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Summary record of the 199th meeting

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

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93. In view of Mr. Scelle's objections to the use of the word "sovereignty", perhaps the opening words of the article might read "The rights of the coastal State..."

94. Mr. LIANG (Secretary to the Commission) said that the use of the word "sovereignty" in article 3 would necessitate extended explanations.

95. Mr. KOZHEVNIKOV said that at first sight it seemed to him that the wording proposed by Mr. Alfaro would be inconsistent with other articles in the draft.

96. Mr. ZOUREK observed that whatever term the Commission decided to use to describe the rights of coastal States must be used consistently throughout the draft.

The meeting rose at 1 p.m.

199th MEETING

Monday, 22 June 1953, at 2.45 p.m.

CONTENTS

	<i>Page</i>
Régime of the high seas (item 2 of the agenda) (A/CN.4/60) (<i>continued</i>)	
Chapter IV: Revised draft articles on the continental shelf and related subjects	
Part I: Continental shelf	
Article 2 (<i>resumed from the 198th meeting</i>) . . .	91
Article 3 (<i>resumed from the 198th meeting</i>) . . .	93
Article 4	95
Article 2 (<i>resumed from above</i>)	95

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

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Roberto CORDOVA, 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. 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 (*resumed from the 198th meeting*)

1. The CHAIRMAN recalled that at the previous meeting the Commission had adopted Mr. Lauterpacht's

proposal,¹ which now formed the first sentence of article 2. Mr. Yepes had withdrawn his amendment. The Commission had therefore now to consider Mr. Pal's² and Mr. Kozhevnikov's proposals. The text of the latter read as follows:

"The continental shelf is subject to the sovereignty of the coastal State for the purpose of exploring and exploiting its natural resources."

2. Mr. PAL said that as a result of discussions with Mr. Lauterpacht, and in view of the Commission's decision at the preceding meeting, he had made several drafting changes in his proposal, which now read as follows:

"The continental shelf is subject to the sovereignty of the coastal State.

"This sovereignty of the coastal State over the continental shelf does not affect the legal status of the superjacent waters as high seas or of the air space above such superjacent waters.

"On the sea-bed the sovereignty (exclusive rights) of the coastal State is (are) limited to the rights of user, control and jurisdiction for the purposes of exploration and exploitation of the natural (mineral) resources of the sea-bed and its subsoil."

3. The first paragraph was that already adopted by the Commission; the second and third were based on articles 3 and 4 as set out in the report.

4. Mr. LAUTERPACHT said that, since Mr. Pal's proposal was wholly in accordance with his views, he would withdraw his own proposal for paragraphs 2 and 3 of article 2.

5. Mr. FRANÇOIS (Special Rapporteur) said that he would be prepared to accept Mr. Pal's proposal provided that he used the word "mineral" instead of "natural". He would then withdraw his amendment to article 2 and the text proposed by him in the report.

6. Replying to Mr. LAUTERPACHT, he added that he would be prepared to agree that the question of "mineral" or "natural" be left in abeyance.

7. Mr. ZOUREK recalled that at the previous meeting he had proposed the deletion of the second sentence from the Special Rapporteur's amendment. Since that amendment had now been withdrawn and the Commission apparently wanted to include in the article some limitation of the sovereignty of the coastal State, he withdrew his own proposal.

8. Mr. SANDSTRÖM said that as he had been absent from the previous meeting he had been unable to follow the Commission's work and therefore wished once more to reiterate his opposition to the notion that a coastal State enjoyed sovereign rights over the continental shelf. He reserved his right to vote against the article.

¹ See *supra*, 198th meeting, para. 38.

² *Ibid.*, para. 17.

9. The CHAIRMAN, speaking as a member of the Commission, said that he had abstained from voting on that issue since he believed that even those governments which used the term "sovereignty" in relation to the continental shelf considered that rights of control and jurisdiction were equivalent to sovereignty.

Mr. Kozhevnikov's proposal was rejected by 6 votes to 2, with 5 abstentions.

10. Mr. ALFARO expressed his surprise that the Commission should be invited to consider a proposal which in point of fact included articles 3 and 4 in article 2. He could not recall that any decision to that effect had previously been taken.

11. The CHAIRMAN said that the idea had originated with an informal suggestion by him that the order of articles 2, 3 and 4 might be changed. That suggestion had not been followed up in view of a series of proposals and amendments which had been submitted at the previous meeting. Articles 3 and 4 would be discussed from the substantive point of view in due course. The Commission must now vote on Mr. Pal's proposal, which, for purposes of voting, consisted only of its second and third paragraphs, the first having already been adopted by the Commission.

12. Mr. KOZHEVNIKOV recalled that the Commission had voted on a matter of principle. Article 2 must therefore be drafted in the light of that principle. He would suggest that the Commission follow the logical order of work, first taking a decision on article 2, and then proceeding to examine articles 3 and 4.

13. Mr. FRANÇOIS agreed that if the Commission adopted the second paragraph of Mr. Pal's proposal, articles 3 and 4 would become redundant. No objections to that had so far been raised.

14. Mr. LAUTERPACHT suggested that for the time being it was unnecessary to discuss article 4.

15. Mr. CORDOVA said that the essence of Mr. Pal's proposal was that the sovereignty of the coastal State over the continental shelf did not affect the legal status of the superjacent high seas or of the air above those seas. That was an issue on which he had a certain point of view which he would like to express in connexion with the extension of the territorial sea, and he would therefore suggest that no decision be taken on the matter until the Commission had examined the question of the width of the territorial sea.

16. The only juridical justification for granting a coastal State some rights, or even sovereignty, over the continental shelf, was the assumption that the latter was a prolongation of the non-submerged territory of that State. No other juridical basis could be found for granting any rights to the coastal State and, of course, if the continental shelf was part of its territory, the coastal State should be recognized as having sovereignty over it. Once having correctly accepted that sovereignty, it only remained to apply to this submerged territory the same old and well-recognized principles which had always

obtained in international law with regard to the sovereignty of the State over the soil, subsoil and fluid elements above and underneath its own territory. The only logical and juridical conclusion, therefore, should be that the coastal State had sovereignty over the soil, the subsoil of its continental shelf as well as over the waters and air which lay above it.

17. It was impossible to apply different principles to different parts of the same territory and to elements above and below it, just because one part was submerged and the other was not. The Inter-American Juridical Committee had recently made a study of the subject and had produced a draft, basing its article 1 thereof on the principle that sovereignty was applicable to the continental shelf and to the elements above and below.

18. Mr. ZOUREK felt that a proposal covering articles 3 and 4 was premature, and that the Commission should first conclude its examination of article 2, and then and then only consider whether the succeeding articles should be combined. As the situation was at present, the régime applicable to the continental shelf was being amalgamated with the régime applicable to the superjacent waters.

19. Mr. FRANÇOIS interpreted Mr. Córdova's views as implying the deletion of articles 3 and 4, on the grounds that the Commission had accepted the principle that the continental shelf was subject to the sovereignty of the coastal State. He would inform Mr. Córdova that those members of the Commission who had voted in favour of the principle of sovereignty had done so with the express reservation that the substance of articles 3 and 4 should be maintained.

20. As to the point raised by Mr. Zourek, he would be prepared to agree that the Commission should decide first on the principles laid down in articles 3 and 4, and then consider the possibility of amalgamating them as proposed by Mr. Pal. That procedure would be acceptable to him.

21. Mr. SANDSTRÖM pointed out that Mr. Córdova's objections clearly showed that the use of the term "sovereignty" was liable to cause confusion, since it necessitated the spelling out of a series of exceptions. That was one reason why he was opposed to the use.

22. Mr. LAUTERPACHT could see no valid reason for deferring consideration of Mr. Pal's proposal, the more so since it was acceptable to the Special Rapporteur.

23. With regard to Mr. Córdova's point, he fully agreed with him that in Mr. Pal's proposal, the legal status of the superjacent high seas or the air space above those seas was in no way affected by any decisions taken in respect of the continental shelf.

24. Mr. SANDSTRÖM had been gratified by Mr. Córdova's objections, and had taken them as confirming his own views. Actually, Mr. Córdova would still have raised the same objection had the Commission adopted the term "sovereign rights of control and jurisdiction". Abuses could not be prevented by terminology, and

he could do no better than suggest to Mr. Córdova that it would help the Commission in its work if he refrained from raising a matter which was now *res judicata*.

25. Mr. HSU also felt that consideration of Mr. Pal's proposal should be deferred until the Commission had discussed articles 3 and 4 from the point of view of substance.

26. Mr. ALFARO maintained his point of view. It was a tenet of sound legislation that every article should deal only with one principle, one rule, on situation. It was wrong to attempt to include in article 2 statements relating to the régimes defined in articles 3 and 4. One principle, namely, that of sovereignty, was applicable to the continental shelf; another principle, namely, that of control and jurisdiction, was applicable to the surface; and a third one, namely, that of the freedom of the seas, was applicable to the superjacent waters and the air space above them. The articles should accordingly be taken in their serial order.

27. Mr. CORDOVA emphasized that the problem of sovereignty over the continental shelf was closely linked with the problem of the territorial sea. If the Commission took a decision forthwith denying sovereignty over the superjacent waters, it would make it impossible or at least useless for him to present his point of view with regard to territorial waters.

28. According to the traditional rule of the cannon shot, a coastal State enjoyed sovereign rights over territorial waters up to a distance of three miles, those rights being exercised independently of whether the coastal State had sufficient military power in practice to enforce its authority. The legal foundation of the three-mile limit was the theoretical powers of the coastal State, measured by the longest range within which any country could assert its power from the shore. All countries had the same width irrespective of whether they possessed cannon or not. The soil, subsoil, as well as the air above the territorial sea, were considered as being under the sovereignty of the State. Now, if they accepted, as they should, and had done, that the coastal State had power, jurisdiction, in other words, sovereignty, over the continental shelf because it was part of its own territory, then they should also apply the principle that anything underneath and above the territory of a State was also under its sovereignty. Then the Commission would also have solved the problem of the width of territorial waters, even when no continental shelf existed, just as in the case of States which did not have cannon on their shores.

29. Mr. FRANÇOIS thought that in the circumstances it would be most expedient for the Commission to defer discussion of the second and third paragraphs of Mr. Pal's proposal, and to take up article 3.

30. Faris Bey el-KHOURI observed that the continental shelf, as defined by the Commission, would be both beneath the territorial waters and beneath the high seas. For the time being, the Commission was not concerned with the first area, but with the second. He would

vote in favour of Mr. Pal's proposal, subject to the inclusion of the words "natural and mineral resources".

31. Mr. SANDSTRÖM thought that the third paragraph of Mr. Pal's proposal was relevant to article 2, since it defined the term "sovereignty".

32. Mr. KOZHEVNIKOV urged the Commission to conclude its work on article 2 and then to take up articles 3 and 4. Those parts of Mr. Pal's proposal which were not relevant to article 2 could be taken up in logical sequence under the succeeding two articles.

33. Mr. LIANG (Secretary to the Commission) recalled that article 3 was subject to Mr. Alfaro's proposal to use the term "rights" instead of the term "sovereignty".³ He would submit that to accept that proposal would be equivalent to opening a Pandora's Box, whence difficulties and problems innumerable would come forth. Article 3, which related to the principle of the freedom of the seas, and article 4 made further inroads on the principles of sovereignty as expressed in the first sentence of article 2. Originally, neither the Commission nor various legal authorities had drawn a distinction between sovereignty, and control or jurisdiction. The Commission had now drawn the distinction.

34. The CHAIRMAN said that he would put to the vote the Special Rapporteur's proposal that the Commission proceed to take up article 3.

It was decided by 5 votes to 3 with 5 abstentions to take up article 3.

35. Mr. YEPES considered that the Commission was taking decisions by margins that were too narrow, and with many abstentions, and expressed apprehension about its future work. A decision by a narrow majority was permissible in the case of a political work, but in the case of a scientific work, a majority of 5 to 3 with 5 abstentions was hardly satisfactory considering that there were 15 members.

36. The CHAIRMAN agreed that the figures of the voting revealed a considerable measure of disagreement within the Commission. That was only natural, since the Commission was engaged in elaborating new principles.

Article 3 (resumed from the 198th meeting)

37. Mr. ALFARO proposed the following text for article 3:

"The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas."

38. Mr. FRANÇOIS said that the majority of governments and legal authorities had agreed with the text of article 3 as adopted by the Commission at its third session. Several governments had objected, however, that the term "exercise" would be too restrictive of their rights over the subsoil, and had consequently

³ *supra*, 198th meeting, para. 93.

expressed a preference for the term "sovereignty". But all had agreed that the régime of the superjacent waters would in no way be affected by the rights enjoyed over the continental shelf. He must point out to Mr. Córdova that he was at fault in his assumption that the Commission had, by accepting the principle of the sovereignty of the coastal State over the continental shelf, also conceded the principle of rights over the superjacent waters. That was not so. The Commission had reserved the question of territorial waters which, as it had stated time and again, had little to do with the continental shelf. The question of the territorial sea was a question of width: three, six or twelve miles. In discussing the continental shelf, the Commission was discussing the exploitation of the subsoil at a depth of some hundreds of metres. He saw no reason whatsoever to defer the discussion, as proposed by Mr. Córdova.

39. Mr. CORDOVA said that he had not intended to ask that the whole discussion on the continental shelf be deferred. His aim was to secure an opportunity of discussing the rights of coastal States in respect of the superjacent waters, when the Commission came to discuss the limit of the territorial sea.

40. He failed to see why he should consider the problem in terms of a decision taken by the Commission at the previous meeting. To his mind "sovereignty" and "control and jurisdiction" were one and the same thing. Had the Commission accepted the principle of the coastal State's exclusive jurisdiction over the soil and subsoil just because of the law passed by the United States and other governments relating to off-shore petroleum deposits and without having a legal basis for so doing? He was sure it had not. The members of the Commission, who acted as jurists and as jurists only, had accepted the principle, no doubt, not because of any political consideration but because they correctly believed that the continental shelf formed a prolongation of the coastal State's territory. In the present state of international law, it was impossible to argue that coastal States could exercise sovereignty over the continental shelf as being part of their own territory — and that was the only possible reason for granting it any rights — and at the same time assert that that coastal State must only exercise such sovereignty over the soil and subsoil but not over the superjacent waters.

41. Mr. LIANG (Secretary to the Commission) pointed out to Mr. Córdova that any question of extending the territorial sea was precluded by the terms of article 1, in which the continental shelf was defined. At the same time, the Commission had not yet taken any decision about that sea. It would seem to him that the difficulty rested on applying the vertical conception of sovereignty — he was grateful to Mr. Lauterpacht for the neat distinction between horizontal and vertical sovereignty — to the continental shelf. The Commission had accepted the horizontal conception, and had in no way linked the problem of the continental shelf with that of the territorial sea. Was there any justification for applying the vertical conception of sovereignty to the latter?

42. Mr. LAUTERPACHT said that, so far as he could tell, there were several proposals before the Commission on article 3, namely, the Special Rapporteur's original text as given in his fourth report (A/CN.4/60) — which would require consequential amendment in the light of the Commission's decision on article 2 — Mr. Alfaro's proposal, and, perhaps, a proposal which Mr. Córdova might submit in due course.

43. He would suggest that the Chairman draw up a list of speakers on article 3 and then close the list.

44. Mr. SANDSTRÖM considered that Mr. Córdova was misinterpreting the decision taken by the Commission at its third session. The Commission had not accorded coastal States control and jurisdiction over the continental shelf in general. It had done so only for the purpose of exploring and exploiting the mineral resources of the shelf. That was an important limitation.

45. Mr. YEPES said that the Commission was wrong in seeking to depart from the text approved at its third session. As regards article 3, the Special Rapporteur's text should be approved, since it maintained the principle adopted previously. They would thus correct at least part of the mistake they had made by introducing substantial changes into the definition of the continental shelf in article 1.

46. He must maintain his view, however, that it would be impossible to vote on article 3 before article 2 had been finally disposed of.

47. Mr. ALFARO pointed out that the provision that the continental shelf is subject to the sovereignty of the coastal State had already been accepted. In order to meet the objections raised by Mr. Scelle and Mr. Sandström, he had put forward a more neutral wording for article 3. If that were not accepted, he would, albeit with great regret, be unable to vote in favour of a provision to which he attached great importance because it safeguarded the principle of the freedom of the high seas.

48. Mr. KOZHEVNIKOV agreed that the principle of the freedom of the high seas should be emphasized in article 3. The Commission should first decide on the principle to be embodied in that article, after which it could turn to the question of drafting.

49. Mr. HSU said that even if article 3 were to refer to "rights", that would still mean sovereign rights. He would therefore have to abstain from voting on the article as a whole, since it would conflict with the principle of the freedom of the seas. The scope of such a provision, moreover, might for practical reasons have the result of extending yet further the rights of coastal States.

50. In order to dispel any possible misunderstanding, it would be well for members to remember that only the first paragraph of article 2 had so far been approved. Until the article had been voted on as a whole, it would be premature to assume that the principle embodied in that first paragraph would necessarily be finally accepted.

51. Mr. FRANÇOIS withdrew his text for article 3 in favour of Mr. Alfaro's.

52. Mr. PAL did likewise.

53. Mr. CORDOVA proposed that article 3 should read:

"The coastal State has sovereignty over the continental shelf as its own territory and therefore has exclusive jurisdiction and control over the soil, sub-soil and the waters above such continental shelf."

Mr. Córdova's text was rejected by 8 votes to 1, with 5 abstentions.

54. Mr. KOZHEVNIKOV urged that the principle laid down in Mr. Alfaro's proposal should be voted on first, before the actual text was considered.

55. Mr. LAUTERPACHT was unable to see why the Commission should first decide on a principle, and then upon the way in which it was to be expressed.

56. The CHAIRMAN, speaking as a member of the Commission, said that he was unable to understand why rights to the exploitation of the sea-bed should entail sovereignty over the superjacent waters.

57. Mr. SCELLE agreed with the Chairman. It would be impossible to safeguard the freedom of the seas in the presence of a continental shelf which might stretch for thousands of miles. He would be unable to support Mr. Alfaro's text.

58. Mr. ZOUREK agreed with Mr. Kozhevnikov that a decision of principle was first required, since there were a number of associated issues connected with article 3 which had not yet been discussed.

59. Mr. YEPES said that by rejecting Mr. Córdova's text the Commission had already taken a decision of principle against extending to coastal States rights over the superjacent waters.

60. He would like an explanation of what was meant by the word "rights" in Mr. Alfaro's text.

61. Mr. KOZHEVNIKOV again urged that the Commission should vote on the principle that the sovereignty of the coastal State over the continental shelf did not affect the legal status of the high seas.

The principle was approved by 9 votes to 1, with 4 abstentions.

62. Mr. YEPES, explaining his abstention, said that it was impossible to vote on article 3 before any decision had been taken on article 2, which defined the nature of the rights exercised by coastal States.

63. Mr. LAUTERPACHT requested the Chairman to put Mr. Alfaro's text to the vote, since it was upon that understanding that members had been invited to vote upon the principle formulated by Mr. Kozhevnikov.

64. Mr. KOZHEVNIKOV asked Mr. Alfaro why, in view of the decision taken on the first paragraph of article 2, he should refer to "rights" and not to "sovereignty".

65. Mr. ALFARO explained that his purpose had been to devise an acceptable compromise which might satisfy those members of the Commission who were opposed to the use of the word "sovereignty". He was using the word "rights" in its general sense.

66. Mr. LAUTERPACHT said that, apart from the desire to present an acceptable text, there were good reasons for Mr. Alfaro's wording. It was very probable that eventually the Commission would confer in article 2 something rather less than sovereign rights over the sea-bed. The use of the expression "rights" in article 3 would then have been vindicated.

67. Mr. KOZHEVNIKOV asked whether Mr. Alfaro's wording was consistent with the principle already approved by the Commission for inclusion in article 2.

68. Mr. ALFARO pointed out that, although coastal States would exercise sovereignty over the continental shelf, their rights over the sea-bed would be restricted to control and jurisdiction.

69. Mr. SPIROPOULOS said that none the less, if article 2 were to refer to sovereignty, the rights mentioned in article 3 would be interpreted as meaning sovereign rights.

70. The CHAIRMAN put to the vote Mr. Alfaro's proposal that the word "rights" be used instead of the word "sovereignty" in article 3.

Mr. Alfaro's proposal was adopted by 10 votes to 1, with 3 abstentions.

71. Mr. CORDOVA explained that he had abstained because he was opposed to a provision which would not confer on coastal States full sovereignty over the waters superjacent on the continental shelf.

Article 4

72. The CHAIRMAN put to the vote article 4, modified for purposes of consistency to read:

"The rights of the coastal State over the continental shelf do not affect the legal status of the air space above the superjacent waters."

Article 4 was adopted by 10 votes to 1, with 3 abstentions.

73. The CHAIRMAN, speaking as a member of the Commission, said that he had voted in favour of article 4, which was consistent with the limitations imposed on the rights of States over the air space above the territorial sea.

Article 2 (resumed from above)

74. The CHAIRMAN reminded the Commission that it had approved the text for the first paragraph of article 2 reading: "The continental shelf is subject to the sovereignty of the coastal State."⁴

⁴ See *supra*, 198th meeting, para. 38.

75. He now invited it to consider the text submitted by Mr. Pal for inclusion in article 2, reading:

“On the sea-bed the exclusive rights of the coastal State are limited to the rights of user, control and jurisdiction for the purposes of exploration and exploitation of the natural (mineral) resources of the sea-bed and its subsoil.”

76. Mr. LAUTERPACHT asked that the Commission defer its decision as to whether “natural” or “mineral” resources should be referred to.

It was so agreed.

77. Mr. SANDSTRÖM asked why a distinction should be drawn between the sea-bed and its subsoil.

78. Mr. FRANÇOIS said that that point had already been discussed at great length. If no distinction were made between the sea-bed and its subsoil, coastal States could claim sovereign rights over bottom fish and wrecks, and that would be totally unacceptable. If the principle of sovereignty over the continental shelf were accepted, some limitation must be placed upon its exercise over the sea-bed.

79. Mr. SCALLE remained unconvinced by the Special Rapporteur’s explanations. According to the definition laid down in article 1, the continental shelf was the sea-bed and subsoil of certain submarine areas. It was impossible to base a régime upon a fictitious distinction which did not correspond to reality.

80. Mr. LIANG (Secretary to the Commission) said that according to Mr. Pal’s text, a coastal State would have no jurisdiction over crimes committed on the sea-bed, a more likely contingency than crimes committed in the subsoil. That point, which had been brought up by the United Kingdom Government in its comments, must be taken into account.⁵ If the sovereignty over the continental shelf were to be extended, then it should be extended to the sea-bed. He must, however, make clear that personally he had been in favour of granting coastal States rights of control and jurisdiction, and not sovereignty, over the continental shelf.

81. Mr. SANDSTRÖM pointed out that rights of control and jurisdiction over the subsoil would still not enable coastal States to deal with crimes committed on installations built above the surface of the water but going down to the sea-bed.

82. Mr. HSU considered the distinction between the sea-bed and subsoil to be artificial and unjustified; in that connexion he would draw the attention of the Commission to the case of opencast mining. It would always be possible to make a special provision covering rights to lay submarine cables on the surface of the continental shelf. He would therefore vote against Mr. Pal’s text.

83. Mr. SPIROPOULOS asked whether States were really interested in acquiring jurisdiction over crimes

committed on the sea-bed or in the subsoil of the continental shelf. He was personally in favour of limiting the rights of coastal States to the exploration and exploitation of natural resources.

84. Mr. LAUTERPACHT said that even if the original text of article 2 were accepted, the difficulty concerning criminal jurisdiction would still subsist. The argument, however otherwise sound, in favour of the grant of sovereignty on the grounds that States must possess criminal jurisdiction in the continental shelf, was perhaps not decisive since in many cases they already possessed jurisdiction over acts committed abroad.

85. Mr. SANDSTRÖM observed that the original text would confer rights of criminal jurisdiction since coastal States would, of necessity, have to be empowered to maintain law and order in the installations set up to explore and exploit the resources of the continental shelf.

86. Mr. CORDAVO considered it impractical to draw a distinction between the sea-bed and the subsoil, since it would be physically impossible to fix the dividing line.

87. Mr. FRANÇOIS said that the distinction between the surface and subsoil had long been accepted so far as *terra firma* was concerned. He saw no reason why it should not be extended to submarine areas.

88. Mr. ZOUREK said it would be unacceptable to have two separate régimes for the sea-bed and subsoil respectively, particularly as a third was to be established for the superjacent waters. The Commission had been entirely mistaken in its over-hasty rejection of Mr. Kozhevnikov’s proposal, which had offered the only way out.⁶

89. Mr. KOZHEVNIKOV said that the Commission must take two decisions of principle. First, whether a distinction was to be made between the sea-bed and the subsoil; and secondly, whether a single régime was to be established for the two.

90. Mr. YEPES said that, despite the Special Rapporteur’s explanation, he was still unable to see the difference between the sea-bed and subsoil in the light of the definition laid down in article 1. A uniform régime must be established for the whole continental shelf.

91. Mr. LAUTERPACHT again asked how the Commission was to take decisions of principle without a definite text before it. It was impossible to vote *in abstracto* upon a principle open to several interpretations.

92. Mr. SPIROPOULOS said that although, according to the Commission’s Statute and the rules of procedure of United Nations organs, it was necessary to vote on definite proposals or amendments, in practice, decisions were sometimes taken upon questions of principle. He could, therefore, support the procedure proposed by Mr. Koshevnikov.

⁵ See document A/CN.4/60 (mimeographed English text, p. 35; printed French text, No. 77).

⁶ See *supra*, paras. 1 and 9.

93. Mr. YEPES proposed that the first principle referred to by Mr. Kozhevnikov should be expressed in the following terms :

“The sea-bed and subsoil are subject to the same juridical régime.”

The principle, as worded by Mr. Yepes, was approved by 8 votes to 4, with 1 abstention.

94. Mr. YEPES said that it now remained to decide what régime was to be applied to the sea-bed and subsoil.

95. Mr. LIANG (Secretary to the Commission) said that, so far as he knew, the only text before the Commission for article 2 was “The continental shelf is subject to the sovereignty of the coastal State.”

96. Mr. LAUTERPACHT said that the decisions so far taken on article 2 did not preclude the possibility of qualifying the régime applicable to the sea-bed.

97. Mr. CORDOVA considered that all the Commission's difficulties derived from its efforts to achieve the impossible task of restricting the sovereign rights of States.

The meeting rose at 6.5 p.m.

200th MEETING

Tuesday, 23 June 1953, at 9.30 a.m.

CONTENTS

	<i>Page</i>
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)	97
Article 5	102
Article 6	102

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

Rapporteur : Mr. H. LAUTERPACHT.

Present :

Members : Mr. Ricardo J. ALFARO, Mr. Roberto CORDOVA, 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. 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. The CHAIRMAN said that the Commission could either endeavour to formulate the principles which it had adopted¹ in relation to article 2, or go on to examine articles 5, 6 and 7.

2. Mr. KOZHEVNIKOV considered it was high time that the Commission concluded its work on article 2. The Commission had adopted the principle of the sovereignty of the coastal State over the continental shelf, the principle that the régime should be the same for the sea-bed and the subsoil and the principle that that régime did not affect the freedom of the superjacent seas and of the air space above the water, but it had not yet answered the important question about the purposes for which sovereignty over the continental shelf was granted to the coastal State. Therein, indeed, lay the source of all the Commission's troubles.

3. If members agreed with his procedural suggestion, he would submit an appropriate proposal.

4. Mr. YEPES supported Mr. Kozhevnikov on the grounds that the Commission's work must follow a logical order. As to the issue of principle, he was convinced that the decision taken at the 198th meeting that the coastal State should have sovereignty over the continental shelf was provisional and subject to rectification. He reserved his right to vote in the light of the changes made in the structure of the draft as proposed by the Special Rapporteur in his report.

5. Mr. FRANÇOIS (Special Rapporteur) also supported Mr. Kozhevnikov's proposal.

6. The CHAIRMAN said that, since the consensus of opinion was clearly in favour of finishing article 2, he would call upon Mr. Kozhevnikov to submit his proposal.

7. Mr. KOZHEVNIKOV proposed the addition to the first sentence of article 2, as adopted at the 198th meeting,² of the following text :

“The sovereign rights over the continental shelf are exercised by the coastal State for the purpose of exploring and exploiting the natural resources of this continental shelf.”

8. Mr. ALFARO said that in order to make certain that his understanding of Mr. Kozhevnikov's proposal was correct, he would ask him whether his intention in using the words “the sovereign rights...are exercised...for the purpose...etc.” was to restrict the exercise of those rights to the purpose stated. He took it

¹ See *supra*, 198th meeting, para. 38 ; 199th meeting, para. 93.

² Para. 38.