " 100 fathoms " for " 200 metres ", he would suggest that the point be met by a statement in the comment that the Commission had adopted the term " 200 metres " as being more comprehensible to those unfamiliar with the marine system of measurement, but that it would have no objection to the change if considered advisable for practical reasons. The difference in depth, amounting to 15 metres, was insignificant.

76. With regard to the United Kingdom Government's second proposal, to insert in the third line of the article the word " immediately " before the word " contiguous ", he suggested that that point also might be met by an appropriate mention in the comment.

77. Sir Gerald FITZMAURICE accepted both the Special Rapporteur's suggestions.

The Special Rapporteur's proposals with regard to the United Kingdom Government's amendments were adopted.

Article 1 as amended was adopted.

Article 2

78. The CHAIRMAN said that, in accordance with a suggestion of the Special Rapporteur, it would be advisable to take paragraph 2 of his (the Chairman's) proposal,[10] relating to the definition of " natural resources ", under article 2, with the substitution of the term " continental shelf " for the term " submarine area ".

79. Mr. SCELLE raised the question of the juridical status of that area of the sea-bed between the soil proper of the coastal State and the continental shelf. In so far as there was no absolute sovereignty, as in the case of the territorial sea, it seemed to be a zone of indeterminate legal status and the question arose whether it should be assimilated to the territorial sea or to the continental shelf. Contiguity implied absolute contact, in which case the earth and the subsoil of the territorial sea had the same juridical status and were consequently not part of the continental shelf. There was no sovereignty over that area, because sovereignty involved a totality of rights and not merely rights for a specific purpose. The situation was equivocal.

80. Mr. AMADO observed that the Chairman's proposal, in order to be acceptable, would require considerable amplification. Although open to conviction, he doubted whether such detail in the definition of " natural resources " was appropriate in a strictly juridical text.

81. The CHAIRMAN replied that at its fifth session, the Commission had decided to retain the term " natural resources ", in preference to " mineral resources ", so as to include the products of sedentary fisheries (A/2456, paragraph 70). As he had pointed out at the previous meeting,[11] there were different views as to what constituted sedentary fisheries. Some States held that they should be defined as living resources permanently attached to the bottom. The benthonic species, however, included not only such organisms (sessiles) but also those which, although in contact with the sea-bed, were at least temporarily mobile, and that covered 85 per cent of the total production of world fisheries concentrated in the superjacent waters of the continental shelf. It was certainly not the intention of the Commission to grant a monopoly in such fisheries to the coastal State. His proposal was intended to clarify that issue, which was of importance because of the character as *res communis* of the living resources of the continental shelf.

82. Mr. SALAMANCA, while appreciating the force of the Chairman's argument, urged that the concept called for a more precise definition. For instance, in the dispute between Australia and Japan, would the proposal imply withholding from Japan the right to fish for pearls on the sea-bed of the continental shelf?

83. The CHAIRMAN, in reply, pointed out that the definition did not specify from which party exclusive rights were withheld.

84. Mr. PADILLA-NERVO recalled that at its fifth session the Commission had decided that the products of sedentary fisheries should be included in the system of the continental shelf, it being understood that so-called bottom-fish were excluded (A/2456, paragraph 70). The Chairman's proposal that the expression " natural resources " should refer solely to the living resources permanently attached to the bottom was an excessive restriction of the concept of natural resources of the continental shelf, for it excluded many species properly belonging thereto and, moreover, seemed to be even more limited in scope than the definition adopted by the Commission. The Commission had certainly had in mind the important doctrinal evolution that had taken place in the concept of sedentary fisheries, in accordance with which the right of the coastal State over certain species that could not always be regarded scientifically as permanently attached to the bottom, had been recognized. Apart from that question, however, it was essential that the Commission's approach to the problem should be based on modern, scientific criteria.

85. The living resources of the continental shelf fell into three ecological groups. First, the sessile species permanently attached to the bottom such as algae, sponges, oysters, etc.; secondly, the sedentary species which lived on the bottom and had limited powers of movement, such as crabs, lobsters, clams and the like; and thirdly, organisms which, although moving through the water at certain stages of their life, were not fish proper and depended on the products of the sea-bed for nourishment and shelter and included the majority of shell-fish.

[9] A/CN.4/SR.357, para. 43.

[10] *Ibid.*, para. 44.

[11] *Ibid.*, para. 51.

86. Even the large majority of the sessile or sedentary species during their life cycle passed through a mobile stage. Oysters, coral, pearl oysters, crabs, etc., had mobile embryos which formed part of the plankton before passing on to the sessile or sedentary stage.

87. The criterion of permanent attachment to the bottom, therefore, was not valid in the determination whether a species was to be regarded as belonging to the living resources of the continental shelf, since if it were applied, no living species could be considered as belonging to the shelf. In the life of the modern fauna of the continental shelf, there was an intimate physical and biological relationship between them and the shelf, which was essentially the same for sessile and sedentary species. Every living organism needed a physical basis or substratum to its existence, whether it were solid, liquid or gas, and that substratum, in the case of sessile and sedentary species, was the bed of the continental shelf, which had a direct influence upon its marine population. That influence was reciprocal, for those organisms affected the ecological conditions of the shelf through the normal biological processes of life and death. There was therefore no major distinction to be drawn between the sessile and the sedentary organisms.

88. The relationship between the fauna inhabiting the bed of the continental shelf was characterized by three features. In the first place, the shelf represented the substratum for the benthonic species, providing them with a favourable environment for their existence and reproduction. Secondly, there was the reciprocal influence, with twofold results, between the benthos and the shelf. Thirdly, the immobility of the sessiles was merely one of the features derived from their relationship with the shelf, but it was neither the only one nor the major one.

89. Given that biological situation, the conclusion was inescapable that the majority of the benthonic species and the continental shelf should both be governed by the same juridical system. Since the sovereignty of the coastal State over the continental shelf was already a recognized juridical institution, it followed that the sessile and sedentary marine fauna should also be incorporated in that system.

90. That principle had already been recognized by various States in respect of exclusive rights in sedentary fisheries—rights which were based on the interdependent relationship between certain species and the sea-bed. How, therefore, could the basis of those rights be withheld in the case of other species which, as he had shown, presented a similar physical and biological relationship? The difference between sessile and sedentary species in respect of the sea-bed was merely a secondary difference which did not affect the fundamental dependence of both with regard to the bed of the continental shelf.

91. In that connexion, he would refer to an important piece of legislation which, although not an international instrument by its nature, had repercussions outside the country that had enacted it. Under Public Law No. 31, the " Submerged Lands Act ", passed by the Congress of the United States on 22 May 1953, the United States released and relinquished to certain States in the Union within fixed limits in the Gulf of Mexico all title to the sea-bed and subsoil beneath navigable waters, and to the natural resources of such sea-bed areas.

92. Section 2 (*e*) of the Act contained a very wide definition of " natural resources ", covering both sessile and sedentary species as well as others, while Section 9 made it clear that the natural resources of the North American continental shelf were the property of the United States and subject to its exclusive jurisdiction and control.

93. The criterion of immobility, of permanent attachment to the bottom, was inadequate for the determination whether certain fauna should be regarded as natural resources of the continental shelf, and the only valid basis for such juridical determination lay in the physical and biological interdependence of certain species and the sea-bed regarded as a substratum and habitat. He would suggest that that principle could best be enunciated in the following definition: " The marine, animal and vegetable species which live in a constant physical and biological relationship with the bed of the continental shelf ". That criterion would exclude so-called bottom fish.

94. There were two alternatives before the Commission: it could either embark on a detailed technical analysis of the problem or it could adopt the draft article as it stood, leaving consideration of the scientific aspects of the question to the experts in the General Assembly or to a special international conference, to be convened in order to deal with the whole subject.

The meeting rose at 1 p.m.

359th MEETING

Monday, 4 June 1956, at 3 p.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.