

Document:-
A/CN.4/SR.116

Summary record of the 116th meeting

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

Extract from the Yearbook of the International Law Commission:-
1951 , vol. I

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

The meeting rose at 6.5 p.m.

116th MEETING

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

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Chairman: Mr. James L. BRIERLY

Rapporteur: Mr. Roberto CORDOVA

Present:

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

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

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

CHAPTER 11: CONTINENTAL SHELF (*continued*)

Article 9 (continued)

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

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

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

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

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

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

¹ See summary record of the 115th meeting, footnote 5.

His was the pacific mode of settlement. The conclusion reached in the memorandum referred to was a confirmation of the dictum that might is right.

6. The CHAIRMAN pointed out that Mr. Scelle's attitude was not far removed from that of the memorandum. Admittedly the latter made no mention of the jurisdiction of the International Court of Justice, but it did state that, failing agreement, the question should go to arbitration.

7. Mr. SCELLE urged that the Commission state that explicitly.

8. Mr. EL KHOURY said that the International Court of Justice could not deal with such matters, since it had to base its decisions on existing law, and there was no existing law on the subject. He thought that the best way of solving the problem was for the parties to conclude an agreement. Failing agreement, they should be required to have recourse to arbitration with a view to settling their differences equitably without the necessity for falling back on existing law.

9. Mr. YEPES said that, on re-reading article 1,² he had noticed that all the difficulties encountered by the Commission in regard to the delimitation of the continental shelf arose because it had started out from a wrong premise. The Commission had started out from the geological concept of the continental shelf, and become involved in endless discussions on the dividing line between continental shelves, etc. What had actually happened was that the Commission had established a juridical notion of the continental shelf which was completely independent of the geological continental shelf. The latter was an extension of *terra firma*, whereas the continental shelf in the legal sense of the term was the sea-bed in areas where the waters did not exceed 200 metres in depth. It was a definition which could apply to the Baltic Sea or the Black Sea where there was no continental shelf proper. He did not think that in the present instance a geological standard which the Commission had not accepted and which was not valid as a legal concept, could be used for delimiting the continental shelf.

10. Mr. FRANÇOIS noted that all were in agreement on accepting the principle of delimiting the continental shelf and recognizing that it was not enough to stipulate that governments must reach agreement. The question was what was feasible at the present time. The Commission could not be expected to produce a complete set of rules governing the continental shelf. It was making a first attempt. The problem was largely dependent on the way in which the Commission dealt with the difficulties arising in connexion with territorial waters.

11. He suggested that study of the question be postponed for the time being until the Commission had settled the question of territorial waters. There could hardly be any drawback to that course, since it was unlikely that in the near future any dispute would arise between two States as to the delimitation of the continental shelf.

12. Mr. SANDSTRÖM supported Mr. François' proposal.

13. Mr. CORDOVA took it that, in the general view, the question could be settled either by agreement between the parties or by arbitration. Agreement was a satisfactory method. As to arbitration, unless it were compulsory, it was no solution. If one of two neighbouring States took measures for the exploitation of a part of the continental shelf which the other State considered as belonging to it, there would be disagreement, but there would be no obligation to resort to arbitration. Since there would be no legal principles to apply, the International Court of Justice would have no occasion to intervene.

14. He agreed with Mr. François. The Commission could not take a decision at present as it had not gone into the question sufficiently thoroughly, and because the question was closely bound up with the delimitation of territorial waters. The Commission should not attempt to delimit continental shelves before delimiting territorial waters.

15. Mr. HSU said that Mr. Córdova evidently feared that if the issue were to be settled by arbitration, the parties might decline to submit their difference to that procedure. If arbitration were to be one of the methods, it must be compulsory, otherwise it was no solution. That was a fundamental problem which the Commission must solve before it could claim that it had done its job. He proposed that the first sentence of article 9 be taken as a basis for discussion, and the following words added: "or failing agreement, by arbitration on a fair and equitable basis".

16. Mr. SCELLE said that the world was living under a system of law in which any method which involved recourse to political power was forbidden. Failing agreement, the parties must either have recourse to the International Court of Justice or to arbitration, or maintain the *status quo*. That meant that neither of the parties was entitled to exert pressure on its neighbour in order to exploit the latter's continental shelf. Supposing there were two States, the one possessing a small section of the continental shelf and the other a large section, and the latter could not gain access to its continental shelf without crossing the restricted area of shelf belonging to the former; it would not be entitled to put pressure on its neighbour on the grounds that it was being prevented from exploiting its continental shelf and that in the interests of the international community it must be allowed a right of way. Did anyone believe they were promoting peace by disregarding such questions? Surely it was more true to describe it as giving the stronger party the right to take advantage of his strength. The Commission must be more explicit and stipulate that in certain circumstances the *status quo* must be maintained, until such time as proper arrangements were made. Merely to exhort States to reach agreement was to leave the strong free to exert pressure on the weak.

17. Mr. AMADO said that the second Communications and Transit Conference held at Geneva in 1923 had gone deeply into the question of the industrial utilization of frontier rivers, and had drawn up a Convention

² See summary record of the 113th meeting, para. 118.

relating to the Development of Hydraulic Power affecting more than one State. Under that instrument,³ which was in force among a small number of countries and territories (Austria, Danzig, Denmark, Greece, Hungary, Iran, Newfoundland, New Zealand, Panama, Thailand and the United Kingdom — including several of its colonies, protectorates and mandated territories) each State remained free, within the limits of international law, to carry out on its own territory any operations it considered desirable for the development of hydraulic power. But the contracting States concerned were to carry out conjointly at the request of any one of them an investigation into the development of available hydraulic power and agree on measures to be taken. At the Pan American conferences, the subject had given rise to profound differences of opinion. The Havana Conference of 1928 had been unable to reach agreement and had referred the question to the committee of jurists it had just set up. In 1932 that committee had submitted to the Pan-American Union a decision which it regarded as fundamental: "For the utilization of the waters of international rivers for industrial or agricultural purposes, it is essential to have agreement between the riparian States in cases where utilization or exploitation may have repercussions of any kind on the other bank if the river is contiguous to, or on the territory of the neighbouring State, if the river intersects the frontier". In the event of it being impossible to reach agreement, the Committee in question suggested in its report that the Pan-American Union should be asked to set up a committee of experts to study the various aspects of the question and to give an opinion, which would not be binding but which would embody data calculated to bring about agreement. A statement by the seventh Pan-American conference which met on 24 December 1933 expanded the contents of the report of the Permanent Codification Committee in Rio de Janeiro. On the basis of those principles, on 20 December 1933 Brazil and Uruguay had signed a convention establishing the legal status of their common frontier. The convention contained the following provisions: "Where there is a possibility that the installation of plant for the utilization of the water may cause an appreciable and permanent alteration in the rate of flow of a watercourse running along or intersecting the frontier, the contracting State, desirous of such utilization shall not carry out the work necessary therefor until it has come to an agreement with the other State". He thought the Commission might bear those precedents in mind.

18. There were countries where life was not entirely dominated by intensive industrial development. Brazil for example was a vast country as yet insufficiently populated, so that not all its territory was inhabited. It looked forward to an increase in population which could exploit the rivers situated in the uninhabited parts of its territory. If the principle of intensive exploitation were put into application immediately, there was a danger of not catering for future generations.

19. Mr. HUDSON, referring to the text he had proposed

for article 9 at the previous meeting,⁴ submitted the following amended text:

"Two or more neighbouring States to whose territories the same continental shelf is contiguous, should establish boundaries in the area of the continental shelf by agreement."

20. The Commission's task was not to try to provide States with a way of settling any disputes that might arise among them. It was not for the Commission to stipulate that arbitration was compulsory. Its task was to draw up rules to facilitate the exploration and exploitation of the continental shelf. That was the conclusion arrived at in the Secretariat's memorandum (A/CN.4/32).

21. The CHAIRMAN said that the Secretariat's memorandum recommended recourse to arbitration.

22. Mr. HUDSON saw no point in recommending arbitration if there were no arbitral tribunal.

23. Mr. SCELLE considered that the text proposed by Mr. Hudson served no useful purpose. It amounted to informing States that if they did not agree they should try to agree.

24. Mr. HSU supported Mr. Hudson's proposal subject to the addition of the words: "Failing agreement, they shall have recourse to arbitration on a just and equitable basis."

25. The CHAIRMAN pointed out that that was precisely what Mr. Hudson did not mean.

26. The Commission should decide first of all whether it was in favour of some formula similar to Mr. Hudson's; and if so, whether it wished to add to that formula some provision concerning arbitration on the lines of that suggested by Mr. Hsu.

27. Mr. CORDOVA did not think that was the right approach. Mr. Hudson was putting forward a text which differed radically from that in the report, and Mr. Hsu was proposing an amendment to Mr. Hudson's text. In his opinion, Mr. Scelle's proposal should be put to the vote first as being the furthest removed from the version in the report.

28. There ensued a discussion as to the right procedure — whether Mr. Hudson's text should be treated as an amendment to article 9 or merely as an amendment to the first sentence of that article; and again, whether the first sentence of article 9 should be put to the vote first, then the second sentence, and finally the text as a whole.

29. Mr. YEPES proposed the following redraft of the article:

"In the event of agreement between the States interested in the same continental shelf proving impossible, it shall be compulsory to refer the matter to the International Court of Justice or to such other means of pacific settlement as may be agreed upon by the parties."

30. Mr. SPIROPOULOS said that the Commission had been discussing the same question since the previous meeting and had got no further with it. In fact, it had lost ground. In his opinion, the problem should be considered

³ League of Nations, *Treaty Series*, vol. XXXVI, pp. 76-79.

⁴ See summary record of the 115th meeting, para. 100.

in a general way. Could the Commission really hope to lay down rules for the delimitation of the continental shelf when there was little or no State practice in the matter, and when no solution had as yet been found for the problem in connexion with territorial waters, even though in that respect there was any amount of precedent and extensive literature? The Commission must adopt a fundamental decision. Was the continental shelf to be delimited or not? If it was, the rapporteur's proposal on the subject should be examined.

31. The Commission must specify what the interested parties must do in the event of their not reaching agreement. The problem only arose in those circumstances, Mr. François' view was a tenable one, and called for a decision. He had noted at the previous meeting that a number of members of the Commission expressed doubts. He did not believe that the procedure recommended by Mr. François would be adopted. Some more flexible system was called for, on the lines proposed by Mr. Hsu and Mr. Yepes, namely compulsory arbitration. Should that course be recommended? Once all the texts had been discussed, the Commission would be in a position to examine Mr. Hudson's version and to insert it into the articles already adopted. That proposal should be put to the vote last, since its practical value was negligible.

32. In short, the Commission should decide whether or not the continental shelf was to be delimited. If it was, they should take a decision on Mr. François' proposal, on Mr. Scelle's proposal, and on the proposal that arbitration be made compulsory.

33. Mr. EL KHOURY did not see the value of the first sentence of article 9, and was in favour of deleting it. Parties could not be compelled to reach agreement. The settlement of disputes was a matter for the judge. Article 9 should begin with the second sentence: "In the absence of agreement . . .", and the parties left free to resort to whatever pacific method of settlement they chose.

34. The CHAIRMAN said that the weight of opinion was in favour of examining first of all the second sentence of article 9 and deciding whether it was possible to establish a rule for the delimitation of continental shelves.

35. Mr. FRANÇOIS enquired whether the objection was valid merely in respect of delimitation as between neighbouring States. So far, there had been no question of States separated by sea. He thought such cases might be dealt with separately.

36. Mr. CORDOVA did not see where the difference lay. The question was still the delimitation of the continental shelf.

37. Mr. FRANÇOIS explained that the difference lay in the fact that in the case of neighbouring States, delimitation of the continental shelf would give rise to the same difficulties as the delimitation of territorial waters. Where States were separated by sea, there was no difficulty; the principle of the median line would apply, and there was no need to wait and see what solution would be found for the problem of territorial waters.

38. The CHAIRMAN asked the Commission to make up its mind first of all as to the second sentence of article 9.

The principle laid down in the second sentence of article 9 was rejected by 7 votes to 4.

39. Mr. EL KHOURY said that what he had voted against was the method of delimitation proposed.

40. Mr. AMADO, supported by Mr. EL KHOURY, suggested voting by stages. The Commission would decide first of all whether, failing agreement, the delimitation of continental shelves should be carried out by way of arbitration, and would then decide whether arbitration should be compulsory.

41. Mr. YEPES and Mr. CORDOVA were strongly in favour of making arbitration compulsory.

42. Mr. HUDSON said that any suggestion as to arbitration was bound to be nothing more than the expression of a wish. He was convinced that the principle of compulsion was an illusion, unless a tribunal were set up. He had only too often seen that method fail — e.g., in the case of the Locarno treaties between France and Germany.

43. Mr. SCELLE asked what procedure Mr. Hudson proposed in the event of the States concerned not reaching agreement.

44. Mr. HUDSON observed that the parties were required by Article 33 of the Charter to seek a solution for their differences by pacific means. It might perhaps be argued that the Charter was illusory, but it had been accepted and offered appropriate machinery.

45. Mr. SCELLE, supported by Mr. EL KHOURY and Mr. CORDOVA, pointed out that the implication would be that, failing agreement, there would be no exploitation of the continental shelf. That was the logical conclusion.

46. Mr. HSU noted that Mr. Amado had asked that the Commission proceed by two stages. Personally, he had not yet made up his mind what method he would support. He thought that at all events recourse should be had to arbitration, even if arbitration were not compulsory. Indeed, the parties would be forced to resort to arbitration, since otherwise they would be unable to explore the sea-bed. Hence, arbitration automatically became compulsory.

47. Mr. AMADO said he had proposed that the Commission take a decision in stages on the basic principle. He did not regard arbitration in the same light as Mr. Hudson. In his view, it was a matter of engineers taking measurements, drawing plans, etc. If the technicians did not reach agreement, the matter would be transferred to the legal sphere.

48. The CHAIRMAN put to the vote the principle of recourse to arbitration.

It was decided by 10 votes to 2 to provide for recourse to arbitration in the event of the interested States not reaching agreement.

49. Mr. SANDSTRÖM said he had voted against the proposal on the grounds that he saw no reason why, at the present stage, an attempt should be made to find a solution for any differences which might arise. The time was not yet ripe. One could quite well await whatever

decision was taken as to the delimitation of territorial waters. In principle, he was in favour of arbitration.

50. The CHAIRMAN pointed out that Mr. Yepes had submitted a text.⁵

51. Mr. ALFARO said that Mr. Yepes' proposal laid down the obligation to submit disputes to the International Court of Justice, with the option of recourse to any other pacific method of settlement. He did not see any point in adopting a text which laid down the obligation to resort to arbitration or any other pacific method of settlement.

52. Mr. EL KHOURY did not think that obligation could be established by offering a choice between two methods. One of the parties might be in favour of submitting the dispute to the Court, and the other in favour of arbitration. The obligation should be confined to one particular course.

53. Mr. HSU did not think the text provided a means of settling disputes, since it left the parties free to resort to any pacific means of settlement.

54. Mr. CORDOVA did not think the Commission could discuss Mr. Yepes' text, since it was not competent to decide that recourse to the International Court of Justice was compulsory. That would mean interfering with Article 36 of the Statute of the Court.

55. Mr. SPIROPOULOS suggested amending Mr. YEPES' proposal as follows:

"In the event of agreement between the States interested in the same continental shelf proving impossible, the matter may, at the request of one of the parties, be referred to the International Court of Justice, unless the parties decide to resort to some other means of settlement."

56. Mr. CORDOVA thought it would be better to state that there was an obligation to submit the question to the International Court of Justice.

57. Mr. SPIROPOULOS pointed out that, under Article 38 of its Statute, the International Court of Justice applied either "international custom, as evidence of a general practice accepted as law", or "the general principles of law recognized by civilized nations". In the present instance, since there was no such law to apply, there would have to be an addition to the text he had just proposed, to the effect that the Court would decide cases *ex aequo et bono* (see Article 38, 2).

58. Mr. AMADO thought it would be more logical to decide first of all as to the principle of compulsory arbitration; then to vote on Mr. Yepes' amendment, which introduced a new notion.

59. The CHAIRMAN asked the Commission to take a decision on the obligation to resort to arbitration.

It was decided by 8 votes to 2, with 2 abstentions, to provide for compulsory arbitration.

60. Mr. YEPES agreed to Mr. Spiropoulos' amendment to his own proposal.

Mr. Yepes' amendment as modified by Mr. Spiropoulos was adopted by 6 votes to 5.

61. Mr. ALFARO, reverting to the question whether it was advisable to state that the question "may" or "shall" be submitted to the International Court of Justice, put forward another proposal, namely, to state that the question "shall" be submitted to the International Court of Justice at the request of one of the parties.

62. Mr. CORDOVA said that Mr. SCELLE had stated that, in the event of no arbitration taking place, the *status quo* would continue between the interested States, and thus there would be no exploitation of the continental shelf. That appeared to be the only practicable course; he hoped therefore that the Commission would adopt it.

63. The CHAIRMAN pointed out that the Commission had decided that arbitration was to be compulsory.

64. Mr. SPIROPOULOS did not think it necessary to envisage a return to the *status quo*. The Court could after all make provisional arrangements.

65. Mr. SCELLE said he had not submitted any definite proposals; the return to the *status quo* was the logical legal consequence.

66. The CHAIRMAN suggested returning to the discussion of the first part of Mr. François' article 9 and Mr. Hudson's proposed amendment.⁶

67. Mr. YEPES wondered whether Mr. Hudson's amendment added anything to the text adopted by the Commission, which by implication embodied that proposal.

68. Mr. AMADO argued that Mr. Hudson's amendment added one significant point, namely, that States should establish boundaries in the area of the continental shelf.

69. Mr. FRANÇOIS had no objection to Mr. Hudson's amendment, but wondered what was to happen in the case of States separated by an arm of the sea.

70. Mr. HUDSON considered that there also the States concerned would be neighbouring States.

71. Mr. ALFARO suggested the wording: "States which are adjacent to or facing one another".

72. Mr. CORDOVA, supported by Mr. SPIROPOULOS and Mr. EL KHOURY, proposed that the word "neighbouring" be deleted.

It was so decided.

Mr. Hudson's amendment as thus modified was adopted by 11 votes.

73. Mr. HUDSON read out a text which he suggested might be substituted for the second part of article 9, laying down detailed rules in connexion with arbitration.

74. Mr. CORDOVA, supported by the CHAIRMAN, maintained that the Commission had no need to go into the finer details of the arbitration procedure. It should be enough to state that arbitration was compulsory.

75. Mr. SPIROPOULOS was afraid that the text read out by Mr. Hudson, was out of place in article 9. It would be appropriate in an arbitration treaty, but not in a treaty concerning the continental shelf.

76. Mr. YEPES reminded the Commission that the Convention on Genocide provided for recourse to the International Court of Justice, but did not go into all the details of the arbitration procedure.

⁵ See para. 29 above.

⁶ See para. 19 above.

77. The CHAIRMAN said that the Commission had provisionally adopted Mr. Yepes' text as amended by Mr. Spiropoulos. It did not seem to him essential that Mr. Hudson should submit his text in the form of an amendment to that of Mr. Yepes.

78. Mr. HUDSON said he had no strong views about submitting his suggestion in the form of an amendment.

79. The CHAIRMAN thought that in those circumstances the Commission should now take a decision on the amended article 9 as a whole.

80. Mr. CORDOVA pointed out that the Commission had accepted Mr. Hudson's text, which would constitute the first part of article 9, as well as Mr. Yepes' text as amended by Mr. Spiropoulos, which would constitute the second part. He saw no reason why it should now take a decision on the complete text consisting solely of those two amendments.

81. Mr. HUDSON formally requested that article 9 as a whole be put to the vote, so that he could express his disapproval of it.

82. Mr. AMADO observed that he had voted in favour of Mr. Hudson's proposal but against Mr. Yepes' proposal as amended by Mr. Spiropoulos.

83. The CHAIRMAN pointed out that under rule 89 of the General Assembly's Rules of Procedure, when parts of a text had been voted on separately, the text as a whole must be duly put to the vote. He therefore put to the vote the entire article 9 as amended.

As 6 votes were cast in favour and 6 against, article 9 as a whole was rejected.

84. Mr. HUDSON said that, in view of the equality of votes, the Commission should not decide lightly on so important an issue. Incidentally it had not yet taken a decision on Mr. Hsu's amendment recommending the addition to the text adopted by the Commission for the first part of article 9 of the words: "Failing agreement, they shall have recourse to arbitration on a just and equitable basis."

85. Mr. HSU observed that the amendment he had proposed had in fact never been discussed.

86. Mr. AMADO did not see how any compromise arrangement could be made on a basis which was not equitable.

87. Mr. SCELLE thought the discussion had lost all significance. He was sorry to have to abstain from taking part in the voting.

88. Mr. AMADO maintained that the complication had come about through Mr. Yepes' amendment. Most of the members had actually expressed their approval of the principle of compulsory arbitration. It was on the details that the differences of opinion had cropped up. Hence it would be wise to be content with the principle of compulsory arbitration, and not to try and solve all the problems at once.

89. Mr. SANDSTRÖM thought it might perhaps be a good thing to postpone study of the entire question of boundaries between continental shelves until the Commission took up the question of the delimitation of territorial waters. After all, the Commission could do no more than

admit that at present there was no rule of international law covering the subject. Hence it could be content with the text of the first sentence of article 9 as proposed by Mr. Hudson and approved by the Commission, and explain in the report why it had felt obliged to confine itself to that.

90. Mr. KERNO (Assistant Secretary-General) thought that as the Commission was divided, it should make an effort to reach agreement. Perhaps it would be better therefore to take up the question again at the next meeting. Meanwhile the members of the Commission might try to think out a formula embodying both the idea of recommending agreement and that of recourse to compulsory arbitration in the event of agreement not proving possible.

91. Mr. EL KHOURY proposed that the entire article 9 consist of the text proposed by Mr. Hudson — which had not given rise to any difficulty — along with the following words: "or failing agreement, by arbitration". The Commission had after all decided by a considerable majority in favour of compulsory arbitration.

92. Mr. AMADO, Mr. FRANÇOIS, Mr. CORDOVA and Mr. YEPES considered the proposal as quite acceptable and a satisfactory way out of the difficulty.

93. Mr. HUDSON, supported by Mr. SPIROPOULOS, was against the use of the word "compulsory".

94. The CHAIRMAN pointed out that the Commission would thus be back at Mr. Hsu's amendment.

95. Mr. HSU said it was clear that the Commission was not succeeding in agreeing on any text. He did not consider it necessary to use the word "compulsory" unless a clear definition were given as to what it meant.

96. Mr. CORDOVA could not understand Mr. Hsu's attitude, in view of the fact that the Commission had decided in favour of compulsory arbitration.

97. Mr. HUDSON said that he had come to the conclusion that it would be better to delete article 9 entirely. It was out of the question to force States which were satisfied with conditions as they stood to go to the trouble of determining the boundaries of the continental shelf by agreement or arbitration. He thought Mr. el Khoury's proposal went much too far.

98. Mr. SCELLE, supported by Mr. SPIROPOULOS, maintained that the original text of article 9 had never implied that States should be required to reach agreement as to the delimitation of their respective parts of the continental shelf unless they found it necessary.

99. Mr. CORDOVA agreed. The important point, however, was what was to happen if the parties did not reach agreement. The only way out of the difficulty was compulsory arbitration.

100. The CHAIRMAN asked the Commission to take a decision on Mr. el Khoury's proposal, by which article 9 would read as follows:

"Two or more States, to whose territories the same continental shelf is contiguous, should establish boundaries in the area of the continental shelf, by agreement, or failing agreement, by compulsory arbitration."

101. Mr. HUDSON proposed that the word "compulsory" be omitted.

It was decided by 6 votes to 5 to keep the word "compulsory".

Mr. el Khoury's proposal was adopted by 7 votes to 4.

102. The CHAIRMAN said that his reason for voting against Mr. el Khoury's proposal was that in his opinion the Commission could not lay down a stipulation as to compulsory arbitration in a document of the kind it was drafting. If it did, it ought to enlarge on the procedure which would apply.

103. Mr. HSU and Mr. HUDSON said they had voted against it for similar reasons.

104. Mr. SPIROPOULOS said that the reason why he had voted against Mr. el Khoury's proposal was that he considered the word "compulsory" to be meaningless in that context.

105. Mr. HUDSON pointed out that the word "should" indicated that it was nothing more than a recommendation.⁷

Articles 6, 7 and 8 (resumed from the 115th meeting)

106. The CHAIRMAN asked the Commission to turn to the new text proposed by Mr. Hudson to replace articles 6, 7 and 8.⁸ Mr. François had now amended it to read as follows:

"The exploration of the continental shelf and the exploitation of its natural resources must not result in substantial interference with navigation or fishing. Interested parties, which may be affected by the construction of any permanent or non-permanent installations, must be duly notified in advance of the intended constructions, and due means of warning of their presence must be maintained.

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

107. Mr. FRANÇOIS explained that he had retained the words "The exploration of the continental shelf and the exploitation of its natural resources." If those expressions were accepted, the text of some of the earlier articles would have to be changed accordingly. He had also adopted the words "in advance", which were not in Mr. Hudson's version. The words seemed to him very important. Again, he had replaced the word "interests" in Mr. Hudson's text by the words "interested parties" which seemed to him preferable.

108. Mr. HUDSON suggested the expression "groups whose interests".

109. Mr. FRANÇOIS thought the expression was not very clear. Governments for example ought not to be excluded.

110. Mr. HUDSON said that the expression "groups whose interests" would cover navigators etc. as well as governments. He had hesitated for a long time about the words "in advance". It was not always possible in operations for the exploration of the continental shelf to ascertain precisely where the exploitation would be carried out. If those words were introduced into the text they would make it impossible in practice to carry out such explorations. Moreover, navigators' charts were brought up to date every year, so that the position of installations, whether permanent or otherwise, could be marked exactly on such charts without the necessity for notifying the interested parties in advance.

111. The CHAIRMAN suggested studying sentence by sentence Mr. Hudson's new text as amended by Mr. François.

First sentence

The first sentence was adopted by 10 votes.

Second sentence

112. *Mr. Hudson's proposal for the deletion of the words "in advance" was adopted by 8 votes, thus entailing the consequential deletion of the word "intended".*

113. Mr. HUDSON proposed that in the French text the word "constructions" be replaced by "installations".

It was so decided.

114. Mr. EL KHOURY proposed that the words "permanent or non-permanent" be deleted.

The proposal was adopted by 10 votes.

115. Mr. HUDSON was convinced that the text of the sentence could be improved. He did not like the expression "interested parties", for example.

116. Mr. YEPES thought the Commission might instruct the Special Rapporteur to try to find a better way of putting it.

117. The CHAIRMAN asked the Commission to take a decision on the amended text of the second sentence, which now read as follows:

"Interested parties, which may be affected by the construction of installations, must be duly notified thereof and due means of warning of the presence of such installations must be maintained."

The second sentence was adopted by 9 votes.

Third sentence

On a proposal by Mr. HUDSON, it was *decided* to replace the word "instituted" by the word "established".

The third sentence was adopted as thus amended.

The entire text to replace articles 6, 7 and 8 was adopted as thus amended.

The meeting rose at 1 p.m.

⁷ See summary record of the 116th meeting, para. 3.

⁸ See summary record of the 115th meeting, para. 90.