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Summary record of the 197th meeting

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

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197th MEETING

Thursday, 18 June 1953, at 9.30 a.m.

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Chairman: Mr. Gilberto AMADO, *First Vice-Chairman.*

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: 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 (item 2 of the agenda) (A/CN.4/60) (*continued*)

CHAPTER IV: REVISED DRAFT ARTICLES ON THE CONTINENTAL SHELF AND RELATED SUBJECTS. PART I: CONTINENTAL SHELF

Article 1 (continued)

1. Mr. FRANÇOIS (Special Rapporteur) drew attention to his proposal, which he had couched as a comment to article 1. It read as follows:

"While the depth of 200 metres as a limit of the continental shelf must be regarded as the general rule, it is a rule which is subject to equitable modifications in special cases in which submerged areas in the proximity of the coast with a depth of less than 200 metres, notwithstanding the fact that they are separated by a narrow channel deeper than 200 metres from the part of the continental shelf adjacent to the coast, must be considered as contiguous to that part of the shelf."

2. Mr. Kozhevnikov's proposal[1] was too vague, since, as had been pointed out at the previous meeting, it would be difficult to define the term "steep slope". He (Mr. François) maintained that the best solution was that which the Commission had considered at its third session, but had abandoned at the last minute as a result of the discussions of the Sub-Commission then set up to examine the issue. The criticism of vagueness also applied to the text finally adopted at the third session.[2] Divergencies might occur not only in respect of the possibilities of exploitation, but also in respect of the different kinds of exploitation and the suitable depths, the latter of course varying with the type of natural resources. Petroleum could be sought at a shallow depth — 30 metres — but precious minerals could perhaps be sought at lower levels — 60 to 70 metres. If the text merely referred to the exploitation of the natural resources of the sea-bed and subsoil, he feared that difficulties might arise between States about how far the continental shelf extended. The Commission should endeavour to adopt a practical rather than a purely academic solution.

3. Mr. YEPES pointed out that the proposal he had submitted at the previous meeting was identical with the text of article 1 adopted by the Commission at the third session, except for the inclusion of the words: "continental or island" ("*continentales ou insulaires*").[3]

4. Mr. FRANÇOIS asked Mr. Yepes whether those words were really necessary. In his opinion, they did not enhance the clarity of the text.

5. Mr. YEPES said that he would be prepared to withdraw them if the Special Rapporteur would not accept them. He had included them because a number of countries — he would especially mention Brazil, Chile and Colombia — were concerned about the possibility that islands might be excluded from the continental shelf.

6. Mr. LAUTERPACHT drew Mr. Yepes' attention to comment 4 to article 1 which read: "The word 'continental' in the term 'continental shelf' as here used does not refer exclusively to continents. It may apply also to islands to which such submarine areas are contiguous."[4]

7. As to the several proposals before the Commission, he hoped that before voting on them, members would carefully consider the Special Rapporteur's proposal. Some members might hesitate to vote for the depth of 200 metres unless some consideration were shown for the objections raised by several governments, as, for instance, that of Norway.

8. Mr. PAL wished to submit the following text for article 1:

"'As used *herein*, the term "continental shelf" *means* the sea-bed and subsoil of the submarine areas contiguous to the coast but outside the area of the territorial sea to a depth of 200 metres.'

"Explanation: A submarine area falling within the area covered by the extension of the maritime frontier lines of a coastal state shall, for the present purposes, be taken to be contiguous to the coast

"(*a*) If any portion of it is connected with the coast by not exceeding 200 metres in depth outside the territorial sea;

"(*b*) If no portion of it is so connected, then if the

[1] See *supra*, 196th meeting, para. 10.

[2] See "Report of the International Law Commission covering the work of its third session", *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858), Annex.

[3] See *supra*, 196th meeting, para. 17.

[4] See "Report of the International Law Commission covering the work of its third session", *op. cit.*, Annex.

separating deep water does not exceed... metres in depth and... miles in width."

9. He had drafted that text in the light of the discussion at the previous meeting, but would like to know what would be the precise relation between the articles and the comments thereon. In the case of the draft on arbitral procedure, the comments had not been put to the vote. Presumably the Special Rapporteur or the Secretariat were responsible for them, and not the Commission. He would suggest that, whenever necessary, explanations should be added to the text of articles, and be considered as explanations.

10. Mr. HSU thought that the Special Rapporteur's proposal was on the whole sound, but he was not sure about the meaning of the words "narrow channel", which might prove difficult to define. The general issue which he would like to raise, however, was whether the Commission was going to rely on comments in drawing up the rules. He believed that in the case of ancient and well-established rules, comment and interpretation were wholly legitimate. In the case of new rules, clarity was surely preferable to interpretation.

11. He agreed with Faris Bey el-Khouri that if the depth were fixed, the width should also be fixed. Indeed, he tended to the view that it would be better to return to the original formula, and take the criterion of exploitation as the basis for article 1. The Commission should not too greatly concern itself with the objections raised by governments, but should above all endeavour to formulate sound rules.

12. He was not opposed to the inclusion of the words "continental or island", as suggested by Mr. Yepes. Since, after all, the Commission proposed to state that the word "shelf" was not a shelf, there was no reason why it should not also say that the word "continental" did not mean continental.

13. Mr. SANDSTRÖM was disposed to agree with Mr. Hsu. The decision to fix the limit of depth had been prompted by misgivings lest the rights of coastal States become so extensive as to lead to interference with shipping and fisheries. He did not consider that the figure of 200 metres offered a sound solution, partly because of the existence of shallow seas to which reference had been made at the previous meeting. If the depth was to be fixed, the width of the continental shelf should also be specified, but what yardstick should be applied in that case? On what data should the Commission base its decision? In view of those difficulties, he believed that it would be best to revert to the original proposal, which simply admitted the right to exploitation.

14. Mr. FRANÇOIS reminded Mr. Pal that the Commission would in due course have to vote on the comments to be appended to the draft on arbitral procedure. With regard to the comments on the articles on the continental shelf adopted by the Commission at the third session, the same procedure would have to be followed at the present session.

15. With regard to the term "contiguous to the coast", he would point out that the difficulty of the continental shelf continuing beyond a deep channel would remain regardless of which alternative principle the Commission adopted — the 200-metre limit or the principle of exploitation.

16. As to the question of shallow seas — for instance, those in the Persian Gulf — he would point out that the depth of 200 metres had always been considered as a maximum. The continental shelf, therefore, would cover all areas of the sea-bed lying beyond the territorial sea at less than 200 metres. In the case of coastal States separated by such a stretch of shallow water, delimitation would have to be made along the lines, for instance, of the proposals made in article 7.

17. Mr. SANDSTRÖM could not accept the Special Rapporteur's argument about contiguity, which would be far easier to interpret in relation to a deep channel if article 1 referred merely to the exploitation of the natural resources without specifying the depth. If the article incorporated the 200-metre limit, a special provision would be necessary to deal with the case of deep channels.

18. Mr. LAUTERPACHT considered that the Special Rapporteur had given the correct answer in respect of shallow seas. It would appear that Mr. Sandström considered that the main reason for changing the Commission's decision of last year was that it had had the effect of making the continental shelf too extensive. He would submit that the real objection to the text previously adopted was that in that formulation, the limit of the continental shelf was indefinite. Governments might have no objection to a continental shelf the outward limit of which was fixed at 20, 30 or 50 miles from the coast so long as the limit was fixed. What was important was to prevent States from claiming the right of exploitation of the bed of the sea at a distance of, say, 200 or 500 miles from the coast.

19. Mr. Hsu had suggested a definition in terms of both depth and width. That was logically impossible — although one might be qualified by the other. Furthermore, he (Mr. Lauterpacht) would urge members to give the most serious consideration to the Special Rapporteur's views and to exercise the greatest caution before overruling them, since they were based on a serious and far-reaching study of the problem in all its aspects.

20. The CHAIRMAN, speaking as a member of the Commission, emphasized the importance of maintaining the principle of the freedom of the seas. What would happen if machinery were erected in the middle of the sea? Such a possibility would have to be envisaged if the concept of the continental shelf were divorced from the concept of contiguity to the coast. What would be the position with regard to shipping and fisheries?

21. Mr. FRANÇOIS was unable to accept the suggestion that the continental shelf should be defined in terms of distance from the coast. As far as Mr. Kozhevnikov's proposal was concerned, he (Mr. François)

stated that the depth of 200 metres mostly coincided with the steep slope he (Mr. Kozhevnikov) had mentioned. The only material difference between Mr. Pal's proposal and his (Mr. François') own was a difference in the comments.

22. Mr. KOZHEVNIKOV proposed that in order to ensure a proper and logical ordering of the debate, the Commission should decide not to examine the comments for the time being.

It was so agreed.

23. Mr. ALFARO considered that the continental shelf should be defined, not as contiguous to the coast, but as a projection or prolongation of the coast into the sea, and that the Special Rapporteur's proposal should be amended in that sense. Mr. Pal's formula, which used the word "means" instead of the words "refers to" was a happy one. It might perhaps be further improved by the use of the word "designates", the definition of the term "continental shelf" then reading: "the term 'continental shelf' designates the sea-bed and subsoil of the submarine areas which form a prolongation of the coast and which lie outside the area of the territorial sea".

24. He was opposed to Mr. Kozhevnikov's proposal because it was too vague.

25. Faris Bey el-KHOURI said that the Commission was hesitating between three criteria: those of depth, width and exploitability. He considered that the definition should take in all three elements, and would therefore suggest that the last clause of article 1 be amended to read: "not exceeding a distance of 10 miles from the territorial waters". The Chairman had made a pertinent observation with regard to the high seas. As for exploitation, it was a new thing, and the door should be left open for future technical development. It would be unwise for the Commission to lay down drastic rules which would compromise their own future applicability.

26. Mr. SPIROPOULOS compared the present discussion to the arguments at the beginning of the century about aerial space and the sovereign rights of States. It had been claimed that the 200-metre limit was very liberal, since at the present time exploitation was for technical reasons limited to the 30-metre level. He himself could not believe that it was possible to impose any limit at all. True, it was essential to maintain the freedom of the seas, but it was also essential to permit humanity to exploit the riches of the sea-bed. He agreed with Mr. Hsu and Faris Bey el-Khouri that distance would be a better criterion than depth. The question was, how to fix the distance? What would be the approximate average breadth corresponding to a depth of 200 metres? States claimed all kinds of distances for their territorial waters; for instance, the Soviet Union claimed 12 miles.

27. He would be prepared to accept the text of article 1 subject to the last clause being amended to read: "up to the distance of... metres from the territorial sea".

28. Mr. KOZHEVNIKOV pointed out to Mr. Spiropoulos that the Soviet Union did not claim a 12-mile zone for its territorial waters. It already exercised its rights over 12 miles in accordance with the provisions of international law.

29. Mr. FRANÇOIS, answering Faris Bey el-Khouri, recalled that the question of breadth had been discussed by the Commission at the third session. Comment 7 on article 1 read as follows: "The Commission considered the possibility of fixing both minimum and maximum limits for the continental shelf in terms of distance from the coast. It could find no practical need for either and it preferred to confine itself to the limit laid down in article 1." Further, he would draw attention to the relevant comments of governments and experts (A/CN.4/60, mimeographed English text, p. 103; printed French text, para. 32). Chile, Norway and Yugoslavia advocated a zone of stated breadth, but that point of view was explicitly opposed by others, for instance by the United Kingdom Government. Mr. Lauterpacht had suggested that members should have confidence in the Special Rapporteur. All he (Mr. François) would ask was that they should carefully study the comments of governments, since the attitude of governments, as well as that of experts, must be taken into account. Thus, the French Government criticized the definition of the continental shelf on the grounds of vagueness, and advocated a fixed limit of depth (*Ibid.*, p. 20 or No. 7); the Netherlands and Yugoslav Governments (*Ibid.*, p. 18 or Nos. 42 and 44) expressed the same view, whereas Gidel held that the continental shelf as now defined would necessarily be uncertain and variable.

30. Mr. Spiropoulos had asked at what average distance from the coast the depth of 200 metres occurred. There was no answer to that question. A sea might be 200 metres deep three or four miles, or 100 or 300 miles, from the coast.

31. Mr. SPIROPOULOS, referring to comment 7, pointed out that the Commission had rejected the concept of distance because it had adopted a text in which there was no reference to depth. That was made perfectly clear in comment 6, which read in part as follows: "The Commission felt, however, that such a limit would have the disadvantage of instability. Technical development in the near future might make it possible to exploit the resources of the sea-bed at a depth of over 200 metres.... Hence, the Commission decided not to specify a depth limit of 200 metres in article 1."

32. He agreed that it was not easy to arrive at a correct figure for distance, but that difficulty applied equally to the suggested figure of a depth of 200 metres, which was purely arbitrary. Why not 300 metres?

33. The CHAIRMAN pointed out that the Special Rapporteur had changed his mind in the light of the comments of governments, which had taken the advice of geologists and oceanographers.

34. Mr. SANDSTRÖM said that the Commission

should keep in mind the connexion between the rights granted to a coastal State in respect of the continental shelf and the rights that same State enjoyed in territorial waters. The United Kingdom desired coastal States to enjoy sovereign rights over the continental shelf. It followed, therefore, that it must insist on a fixed limit. Otherwise it would be impossible for sovereign rights to be exercised.

35. Faris Bey el-KHOURI pointed out that he had not advocated the adoption of the concept of distance to the exclusion of the concept of depth. He had suggested that the definition should embrace three elements: distance, depth and exploitability. Actually, it would be far easier to measure distance from the limit of the territorial waters than it would be to measure depth.

36. Mr. SCELLE said that as the Commission was seeking to define something which did not exist, its efforts would never meet with success. Moreover, if it decided to define the continental shelf by reference to a specific limit, whatever figure was selected was bound to be purely arbitrary.

37. He saw no reason why the Commission should not seek guidance from domestic law and practice concerning the exploitation of natural resources. It was entirely irrelevant which State laid claim to exercise rights over its continental shelf, since all States were equal before the law. All that was necessary was to establish how submarine resources could be exploited for the benefit of the world community as a whole. In his view, the solution lay in establishing a legal system whereby the subsoil of the high seas could not be exploited beyond the limits of the territorial sea unless there was no break between the exploitation of the two zones, and unless an appropriate concession had been granted to the interested State by, say, the Economic and Social Council.

38. There was nothing radical about his proposal, whereas to abandon the centuries-old principle of the freedom of the high seas would be a revolutionary innovation.

39. Mr. FRANÇOIS said that Mr. Scelle had revived the arguments he had put forward at the third session.[5] They had not found support either among governments or recognized authorities on the subject, and it was to be hoped that the Commission would not think it necessary to re-open discussion on such fundamental issues of principle.

40. Mr. SCELLE had no illusions about the possibility of his thesis being accepted, and did not intend to make a formal proposal.

41. The CHAIRMAN said that, much as the Commission respected Mr. Scelle's authority and learning, it could not close its eyes to the fact that States were unlikely to share the views he had just expressed.

42. Mr. KOZHEVNIKOV said that a definition of the continental shelf based on distance was not in conformity with the natural properties of the shelf.

43. Mr. HSU thanked Mr. Scelle for having directed the Commission's attention to basic principles. The problem was to reconcile the conflict between the principle of the freedom of the seas and the interest of the world community in exploiting natural resources, and it would not be solved by defining the continental shelf in terms of depth or distance. Furthermore, it was undesirable to create yet another maritime zone. The best criterion, therefore, in his opinion, remained the possibility of exploiting the bed of the sea. It was a matter of adjusting claims between States and of demarcation in cases of disagreement.

44. Mr. LAUTERPACHT said that Mr. Spiropoulos was probably mistaken in thinking that the limit of 200 metres was an arbitrary one. It was generally considered to coincide with the geographical conception of the continental shelf and with the boundary of the actually exploitable area.

45. The CHAIRMAN confirmed that scientists seemed generally agreed that the limit of the continental shelf was where it fell steeply away from a depth of about 200 metres. Clearly, governments would have consulted geologists on the matter before making their observations.

46. Mr. Kozhevnikov's comments on Faris Bey el-Khouri's proposal were very pertinent. He (the Chairman) was also unable to agree to the proposal that States should be granted rights for another ten miles beyond the limit of their territorial sea. Personally, he would very much regret it were the Commission to reject the text proposed by its Special Rapporteur, who was a recognized authority in the field and a man of sound judgement.

47. Mr. YEPES said that the only criterion which could be used in defining the continental shelf was that of exploitability. The criterion of depth was impossible of application, and the criterion of distance would provoke grave objections on the part of certain governments, especially that of the United Kingdom. The Commission should therefore revert to the text adopted at the third session.

48. He could not allow Mr. Scelle's statement to pass without comment. The continental shelf most emphatically did exist. It was not only a geological feature, but also a concept recognized in customary international law. President Truman's declaration of 1945, though a revolutionary way of giving expression to customary law, had not been challenged by any government, and would have far-reaching repercussions. The same applied to the measures on the same lines taken by other American governments such as those of Mexico, Argentina, Chile, Peru and Brazil.

49. Mr. ZOUREK said that the criterion of distance would not meet the Commission's purpose, which was to regulate the exploration and exploitation of the natural resources of submarine areas. On the other

[5] *Ibid.*, Chapter VII, footnote 22.

hand, some clear definition of the continental shelf must be adopted, and he saw no reason why it should not be the geological definition, which was clear and unquestionable. The freedom of the seas would be sufficiently safeguarded by articles 3 and 4.

50. Mr. LAUTERPACHT suggested that all the proposals before the Commission should be treated as amendments to the Special Rapporteur's text.

It was so agreed.

51. The CHAIRMAN put to the vote Mr. Kozhevnikov's text.[6]

Mr. Kozhevnikov's text was rejected by 8 votes to 2 with 3 abstentions.

52. The CHAIRMAN put to the vote the final text of Faris Bey el-Khouri's proposal, consisting in the addition at the end of the Special Rapporteur's text of the words "within a distance not exceeding... miles from the territorial sea of the coastal State".

Faris Bey el-Khouri's proposal was rejected by 7 votes to 4, with 2 abstentions.

Mr. Yepes' proposal[7] was rejected by 7 votes to 4, with 2 abstentions.

The Special Rapporteur's text[8] was adopted by 7 votes to 4, with 2 abstentions.

53. Mr. KOZHEVNIKOV was still convinced that his proposal was the more rational, but as certain elements in the Special Rapporteur's text were in conformity with his views, he had joined with other members of the Commission in voting for it.

54. Mr. ZOUREK said that he had voted in favour of the Special Rapporteur's text, though he believed that the geological criterion was the only sound one. The Special Rapporteur's text, however, derived from a similar concept which might, in process of time, undergo the necessary modification.

55. Mr. FRANÇOIS observed that he had, in his second draft, transposed the reference to mineral resources from article 1 to article 2. He would, however, suggest that discussion on that matter be deferred for the moment, because it was closely related to the question of sedentary fisheries. He would therefore propose that, that element apart, the Commission shoud now take up article 2.

It was so agreed.

Article 2

56. Mr. FRANÇOIS reminded the Commission that during the discussion on his first draft it had been decided that article 2 should confer upon coastal States rights of control and jurisdiction for the purposes of the exploration and exploitation of the natural resources of the continental shelf.[9] That decision had been criticized by the governments of Chile, France, Iceland, the Union of South Africa and the United Kingdom, all of which considered that coastal States should exercise sovereignty over the continental shelf, though with the exception of Chile, they did not claim sovereignty over the superjacent waters and the air above. The Swedish Government and certain others had endorsed the Commission's views. The Brazilian and Danish Governments believed that coastal States should exercise "exclusive" jurisdiction, whereas the United States Government would be satisfied if that were brought out clearly in the commentary.

57. Those governments which believed that coastal States should exercise sovereignty over the continental shelf had argude that control and jurisdiction amounted to the same thing, the more so if the latter term were reinforced by the qualification "exclusive".

58. Taking those observations into account, he had proposed that the original text be modified by the insertion of the words "sovereign rights" before the words "control and jurisdiction".

59. Mr. YEPES proposed an alternative text for article 2, reading:

> "The coastal State possesses the same rights of sovereignty over the continental shelf as it exercises over its land area. The exercise of these rights is independent of any effective or fictional occupation by the coastal State."

60. He had sought to eliminate the controversial expression "control and jurisdiction". The meaning of the word "sovereignty", on the other hand, was perfectly clear. As Sir Cecil Hurst had argued in an article entitled "Whose is the Sea Bed?" published in the *British Year Book of International Law*, Vol. IV (1923-1924), p. 34-43, the distinction between sovereignty on the one hand and jurisdiction and control on the other had become so slight as to have been reduced to a mere question of terminology.

61. Mr. KOZHEVNIKOV asked the Special Rapporteur for an explanation of the expression "sovereign rights", and the reason for its introduction into article 2.

62. Mr. SANDSTRÖM failed to understand the meaning of the expression "sovereign rights", which was not a usual one and would add nothing to the text. If any addition were needed, it should be the word "exclusive" before the word "control", but in his opinion the text approved by the Commission at its third session was preferable.

63. Mr. ALFARO had no objection to the expression "sovereign rights", which would dispel the doubt as to whether States exercised full sovereignty over the continental shelf or only the rights of control and jurisdiction. Sovereignty consisted of a whole series of powers

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[6] See *supra*, 196th meeting, para. 10.

[7] *Ibid.*, para. 17.

[8] Document A/CN.4/60, Chapter IV.

[9] See *Yearbook of the International Law Commission, 1951*, vol. I, 114th meeting, paras. 1-17.

and attributes exercised by States within their own territory, from which two — the rights of control and jurisdiction — had been selected.

64. Mr. LIANG (Secretary to the Commission) considered that there was a substantive difference between sovereignty and control and jurisdiction. As the United Kingdom Government had argued (*Ibid.*, p. 35 or No. 77), if the expression "sovereignty" were used, a crime committed in a tunnel under the continental shelf would come within the jurisdiction of the coastal State. If the expression "control and jurisdiction" were maintained, there might be some doubt about that point.

65. On the other hand, he did not agree with the United Kingdom Government that the expression "control and jurisdiction" was "new and undefined" but did feel that the meaning of the expression "sovereign" as used in the present context was not clear.

66. The expression "sovereign rights" would not circumvent the difficulty, for it would certainly not satisfy governments like that of the United Kingdom or conform with the views of legal authorities such as Sir Cecil Hurst.

67. Mr. LAUTERPACHT said that the words "sovereign rights" were neither elegant nor self-explanatory. He also had doubts about the expression "exclusive right or control and jurisdiction". If explanatory, it was inappropriate; and if it constituted a qualification meaning that States were only being granted rights for exploration and exploitation of the mineral resources of the continental shelf which for the rest would remain *res nullius*, it was unacceptable. He would prefer article 2 to read: "The continental shelf is subject to the sovereignty of the coastal State."

68. In essence, his text was not far removed from the first sentence of Mr. Yepes' proposal, but it had the advantage of not referring to the undefined concept of sovereignty exercised over land areas. The second sentence of Mr. Yepes' proposal seemed to belong more properly to the commentary on article 2.

69. He would be interested to know whether the Special Rapporteur insisted on retaining the word "mineral". Was there any reason for excluding other resources?

70. Mr. SCELLE asked whether article 2 would confer upon coastal States the right to destroy or render unexploitable by others the natural resources of their continental shelf.

71. Mr. HSU said that his view that coastal States should not exercise full sovereignty over the continental shelf had not changed. He would be opposed, therefore, to any reference to sovereign rights or sovereignty in article 2. If the Commission's purpose was to maintain its decision that the rights should be confined to the exploration and exploitation of natural resources, he saw no reason for departing from the original text.

72. Mr. ALFARO asked whether, if States were accorded full sovereignty over their continental shelf, they would have the right to sell, cede or transfer the whole or any part of that area.

73. Mr. LAUTERPACHT asked whether, if States exercised limited sovereignty over the continental shelf, they would lose their rights by failing to explore or exploit its natural resources, and would be debarred from using the continental shelf for purposes of communications, such as tunnels.

74. Mr. PAL was not in favour of coastal States exercising absolute sovereignty over the continental shelf. Article 2 as it stood did not seem to him sufficiently explicit. He therefore proposed that it read:

> "The coastal State has sovereign rights of control and jurisdiction over the continental shelf in respect only of its mineral resources and of the exploration and exploitation of the same."

He would be prepared to substitute the word "exclusive" for the word "sovereign", which he had borrowed from the Special Rapporteur's text.

75. Mr. SCELLE said that if coastal States were not to exercise unlimited sovereignty over the continental shelf they must be subject to the control of some supra-national authority to ensure that the natural resources of the sea-bed were not lost to the international community. He was therefore opposed to all the alternative versions suggested for article 2.

76. Members of the Commission were aware of his views on the whole subject. He proposed to abstain from the vote on most of the articles in the draft, but in the case of article 2 would cast an adverse vote, in the belief that it was positively harmful, contrary to international law and inconsistent with the purpose the Commission had in mind.

77. Mr. LIANG (Secretary to the Commission) observed that there could be no doubt that the rights conferred by article 2 were not unlimited.

78. The theory that coastal States should exercise full sovereignty over the continental shelf raised various issues of principle. For instance, how did a State acquire sovereignty over a particular area? If the principle of propinquity held good, was occupation necessary? If the continental shelf formed part of the high seas, the principle of occupation might be invoked. The second sentence in Mr. Yepes' proposal was therefore perfectly germane to the issue. Hitherto, the Commission had held the view that coastal States should exercise sovereignty over the continental shelf solely for the purpose of exploiting its natural resources. If that view were rejected and replaced by the theory of absolute sovereignty, the whole nature of the draft would be altered, and a number of problems not thoroughly investigated at the third session would have to be examined. It was true that the majority of governments which had commented on the draft were in favour of the latter theory, but it must be remembered that they were not numerous, and that it would first have to be established whether their views were representative.

Lawyers were divided on the matter, and it was difficult to establish which theory prevailed.

79. Mr. SPIROPOULOS considered that there was no need for the Commission to discuss article 2 at great length. It should accordingly decide as soon as possible on Mr. Yepes' proposal, which was consistent with the views of the United Kingdom Government. If the proposal were rejected, the Commission could then consider the alternative solution offered by the Special Rapporteur.

The meeting rose at 1.05 p.m.

198th MEETING

Friday, 19 June 1953, at 9.30 a.m.

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Chairman: Mr. Gilberto AMADO, *First Vice-Chairman.*

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: 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 (item 2 of the agenda) (A/CN.4/60) (*continued*)

CHAPTER IV: REVISED DRAFT ARTICLES ON THE CONTINENTAL SHELF AND RELATED SUBJECTS. PART I: CONTINENTAL SHELF

Article 2 (continued)

1. Mr. FRANÇOIS (Special Rapporteur) wished first to comment briefly on the various proposals submitted on article 2, and to reply to the questions which had been put to him at the previous meeting.

2. Mr. Kozhevnikov had asked what he meant by "sovereign rights of control and jurisdiction". The answer was that that term meant all the rights of control and jurisdiction exercised by a sovereign State over its territory. The same notion was conveyed by the expression "exclusive rights of control and jurisdiction". It might be argued that to use the term "sovereignty" would suggest the enjoyment of rights over the waters and air space above the continental shelf. That, however, was expressly excluded by articles 3 and 4. The term "sovereignty" implied that the coastal state could cede to another state its rights in respect of exploitation and exploration.

3. It could be argued, as the Swedish Government had done (A/CN.4/60, mimeographed English text, p. 36; priated French text, No. 79), that where there was no exploration or exploitation the coastal state had no rights over the continental shelf except the right to prevent its exploitation or exploration by others, but he considered that it was impossible so to restrict the concept, and was himself inclined to support the Israeli Government's argument (*Ibid.*, p. 34 or No. 75). If the last clause of article 2 ("for the purpose of exploring it and exploiting its mineral resources") were interpreted as connoting some sort of control over the efficacy of exploration and exploitation operations, he would be opposed to its inclusion. In that respect, States must have the same rights as they enjoyed over the natural resources of their land areas.

4. What other rights could be exercised over the continental shelf? In advocating the use of the term "sovereignty", the United Kingdom Government (*Ibid.*, p. 35 or No. 77) held that it would leave no doubt that a crime committed in a tunnel under the continental shelf would come within the jurisdiction of the coastal state. Thus, should any doubt subsist in relation to the expression "sovereign rights of control and jurisdiction", the use of the term "sovereignty" would be preferable, since it was impossible to envisage plurality of jurisdiction over the continental shelf. But caution was necessary, since it was essential to avoid giving the impression that the coastal State might enjoy rights over fisheries or wrecks on the bed of the sea. Fish, which spent long periods at the bottom of the sea, and wrecks could not be regarded as natural resources. Mouton made a distinction between the seabed and the subsoil. He (Mr. François) was prepared to concede the validity of the distinction, provided it were interpreted as meaning that sovereignty would be enjoyed by the coastal State over the subsoil of the continental shelf, rights over the sea-bed being limited to exploitation and exploration of natural resources.

5. In view of the above-mentioned considerations, he wished to submit an amendment to article 2 in the following terms:

> "The continental shelf is subject to the sovereignty of the coastal State. On the sea-bed, however, the coastal State has only the rights of control and jurisdiction for the purpose of exploring it and exploiting its natural (or mineral) resources."

6. Mr. YEPES, referring to the proposal he had submitted at the previous meeting, said that he had come to the conclusion that the second sentence raised a