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Summary record of the 131st meeting

Topic:
Other topics

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78. Mr. EL KHOURY was of opinion that the paragraph had the advantage of showing that the definition of the continental shelf had no other implication.

It was decided to retain the paragraph.

Article 2

Paragraph 17 (annex to the "Report", part I, art. 2, com., para. 1)

79. Mr. HUDSON was pleased to note that the article defined the position clearly but, in his opinion, it lacked an introduction to the comment which would do what Mr. François had tried to do in the comment on article 1. Article 2 emphasised that control and jurisdiction were only recognized for the purposes of the exploration and exploitation of the continental shelf. That had already been said in the comment on article 1, but it was not clearly stated in the comment on article 2. That omission had struck him and he wished paragraph 17 to be preceded by a paragraph in which that was brought out. The primary purpose, which was to stress the restricted ends for which control and jurisdiction could be exercised, had not been achieved.

80. He therefore proposed the following text as an introduction to the comment:

"In this article the Commission adopts the idea that the coastal State may exercise control and jurisdiction over the continental shelf, but requires such jurisdiction and control to be solely for the purpose stated. There can be no question of jurisdiction and control independently of the exploration and exploitation of the natural resources of the sea-bed and sub-soil."

Mr. Hudson's text was approved.

81. Mr. HSU pointed out that the beginning of paragraph 17 read: "The Commission rejected the view that the principle of the freedom of the seas conflicts with any exploration of the sea-bed and sub-soil...", but the Commission had never discussed the question. It was therefore somewhat arbitrary to say that it had rejected that opinion; neither had the Commission ever discussed the question mentioned in the second sentence. He was of the opinion that if the Commission had not discussed a question, it should be so stated.

82. He thought the paragraph should be redrafted and be wished to propose the following text to replace the first two sentences of paragraph 17:

"The Commission is aware that exploration and exploitation of the sea-bed and sub-soil, which involves the exercise of control and jurisdiction by the coastal State, would affect, though to a very limited extent, the principle of the freedom of the seas, particularly as it relates to navigation. It favours such exploration and exploitation only because they mean progress and may enhance the well-being of mankind. Nevertheless, it is evident..."

83. Mr. YEPES considered that the text proposed by Mr. HSU would obviate an undesirable interpretation. He did not, however, see why the principle of the freedom

of the high seas had been qualified as sound. The way in which Mr. Hsu presented the question was satisfactory to him.

The meeting rose at 6 p.m.

131st MEETING

Tuesday, 24 July 1951, at 9.45 a.m.

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

Present:

Members: 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 Maria 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.

Examination of the draft report of the Commission covering its third session (*continued*)

CHAPTER VII. RÉGIME OF THE HIGH SEAS (A/CN.4/L.27) (*continued*)

Continental shelf

Article 2 (continued)

Paragraph 17 (annex to the "Report", Part I, art. 2, com., para. 1) (*continued*)

1. The CHAIRMAN recalled that towards the end of the previous meeting, Mr. Hsu had submitted to the Commission a text to replace the greater part of paragraph 17¹. He personally agreed with Mr. Hsu that the exploration and exploitation of the sea-bed and subsoil did not leave the freedom of the high seas wholly intact.

2. Mr. HUDSON was in favour of deleting paragraph 17 and including the ideas it expressed in the comment on article 6.

¹ Summary record of the 130th meeting, para. 82.

3. Mr. FRANÇOIS did not approve of the passage in Mr. Hsu's text claiming that exploration and exploitation of the sea-bed and subsoil would affect the principle of the freedom of the high seas. In point of fact, it was the freedom of the high seas which would be affected and not the principle of that freedom. The rules of navigation were similar in that respect. In his opinion, the principle of the freedom of the high seas was in no way affected by the exploitation of their subsoil, even though such exploitation might cause a certain amount of obstruction to navigation.

4. He did not approve of Mr. Hudson's proposal to delete the paragraph or, at least, insert it elsewhere. He drew the attention of members of the Commission to the fact that the point was one on which the report would be most vigorously attacked. The main objection of the opponents of the system adopted by the Commission was that it interfered with the principle of the freedom of the high seas; that was, for example, the opinion of Professor A. de La Pradelle. It was advisable for that line of argument to be refuted from the outset in the main article of the rules elaborated by the Commission. There was thus good reason for including a statement of those ideas in the comment on article 2.

5. Mr. YEPES shared the view of Mr. François. Article 2 was the main article in the draft. It summed up the opinion of the Commission on a new legal question.

6. The CHAIRMAN noted that the Commission had two proposals before it: one, from Mr. Hsu, was to amend paragraph 17; the other, from Mr. Hudson, was to insert the paragraph elsewhere. He himself had no set opinion with regard to the second proposal.

7. In reply to a question from the CHAIRMAN, Mr. HSU agreed to delete from his text the words "the principle of".

8. Mr. SANDSTRÖM thought it necessary for the Commission, at some point in the report, to state its reasons for recognizing the right of coastal States to explore and exploit the resources of the continental shelf; it should also reply to possible objections. In the comment on article 1, the Commission had given the reasons for recognizing that right. Under article 2, the reasons against recognition should be outlined so that they could be refuted.

9. Mr. SCELLE enquired whether Mr. François was anxious to retain the words "in any respect" in the clause "that would in any respect diminish the freedom of navigation". Although he personally shared the view of Professor de La Pradelle on the question, he considered the words, even viewed from the standpoint of the rapporteur, to be too categorical. The assertion would be correct had the Commission confined itself to recognizing the right to exploit the continental shelf from the shore only. Since, however, it went so far as to envisage exploitation from the high seas, it was no longer possible to claim that freedom of navigation on the high seas was not "in any respect" diminished by exploration of the sea-bed and subsoil.

10. Replying to Mr. FRANÇOIS, who pointed out that it was only the freedom of the high seas which was

diminished, the principle of that freedom remaining intact, Mr. SCELLE remarked that a principle devoid of practical application was as good as non-existent.

11. The phrase "as much... as anyone" was also distasteful to him. It struck a somewhat aggressive note. In any case, while the text of paragraph 17 was quite in accord with the general feeling of the Commission and should accordingly be retained, it was clear that the wording was too categorical.

12. The CHAIRMAN pointed out to Mr. Scelle that the amendment proposed by Mr. Hsu would meet his objections.

13. Mr. AMADO approved, in substance, the ideas enunciated in paragraph 17 but was critical of certain phrases such as "the sound principle", "but refuses to interpret", and "the well-being of mankind". The latter expression, so lyrical in tone, was out of place in a serious text. The exploitation in question was mainly carried out for pecuniary gain. The Commission should return to a sober style befitting the subject.

14. Mr. KERNO (Assistant Secretary-General), actuated by the same desire for stylistic restraint, suggested replacing the words "because they mean progress and may enhance the well-being of mankind", in Mr. Hsu's amendment, by the words "because they meet the needs of the international community".

15. Mr. HSU agreed to the suggestion, but pointed out that the phrase which it was desired to change was taken from the rapporteur's text.

16. The CHAIRMAN noted that the majority of the members of the Commission preferred to leave the ideas enunciated in paragraph 17 where they were.

17. He asked the Commission to come to a decision on the substance of Mr. Hsu's amendment, namely, whether the Commission should acknowledge that exploitation of the continental shelf did to some extent affect the freedom of the seas.

18. Mr. FRANÇOIS did not contest such an assertion but must emphasize once again that the principle of the freedom of the high seas remained intact. The principle was not of so rigid a kind that it would automatically be limited by anything which might limit the freedom of the high seas.

Mr. Hsu's proposal was approved in substance.

The wording suggested by Mr. Kerno for the second sentence of Mr. Hsu's proposal was adopted.

19. Mr. AMADO proposed that the word "would" in the first sentence of the text submitted by Mr. Hsu be replaced by the word "may".

It was so decided.

20. Mr. HUDSON proposed that the words "the principle of the freedom of the seas, particularly as it relates to navigation" be replaced by the words "the freedom of navigation".

21. Mr. YEPES preferred Mr. Hsu's text as it stood.

22. Mr. KERNO (Assistant Secretary-General), developing a remark by Mr. CORDOVA, thought that other maritime activities, such as fishing, must be taken into

consideration. The suggested deletion would therefore have its disadvantages.

Mr. Hudson's proposal was rejected and Mr. Hsu's text was adopted as amended.

Paragraph 18 (annex to the "Report", Part I, art. 2, com., para. 4)

23. Mr. HUDSON read out the following text which he proposed should be substituted for paragraph 18:

"It serves no purpose to refer to the sea-bed and subsoil of the submarine areas in question as *res nullius*, capable of being acquired by the first occupier. That conception would lead to chaos and would disregard the fact that in most cases the effective exploitation of the natural resources will depend on the existence of installations on the territory of the coastal State to which the submarine areas are contiguous."

24. Mr. FRANÇOIS pointed out that the text left out the consideration that the *res nullius* theory "would make any systematic exploitation of the natural resources of the sea-bed impossible".

25. Mr. HUDSON remarked that, in the Gulf of Mexico for example, Mexico might undertake the exploitation of the continental shelf just as well as the United States of America, if the area of the high seas in which it carried out such exploitation were contiguous to its territory.

26. Mr. FRANÇOIS recalled that the Commission had noted that if the first occupant State could exploit certain resources of the sea, other States subsequently participating in such exploitation at the same points, systematic exploitation of the continental shelf would be impossible. If exploitation was to be efficiently carried out, each area must be placed under single control, that of a single company, for instance. If the continental shelf were considered as *res nullius*, everyone could claim the right to exploit it.

27. Mr. CORDOVA remarked that any decision by the Commission to extend the concept of *res nullius* to the continental shelf might have most undesirable consequences for the coastal States.

28. Mr. SCALLE drew attention to certain contradictions in the system outlined by the Commission. At one point, it stated that exploitation of the subsoil did not depend on the possibility of access from the mainland and, at another, it linked exploitation of the continental shelf with exploitation of the mainland. If the Commission declared it possible to gain access to the continental shelf from the high seas, it would be logical to authorize its exploitation by one and all.

29. Although it was his intention to abstain from voting on the whole section dealing with the continental shelf, he nevertheless felt he must draw attention to that contradiction.

30. Mr. CORDOVA pointed out that, according to the Commission's comment, access to the continental shelf contiguous to the coast of Mexico would be possible from Texas. If one went to the root of the matter, the

Commission was acknowledging the right of the coastal State to priority of control and jurisdiction over the continental shelf not on the ground of possibility of access thereto but because it thought, though it did not say so, that the continental shelf was an extension of the territory of the State.

The text proposed by Mr. Hudson was adopted.

Paragraph 19 (annex to the "Report", part I, art. 2, com., para. 2)

31. The CHAIRMAN, in reading out the text, suggested that it would be preferable to say in the third line "has its advocates".

32. Mr. HUDSON proposed the following text:

"In some circles it is thought that the exploitation of the natural resources of submarine areas should be entrusted, not to coastal States, but to agencies of the international community generally. In present circumstances, such internationalization would meet with insurmountable practical difficulties, however, and would not ensure the effective exploitation of the natural resources, which is necessary to meet the needs of mankind. Continental shelves exist in many parts of the world; exploitation will have to be undertaken in very diverse conditions, and it seems impracticable at present to rely upon international agencies to conduct the exploitation."

33. Mr. KERNO (Assistant Secretary-General) noted that the majority of the members of the Commission had in fact considered internationalization of the continental shelf to be unwarranted at that stage. He wondered, however, whether internationalization should not be mentioned as an ideal solution which it was not possible to apply for the moment. In that way, the Commission would avoid prejudging the future.

34. Mr. HUDSON said that he did not regard internationalization as an ideal. It was with a view to giving partial satisfaction to the point of view just put forward by Mr. Kerno that he had included the words "in present circumstances" in his text.

35. Mr. CORDOVA enquired whether the Commission admitted the right of the coastal State to consider the continental shelf as part of its territory. If it did not admit that, why should it not accept the possibility of internationalization, which both the draft and Mr. Hudson's amendment dismissed without explanation?

36. The underlying reason which led the Commission to dismiss the idea of internationalisation was that, at bottom, it thought the coastal State enjoyed sovereignty over the continental shelf.

37. Mr. HSU thought that if Mr. Hudson's proposal was going to be accepted, it should be modified. Except for a reference to the "very diverse conditions" in which exploitation of the continental shelf would have to be undertaken in many parts of the world, it did not give the Commission's reasons for turning down the idea of internationalization. Were those reasons valid, they would apply equally to all such problems and would justify a general rejection of all internationalization.

38. Mr. FRANÇOIS accepted the text submitted by Mr. Hudson. Mr. Cordova's thesis was a dangerous one. If it admitted, even provisionally, appropriation by the coastal State, the Commission would render any subsequent internationalization impossible.

39. Mr. AMADO considered that it would be dangerous to rule out all possibility of subsequent international co-operation, such as the formation of an international economic consortium, for the purpose of exploiting the resources of the marine subsoil.

40. Mr. SCALLE wondered if it would be possible to modify the system once adopted. A claim by each State to possession of the bed of the high seas contiguous to its coasts was tantamount to an indefinite extension of the system of territorial waters.

41. Mr. CORDOVA thought that the Commission should not be afraid to say that the exploitation of the continental shelf did not lend itself to internationalization because the shelf should be regarded as an extension of the territory of the coastal State.

42. Mr. HUDSON felt that such an addition would conflict with article 2.

43. The CHAIRMAN thought that, in order not to compromise the future, the Commission would be well advised to make no pronouncement on the merits of a possible internationalization of the continental shelf.

44. Mr. HSU suggested deleting the last sentence in Mr. Hudson's text. International agencies were set up in order to meet the various needs that arose, but the text rejected the idea of their playing any part.

45. The reasons adduced against international agencies were precisely those quoted elsewhere in their support. He felt the sentence was contradictory.

It was decided by 6 votes to 2, to retain the sentence.

46. Mr. YEPES explained that he had voted for Mr. Hudson's text because it mentioned the existence of continental shelves in many parts of the world.

The whole of the text submitted by Mr. Hudson was adopted by 7 votes.

47. Mr. CORDOVA pointed out that the vote for Mr. Hudson's text involved the rejection of the text he (Mr. Cordova) had submitted in writing and which was worded as follows:

"The Commission is aware that the latter solution has had its advocates. It considers, however, that such internationalization should not be carried out because it believes that the continental shelf, as a submarine extension of the territory of the coastal State, should be subject to the jurisdiction and control of that State."

Paragraph 20 (annex to the "Report", part I, art. 2, com., para. 6)

48. Mr. HUDSON read out the text he proposed substituting for paragraph 20. It was as follows:

"It seems to be unnecessary to attempt to base the right of a coastal State to exercise control and jurisdiction for the limited purposes stated in article 2 on customary law. Though numerous proclamations have

been issued over the past decade, it can hardly be said that such unilateral action has established a new customary law. It is sufficient to say that the proclamations are based upon concepts of international law which serve the present-day needs of the international community."

49. Mr. YEPES thought that the idea that international customary law might be established by unilateral proclamation should not be ruled out entirely. If the Commission accepted Mr. Hudson's text, it would be identifying itself with a particular conception of the process of formation of customary law.

50. The CHAIRMAN pointed out that the Commission was not taking any decision as to substance. It was merely stating that, in a specific case, the proclamations in question did not have the effect of establishing a customary law.

51. Mr. YEPES reminded the Commission that no one made the formation of customary law subject to certain conditions as to time. He would accept the proposed text provided it specified that, as an exception to the general rule with regard to the formation of customary law, the case in point was not an example of a new customary law.

52. Mr. HSU considered it incorrect to talk of "concepts of international law".

53. Mr. SCALLE was unable to grasp the pretended distinction between the formation of a customary rule and the establishment of a rule of law based on the needs of the community. As far as he was concerned, every rule of law was based on social need, on the public weal. It seemed to him that, in the case in point, they were dealing with a rule of customary law in process of formation.

54. After a discussion in which Mr. HSU, the CHAIRMAN, Mr. KERNO (Assistant Secretary-General) and Mr. SCALLE took part, Mr. HUDSON proposed replacing the words "concepts of international law", in his text, by the words "general principles of law", the term employed in article 38 of the Statute of the International Court of Justice.

It was so decided.

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

Paragraph 21 (annex to the "Report", part I, art. 2, com., para. 7)

55. Mr. HUDSON thought the last sentence unnecessary and suggested that the following text be substituted for the paragraph as a whole:

"Article 2 avoids any reference to "sovereignty" of the coastal State over the submarine areas of the continental shelf. As control and jurisdiction by the coastal State would be exclusively for exploration and exploitation purposes, they cannot be placed on the same footing as the general powers exercised by a State over its territory and its territorial waters."

56. Mr. KERNO (Assistant Secretary-General) thought the distinction drawn in the text submitted by Mr. Hudson more apposite. What the Commission had in mind was

not sovereignty but certain rights exercised for clearly defined ends.

57. Mr. CORDOVA preferred the text of the draft report. Once it was stated that exploration and exploitation must be carried out from the mainland, the Commission implicitly recognized the fact that the coastal State enjoyed such rights by reason of its sovereignty. The continental shelf was part of the State territory. Once again, the Commission was frightened of saying that the sovereignty of States extended to the bed and sub-soil of the contiguous high seas. If the basis for exploitation was not ownership, what else could it be?

58. Mr. YEPES said that he too preferred the text of the draft, in which the reasons for which the Commission avoided using the term sovereignty were more clearly stated.

Mr. Hudson's text for paragraph 21 was adopted by 5 votes to 4.

Paragraph 22 (annex to the "Report", part I, art. 2, com., para. 5)

59. Mr. HUDSON proposed that the paragraph be worded as follows:

"The exercise of the right of control and jurisdiction is independent of the concept of occupation. Effective occupation of the submarine areas in question would be practically impossible; nor can recourse be had to a purely declaratory occupation. The right of the coastal State under Article 2 does not depend on any formal assertion of that right by the State."

60. On the proposal of Mr. SCALLE and following a discussion between Mr. FRANÇOIS and Mr. YEPES, it was decided provisionally to replace in the French text the word "*notionnelle*" by the word "*théorique*".

61. Mr. FRANÇOIS supported the text submitted by Mr. Hudson.

Mr. Hudson's text for paragraph 22 was adopted. Additional paragraph proposed by Mr. Yepes

62. Mr. YEPES proposed an additional paragraph on the following lines:

"The idea of the Commission in adopting this article is that the rights of control and jurisdiction over the continental shelf, as defined in this draft, which coastal States are acknowledged to possess, belong to all States regardless of the existence or non-existence of a continental shelf in the geological sense."

63. Mr. HUDSON pointed out that Mr. Yepes was coming back to the same proposal he had already submitted. The recasting of article 1 should have given him satisfaction and the same objections applied to his proposal as before.

Mr. Yepes' proposal was rejected by 6 votes to 1.

Articles 3 and 4

64. Mr. HSU wondered whether articles 3 and 4, which were practically the same, could not be combined into a single article.

65. The CHAIRMAN considered that would hardly be feasible.

Paragraphs 23 and 24 (annex to the "Report", part I, arts. 3 and 4, com.)

66. Mr. HUDSON proposed the following text:

"23. The object of articles 3 and 4 is to make it perfectly clear that the control and jurisdiction which may be exercised over the continental shelf for the limited purposes stated in article 2 may not be extended to the superjacent waters and the air-space above them. While some States have connected the control of fisheries and the conservation of the resources of the waters with their claims to the continental shelf, it is thought that these matters should be dealt with independently." (See A/CN.4/L.27, para. 34.)

67. He pointed out that paragraphs 23 and 24 were thereby merged into a single paragraph. He thought he had expressed more forcibly what Mr. François had in mind.

68. Mr. FRANÇOIS had no objection to the new wording.

Mr. Hudson's text for paragraphs 23 and 24 combined was adopted.

Article 5

Paragraph 25 (annex to the "Report", Part I, art. 5, com., para. 1)

69. Mr. HUDSON was in favour of deleting the first sentence in the paragraph. They were not really concerned with an application of articles 2 and 3. He proposed that the paragraph be reworded as follows:

"It must be recognized that, in exercising control and jurisdiction under article 2, a coastal State may adopt measures reasonably connected with the exploration and exploitation of the sub-soil, but it may not exclude the laying of submarine cables by non-nationals."

70. Mr. FRANÇOIS accepted that text.

Mr. Hudson's text for paragraph 25 was adopted.

Paragraph 26 (annex to the "Report", Part I, art. 5, com., para. 2)

71. Mr. HUDSON proposed amending the first sentence of the paragraph to read "whether this provision should be extended . . ." instead of "whether it should extend this provision . . ."

Paragraph 26 was adopted as thus amended.

Article 6

Paragraph 27 (annex to the "Report", Part I, art. 6, com., para. 1)

72. Mr. LIANG (Secretary to the Commission) pointed out that the third sentence, "In most cases, however, such exploitation could not meet requirements.", was a little obscure and, furthermore, seemed unnecessary.

73. Mr. HUDSON was in favour of omitting the sentence, which merely repeated what had been said in the previous one.

74. Mr. FRANÇOIS thought the sentence served a useful purpose.

It was decided to amend the sentence to read as follows:

“In most cases, however, such exploitation would not be practicable.”

75. Mr. CORDOVA and the CHAIRMAN thought that if the words “in such cases” were to be used in the last sentence, then mention should also be made of fishing. It was not only the interests of navigation which were involved.

76. Mr. HUDSON did not wish any reference to be made to fishing, because the Commission was dealing with the waters in narrow channels. He suggested the following wording:

“For example, in narrow channels, essential to navigation, the claims of navigation should have priority over those of exploitation, unless the conflicting claims can be reconciled.”

77. Mr. FRANÇOIS having accepted that text, *it was adopted.*

Paragraph 28 (annex to the “Report”, Part I, art. 6, com., para. 2)

78. *Paragraph 28 was adopted*, after substitution of the word “should” for the word “must” in the first and third sentences.

Paragraph 29 (annex to the “Report”, Part I, art. 6, com., para. 3)

79. Mr. HUDSON suggested the wording “The responsibility for giving notification and warning . . . is not restricted to installations set up on regular sea lanes. It is a general duty . . .”

Mr. Hudson’s text was adopted.

Paragraph 30 (annex to the “Report”, Part I, art. 6, com., para. 4)

80. Mr. HUDSON thought that the first sentence should be deleted and the second and third sentences recast as follows:

“While an installation could not be regarded as an island or elevation of the sea-bed with territorial waters of its own, the coastal State might establish narrow safety zones encircling it.”

81. He would also like to see the last sentence deleted. The point to be brought out was that while such installations must not be considered as islands with territorial waters of their own, the State could establish a safety zone.

82. Mr. KERNO (Assistant Secretary-General) thought that the last sentence might nevertheless be of use in order to make it clear that, in referring to a narrow zone, the Commission was thinking in terms of metres and not kilometres. It was, after all, dealing with installations on the high seas, where a distance of several kilometres might well be regarded as quite small.

83. Mr. FRANÇOIS was in entire agreement with that view.

84. The CHAIRMAN likewise considered that the expression “narrow zone” was vague. The Commission should make clear what it meant by the term.

It was decided to delete the first sentence of the paragraph, to adopt the wording proposed by Mr. Hudson in place of the second and third sentences, and to retain the last sentence.

Article 7

85. Mr. HUDSON thought the second sentence was unnecessary.

86. The CHAIRMAN, supported by Mr. CORDOVA, was in favour of keeping it.

It was decided to retain the sentence.

87. Mr. HSU asked whether article 7, which placed States under an obligation, was not to be redrafted.

88. The CHAIRMAN replied that the majority of the Commission had expressed itself in favour of imposing an obligation whenever it was necessary for an existing dispute to be settled.

Paragraph 31 (annex to the “Report”, Part I, art. 7, com., para. 1)

89. Mr. HUDSON suggested the following wording:

“No general rule can be proposed for the drawing of such a boundary, just as a delimitation of territorial waters between adjacent States is not governed by any general rule.”

90. The CHAIRMAN, supported by Mr. FRANÇOIS, said that he did not think it was possible to say: “just as”, since something different was involved. If it were possible to establish a general rule for the delimitation of territorial waters, a great obstacle to the establishment of a delimitation of the continental shelf would be removed. One of the reasons for which the Commission was concerning itself with the continental shelf was that it wished to propose rules in a field in which the practice of States was not yet settled.

91. Mr. HUDSON did not share that view. He recalled that several States, among them the United States and Mexico, and France and Spain, had fixed a boundary between their territorial waters.

92. The CHAIRMAN noted that there was no general rule for the delimitation of territorial waters and that, even if there were, it would not necessarily apply outside those waters. The object was to establish a general rule for the delimitation of the continental shelves but it was difficult to do so in the absence of a general rule for territorial waters.

93. Mr. HSU said he would like the second sentence in the paragraph to be phrased as follows:

“The statement of a general rule for this purpose will be subject to insurmountable difficulties as long as there are no generally recognized rules for the delimitation of territorial waters between adjacent States. Even if such rules existed, they would not necessarily meet the situation when the continental shelf extended far into the sea.”

94. Mr. HUDSON proposed the following text.

“Where the same continental shelf is contiguous to the territories of two or more adjacent States, boundaries may be necessary in the area of the continental shelf. Such boundaries should be fixed by agreement among the States concerned. It is not feasible to lay down any general rule which States should follow; and it is not unlikely that difficulties may arise. For example, no boundary may have been fixed between the respective territorial waters of the interested States, and no general rule exists for such boundaries. It is proposed, therefore, that if agreement cannot be reached and a prompt solution is needed, the interested States should be under an obligation to submit to arbitration *ex aequo et bono*.”

The last sentence in paragraph 31 of Mr. François' draft could then follow on.

95. Mr. FRANÇOIS accepted that drafting.

96. Mr. YEPES wondered whether the text ruled out other means of peaceful settlement.

97. The CHAIRMAN explained that the States concerned could always resort to other means. The text applied only in the absence of agreement.

Mr. Hudson's text was adopted.

Paragraph 32 (annex to the “Report”, Part I, art. 7, com., para. 2)

98. The CHAIRMAN and Mr. SCALLE both wondered whether the paragraph was necessary.

99. Mr. HUDSON said that the demarcation line between continental shelves might generally coincide with a certain median line. At times, however, the latter might be difficult to establish, as had been pointed out by Mr. R. Young in the case of the Persian Gulf.²

100. He thought it might perhaps be better to say in the second sentence:

“However, in such cases the configuration of the coast might give rise to difficulties in drawing any median line, and such difficulties should be referred to arbitration.”

101. Mr. CORDOVA would prefer no mention to be made of the median line.

102. Mr. FRANÇOIS thought that it was none the less desirable to lay down as a general rule that the boundary would be the median line.

103. Mr. SCALLE objected that the Commission had previously said it was impossible to lay down any general rule.

104. Mr. HUDSON explained that, on that occasion, it had been neighbouring States which were involved. In the case before them, however, the States concerned were those separated by an arm of the sea, such as Iran and Saudi Arabia.

105. Mr. CORDOVA pointed out that two States situated on different sides of an arm of the sea might have continental shelves of very different extent.

106. Mr. FRANÇOIS said that the hypothetical case envisaged by Mr. Córdova did not correspond to that covered by article 7. The article envisaged the existence of a single continental shelf such as that between France and the United Kingdom. Article 7 was appropriate both for States on opposite sides of a stretch of sea and for neighbouring States. Paragraph 31 applied to the latter and paragraph 32 to the former. Territorial waters raised no problem except between neighbouring States. In the case of States on opposite sides of a stretch of sea, there were no difficulties.

107. Mr. CORDOVA was in favour of leaving the whole question to arbitration and not introducing the idea of the median line.

108. Mr. EL KHOURY, supported by Mr. CORDOVA, pointed out that, since the geographical distribution of the continental shelf was uneven, any division by means of a median line was an arbitrary one.

109. Mr. HUDSON did not wish paragraph 32 to be separated from paragraph 31. He referred to the opinion of Mr. S. F. Boggs, that the principle of the median line should be applied in such a case.³ He recalled the difficulties which arose in the Persian Gulf. It was necessary to decide from what territory the median line was to be measured. When there were islands, account must be taken of their ownership, but it was also possible to trace a median line which left islands out of account.⁴ He would vote in favour of retaining the principle of the median line.

110. Having heard that Mr. Kerno (Assistant Secretary-General) had to leave Geneva to lecture to the Academy of International Law at the Hague, he would like to pay tribute to the very valuable assistance given by Mr. Kerno during the whole of that session.

111. The CHAIRMAN and the other members of the Commission associated themselves with Mr. Hudson's tribute.

The meeting rose at 1.0 p.m.

132nd MEETING

Wednesday, 25 July 1951, at 9.45 a.m.

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² “Legal status of submarine areas beneath high seas”, *American Journal of International Law*, vol. 45 (1951) p. 236.

³ “Delimitation of seaward areas”, *ibid.*, pp. 256–258.

⁴ *Ibid.*, p. 261.