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Summary record of the 200th meeting

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

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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.

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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.

that the first sentence of article 2 as adopted at the 198th meeting remained in being, the article therefore opening with the words "The continental shelf is subject to the sovereignty of the coastal State."

9. Mr. FRANÇOIS wished to raise exactly the same point as Mr. Alfaro.

10. Mr. SANDSTRÖM assumed that Mr. Kozhevnikov's intention was to assume that there was complete sovereignty for a certain purpose.

11. Mr. LAUTERPACHT considered Mr. Kozhevnikov's proposal to be acceptable. It served a double purpose; first, it meant that sovereign rights were granted because of the necessity of exploring and exploiting the sea-bed and its subsoil; secondly, it implied that sovereign rights must be exercised for that purpose alone. It seemed to him that that was a reasonable interpretation which would allay the apprehensions of those members who were concerned about the implications of the term "sovereignty".

12. The CHAIRMAN, speaking as a member of the Commission, considered that Mr. Kozhevnikov's proposal differed from the original draft of article 2 only in that it referred to "sovereignty" instead of to "control and jurisdiction".

13. Mr. KOZHEVNIKOV said that the Russian text of his proposal was perfectly clear, and that there could be no possible doubt as to the meaning of the Russian equivalent of the term "for the purpose" ("*ν tselyakh*").

14. As for interpretation, the Commission had agreed that a commentary should be appended to the various articles. As a matter of fact, the Special Rapporteur had used the term "for the purpose" in his proposed text and had commented upon it. From his (Mr. Kozhevnikov's) point of view, the issue turned on the fact that the term "sovereign rights" had been substituted for the term "control and jurisdiction".

15. The text was clear, and there were no grounds for apprehensions of any kind.

16. Mr. FRANÇOIS noted that the aims of Mr. Kozhevnikov's proposal were identical with those he had sought to attain in his own draft of article 2. He therefore had no objection to it.

17. Mr. LAUTERPACHT hoped that the Commission would be satisfied with Mr. Kozhevnikov's explanations. It set some limits to the rights of a coastal state. Thus a coastal State would not be able to invoke its sovereign rights to prevent another State from laying submarine cables, to mention but one example selected at random.

18. Mr. SPIROPOULOS also considered that Mr. Kozhevnikov's proposal constituted a reasonable interpretation of the first sentence of article 2. Would it not be possible, however, to combine the two sentences?

19. Mr. HSU asked what were the implications of Mr. Kozhevnikov's proposal. Was it intended to convey that a State was free to enjoy its sovereign rights only to a

limited extent? Could a coastal State with sovereign rights over the continental shelf take measures of security, objecting, for instance, to another State's sending a submarine into that area and concealing it there? There was also the delicate question of atomic weapons. Surely that was a consideration which the Commission should keep in mind.

20. Mr. ALFARO considered that Mr. Kozhevnikov had given a perfectly satisfactory answer to the questions put to him. He had but one small point to make. Legal texts should be absolutely clear, and he would suggest that for the sake of greater clarity the word "sole" should be inserted before the word "purpose" ("*aux seules fins*").

21. Mr. PAL was reluctant to raise any questions about a text which seemed to have won general approval, but wished to submit that if sovereign rights were limited in the sense of Mr. Kozhevnikov's interpretation, the very purpose for which those rights were granted would be frustrated. It might be held that whereas the sovereign rights remained unlimited, the immediate exercise thereof would be limited.

22. Mr. SPIROPOULOS moved the following amendment to Mr. Kozhevnikov's proposal:

"The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources."

23. That amendment would render the first sentence of article 2, as adopted at the 198th meeting, superfluous.

24. Mr. KOZHEVNIKOV feared that amendments on such lines would affect the integrity of the principle already adopted by the Commission. He believed that his proposal was logical, in that it retained that principle and proceeded to define it.

25. So far as at any rate the Russian text was concerned, Mr. Alfaro's amendment was unnecessary.

26. The question of submarine cables was dealt with in article 5, and need not be considered in relation to article 2.

27. Mr. YEPES asked whether Mr. Kozhevnikov's proposal would, if adopted, nullify the text adopted by the Commission at its 198th meeting, which he (Mr. Yepes) considered as provisional.

28. The CHAIRMAN said that a vote could not be interpreted as "provisional". How did Mr. Yepes interpret that word?

29. Mr. YEPES recalled that it had been clearly understood that the Commission was taking a vote on a question of principle, and that article 2 would in due course be put to the vote as a whole. He did not consider that a satisfactory solution had been reached, for the simple reason that the first sentence had been adopted by 6 votes to 5, with 1 abstention, three members of the Commission having been absent. Such a vote might be satisfactory in a political body, but hardly in an assembly of specialists. He therefore presumed that it

was provisional, and subject to ratification or rectification.

30. Mr. SANDSTRÖM wished to put the following question. The first sentence read: "The continental shelf is subject to the sovereignty of the coastal State." If reference were made in the second sentence to the "sole purpose", would that not mean that full sovereignty was exercised over the continental shelf for the purpose indicated, but was latent in other respects?

31. The CHAIRMAN thought that members were inclined to exaggerate the importance of words. The situation was perfectly clear. The Special Rapporteur was prepared to accept Mr. Kozhevnikov's proposal, which had been supported by several other members. Two amendments had been submitted to that proposal. The Commission must now proceed to vote on those texts.

32. Mr. ZOUREK asked whether the Commission could go back on a decision. Mr. Kozhevnikov's proposal should be put to the vote, the question of principle being left untouched.

33. Mr. LAUTERPACHT said that Mr. Kozhevnikov's proposal spoke for itself. There was little purpose in pressing the author of a proposal for its authentic interpretation.

34. Mr. Spiropoulos' amendment did not make much difference, but he would vote against it, since he considered that the Commission was bound by its decision on the first sentence.

35. The introduction of the word "sole", as proposed by Mr. Alfaro, was innocuous, but, he thought, unnecessary. It followed the lines of the amendment proposed to article 11 of the draft on arbitral procedure, where reference was made to the tribunal's "widest powers". In that case the word "powers" amply sufficed; in the present case, the words "for the purpose" likewise needed no qualification.

36. Mr. HSU agreed with Mr. Lauterpacht that Mr. Kozhevnikov's proposal was subject to reasonable interpretation, but considered it still to be true that the use of the word "sovereignty" in the first sentence would have most serious consequences. There was no getting away from the fact that control and jurisdiction were not tantamount to sovereignty. If, however, sovereignty were granted, it was only reasonable to expect claims for security to be made by the coastal State. The Commission could not escape the logical consequences of a decision which, obviously, was not very much to its liking. He saw no reason why members should not change their minds.

37. The CHAIRMAN, speaking as a member of the Commission, pointed out that the United Kingdom Government, which was the strongest champion of the doctrine of the freedom of the seas, had advocated the use of the term "sovereignty". Could Mr. Hsu hope to convince the experts in the Foreign Office? He (Mr. Amado) had been impressed by the arguments of the

United Kingdom Government and had consequently abstained from voting.

38. Mr. HSU appreciated the pertinence of Mr. Amado's comment, but found it surprising that the United Kingdom Government should have made the suggestion.

39. Mr. KOZHEVNIKOV said that he was always in favour of the widest possible discussion and the fullest exchange of views, but there were limits beyond which it was impossible to go. The issue of principle had been decided, and it was essential for the Commission to proceed from that point.

40. Faris Bey el-KHOURI pointed out that the issue had been complicated by the use in Mr. Kozhevnikov's proposal of the words "sovereign rights". He proposed that the text of the second sentence be amended to read:

"The right of exploring and exploiting the natural resources of this continental shelf belongs exclusively to the coastal State."

41. If Mr. Kozhevnikov were unable to accept such a text, he would move it formally as an amendment to his proposal.

42. Mr. LAUTERPACHT reiterated that it was not proper to press Mr. Kozhevnikov for further explanations, and supported him in the view that the Commission must act in the light of its decision on the matter of principle, so long as no formal proposal had been made that that decision should be reconsidered.

43. Mr. KOZHEVNIKOV was perfectly willing to reply to Faris Bey el-Khoury, and said that he had included the term "sovereign rights" in order to throw a bridge, so to speak, across the gap between the principle expressed in the first sentence and the practical application of that principle as described in the second. If the term "sovereign rights" were deleted, the link between the first and second paragraphs of article 2 would be destroyed.

44. Mr. HSU said that he was not proposing that the decision be reconsidered, for he had voted against it, and tradition denied an opposer the moral right to seek reconsideration.

45. Mr. FRANÇOIS assumed that the adoption of the text proposed by Faris Bey el-Khoury would imply the deletion of the first sentence of article 2 as adopted. But that was impossible. As to the proposals of Mr. Kozhevnikov and Mr. Spiropoulos, their aim was identical with that of article 2 as it appeared in the report, the sole difference between the three texts being one of drafting.

46. Mr. SANDSTRÖM indicated that he had some intention of asking that the Commission's earlier decision be reconsidered when the Commission reached the point of voting on article 2 as a whole.

47. Mr. SPIROPOULOS said that he would not press his proposal.

48. Answering Mr. CORDOVA, Faris Bey el-KHOURI said that his proposal was not intended to eliminate the first sentence of article 2 as adopted. The proposal simply dealt with the exploitation of the natural resources, without prejudice to the principle of the freedom of the seas.

49. The CHAIRMAN said that he would first put to the vote Mr. Alfaro's amendment to Mr. Kozhevnikov's proposal.

Mr. Alfaro's proposal that the word "sole" be inserted before the word "purpose" in Mr. Kozhevnikov's proposal was rejected, 3 votes being cast in favour and 3 against, with 7 abstentions.

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

50. Mr. YEPES said that Faris Bey el-Khouris proposal was in flagrant contradiction with the decision taken by the Commission at its 198th meeting.³

51. Mr. ZOUREK wished to make it clear that the decision taken at that meeting was not provisional. It was true that it had been adopted by only a small minority, but he could not see that that in any way justified Mr. Yepes' attitude.

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

52. Answering a question put to him by Mr. YEPES with the CHAIRMAN's permission, Mr. LIANG (Secretary to the Commission) said that he would hesitate to interpret the decision taken by the Commission at its 198th meeting. However, in reply to the question put by Mr. Yepes, he would submit that the Commission had adopted the first sentence of the Special Rapporteur's amendment, which was identical with Mr. Lauterpacht's proposal.⁴ The Commission had then discussed the second sentence of the special rapporteur's amendment, which had been intended to form the second paragraph of article 2. In due course the Commission would have to vote on the article as a whole. Thus, so far, only the first paragraph of article 2 had been adopted. It stood to reason that if the second paragraph of the article contradicted the first, the latter would have to be modified.

53. The CHAIRMAN emphasized that the vote taken on the first paragraph of article 2 had not been provisional. It remained in force unless and until Mr. Sandström formally moved that the decision be reconsidered, and the motion was carried.

54. Mr. SPIROPOULOS said that, after the rejection of several proposals, the Commission must perforce return to the proposal submitted by Mr. Pal,⁵ in the form of three paragraphs, the first of which contained the sentence already adopted by the Commission. It

was not entirely clear whether the decisions of principle taken by the Commission at the 199th meeting in respect of the superjacent waters as high seas and the air space above them had been taken in relation to the second paragraph of Mr. Pal's proposal. In any event, the third paragraph had not been voted upon.

55. Mr. ZOUREK expressed his concern at the action taken by the Commission on Mr. Kozhevnikov's proposal, which had offered a way out of the impasse. For the time being, the Commission was left with an article 2 consisting of one sentence. Nor had any decision been taken on the amalgamation of articles 3 and 4.

56. Mr. SANDSTRÖM formally moved that the Commission reconsider its decision on the first sentence of article 2.

57. The Commission was well aware of his view that the concept of sovereignty should not be introduced in relation to the continental shelf. Article 2 should be adopted as drafted by the Special Rapporteur.

58. Mr. LAUTERPACHT said that the position seemed to be fairly clear to him. The Commission had the choice either of interrupting its discussion of article 2 and taking up Mr. Sandström's motion, or of leaving that motion until a later stage.

59. Mr. Pal's text for article 2 consisted of three parts. The first paragraph had already been adopted by the Commission. The substance of the second paragraph, dealing with the legal status of the superjacent waters and of the air space above them, had been dealt with in articles 3 and 4. There remained, therefore, the third paragraph 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."

That text to some extent coincided with Mr. Kozhevnikov's proposal which had, to his (Mr. Lauterpacht's) regret, been rejected.

60. Unlike some members, he did not consider that the Commission's acceptance at the previous meeting⁶ of the principle that a single régime should apply to the sea-bed and its subsoil precluded it from discussing the third paragraph of Mr. Pal's text. Unless a provision of that kind were inserted, article 2 would remain incomplete, as no qualification would be placed upon the principle enunciated in the sentence already adopted as its first paragraph.

61. Mr. CORDOVA said that in his opinion the Commission had rejected all proposals relating to the second paragraph of article 2. It should therefore vote upon the article as a whole, consisting of one single paragraph; it could then consider Mr. Sandström's motion.

³ See *supra*, 198th meeting, para. 38.

⁴ *Ibid.*, paras. 5 and 38.

⁵ See *supra*, 199th meeting, para. 2.

⁶ *Ibid.*, para. 93.

62. Mr. SPIROPOULOS believed that the Commission should vote forthwith upon article 2 as a whole, despite the fact that acceptance of the first paragraph had presupposed the existence of another provision in the article.

63. Mr. HSU disagreed with Mr. Lauterpacht, because in his opinion the Commission, by rejecting Mr. Kozhevnikov's proposal, had also implicitly rejected the third paragraph of Mr. Pal's text. It would therefore be quite improper to re-open consideration of the latter. Once the Commission had voted on article 2 as a whole, consisting of the paragraph already adopted, it could decide whether or not the adoption of that paragraph should be reviewed.

64. He would urge the Commission to abide by the rules of procedure, which were one of the main safeguards of democratic discussion.

65. The CHAIRMAN pointed out to Mr. Hsu that he was waiting to hear the comments of other members on Mr. Lauterpacht's statement before expressing his own views. His silence should not be interpreted as necessarily conveying approval of that statement.

66. Mr. KOZHEVNIKOV said that the discussion on the latter part of article 2 had been so inconclusive that it would be only reasonable for the Commission to consider the third paragraph of Mr. Pal's text. It was not possible to leave the first paragraph as it stood, for without further development and qualification it would be impossible to interpret its meaning. He would therefore advocate that the Commission resume its consideration of the third paragraph of Mr. Pal's text in the light of the principle adopted at the previous meeting that a single régime should be established for the sea-bed and subsoil. Mr. Sandström's motion had been premature, and should be taken up only after Mr. Pal's text had been finally disposed of.

67. The CHAIRMAN said that the Commission must give legal expression to the principle adopted at the previous meeting. Its present difficulties confirmed his belief that the practice of voting on principles as distinct from texts was nefarious, and should be abandoned.

68. Mr. SANDSTRÖM said that he was opposed to the procedure outlined by Mr. Lauterpacht, as it was inadmissible at the present stage to consider any new proposals relating to the second paragraph of article 2. Once the article as a whole had been voted on, the Commission could decide whether or not to act on his own motion.

69. The CHAIRMAN pointed out that for the Commission to formulate the principle approved at the previous meeting would involve no new proposal.

70. Mr. KOZHEVNIKOV concurred.

71. Mr. PAL contended that the Commission had not yet disposed of the third paragraph of his text. Though he had voted against the text which now formed the first paragraph, he had included it in his proposal because it had been accepted by the Commission. The

principles laid down in his second paragraph had been incorporated in articles 3 and 4. Consideration of the third paragraph should be abandoned only if the Chairman ruled it out of order because it conflicted with the Commission's previous decision that a single régime be established for the sea-bed and subsoil.

72. Mr. ALFARO agreed with Mr. Pal. The Commission should vote on the third paragraph of the latter's text, which would reflect the decision of principle taken at the previous meeting provided the opening words "On the sea-bed" were deleted. Subject to that amendment, he would vote in favour of the text.

73. Mr. YEPES argued that the third paragraph of Mr. Pal's text was in overt contradiction with the Commission's decision of principle, and, moreover, had already been implicitly rejected with Mr. Kozhevnikov's proposal.

74. Mr. SANDSTRÖM agreed with Mr. Yepes.

75. Mr. LAUTERPACHT moved that the third paragraph of Mr. Pal's text, being consistent with the principle adopted at the previous meeting that a single régime be established for the sea-bed and subsoil be discussed and voted upon.

The motion was carried by 8 votes to 4.

76. Mr. YEPES asked whether that decision implied any deviation from the principle accepted at the previous meeting.

77. The CHAIRMAN replied in the negative. The only effect of the decision would be to enable the Commission to discuss the third paragraph of Mr. Pal's text.

78. Mr. LAUTERPACHT moved the adoption of the third paragraph of Mr. Pal's text, which would provide a reasonable compromise between the views expressed in the Commission.

79. Mr. KOZHEVNIKOV pointed out that the text must be made to accord with the principle adopted at the previous meeting. At first sight Mr. Alfaro's amendment appeared to achieve that object.

80. The CHAIRMAN feared that the third paragraph of Mr. Pal's text did not accurately reflect the principle accepted by the Commission at the previous meeting.

81. Mr. PAL accepted Mr. Alfaro's amendment.

82. The CHAIRMAN put to the vote Mr. Pal's text for the second paragraph of article 2, as amended by Mr. Alfaro. The text now read:

"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."

That text was adopted by 7 votes to 5, with 1 abstention.

83. The CHAIRMAN put to the vote article 2 as a whole, consisting of the text just adopted and, as first

paragraph, the words: "The continental shelf is subject to the sovereignty of the coastal State."

Article 2 as a whole was adopted by 8 votes to 4, with 1 abstention.

84. Mr. CORDOVA explained that he had voted in favour of article 2 on the understanding that the second paragraph did not constitute a limitation on the sovereignty of the coastal State over the continental shelf.

Article 5

85. Mr. FRANÇOIS said that the Danish Government, which supported article 5, had expressed the fear that it was not clear which of the two interests, namely, the exploitation of mineral resources and the establishment or maintenance of submarine cables, would prevail. In his opinion, the Danish Government's comment⁷ did not call for any modification of the text of the article. If any doubt subsisted as to its meaning, the comment might be amplified.

86. Some authorities had regretted the Commission's decision not to make specific provision for pipelines, since they regarded that as a matter likely to become extremely important in the future. However, no government had contested the decision, which might therefore be confirmed.

87. Mr. YEPES supported the Special Rapporteur's view.

88. Mr. SANDSTRÖM did not fully agree with Mr. François. Of course, if the exploitation of part of the continental shelf required the removal of submarine cables already laid, the cost would have to be borne by the coastal State, but it was surely indefensible that, when operations began for exploiting the continental shelf, the coastal State should finance the increased cost of laying submarine cables.

89. Mr. FRANÇOIS said that once a coastal State had begun to exploit the sea-bed or subsoil it could refuse the request of another State to lay a submarine cable in that area.

90. The CHAIRMAN suggested that the point raised by Mr. Sandström should be dealt with during the discussion on the commentary. He accordingly put article 5 to the vote.

Article 5 was adopted unanimously.

Article 6

91. Mr. FRANÇOIS said that in order to meet the French Government's request for greater precision, he had added at the end of the first sentence in article 6 the words "or in reducing fish production".

⁷ See "Report of the International Law Commission covering the work of its fifth session", *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456)*, pp. 47-48.

92. Mr. KOZHEVNIKOV said that for the benefit of navigation and fishing, article 6 prescribed reasonable limitations to the right of setting up installations. That point should be particularly emphasized now that the Commission had recognized that the sovereignty of the coastal State over its continental shelf did not affect the status of the superjacent waters as high seas. At the same time he felt that the article was neither clear nor comprehensive enough. A number of governments, including those of Belgium, France and Sweden, felt that more stress should be laid upon navigation and fishing interests. The Belgian Government, for instance, considered that the exploitation of the sea-bed should not obstruct the traffic on sea routes. With those considerations in mind, he accordingly proposed that article 6 be amplified by the addition of a new paragraph reading:

"(3) Neither the installations themselves, nor the said safety zones around them, shall be situated in straits, narrow channels or on recognized sea lanes."

93. Mr. CORDOVA said that "substantial interference" was a good criterion but should also apply to the latter part of the first sentence in article 6. He accordingly proposed the insertion of the word "substantially" before the words "reducing fish production".

94. Mr. FRANÇOIS accepted Mr. Córdova's amendment.

95. Mr. LAUTERPACHT considered that installations for the exploitation of the sea-bed on a large scale might be of great importance, and in some cases might justify substantial interference with navigation. In such cases the interference, though substantial, would not be unreasonable. He would therefore urge the Commission to consider substituting the word "unreasonable" for the word "substantial".

96. On first hearing, Mr. Kozhevnikov's proposal seemed acceptable, but before expressing his final views he would have to see it in writing.

97. Mr. SANDSTRÖM was unable to detect any difference between the words "substantial" and "unreasonable".

98. Referring to Mr. Kozhevnikov's proposal, he did not think that there was any need to prohibit the exploitation of the sea-bed in straits.

99. He wondered whether the comment brought out with sufficient clarity that navigation and fishing interests should be given equal priority with rights of exploration and exploitation.

100. Mr. FRANÇOIS considered that the interests of navigation and fishing would have to yield sometimes to larger interests of a new industry, such as the submarine extraction of petroleum. It would be impossible always to give the former preference.

101. He doubted whether there would be any justification for prohibiting the establishment of installations in straits or on recognized sea lanes in the case of an industry which might be of the greatest importance to

the community. The whole question was one of the balance of interests.

102. Mr. SANDSTRÖM said that the Special Rapporteur had misunderstood him. He had not claimed that the interests of navigation and fisheries should always prevail. He was perfectly familiar with the principle of the balance of interests, of which he might quote an example from his own country, where a concession to build hydro-electric installations could be obtained only where it could be proved that the benefit derived from raising the level of the water would outweigh the damage done to agriculture by at least 50 per cent.

103. Mr. CORDOVA said that it was a highly technical matter to determine which interests were of overriding importance, and it would consequently be impossible for the Commission to devise a comprehensive provision. He therefore welcomed Mr. Lauterpacht's suggestion that the word "unreasonable" be substituted for the word "substantial".

104. Mr. LAUTERPACHT said that it would not be desirable to establish too rigid a text determining which interests should prevail. The word "unreasonable" might be preferable to the word "substantial", provided that an article were inserted in the draft stating what organ had jurisdiction to interpret article 6.

105. He endorsed the Special Rapporteur's comments on Mr. Kozhevnikov's text. It would be going too far to prohibit rigidly the construction of installations on international sea routes. In that connexion, it was very pertinent to remember that the entire coastline of Norway had on occasions been used as an international sea route for certain purposes. Moreover, the stretch of sea near the territorial waters was often particularly convenient for navigation and used as such, and if Mr. Kozhevnikov's text were adopted it would be unlawful to erect installations there. The same argument was applicable to the exploitation of the continental shelf in straits, the definition of which, furthermore, was elastic.

106. Mr. SANDSTRÖM said that, in the light of the arguments just advanced, he would agree to the substitution of the word "unreasonable" for the word "substantial".

107. He was unable to understand what was meant by reduction in fish production.

108. The CHAIRMAN was uncertain whether there was any real need to refer to that matter. Moreover, it might be extremely difficult to establish the decisive statistics.

109. Mr. YEPES said that the Commission should establish a flexible text for article 6, expressing a general wish that the exploitation of the continental shelf and of its mineral resources should not constitute unreasonable interference with the freedom of navigation.

110. He was in general agreement with Mr. Kozhevnikov's text, which was consistent with customary law on the continental shelf and with the declarations made by

President Truman and a number of Latin-American Governments in recent years.

111. Mr. KOZHEVNIKOV said that the word "unreasonable" was even less clear than the word "substantial".

112. He was unable to understand the criticism of his text, which was designed to render article 6 more complete and consistent with the whole spirit of the draft, and notably with the principle of freedom of the seas. That principle must at all costs be maintained.

113. Mr. SPIROPOULOS said that he could admit the use of the word "reasonable" in a legal text, but not that of the word "unreasonable".

114. He agreed with Mr. Yepes that the rule established in article 6 should be flexible, and with the Chairman that there was no need to refer to reduction in fish production, which was not of sufficient importance to merit special mention.

115. Mr. ZOUREK said that article 6, and notably paragraph 2 thereof, constituted a serious derogation from the principle of freedom of navigation and of the seas. In striving to achieve a balance between different and conflicting interests, the Special Rapporteur had only succeeded in being imprecise and in drafting a text which would be difficult to interpret. Mr. Lauterpacht's suggested amendment was no improvement.

116. It was clearly essential to establish certain minimum safeguards for the freedom of navigation, as had been done in Mr. Kozhevnikov's text. Rules governing straits already existed, and States could not repudiate them unilaterally. Anything which might affect important international sea routes would bring about so many difficulties as to make it impossible to maintain the freedom of navigation. The establishment of such minimum safeguards would, moreover, make the text far more acceptable to governments.

The meeting rose at 1 p.m.

201st MEETING

Wednesday, 24 June 1953, at 9.30 a.m.

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

Rapporteur: Mr. H. LAUTERPACHT.