

Document:-  
**A/CN.4/SR.201**

**Summary record of the 201st meeting**

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

Extract from the Yearbook of the International Law Commission:-  
**1953 , vol. I**

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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.

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## 201st MEETING

Wednesday, 24 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) ( <i>continued</i> )	
Chapter IV: Revised draft articles on the continental shelf and related subjects	
Part I: Continental shelf	
Article 6 ( <i>continued</i> ) . . . . .	104
Article 7 . . . . .	106
Article 6 ( <i>resumed from above</i> ) . . . . .	108

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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. 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 6 (continued)*

1. The CHAIRMAN, speaking as a member of the Commission, said that neither the word "substantial" as used in paragraph (1) of article 6, nor even less the word "unreasonable", suggested by Mr. Lauterpacht, gave him satisfaction, because both were open to highly subjective interpretation. However, as the first had gained currency in legal usage, he felt obliged to accept it.
2. He could not, on the other hand, support the Special Rapporteur's proposed addition at the end of the first sentence of the words "or in reducing fish production", because he felt that such a provision would inevitably prove a constant source of controversy between States.
3. He feared that Mr. Kozhevnikov's intention in proposing an amendment<sup>1</sup> to clarify the meaning of article 6 would fail in its purpose, and would only result in restricting the scope of the original text.
4. Mr. FRANÇOIS (Special Rapporteur) said that the words "substantial interference" might be replaced by the words "unjustified interference taking into account the different interests involved". Once the English and French texts of Mr. Kozhevnikov's proposal had been brought into line, he could accept it, provided it were amended by the addition at the end of the words "essential to international navigation".
5. Mr. SCELLE observed that so far as the French text was concerned the word "*sensiblement*" was the most appropriate.
6. Mr. YEPES said that, although he was in general agreement with Mr. Kozhevnikov's text because it sought to safeguard the freedom of navigation, he considered that article 6 should be drafted in general terms in order to ensure flexibility. He was therefore opposed to a detailed provision dealing with technical matters

<sup>1</sup> Mr. Kozhevnikov's proposal read as follows:

"Add the following paragraph, (3), to article 6:

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

which the Commission was not really competent to discuss, and accordingly submitted an alternative text for the first paragraph of article 6 reading:

"The exploration of the continental shelf and the exploitation of its natural resources must not be carried out in a manner calculated to entail unnecessary or useless departures from the principle of freedom of navigation on the high seas or a real interference with the exercise of that freedom or with the development—utilization, exploitation—of the resources of the sea.

"Conversely, the exercise of freedom of navigation must not unnecessarily impede construction of the installations essential for exploring the soil and subsoil of the continental shelf or for exploiting its natural resources.

"Any dispute concerning the interpretation or application of the provisions of this article shall be decided by the International Court of Justice at the request of one of the parties concerned or by an arbitral tribunal constituted in accordance with the rules for arbitral procedure adopted by the International Law Commission."

7. Mr. SANDSTRÖM said that, although at the pre-previous meeting<sup>2</sup> he had declared his acceptance of Mr. Lauterpacht's amendment for the substitution of the word "unreasonable" for the word "substantial", he now felt, on reflection, that the original wording was preferable.

8. He wished to propose an alternative text, based on the Special Rapporteur's comment to paragraph (1), to read as follows:

"The exploration of the continental shelf and the exploitation of its natural resources must not result in substantial interference with navigation or fishing.

"The construction of installations which hamper navigation or fishing is justified only where the benefit to the community of States to be derived from the exploitation outweighs the inconveniences to navigation and fishing.

"Due notice must be given of such construction and due means of warning must be maintained."

9. Commenting on Mr. Kozhevnikov's proposal, he said that in his opinion it was too rigid; its substance could more appropriately be dealt with in the commentary.

10. Mr. KOZHEVNIKOV said that, though not agreeing that his text was too rigid, he would be prepared to accept the Special Rapporteur's amendment to it, which would apply to straits, narrow channels and recognized sea lanes.

11. Mr. YEPES reaffirmed his conviction that the Commission should first decide the issue of principle, namely: whether to have a general or a detailed provision.

<sup>2</sup> See *supra*, 200th meeting, para. 106.

12. Mr. LAUTERPACHT shared the Special Rapporteur's views on Mr. Kozhevnikov's text, and accepted his amendment to it.
13. Mr. FRANÇOIS pointed out to Mr. Yepes that Mr. Kozhevnikov's text dealt not with matters of detail, but with a general issue of great importance.
14. Mr. ALFARO said that he could vote for Mr. Kozhevnikov's text, but was doubtful about the inclusion of the word "straits", which was apt to be broadly interpreted. Some straits were so wide that installations constructed in them could not possibly constitute a hindrance to navigation. Mr. Kozhevnikov's purpose might perhaps be fully met by referring solely to narrow channels and recognized sea lanes.
15. Mr. SANDSTRÖM agreed with Mr. Alfaro. If installations could be erected in wide straits without hampering either navigation or fishing, there was no reason why States should be precluded from erecting them.
16. The CHAIRMAN shared Mr. Alfaro's misgivings about the reference to straits in Mr. Kozhevnikov's proposal.
17. Mr. CORDOVA said that paragraph (1) of article 6 in the Special Rapporteur's draft would suffice to safeguard the interests of navigation and fishing. No more detailed provision was required. Mr. Kozhevnikov's text would do more harm than good, and was, moreover, open to serious practical objections. It was, for instance, not clear what was meant by "narrow channels". There was, furthermore, no reason why States should not be allowed to erect installations in recognized sea lanes if the only result would be to oblige ships to make a slight detour.
18. Mr. SCALLE said that he was in favour of Mr. Kozhevnikov's proposal, as amended by the Special Rapporteur, because it would, at least to some extent, deflect the Commission from the course it had taken of whittling down the principle of the freedom of the seas.
19. Mr. HSU said he had no objection in principle to Mr. Kozhevnikov's text, but shared the doubts expressed by Mr. Alfaro. Would the Straits of Formosa and Tsushima, for example, come within Mr. Kozhevnikov's definition?
20. Faris Bey el-KHOURI proposed the deletion of the word "straits" from Mr. Kozhevnikov's proposal, with the remainder of which he was in agreement.
21. Mr. KOZHEVNIKOV explained that the purpose of his text was to ensure that the freedom of navigation would not be threatened.
22. Referring to Mr. Hsu's question, he said that it was impossible in a text of three lines to define what was meant by "straits", nor did he feel that the Commission should go into such detail. It must limit its discussion to general issues.
23. Mr. ZOUREK pointed out that the interests of navigation and fishing on the one hand, and of the exploration and exploitation of the continental shelf on the other, could never be of equal importance, since the first concerned the community of States and the second, one State alone. Recognized sea lanes had been established after long years of experience, and it would be difficult to justify any interference with them on the grounds of expediency for one State. He therefore supported Mr. Kozhevnikov's proposal.
24. Mr. HSU was unable to see how the Commission could accept Mr. Kozhevnikov's text if its author could not explain what he meant by "straits". The text must, if adopted, inevitably give rise to disputes. Unless the word "straits" were deleted, he would have to vote against the text.
25. Mr. LAUTERPACHT said that his original views about Mr. Kozhevnikov's proposal had undergone some change during the discussion. In view of the objections revealed in the course of the discussion, it might be as well to allow members more time for reflection before it was put to the vote. Perhaps the Commission might eventually decide to deal with its subject matter in the comment, since the essential points were already covered in paragraph (1).
26. The CHAIRMAN, speaking as a member of the Commission, considered that the first sentence in article 6 was broader than Mr. Kozhevnikov's text, and would better safeguard the freedom of the seas. Although the purpose of the two texts was the same, he would be unable to vote for Mr. Kozhevnikov's proposal, which was too detailed and could not be exhaustive.
27. He did not feel that the Commission's work would be in any way advanced by deferment of the vote on Mr. Kozhevnikov's proposal.
- Faris Bey el-Khouris proposal that the word "straits" be deleted from Mr. Kozhevnikov's text was adopted by 6 votes to 3, with 5 abstentions.*
- Mr. Kozhevnikov's text, as amended, was adopted by 8 votes to 3, with 3 abstentions.*
28. Mr. YEPES said that he had voted for the deletion of the word "straits" from Mr. Kozhevnikov's proposal but had abstained from voting on the text as a whole for the reasons he had already explained.
29. Mr. SCALLE said that he had voted against Faris Bey el-Khouris's amendment because he feared that readers of the summary records might conclude that the Commission's decision to delete the word "straits" meant that the construction of installations in such areas was authorized.
30. Mr. KOZHEVNIKOV said that he had voted in favour of his own text as a whole, despite the adoption of Faris Bey el-Khouris's amendment, because, in a sense, the expression "recognized sea lanes" would include straits.
31. Mr. ZOUREK said that he had voted against Faris Bey el-Khouris's amendment because the reasons militating in favour of the freedom of navigation in narrow

channels and recognized sea lanes applied even more to straits. However, as the amended text would still cover straits, he had voted for it.

32. Mr. CORDOVA expressed concern that members of the Commission should so frequently abstain from voting even after taking an active part in the debate, and deprecated the fact that decisions were being taken by so small a majority.

33. The CHAIRMAN observed that the Commission had recently been examining certain entirely new questions. The failure to secure a wide area of agreement was, therefore, not surprising.

34. Mr. ALFARO said that he had voted in favour of Faris Bey el-Khoury's amendment because it was well known that many so-called straits were very wide. When not narrow channels, they could not be described as regular sea lanes. However, Mr. Kozhevnikov's text fulfilled the purpose of safeguarding navigation and fishing from undue interference, and he had accordingly voted in favour of the text as a whole.

35. The CHAIRMAN, speaking as a member of the Commission, thought that the deletion of the word "straits" would not seriously affect the text.

36. Pending distribution of Mr. Sandström's and Mr. Yepes' texts for article 6, he would open the discussion on article 7.

#### Article 7

37. Mr. FRANÇOIS said that, in view of the conclusions reached by the Committee of Experts on certain technical questions concerning the territorial sea (A/CN.4/61/Add.1), he proposed an amended text for article 7, to replace the one contained in his fourth report (A/CN.4/60). The new text read as follows:

"1. Where the same continental shelf is contiguous to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to each State should be the median line, every point of which is equidistant from the two opposite coasts.

"2. Where the same continental shelf is contiguous to the territories of two adjacent States, the boundary of the continental shelf appertaining to each State should be drawn according to the principle of equidistance from the respective coastlines of the adjacent States.

"3. If the parties cannot agree on how the lines are to be drawn in accordance with the principles set forth in the preceding paragraphs, the dispute shall be submitted to arbitration."

38. The Commission would remember that article 7, as adopted at the third session, contained no directives about the delimitation of the continental shelf, on which there was no rule of law that could be applied by a tribunal. The comment, by referring to median lines, did give some guidance in the matter to States whose coasts were opposite to each other, but gave none to adjacent

States, because the Commission had not yet reached any decision on the delimitation of the territorial sea of such States. In the absence of any rules of law, the Commission had decided that disputes on the delimitation of the continental shelf should be submitted to arbitration *ex aequo et bono*. In view of the objections raised by numerous governments to that proposal, however, he had suggested in his fourth report that disputes should be submitted to conciliation procedure. But since the completion of the fourth report, the conclusions of the Committee of Experts had become available and had prompted him to prepare a new text for article 7.

39. At the request of the Commission, he had convened the Committee of Experts to examine matters connected with the delimitation of the territorial sea. The General Assembly, in its customary anxiety to economize, had voted no funds for the purpose. However, with the help of the totally inadequate sum of 1,500 dollars, left over from the 1952 budget, and the Netherlands Government's generous offer to provide administrative assistance, it had been possible to comply with the Commission's request. The Committee, consisting of Professor L. Asplund, Mr. Whittemore Boggs, Mr. P. Couillault, Commander Kennedy and Vice-Admiral Pinke, had met at The Hague in April 1953, and had established certain rules for delimiting the territorial sea both between adjacent States and States whose coasts faced each other. It had expressly stated in its report that those rules were equally applicable to the delimitation of the continental shelf, and had confirmed the Commission's preliminary view that the technique of the median line could be adopted for States whose coasts faced each other, at the same time indicating how the line was to be drawn. In the case of adjacent States, when the coast was straight, the continental shelf was delimited by means of a line perpendicular to the coast. If the coast was curved, the line took into account its configuration. The experts had agreed that the rules might give rise to doubts in certain specific cases, but had recognized that it would be impossible to devise a universally applicable method.

40. In the light of the Committee's conclusions, States might now be prepared to submit disputes to arbitration.

41. Mr. HSU welcomed the new text submitted by the Special Rapporteur. Although conciliation was, on the face of it, a very admirable procedure, in practice it was frequently abused and transformed into a shield to protect the powerful against the weak. Since, according to the Charter of the United Nations, disputes between States should be settled by peaceful means in conformity with the principles of justice and international law, arbitration was preferable.

42. Mr. SANDSTRÖM said that, although he had not yet studied the report of the Committee of Experts, since it was annexed to the Special Rapporteur's report on the régime of the territorial sea, two points immediately came to mind. First, though it might be obvious, it would perhaps be wise to indicate the point from which the boundary between the continental shelf

of two States was to be drawn. Secondly, the Special Rapporteur had referred to the important question of median lines following the configuration of the coast in certain cases. Perhaps that should be explicitly stated in paragraph 2 of the new text as it was an extremely important qualification of the general principle laid down therein.

43. Mr. CORDOVA said that the Special Rapporteur's new text made no allowance for existing or future bilateral agreements between States on the delimitation of the continental shelf between them. There was no reason why the system laid down in article 7 should be mandatory in the presence of such agreements.

44. He was unable to grasp precisely what was meant by the last phrase in paragraph 1, reading "every point of which is equidistant from the two opposite coasts".

45. Referring to paragraph 3, he said that if the intention was to submit the actual tracing of the demarcation line to arbitration he could not accept it; only disputes about the respective rights of States could be dealt with by that procedure.

46. Mr. SCALLE said that article 7 simply fortified his unremitting opposition to the whole notion of creating a continental shelf, since, after delimiting their respective zones in narrow waters—which was his conception of a strait—States would be able to set up installations there for the exploitation of the sea-bed to the detriment of the interests of navigation. It would be interesting to observe the reactions of the United Kingdom Government if, for example, the continental shelf in the Baltic were to be delimited in the manner suggested in article 7. Surely such a provision could only lead to incessant friction, if not to more serious consequences. Paragraph 1 was proof positive of the Commission's failure to foresee what would happen in narrow straits if the articles so far approved were put into force.

47. Mr. KOZHEVNIKOV said that his initial hesitation about the new text of article 7 had been confirmed by the discussion as it had so far developed. Acceptance of the new text would presuppose that the Commission had taken a stand on the experts' conclusions. He, among other members of the Commission, had not yet studied the experts' report. He therefore moved that discussion on the new text of article 7 be deferred until the Commission had dealt with item 3 of its agenda, relating to the régime of the territorial sea.

48. Such a procedure would in one way preclude the Commission from discussing the Special Rapporteur's text of article 7 as set forth in his fourth report. Such a discussion might well result in a consensus of opinion leading to final agreement on the article.

49. The CHAIRMAN considered Mr. Kozhevnikov's motion to be a reasonable one.

50. Mr. YEPES disagreed with Mr. Kozhevnikov. Article 7 was indispensable, and without it the whole draft would be incomplete.

51. Commenting on the Special Rapporteur's new text, he said that it was not for the Commission to attempt to

deal with technical matters. The advice of the experts should be accepted, and he personally would vote for paragraphs 1 and 2. Moreover, a precedent for the method of delimitation recommended by them already existed in the treaty relating to the submarine areas of the Gulf of Paria, concluded between the United Kingdom and Venezuela in 1942.

52. Paragraph 3, he felt, should be made more flexible. There was no *a priori* reason why all disputes should be submitted to arbitration. He therefore proposed the substitution of the words "one of the methods of peaceful settlement provided for by international law" for the word "arbitration" at the end of the paragraph.

53. Mr. FRANÇOIS said that he could not agree to consideration of article 7 being deferred until the Commission had disposed of item 3. As Chairman of the Commission he would shortly be submitting a proposal concerning the Commission's programme of work, and he was not optimistic enough to think that, even if sufficient progress were made to enable the Commission to take up item 3, discussion on it could be concluded at the present session. If he were proved right, the draft on the régime of the high seas would then not be ready for submission to the General Assembly.

54. Mr. SPIROPOULOS said that, although in principle he could support Mr. Kozhevnikov's motion, he also fully recognized the weight of Mr. François' remarks, for he, too, believed the situation to be somewhat inauspicious for completing at the present session the work on the régime of the high seas.

55. Mr. KOZHEVNIKOV said that, although he fully understood the force of the arguments adduced by the Special Rapporteur, he still did not think that there was any reason why the Commission should not take as its basis for discussion the text contained in Mr. François' fourth report on the régime of the high seas. Quite clearly, the new draft which dealt with highly technical matters could not be taken up at the present stage.

56. Mr. LAUTERPACHT considered that conditions were propitious for the final adoption of the report on the continental shelf and that the Commission should avoid the course of linking that question with other controversial and unresolved matters. He would suggest that a final decision on article 7 be deferred for a day or two in order to give the Commission time to study the report of the Committee of Experts. He did not feel that detailed discussion of the technical questions dealt with by the experts would serve any useful purpose. Members of the Commission must be guided by the views of the experts whom they had entrusted with the task of examining certain highly technical problems.

57. Nor did he consider that the question raised in article 7 should be linked with that of the territorial sea.

58. Faris Bey el-KHOURI was opposed to deferment of article 7, on the ground that no new light would be shed on the problem even if more time were allotted to its study.

59. Mr. CORDOVA considered that it would be very serious if the Commission failed to complete its work on the continental shelf. At the same time, he, too, had had no opportunity of studying the experts' report, and would welcome a few days' respite.

60. He agreed that the problem need not be linked with that of the territorial sea, the main issue in respect of which was that of width.

61. The CHAIRMAN, speaking as a member of the Commission, said he was opposed to any lengthy deferment. The matter was ripe for decision, the report was good, and the argument that the Commission's decisions were taken by a small majority was inconclusive, for that was inevitable in the circumstances, particularly in view of the fact that the Commission was elaborating wholly new principles. He, too, would find it difficult to vote on article 7 in the version submitted by the Special Rapporteur, since it differed fundamentally from the text in the latter's fourth report.

62. He had every sympathy for Mr. Kozhevnikov's suggestion that the Commission might examine article 7 in the original text, but feared that no progress would be possible, since a number of technical and far-reaching problems had now been raised. To mention one instance only, the original proposal that any dispute be submitted to conciliation procedure had now been superseded by the proposal that it be submitted to arbitration.

63. Speaking as Chairman, he would propose that further consideration of article 7 be deferred for one day, the Commission meanwhile resuming its examination of article 6.

64. Mr. ZOUREK maintained that it was essential to defer the vote on article 7 at least until the Commission had discussed the related question of territorial waters. In his view, the connexion between article 7 and the problem of the territorial sea was intrinsic to the nature of the problem. Any system that the Commission might adopt for delimiting the boundaries of territorial waters between neighbouring States would have to be linked with the system of delimiting the boundaries of the continental shelf.

65. The CHAIRMAN pointed out that since the continental shelf began beyond the limit of the territorial sea, the link was not quite so close as Mr. Zourek would imply.

66. Mr. CORDOVA supported Mr. Kozhevnikov's proposal. No great harm would be done if the Commission failed to reach a final decision on the continental shelf at the present session. At its third session, the Commission had adopted certain principles which it had reversed at the present one. Indeed, the Commission had discussed the question of the high seas five times all told, and there was some likelihood of another change of viewpoint at the next session.

67. Nor did he take a serious view of the lack of unanimity in the Commission.

68. Mr. KOZHEVNIKOV suggested that the Chairman put his motion to the vote in the following form: Should the discussion on article 7 be deferred? If so, for how long?

*The motion that the discussion of article 7 be deferred was carried by 11 votes to 1, with 2 abstentions.*

69. Mr. KOZHEVNIKOV proposed that the Chairman next put one of the following alternative proposals to the vote: that the discussion on article 7 be deferred until the Commission had concluded its examination of item 3 of the agenda (régime of the territorial sea); or that the discussion on article 7 be deferred until the Commission had concluded its examination of item 2 of the agenda (régime of the high seas) and of item 1 (arbitral procedure).

70. Although he would prefer the second alternative, he believed that the first was the correct one, and should be adopted.

71. Mr. ALFARO wished formally to move the Chairman's suggestion that discussion of article 7 be deferred for one day, namely, until Friday, 26 June 1953.

72. The CHAIRMAN said that he would put Mr. Kozhevnikov's alternative motions to the vote in the order in which they had been presented.

*Mr. Kozhevnikov's first alternative motion was rejected by 9 votes to 2 with 3 abstentions.*

*Mr. Kozhevnikov's second alternative motion was rejected by 9 votes to 2 with 3 abstentions.*

*Mr. Alfaro's motion—that discussion of article 7 be deferred until Friday, 26 June 1953—was adopted by 8 votes to none, with 6 abstentions.<sup>3</sup>*

#### Article 6 (resumed from above)

73. The CHAIRMAN said that before inviting Mr. Pal to introduce his proposal on article 6, he would ask Mr. Sandström to comment on his amendment to paragraph (1) of that article.

74. Mr. SANDSTRÖM said that he could not add very much to his previous comments, except that he had tried to draft a text which would cover the Special Rapporteur's comments on the necessity of keeping a balance between the various interests involved.

75. The CHAIRMAN felt that Mr. Sandström's amendment in no way differed from Mr. François' own proposal that the words "unjustified interference, taking into account the different interests involved" ("*d'une manière injustifiée en tenant compte des différents intérêts en cause*") be substituted for the words "substantial interference".

76. Mr. SANDSTRÖM said he was prepared to withdraw his amendment in favour of Mr. François'.

<sup>3</sup> See *infra*, 204th meeting, para. 1.

77. Answering the CHAIRMAN, he said that he considered that both texts raised the problem that the concept of the benefit of the community of States was difficult to define. That, however, was a general question, and its solution was surely to be found in Mr. Scelle's proposal for an additional article, the text of which read as follows:

"A permanent international organ should be empowered to investigate the methods of exploring or exploiting the continental shelf and to make certain that such exploration or exploitation does not interfere with the free use of the high seas. Any disputes which may arise between States concerning the exploration or exploitation of the continental shelf should be compulsorily submitted to the Permanent Court of Arbitration at the request of any of the parties."

78. Mr. SCELLE drew attention to the general character of his proposal.

79. Mr. LAUTERPACHT doubted whether Mr. Sandström's reference to the benefit of the community of States added anything to the meaning of the words "substantial" or "unreasonable", both of which had been proposed as terms to qualify the word "interference". The proper criterion was the relative importance of the interests involved. Who was to judge whether the community of States benefited more from boring for oil or from fishing? He maintained his view that the word "unreasonable" adequately expressed the Commission's intentions.

80. Mr. SANDSTRÖM withdrew his amendment.

81. Mr. SCELLE said that to use the term "*dérailsionnable*" in French would be *déraisonnable*, meaning foolish. The precise and unequivocal word which should be used in the French language was "*sensiblement*".

82. Mr. PAL submitted the following alternative text for article 6:

"1. The exploration of the continental shelf and the exploitation of its mineral (natural) resources must not result in any unreasonable interference with navigation or fishing.

"2. Subject to the provisions contained in clause 1, the rights of exploration and exploitation of the mineral (natural) resources shall include the right to construct and maintain requisite installations on the continental shelf for the actual exercise of those rights and to establish safety zones at a reasonable distance from and around such installations, where measures necessary for their protection may be taken.

"3. Such installations shall not have the status of islands for the purpose of delimiting the territorial sea.

"4. Due notice must be given of any such installations constructed, and due means of warning of the presence of such installations must be maintained."

83. Although it looked somewhat formidable, it followed the lines of the Special Rapporteur's proposal, except in paragraph (2), which opened with the words: "Subject to the provisions contained in clause 1,..." He proposed in that paragraph to confer on coastal States the right to construct and maintain installations on the continental shelf, the limitations of that right being already defined in articles 2, 3 and 4 of the draft rules. He had so framed his proposal as to circumvent the difficulty that article 6, as the Special Rapporteur indicated in his comment, might be interpreted as meaning that coastal States could exercise their right to construct and maintain installations as from the limit of the territorial sea.

84. Further, he had made a separate paragraph of the second sentence of paragraph (i) of the original text, on the ground that due notice of the construction of installations should be given in all cases, and not only in those when interference might be caused.

85. Finally, he had deleted the reference to fish production, since he believed that it would be difficult to define such production quantitatively.

86. The CHAIRMAN noted that Mr. Pal used the word "unreasonable" in paragraph 1 of his proposal, whereas Mr. Yepes used the word "unnecessary".

87. Mr. PAL said that he preferred the word "unreasonable" to any other. The word "unnecessary" might raise the question of the absolute necessity of exploring and exploiting the resources of the sea-bed and the subsoil, whereas the only point at issue was that such exploration and exploitation should not interfere with navigation or fishing.

88. Mr. LAUTERPACHT considered that Mr. Pal's re-draft of article 6 was on the whole preferable to the original version, and supported his use of the term "unreasonable" which might be rendered in French by "*d'une manière injustifiée*".

89. He would favour the inclusion of the reference to fish production.

90. Mr. PAL was prepared to accept Mr. Lauterpacht's suggestion.

91. The CHAIRMAN maintained his opposition to the inclusion of such a reference.

92. Mr. LAUTERPACHT suggested that the Commission take Mr. Pal's proposal as a basis for discussion and asked whether Mr. Yepes would be prepared to withdraw the first and second paragraphs of his proposal, while retaining the last, which dealt with the submission of disputes to the International Court of Justice or to an arbitral tribunal.

93. Mr. SCELLE considered that "*exagérément*", which was how "unreasonable" had been rendered in the French text, was far too strong a term. He favoured the term "*sensiblement*", which meant that exploration should not interfere with navigation or fishing constantly and to any appreciable extent. Slight interference would not matter. When shipping interests became

aware that they were being hampered by having to make long and consequently costly detours, then the situation would no longer be tenable. That notion was clearly conveyed by the French word "*sensiblement*".

94. Mr. KOZHEVNIKOV also thought that Mr. Pal's proposal could serve as a basis for article 6. The term which had been used in the original text in the Russian was "substantial" ("*sushchestvenniya*") interference, which was preferable to the new version—"unfounded" ("*neobosnovanniya*"). The latter introduced an element of doubt, and of possible conflicting interpretations. He also favoured the inclusion of the reference to fish production, which was a wholly different problem from that of fishing, and noted that Mr. Pal was prepared to accept Mr. Lauterpacht's view on the subject. Finally, he would suggest that his own proposal relating to article 6, which had already been adopted, should form paragraph 5 of Mr. Pal's proposal.

95. Mr. PAL confirmed that that was how he interpreted the Commission's decision.

96. Mr. CORDOVA said that he could accept neither the word "*sensiblement*" nor the original formula "substantial", since both conveyed the idea that installations could not be constructed if they substantially interfered with navigation. It might happen, however, that the interests of navigation or fishing in any given area would be so slight that there was no need to take them into account at all. It was, on the other hand, in the interest of all States to exploit the resources of the sea-bed and subsoil, and a proper balance must be kept between the various interests at stake. For that reason he would prefer the word "unjustifiable".

97. Faris Bey el-KHOURI said that the factor of reason did not come into the picture at all. Reasonableness was a criterion closely connected with the general concept of right or wrong. But the factors which came into play in the present instance were on the one hand the natural conditions and on the other hand prevailing political considerations. The concept of justification was accordingly the correct one to apply.

98. Finally, he would draw Mr. Pal's attention to the fact that he (Faris Bey el-Khoury) would advocate the use of the words "mineral and natural resources"; he was opposed to a choice between mineral and natural.

99. The CHAIRMAN recalled that the Commission had decided to suspend judgement on that point, with the result that the vote on Mr. Pal's proposal would be taken conditionally.

100. Mr. SCELLE said that all difficulties would be resolved if the Commission accepted his proposal for an additional article, together with the third paragraph of Mr. Yepes' proposal, which described methods for dealing with difficulties once they had arisen. As things stood at present, any word was as good as another. But if the Commission accepted the principle of arbitration, it would be for the arbitrators to decide any disputes.

101. Mr. YEPES took a somewhat different view of the problem. He thought the opportunity should be

taken to lay down one or two major principles, namely, that navigation should not be hampered, and that humanity should be enabled to profit from the resources of the sea-bed and subsoil. Since, however, the Commission seemed disinclined to accept that view, he would withdraw the first two paragraphs of his proposal and maintain the third.

102. He agreed with Mr. Scelle that "*sensiblement*" was the right word to use. It could, if desired, be amplified by the addition of the words "or in an unjustified manner ("*ou d'une manière injustifiée*")", as proposed by Mr. Lauterpacht.

103. The CHAIRMAN, speaking as a member of the Commission, withdrew his opposition to the inclusion in the first paragraph of the reference to fish production.

104. He would invite the Commission to vote on Mr. Lauterpacht's amendment on that point.

*Mr. Lauterpacht's amendment that the words "or in reducing fish production" be added to paragraph 1 of Mr. Pal's proposal was adopted by 11 votes to 2.*

105. Mr. CORDOVA said that he had voted against the amendment because he considered it unnecessary to refer to fish production.

106. The CHAIRMAN said that, although he personally agreed that the most suitable term would be "*sensiblement*", it would seem that the consensus of opinion tended to favour the use of the word "unjustifiable", which had the merit of being exactly translatable in all the official languages.

107. Mr. PAL agreed.

*The proposal that the word "unjustifiable" be substituted for the word "unreasonable" in paragraph 1 of Mr. Pal's proposal was adopted by 11 votes to none, with 2 abstentions.*

108. Mr. LAUTERPACHT considered that the purpose of paragraph 3 would be made clearer if the following sentence were added: "Such installations shall not have territorial waters of their own." That would make it clear not only that an installation could not be used as a factor for delimiting the territorial sea, but also that it had no territorial waters of its own.

109. Mr. PAL was prepared to accept Mr. Lauterpacht's suggestion.

110. Mr. FRANÇOIS drew attention to the fact that the point was covered in comment 4 to article 6 (A/CN.4/60, chapter IV). He had, however, no objection to the reference being included in the text itself.

111. Mr. CORDOVA suggested that the amendment might be inserted after the word "islands", and read: "and shall not have territorial waters of their own".

112. Mr. ALFARO assumed that the French text would therefore read: "*et n'auront pas des eaux territoriales qui leurs sont propres*".

113. Mr. KOZHEVNIKOV recalled that the Commission would, in due course, have to take a decision as to whether it used the term "territorial sea" or the term "territorial waters". He presumed that the vote on paragraph 3 of article 6 would not be interpreted as affecting that issue.

114. The CHAIRMAN confirmed that that was so.

115. Mr. HSU asked what was the meaning of the last clause of paragraph 3: "for the purpose of delimiting the territorial sea".

116. Mr. LAUTERPACHT explained that the consequences of regarding an installation as an island would be two-fold: first, the delimitation of the territorial waters of the mainland might be affected; secondly, apart from the question of proximity to the mainland, an installation viewed as an island might be considered as having territorial waters of its own. Paragraph 3 was intended to obviate those difficulties.

117. Mr. YEPES considered that the text of paragraph 3 was too far-reaching. It was hardly advisable to contemplate the possibility of the construction of such installations as might become artificial islands. He would therefore abstain from voting on the paragraph.

118. Mr. SPIROPOULOS, speaking in explanation of his vote, said that he would vote against paragraph 3 because, according to international law, there was no doubt whatsoever that only an island, and an island alone, could have the status of an island. A heap of stones could be an island, and it would be subject to international law.

119. Mr. SCALLE agreed with Mr. Lauterpacht. A government which was lacking in good faith might pretend that its installation was an island. It was consequently necessary to state the prohibition in relation to the territorial sea.

120. Mr. CORDOVA pointed out that the Commission was concerned with the high seas and not with territorial waters. It was true that an installation might well be the size of an island. The purpose of paragraph 3 was to ensure that an installation should not serve as the starting point for the delimitation of territorial waters. In all other respects, however, an installation must have the same status as an island. In other words, it must come under the jurisdiction of the coastal State. Some jurisdiction must be applicable to an installation; otherwise what would happen if a crime were committed on it? Obviously, that must fall under the jurisdiction of the coastal State. Thus, the sovereignty of the coastal State could be extended to new areas on the high seas.

121. Faris Bey el-KHOURI considered that paragraph 3 was unnecessary. No lawyer, geographer or politician could possibly concede to an installation the status of an island. Everybody knew perfectly well what an island was, and there was no need to direct attention to the issue.

122. Mr. HSU proposed that paragraph 3 be amended by the deletion of the last clause. The text would there-

fore read: "Such installations shall not have the status of islands." He made his proposal in the light of Mr. Córdova's comments on the difficulties which might arise.

123. Mr. LIANG (Secretary to the Commission) thought that the text would be clearer if it were amended to read: "Such installations shall not be assimilated to islands..."

124. Mr. ALFARO proposed the following amendment: "Such installations shall not have the status of islands and the waters of the safety zones shall not have the character of territorial waters."

125. Mr. CORDOVA emphasized that it was essential to define the source of jurisdiction for installations.

126. Mr. FRANÇOIS thought that explicit reference to the jurisdiction of the coastal State was hardly necessary. It might perhaps be included in a comment.

127. He did not agree with Mr. Spiropoulos. The question of artificial islands was highly controversial, and it was essential to state that the installations should not have the status of islands.

128. Mr. ZOUREK drew attention to the fact that, since Mr. Pal had accepted the addition of a fifth paragraph to his proposal, reference thereto should be made in the first clause of paragraph 2.

129. Mr. PAL said that he would not that point.

130. Answering Mr. Hsu, Mr. LAUTERPACHT said that he could not support the suggestion that part of the text of paragraph 3 be deleted.

131. Mr. SCALLE wished to draw the Commission's attention to the fact that it must guard against establishing one juridical system for islands and another for the continental shelf.

132. The CHAIRMAN said that it would obviously be premature to put Mr. Pal's proposal to the vote forthwith. The vote should be deferred until the next meeting.

*It was so agreed.*

The meeting rose at 1.5 p.m.

## 202nd MEETING

*Thursday, 25 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) ( <i>continued</i> )	
Chapter IV: Revised draft articles on the continental shelf and related subjects	
Part I: Continental shelf	
Article 6 ( <i>continued</i> ) . . . . .	112
Additional article relating to arbitration . . . . .	113