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**Summary record of the 113th meeting**

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

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## 113th MEETING

Thursday, 28 June 1951, at 9.45 a.m.

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*Chairman:* Mr. James L. BRIERLY

*Present:*

*Members:* Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jesús María YEPES.

*Secretariat:* Mr. Ivan KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

## Communication from Sir Benegal Rau

1. The CHAIRMAN announced that he had just received a letter from Sir Benegal Rau. He had hoped to be able to come to Geneva towards the middle of the month, but political developments had forced him to change his plans. He now hoped to be able to attend the last week of the session and asked the Commission to excuse his prolonged absence.

**General Assembly resolution 484 (V): Review by the International Law Commission of its Statute with the object of recommending revisions thereof to the General Assembly (item 1 of the agenda) (A/CN.4/L.21) (*continued*)**

**DRAFT REPORT TO THE GENERAL ASSEMBLY PROPOSED BY THE SUB-COMMITTEE (*continued*)**

*Paragraphs 13 and 14 (continued)*

2. The CHAIRMAN recalled that, at the last meeting, the votes on the two last paragraphs of the sub-committee's report had been equally divided.<sup>1</sup> He explained that, whether the motion were for the deletion, or the adoption of the paragraphs, in case of an equal division of votes, it was not carried. He asked the Commission what it intended to do.

3. Mr. HSU stated that he had abstained from voting because he had not fully understood what his colleagues had in mind in regard to those paragraphs. He would like to be informed what were the arguments in support of the proposal contained in paragraphs 13 and 14.

4. The CHAIRMAN explained that some members of the Commission had considered that, in including in its report a question that had not been discussed by the Commission, the sub-committee had gone beyond its terms of reference, while, on the other hand, the report's general structure did not allow for detailed suggestions. It was, in fact, stated in paragraph 12 that the Commission preferred to abstain, for the time being, from submitting detailed proposals in regard to desirable amendments. It was therefore illogical that paragraphs 13 and 14 should contain detailed proposals for desirable amendments on one single point. Why had special emphasis been placed on that one particular question? Those had been the main arguments advanced. He himself was of the opinion that the paragraphs should be omitted.

5. Mr. FRANÇOIS considered that the question should be studied more thoroughly. Actually, the problem was not the same in the case of a full-time commission as it was for a body such as the present Commission. With a commission of the former type, there was a great deal to be said for partial renewal, but with a commission meeting by sessions, if the number of its members were not changed and if they were appointed for six years, five members would retire every two years. In his opinion, such a situation would react very unfavourably on the stability of the commission's work. It had already been argued that a term of three years was too short. Under the proposed system a third of the membership would be renewed every two years. The Commission's time was very valuable and such a system would hold up its work. He was very doubtful whether it could be recommended, so long as the Assembly had not decided whether members should devote the whole of their time to the Commission, or whether the Commission was to retain its existing form.

6. For various reasons Mr. SCELLE was also opposed to the system of partial renewal. The sub-committee had not been wrong in studying the question, but their opinion was not his. Actually, if the members of the Commission were elected for six or nine years, the system would prevent it from meeting the requirements of the international community. But it was a pre-legislative body which needed to be in constant touch with the international community. Under the system of partial replacement, the newly-elected third would be of one opinion, whereas the other two-thirds would take another and more conservative view. They would, in fact, be concerned to safeguard what they had done. As a result the Commission's desire for more rapid progress would, to some extent, be frustrated. In Europe, experience of assemblies whose membership was renewable by a third at a time had shown that they were reactionary, and mainly concerned to safeguard what had happened in the past. He was in favour of complete renewal.

7. The CHAIRMAN was not sure how to put the matter to the vote. Mr. ALFARO and Mr. AMADO

<sup>1</sup> See summary record of the 112th meeting, para. 182.

proposed that the paragraphs be deleted, whilst Mr. YEPES advocated their retention.

8. The CHAIRMAN pointed out that, provided there was not an equal division of votes, no difficulty would arise.

*It was decided by 7 votes to 3 to delete paragraphs 13 and 14.*

*Paragraph 9 (paragraph 68 of the "Report") (resumed from the 112th meeting)<sup>2</sup>*

9. Mr. HUDSON proposed the addition of the following sentence at the end of the above paragraph:

"Consideration might also be given, in this connexion, to the possibility of staggering the terms of office of the members of the Commission, in the interests of the continuity of its work."

10. Mr. HSU felt that the Commission should not recommend a course which was contrary to the intention of the decision it had just taken.

11. The CHAIRMAN explained that there was a difference. The deleted paragraphs contained a definite recommendation, whereas the text proposed by Mr. Hudson only suggested that the question be considered.

12. Mr. HUDSON said that the question should be examined in connexion with the recommendation for a full-time commission.

*Mr. Hudson's proposal was rejected by 5 votes to 4.*

13. The CHAIRMAN observed that it was no longer necessary to divide the report into two parts.<sup>3</sup> (See summary record of the 129th meeting for final discussion of that item.)

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

##### CHAPTER 11: CONTINENTAL SHELF

14. Mr. FRANÇOIS, in tendering his report, said that so far as the continental shelf was concerned his work had been comparatively simple. The previous year, the Commission had asked him to submit a new report, based on the principles which it had provisionally adopted.<sup>4</sup> It had been his responsibility to give them concrete form. The result of his efforts was to be found on page 69 (mimeographed English text; para. 162, printed French text) of his report where his conclusions were given in the form of nine articles.

15. The Commission could consider those articles and then decide on the course to be followed. He was convinced that it was a matter of the development of international law. If so, the Commission had, under its statute, to submit the results of its work to governments, but that was a matter it could decide later.

16. In his opinion, it was not only the conclusions on page 69 that had to be considered. After a first reading of the conclusions relating to the continental shelf, in

the strict sense of the term, it would be necessary to examine the parts of his report which concerned the resources of the sea and the contiguous zone, as those two questions were closely linked with that of the continental shelf. It would be impossible for governments or the General Assembly to comprehend the Commission's views on the latter question, if they were unaware of its opinions concerning the resources of the sea and the contiguous zone.

17. The members of the Commission would recall that, in many of the proclamations relating to the continental shelf, the questions of fisheries and of control of the waters overlying the continental shelf were very closely linked with the latter concept. In accordance with the view adopted by the Commission the previous year, he had dealt with the question of the continental shelf separately, but it was impossible to avoid giving consideration, at the same time, to the main features of the decisions arrived at in regard to fisheries and the protection of the resources of the sea.

18. It was also necessary to decide whether the question of territorial waters could be dealt with before, or at the same time as, that of the continental shelf. The answer to that question must be in the negative. The question of territorial waters related to a narrow coastal-strip, sometimes three and sometimes six miles wide or even, as claimed by the Soviet Union, as much as twelve miles wide. But in comparison with the 50, 100 or even 200 miles claimed for the continental shelf, even 12 miles was just a trifle. Once the question of the continental shelf was decided, it would probably be very much easier to settle the problem of territorial waters. Although a solution of the problem of territorial waters would be no help towards solving that of the continental shelf, it did not follow that no useful purpose would be served by examining the former question as well. The General Assembly had invited the Commission to do so. It was not, however, necessary to link it with the problem of the continental shelf.

19. Mr. HUDSON wondered whether Mr. François' report clearly indicated that the part of the sea-bed and subsoil with which he was concerned, was entirely outside territorial waters. It was necessary to make that clear, since, geologically, the sea-bed and subsoil of territorial waters formed part of the continental shelf. The continent started at the point where the surface of the sea touched land. Geologically speaking, the continental shelf stretched from there to the point where the sea-bed dropped abruptly to the ocean depths. It was therefore necessary to stipulate that, from the legal standpoint, the continental shelf only consisted of that part thereof which lay outside territorial waters.

20. Mr. FRANÇOIS was entirely of Mr. Hudson's opinion. As regards the sea-bed and subsoil of territorial waters there was no difficulty. The question was governed by the régime of such waters. Only the sea-bed and subsoil outside territorial waters entered into question.

21. Mr. HUDSON repeated that it was very important to make that point clear. He had just received a copy of a bill before the United States Congress which, from the national standpoint, had the effect of assimilating

<sup>2</sup> Paras. 114-154.

<sup>3</sup> Part I comprised paras. 1-11; Part II comprised paras. 12-14.

<sup>4</sup> Summary record of the 66th meeting, para. 22, and subsequent summary records up to the 69th meeting.

completely the sea-bed and subsoil of territorial waters to those of the high seas, up to the limits of the continental shelf. In his opinion, such an assimilation would be very regrettable and not justified by the historical development of the law in the matter.

22. He could not find that the Rapporteur had drawn any such distinction in the report, and he would ask him to make it quite clear.

23. Mr. FRANÇOIS said that the question would come up in connexion with the examination of article 1 of his conclusions. It should then be brought out very clearly.

24. Continuing with the introduction of his report, he wished to add a few comments concerning the question of the continental shelf in the strict sense of the term.

25. The Secretariat had supplied him with fairly complete documentation on the rules relating to the continental shelf. He used the words "fairly complete" because nothing was perfect in this world. He had, since, received an article entitled "National Claims in Adjacent Seas" by S. Whittemore Boggs,<sup>5</sup> which mentioned some rules of which he had been unaware. He had also seen the Brazilian decree of 8 November 1950 concerning the continental shelf, which Mr. Amado had been kind enough to send him. Some new rules were to be found on pages 202 and 203 of Whittemore Boggs' article which were not mentioned in his first report (A/CN.4/17) and were not all included in the documentation supplied by the Secretariat. But with the sole exception of the Brazilian decree of 1950 they were not, in general, very important.

26. He had stated in his report that the question of the continental shelf had been studied by the International Law Association. It would be recalled that the Association had put the question on the agenda of the Copenhagen conference held in August 1950. To his great regret he had not been able to attend that conference, but the secretariat of the conference had sent him the provisional verbatim records of the discussions, so he had been able to inform himself regarding the discussions. He had also read the very interesting report submitted to the conference by a committee under the chairmanship of Mr. Leopold Dor which included, amongst others, Professor Bingham, Mr. Fisher, Professor Gidel, Professor Kahn-Freund and Professor Waldeck. The rapporteur was Jonkheer P. R. Feith. In all but a few instances, that report came to very similar conclusions to those of the International Law Commission. A perusal of it suggested that it was likely to be approved by the conference without much difficulty, and it was, in fact, approved by a large number of the members present.

27. However, some opposition was manifested in various quarters. A number of Scandinavian members were afraid that the adoption of the concept of the continental shelf would endanger fishing rights. But their opposition was not the most formidable. That came from supporters of the thesis advanced by Mr. Hsu<sup>6</sup> at the International Law Commission's second session,

<sup>5</sup> Offprint from the *Geographical Review*, vol. XLI, No. 2, 1951, pp. 185-209.

<sup>6</sup> Summary record of the 66th meeting, para. 82.

advocating the internationalization of the subsoil, and eloquently championed at Copenhagen by Mr. Albert and Mr. Paul de Lapradelle.

28. It was to be noted that the members of the International Law Association could not all be considered as acknowledged experts in international law, and that the audience was much influenced by the speakers' eloquence. He had the impression that if the report had been put to the vote, it would almost certainly have obtained a majority, but that there would have been a considerable minority against it, and that it was not considered desirable to have it adopted by only a small majority. It was decided to add some members of the opposition to the committee and to ask the enlarged committee to submit a new report at the next session, which would not be held until 1952.

29. The CHAIRMAN mentioned that Mr. Kerno had attended the International Law Association conference.

30. Mr. KERNO (Assistant Secretary-General) recalled that he had attended the Copenhagen conference, as representative of the Secretary-General of the United Nations, and that Mr. Yepes had also been present. The discussions on the continental shelf had been very interesting as all shades of opinion were represented. Mr. François had given a very good description of the conditions in which the discussions were held. The International Law Association provided an example of how official could be combined with private codification. That was very interesting.

31. The report submitted at Copenhagen had been inspired by Mr. François' first report, and it emphasized that the work of the International Law Association might be of some service to the Commission. He could say the same thing of the International Bar Association. He had not been able to attend its discussions, but had received an account of them. The Association was doing its utmost to promote the study of the question.

32. Mr. YEPES confirmed what Mr. François and Mr. Kerno had said about the Copenhagen Conference. Despite the opposition of the French delegation, he believed the draft report could have obtained an appreciable majority.

33. Mr. FRANÇOIS proposed that the Commission base its discussion of his report on the nine articles on pages 69 and 70 (mimeographed English text; para. 162, printed French text) and on paragraph 6 (pages 67 to 69, mimeographed English text; para. 159, printed French text), which dealt with the delimitation of the continental shelf.

34. He considered that the Commission should commence the study of his report by an examination of its conclusions, article 1 of which was very important, as it contained a definition of the continental shelf. It would also be seen from paragraph 6 that there were several divergent opinions in the matter. Delimitation of the continental shelf should be the first point to be considered.

35. Mr. AMADO was very glad that the discussion had turned to practical matters. Last year the Commission had discussed Mr. François' report in all its aspects.

That report had been "exploratory". Mr. François' latest report went into the question in all its details, offered conclusions and proposed articles.

36. The question of the continental shelf was somewhat different from problems of the high seas and was full of contradictions. In the United States the question of territorial waters had been merged in that of the continental shelf. He himself did not see why two different subjects should be so combined. If there were a relationship, it was with the contiguous zone. Territorial waters had nothing to do with the continental shelf.

37. He had pleasure in communicating to the Commission the text of the Brazilian decree, dated 8 November 1950:

"Article 1. It is expressly recognized that that part of the submarine plateau adjoining the continental and island territory of Brazil is incorporated into that territory under the exclusive jurisdiction and authority of the Federal Union.

"Article 2. The working and exploration of natural products or resources situated in that part of the national territory shall in all cases be subject to federal authorization or concession.

"Article 3. Regulations governing shipping in the waters above the said plateau shall remain in force, without prejudice to any future regulations enacted, in particular those relating to fishing in that area."

38. It would be seen that Brazil had taken care not to make use of the term "continental shelf", which had not yet been juridically defined, and spoke of the right of jurisdiction and control. Navigation and fishery rights were safeguarded.

39. Mr. LIANG (Secretary to the Commission) said that the Brazilian decree was included in a collection of documents prepared by the Secretariat, but not yet published owing to printing delays.

40. Mr. HUDSON said that the April 1951 number of the *American Journal of International Law* (vol. 45, No. 2) contained two articles, one by Mr. Richard Young entitled "The Legal Status of Submarine Areas Beneath the High Seas", page 225, and another by Mr. S. Whittemore Boggs, "Delimitation of Seaward Areas under National Jurisdiction", page 240. Mr. Boggs, who was a geographer, had recently published two articles on the matter in the same month. The other had appeared in the *Geographical Review*. In the article to which he had referred Mr. Boggs was mainly concerned with the question of frontiers between coastal States. He asked whether it would not be possible to circulate the text of those articles for study.

41. Mr. LIANG (Secretary to the Commission) said that he had received a letter from Mr. Boggs in which the latter had informed him that he was sending offprints of his article for the use of the Commission. He was sorry to say that Mr. Young had not sent any.

#### Article 1

42. The CHAIRMAN read the first article of Mr. François' conclusions:

"The continental shelf is constituted legally by the bed and the subsoil of the submarine regions, situated off the coast, where the depth of the water does not exceed 200 metres."

43. Mr. HUDSON said that, in the first place, it must be obvious that the text was not so much a definition as an explanation of the use of the term "continental shelf".

For the Commission's purpose he would prefer:

"The term 'continental shelf' refers to the sea-bed and subsoil of submarine regions situated off the coast but outside the areas of marginal seas where the depth of the water does not exceed 200 metres."

44. The Secretariat's memorandum (A/CN.4/32) made it clear that the 200-metre limit did not apply in all parts of the world and that, at times, the continental shelf lay at a greater depth before the abrupt drop to ocean depths.

45. The Oceanographical Institute, in California, which had been surveying the sea-bed of the Pacific for the last three years, had, a few weeks ago, summarized its findings in the most glowing terms. It reported having discovered a mountain of magnesium in the Pacific at a depth of 2,000 feet, and that was only one of its discoveries. It added that the sea-bed of the Pacific might be able to nourish the world, if means could be found to exploit it, and it hoped that they would.

46. He observed that the possibility of perfecting technical methods for working the sea-bed and subsoil at greater depths was already under consideration. That possibility should not be excluded. Up till then it had not been possible to sink oil wells at a greater depth than 100 feet. A Venezuelan delegate had recently told him that it was very difficult to keep the rigging required for reaching greater depths. At Lake Maracaibo, a British company had had to abandon its efforts because of the depth of the water, but operations had been restarted by another company. He considered that any depth decided upon should be on a provisional basis to allow for the possibility that States might claim that the continental shelf extended beneath waters of a greater depth before reaching the drop to the ocean deep.

47. Mr. KERNO (Assistant Secretary-General) said that Mr. Hudson had raised the question of an exact definition of the continental shelf and had maintained that legally the term "continental shelf" was only applicable to that part of the shelf which lay outside territorial waters. According to Mr. Hudson that fact was not clearly apparent from Mr. François' report. As regards article 1, it would be seen that Mr. François had defined the continental shelf in terms of the expanse of water from the coastline seawards up to a depth of 200 metres. According to that definition the continental shelf also existed under territorial waters. For that reason it would have to be specified, in the succeeding articles, that only the continental shelf outside territorial waters was affected. If that were made clear in article 1, there would be no necessity to repeat the statement subsequently

48. Mr. FRANÇOIS accepted that suggestion.

49. Mr. YEPES had read the definition given by Mr. François several times. With the best will in the world he had not been able to find a reply to the question as to what was the position of coastal States which did not enjoy the advantage referred to in article 1, that was to say, which had no submarine regions, situated off their coast, where the depth did not exceed 200 metres. In Chile the depth of the sea, close in shore, was considerably more than 200 metres. Would a State in that position have a right to compensation because it did not possess a continental shelf?

50. Mr. HUDSON said that the United States was in the same position as regards certain parts of its Pacific coast. The situation did not, at the moment, give rise to any practical problems in regard to the exploitation of the resources of the bed and subsoil of the sea, as it was not yet possible to exploit anything at those depths. It was, therefore, hardly necessary to consider the question. The study of the continental shelf should be given a severely practical turn. The rules which the Commission was to prepare should meet existing requirements, while providing for the possibility of exploiting resources at very great depths by means of new technical processes.

51. Mr. AMADO observed that the two preceding speakers had both been right. Mr. François, from the general point of view, and Mr. Hudson when the matter was considered from a special angle. He wondered whether a legal definition of a geological situation was possible. He had traced Mr. François' line of thought to its source and had found that it was based on proclamations and not on customary law, which, in fact, did not exist. Mr. François had himself recognized that fact. He wondered how Mr. François had reached his conclusions.

52. He agreed with Mr. Hudson that any limitation should be provisional.

53. He was glad that Mr. Yepes had raised a point of interest to all countries where the existence of such an extension of national territory had not yet been demonstrated.

54. Mr. FRANÇOIS explained that the main feature of his definition was that it entirely disregarded the geographical and geological concept of the continental shelf. It was well-known that geographers and geologists were not at all agreed as to the meaning to be attached to the notion of the continental shelf. In his opinion the only way to get results was to adhere to the strictly legal concept of the continental shelf. The first advantage derived from that course was that it enabled the inclusion of the sea-bed and sub-soil of shallow waters. In that connexion experts differed as to whether there could be a continental shelf under shallow waters. Some maintained that there was a continental shelf between France and Belgium on the one side, and England on the other. Others claimed that there were shallow waters but no continental shelf. No positive and concrete result could therefore be achieved except by adopting a strictly legal definition. He had adopted the solution approved by the commission the year before.

55. As regards Mr. Yepes' question, experts maintained that it was not possible to work the resources of the sea at a depth of more than 200 metres, so under those conditions the question did not arise. Moreover, at a depth of more than 200 metres there was no longer any life, and, in consequence, fishing was not possible. As regards the working of submarine resources, he had pointed out that the limit of 200 metres was not final, but conformed to existing technical limitations. That was why it had been adopted in a number of conventions, a fact which constituted his answer to Mr. Amado. Admittedly President Truman's proclamation of 28 September 1945<sup>7</sup> did not refer to that limit, but it was mentioned in the official press release, issued after the proclamation. The Mexican proclamation of 29 October 1945<sup>8</sup> also mentioned it expressly. A depth of 200 metres had been more or less generally accepted as the limit of exploitation.

56. Mr. HUDSON said that the point at issue was the working limit in the foreseeable future.

57. Mr. FRANÇOIS claimed that he had said that himself. Naturally, if technical progress made it possible to exploit the sea-bed beyond the 200 metre-limit, it would have to be reviewed. It could be said that the continental shelf extended up to the limit set by the technical possibilities of working the sea-bed and subsoil. He had considered such a definition, but had believed that it was to everyone's interest to determine, at least provisionally, for the guidance of all concerned with the working of any such waters, how far the rights of States extended. That was the only reason why he had adopted the limit of 200 metres which was, moreover, to be found in a number of proclamations.

58. Mr. SANDSTRÖM wondered whether Mr. François considered that his conclusions reflected the rules which the Commission had formulated.

59. Mr. FRANÇOIS said that they did no more than constitute a basis for discussion.

60. Mr. SANDSTRÖM considered that, if no attention was to be paid to the geographical and geological definition of the "continental shelf", that term should not be used in formulating a rule of law. He was in favour of the solution provisionally adopted the year before, which was not to fix any depth limit. Actually, fixing a limit would result in the delimitation of an area and the tendency would be to extend sovereignty over the whole of that area.

61. Mr. HSU believed that, in spite of its possibly artificial character, a limit was inevitable. It should be realized that if coastal States were accorded a right of control for the purpose of working the resources of the continental shelf, and if it were accepted that any limitation of such rights was provisional, the result of technical progress might be to extend the limit to the middle of the ocean.

62. Mr. AMADO wondered whether it would not be possible to combine Mr. François' first two articles in a

<sup>7</sup> See A/CN.4/17 (p. 35, mimeographed English text; para. 105, printed French text).

<sup>8</sup> *Ibid.* (para. 106, printed French text).

single article to serve as a basis for discussion. That article might be worded as follows :

“ The continental shelf, constituted by the bed and subsoil of the submarine regions off the coast where, according to the latest available geological information, the depth of the water does not exceed 200 metres, is subject, or may be subjected, to the exercise by the coastal State of a right of control and jurisdiction for the purposes of its exploration and exploitation.”

63. Mr. HUDSON also wished to propose a text for article 1 ; it read as follows :

“ For present purposes, the term ‘ continental shelf ’ is employed to refer to the sea-bed and subsoil of the submarine areas situated off the coast outside the areas of marginal seas, and where the depth of the superjacent water does not exceed 200 metres.”

64. All the notions contained in Mr. François’ text were to be found in that proposal, the two main qualifications to which were contained in the phrases “ for present purposes ”, which indicated the provisional character of the definition, and “ outside the areas of marginal seas ”.

65. He then read out the following extract from an article by Mr. Richard Young on “ The Legal Status of Submarine Areas beneath the High Seas ”, published in the *American Journal of International Law* (vol. 45 (1951), p. 235) :

“ 1. As a general rule, the seaward limit of the continental shelf should be considered to be the 100-fathom (or 200-metre) line. For the sake of uniformity, this should be the case even when the shelf in fact terminates at a lesser depth.

“ 2. When the submarine terrain creates more than one such line, the outermost 100-fathom contour should be regarded as the limit of the shelf.

“ 3. A possible boundary line should not be regarded as discontinuous merely because it may be interrupted by submarine canyons running out from land. On a principle somewhat analogous to the headland theory for bays, such canyons should be spanned by straight lines connecting the 100-fathom contours. By the same analogy, the permissible length of such lines might be limited to that applied by the coastal State to its bays.

“ 4. Isolated patches of limited size which are over 100 fathoms in depth should be disregarded and absorbed into the shelf area. In narrow or landlocked seas particularly, depressions over 100 fathoms deep which do not connect with the ocean depths, or which are of small size in relation to the total area of the sea in question, should be assimilated to the surrounding shallows.”

66. He called attention to the entirely novel character of the standards formulated by the writer of the article, who had devoted several years to the study of the question. He considered that the text he had just read might form a pertinent comment to the definition of the continental shelf which the Commission had before it.

67. Mr. SCALLE expressed his great interest in the extract from Mr. Young’s article to which they had just

listened. A special case occurred to him ; that of a mountain rising out of the high seas at a certain distance from the coast of a State, from which it was separated by a deep depression. Could the State in question lay claim to the mountain as forming part of its continental shelf? That was to say, was it necessary to determine distance in length as well as depth?

68. Mr. HUDSON said that Mr. Young had not definitely taken a position in the matter. He only spoke of a case where “ the submarine terrain creates more than one 100-fathom line ”, in which case “ the outermost 100-fathom contour should be regarded as the limit of the shelf ”.

69. Mr. AMADO would take Mr. Scelle’s remarks into account in drawing up his proposed text, but, so far as he was concerned, the continental shelf could only be adjacent to a coastal State. He did not see how it was possible to establish a continental shelf in the middle of the sea.

70. Mr. YEPES believed that a fundamental notion was being overlooked. The continental shelf was nothing more than an extension of the continent beneath the sea. It must in consequence be adjacent to the land, or else it could not be called a continental shelf.

71. He pointed out that, near the coast, the sea-bed consisted of a series of levels, the first of which extended to a depth of 200 metres. That level, in which life was possible, constituted the continental shelf. There followed a second level with a depth from 200 to 1,000 metres where life was hardly possible, and finally a third level at a depth of over 1,000 metres where no life at all was possible. If there were a mountain beyond that limit, and separated from the continent, it could not be considered as belonging to the continental shelf. It could only be held to belong to the high seas. It was, therefore, very necessary to agree on what constituted the continental shelf from the geographical point of view.

72. Mr. AMADO said that the Brazilian decree had adopted the notion of an extension of the continent. It defined the continental shelf as a submerged territory constituting a single geographical unit with the continent.

73. Mr. HUDSON stated that Mr. Young had dealt with the question of distance in another part of his article and adopted the position taken by the French branch of the International Law Association, according to which coastal States were entitled to a right of control and jurisdiction up to a distance of 20 miles.

74. Mr. EL KHOURY considered that it should be possible to settle the question of the definition of the continental shelf by determining its extent in terms of a maximum and a minimum distance. The minimum distance should be stated in miles, irrespective of depth, or of whether the sea-bed could or could not be worked. All the shallows included within such limits would belong to the continental shelf. The maximum distance, on the other hand, would depend on depth.

75. The definition of the continental shelf might, in fact, be worded as follows :

“ Legally the continental shelf is constituted by the sea-bed and the subsoil of the submarine regions

- situated off the territorial waters, to a minimum distance of  $x\frac{1}{2}$  miles, irrespective of the depth of the water, and to a maximum depth of . . . . irrespective of length or distance.”
76. Mr. FRANÇOIS said that Mr. el Khoury's view was referred to in paragraph (f) on page 68 of his report (mimeographed English text; para. 159, printed French text), and had, moreover, been adopted, in part, by the French branch of the International Law Association. He himself did not consider, and had so stated in his report, that a right of control and jurisdiction over the subsoil should be accorded up to a distance of 20 miles, where the depth exceeded 200 metres and where, in consequence, there could be no question of exploitation.
77. Mr. el Khoury's view that the existence of a continental shelf must be accepted, even where there could be no question of exploitation, was absolutely opposed to that of the Commission.
78. Mr. KERNO (Assistant Secretary-General) felt that, with so difficult a problem, it was essential to keep the desired aim clearly in view, and that was to enable, in the general interests, the exploitation of submarine resources. For that purpose it was necessary to accord coastal States a right of control and jurisdiction. There was, however, no question of granting them absolute sovereignty over the continental shelf. It followed that, where working of submarine resources was not possible, no control or jurisdiction was required, and there was, therefore, nothing to regulate.
79. On the other hand, it was necessary to set a limit to such rights of control and jurisdiction. It was thus essential to specify the depth and distance up to which they could be exercised. The limit should be that provided by existing technical knowledge. Scientific progress might, obviously, make it possible, within a comparatively short time, to work natural resources at a depth of more than 200 metres. But such a contingency could be provided for by stating, at the end of a convention for instance, that the convention was subject to periodical revision. Such revision might even be made compulsory.
80. The CHAIRMAN suggested that the Commission study Mr. Hudson's amendment, which had just been circulated.<sup>9</sup>
81. Mr. HUDSON wished to make some changes to his text, namely the insertion of the word “here” before “employed”, and the substitution of the words “contiguous to” for “situated off”.
82. Mr. YEPES wished to be sure that Mr. Hudson's definition took due account of the notion of continuity which to his mind was essential.
83. Mr. ALFARO was also of the opinion that the notion of continuity was absolutely necessary. He did not consider the term “continental shelf” a very good one, as there might be a submarine shelf contiguous to islands. It would in his opinion be better to say “submarine shelf”, a term which had, moreover, been employed in certain treaties.
84. Mr. AMADO pointed out to Mr. Alfaro that the term “marginal seas” employed in Mr. Hudson's text made it possible to include islands also.
85. Mr. HUDSON, supported by the Chairman, expressed the opinion that the term “continental shelf” had entered into general use and could not give rise to confusion. There was no question of excluding islands.
86. Mr. FRANÇOIS also preferred the term “continental shelf”. He gladly accepted Mr. Hudson's amendment but wondered what was to be understood by “for present purposes”. He would prefer “for present-day purposes.”
87. Mr. YEPES wondered whether it was really necessary to add “here”, as proposed by Mr. Hudson.
88. Mr. HUDSON pointed out that the definition in question was not intended for either geologists or geographers. He proposed the substitution of the words “as here used” for “for present purposes.”
89. Mr. FRANÇOIS agreed to that proposal.
90. Mr. SCELLE wished to know whether the Commission proposed to take a vote on Mr. el Khoury's and Mr. Kerny's suggestion in regard to deciding on the distance.
91. Mr. HUDSON thought that question should be dealt with in connexion with article 2.
92. Mr. FRANÇOIS, on the other hand, considered that it related to article 1.
93. Mr. AMADO wondered what criterion could be adopted for deciding the distance; he was afraid considerable difficulty might be encountered in that connexion as had happened in the case of the delimitation of territorial waters.
94. Mr. SCELLE wondered whether mine galleries, for instance, could be prolonged indefinitely beneath the bed of the sea. In that case there would be no limit to the continental shelf.
95. Mr. FRANÇOIS said that, in practice, exploitation was not possible beyond certain limits, but it would be very difficult to fix a specific limit.
96. Mr. EL KHOURY pointed out that he had not asked for a maximum limit, but it would be necessary to fix a minimum distance, in some way or other.
97. Mr. AMADO said that there was no precedent in the matter, nor did any of the existing proclamations mention distance, whereas they did mention depth. The Commission was, no doubt, studying a question relating to the progressive development of international law, but some point of departure was nevertheless required. He was afraid that States would disagree in regard to the question.
98. Mr. FRANÇOIS pointed out that Peru and Chile had taken 200 miles as the maximum distance.
99. Mr. SCELLE remarked that, in the case of France and England, it would, under those conditions, be very difficult to say where the French continental shelf ended and the English one began.
100. Mr. AMADO was all in favour of fixing a distance but did not see how it was to be done. The necessity of

<sup>9</sup> See para. 63 above.

safeguarding the freedom of the seas in regard to fisheries, navigation, etc., should not be overlooked. He was afraid that, in taking a decision of that kind, the Commission might accord States control over much too large an area.

101. Mr. FRANÇOIS did not see how it was possible to lay down maximum and minimum distances.

102. Mr. HUDSON remarked that Mr. Young had, apparently, come to the same conclusion.

103. Mr. YEPES observed that the French branch of the International Law Association accorded coastal States rights of control and jurisdiction up to a distance of 20 miles.

104. The CHAIRMAN considered that to be an entirely arbitrary limit.

105. Mr. YEPES maintained that, all the same, the Commission could not ignore the fact that three States, Chile, Peru and Costa Rica, had fixed the maximum distance at 200 miles. That represented the beginning of a custom.

106. Mr. HUDSON pointed out that the distance of 200 miles was not a maximum, and that, moreover, those three States did not exercise either control or jurisdiction over that distance. It only appeared on paper.

107. The CHAIRMAN put to the vote Mr. el Khoury's proposal to recommend the establishment of a maximum horizontal distance.

*Mr. el Khoury's proposal for a maximum distance was rejected by 7 votes to 1.*

108. Mr. AMADO considered that, as there were neither basic data nor precedents, it would be better to leave it to States to settle the question of a minimum distance by mutual arrangement.

109. The CHAIRMAN thought that the notion of a minimum distance did not make sense. Chile, for instance, had no continental shelf.

110. Mr. EL KHOURY wanted all States to be in a position to exercise the rights in question up to a minimum distance, irrespective of the depth of water. He was thinking of the possibility of a rise in the sea-bed, resulting in the formation of a continental shelf.

111. Mr. AMADO considered that the course advocated by Mr. el Khoury would represent a total subversion of all law; that might have very serious consequences.

112. Mr. KERNO (Assistant Secretary-General) pointed out that there was no question of depriving States of rights of control and jurisdiction required for the exploitation of the sea-bed and subsoil; but why should they be given those rights when no exploitation was possible?

113. Mr. YEPES considered there might be a substratum of scientific truth in Mr. el Khoury's idea. He would, however, like to be able to study the proposal in written form. Such a suggestion could not be rejected *a priori* but should be carefully examined.

114. Mr. AMADO pointed out to Mr. Yepes that due account must be taken of the interests of the community of States. Any limitation of the régime of the high seas

was liable to be prejudicial to the international community. It had, therefore, to be justified up to the hilt.

115. Mr. YEPES said that, since Mr. el Khoury's object was to provide a minimum limit of control and jurisdiction in the case of States that did not possess a continental shelf, he would vote for his suggestion.

116. Mr. SCALLE said that he would abstain from voting on the matter.

*Mr. el Khoury's proposal for a minimum distance was rejected by 7 votes to 2.*

117. The CHAIRMAN asked the Commission to vote on Mr. Hudson's text.

118. Mr. FRANÇOIS thought that it could, with advantage, be shortened to read:

"As here used, the term 'continental shelf' refers to the sea-bed and subsoil of the submarine areas contiguous to the coast, but outside the areas of marginal seas where the depth of the superjacent water does not exceed 200 metres."

*Mr. Hudson's text was adopted as thus amended.*

#### Article 2

119. Mr. HUDSON suggested to Mr. François that he delete the words "of a right" and substitute the words "exploring and exploiting its natural resources" for "its exploration and exploitation".

120. Mr. SCALLE pointed out that the French text should then read: "*est soumis au contrôle et à la juridiction de l'Etat riverain*".

121. Mr. FRANÇOIS supported Mr. HUDSON in considering that the word "exercise" should be retained.

122. Mr. KERNO (Assistant Secretary-General) pointed out that article 2, as amended by Mr. Hudson, would reinforce what had already been said to abate the apprehensions of some members of the Commission. The control and jurisdiction exercised by coastal States was, in effect, limited to the exploring and exploiting of natural resources.

123. The CHAIRMAN observed that, under the terms of the article in question, it was not necessary for coastal States to proclaim that they exercised a right of control and jurisdiction over the continental shelf. There was, however, a contrary opinion. Perhaps a comment was required.

124. In Mr. HUDSON'S opinion the coastal State's right of control and jurisdiction must be exclusive.

125. Mr. AMADO pointed out that the word "exclusive" did, in fact, appear in the Brazilian decree.

126. Mr. FRANÇOIS considered that the idea of exclusiveness was implied in article 2.

127. Mr. ALFARO did not consider it necessary to add the word "exclusive".

128. Mr. EL KHOURY thought that it would be better to do so. He proposed: "The coastal State has the exclusive right to exercise control and jurisdiction over the continental shelf..."

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

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

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

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

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

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

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

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

The meeting rose at 1 p.m.

## 114th MEETING

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

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

#### *Present:*

*Members:* Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

*Secretariat:* Mr. Ivan KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

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

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

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

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

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

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

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

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

5. Mr. SCELLE was of the opposite opinion.

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

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

7. Mr. FRANÇOIS did not think so.

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