

Document:-  
**A/CN.4/SR.202**

**Summary record of the 202nd meeting**

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

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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.*

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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.

*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 invited the Commission to continue its consideration of paragraph 3 of Mr. Pal's text,<sup>1</sup> which read :

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

2. Mr. FRANÇOIS (Special Rapporteur) said that the discussion at the previous meeting had shown that most of the members of the Commission were in favour of stating explicitly that, although the coastal State had jurisdiction over installations set up on the continental shelf, such installations would not possess a territorial sea of their own. He therefore proposed the following wording for paragraph 3 of Mr. Pal's text :

"Such installations, though under the jurisdiction of the coastal State, shall not have the status of islands. They shall have no territorial sea of their own and their presence shall not affect the delimitation of the territorial sea of the coastal State."

3. Mr. PAL accepted the Special Rapporteur's wording.

*The Special Rapporteur's amendment was adopted by 9 votes to none, with 3 abstentions.*

4. Mr. YEPES said that he had abstained from voting because he regarded the proposed provision as superfluous. It was self-evident that installations would not have the status of islands.

5. Mr. SANDSTRÖM, referring to paragraph 4 of Mr. Pal's text,<sup>2</sup> said that several governments had pointed out that States should give notice before starting to construct installations. He therefore con-

sidered that the words "any such installations constructed" should be replaced by the words "the construction of such installations".

6. Mr. SCELLE said that paragraph 4 of Mr. Pal's text was unsatisfactory. He proposed that it be amended to read :

"The State concerned must give notice of any installations constructed or any places for installations it proposes to construct and must maintain the necessary means of warning of the presence of such installations."

[*"L'état intéressé devra donner avis des constructions et plans d'installations qu'il entend faire et entretenir les moyens permanents de signalisation nécessaire."*]

7. Mr. FRANÇOIS said that he was disturbed by the inclusion of the word "*plans*" in Mr. Scelle's text, which would constitute an entirely new departure by making it obligatory for coastal States intending to construct installations to submit the plans to other States for approval.

8. Mr. KOZHEVNIKOV said that if Mr. Scelle could see his way to withdrawing the reference to "*plans*", his text might be acceptable.

9. Mr. SANDSTRÖM, in support of Mr. Scelle, drew attention to the second sentence in paragraph 2 of the comment on article 6 (A/CN.4/60, chapter IV) which read : "Wherever possible, notification should be given in advance."

10. Mr. SCELLE observed that prevention was better than cure. The advantages of providing against the possibility of disputes were obvious.

11. The CHAIRMAN, speaking in his personal capacity, agreed with Mr. François that Mr. Scelle had introduced a new concept into paragraph 4. It would be going too far to ask coastal States which exercised sovereignty over the continental shelf to submit in advance, to other States, their plans for the construction of installations. Furthermore, even if adopted, such a provision would not prevent States from pursuing their projects.

12. Mr. CORDOVA said that the rights of coastal States had already been qualified in paragraph 1. If they were further restricted by a requirement of the kind advocated by Mr. Scelle, disputes would inevitably arise about the construction of installations.

13. Mr. FRANÇOIS asked whether Mr. Scelle would be satisfied with the addition at the end of paragraph 4 of the words, "Wherever possible, notification should be given in advance".

14. Mr. SCELLE replied that such an amendment would not give him entire satisfaction because it would not allay his anxiety about the effect upon navigation and other international interests of allowing the coastal State full freedom of action in the waters above the continental shelf. He also feared that preparations for

<sup>1</sup> See *supra*, 201st meeting, para 82.

<sup>2</sup> "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."

exploiting the natural resources of the shelf might prove more of a hindrance to navigation than the exploitation itself.

15. The CHAIRMAN said that, although he agreed to some extent with the views expressed by Mr. Kozhevnikov and Mr. Córdova, he was also anxious that the interests of the international community should not be threatened. He pointed out to Mr. Scelle that coastal States would not necessarily wish to endanger in any way the principle of freedom of navigation.

16. Mr. YEPES considered that paragraph 4 was unnecessary and too detailed and should be deleted.

17. Mr. SPIROPOULOS said that it had always been the practice of States to give warning of any danger to shipping which might arise from the erection of installations in the sea—the more so as they would be responsible for any accident which might occur. It might, therefore, be possible to follow Mr. Yepes' advice and delete paragraph 4.

18. However, if it were retained, Mr. Scelle's point would surely be covered by the words "due notice".

19. Mr. FRANÇOIS emphatically warned the Commission against following Mr. Yepes' advice. It would be inadmissible to allow States to construct installations without giving due warning, providing danger signals and indicating the position of the installations on maritime charts. A mandatory provision of that kind was absolutely indispensable.

20. Mr. KOZHEVNIKOV said that no one disputed the need for giving due warning of the presence of installations. Paragraph 4 of Mr. Pal's text was perfectly clear, and would suffice for the purpose. The point raised by Mr. Scelle could be dealt with in the comment.

21. Mr. SPIROPOULOS suggested that Mr. Scelle's point might be met by the substitution of the words "the construction of installations" for the words "any such installations constructed", which would ensure that notice was given as soon as erection began.

22. Mr. YEPES, in reply to Mr. François, said that he had never argued that there was no need to give warning of installations. All that he had sought to emphasize was that there was no need for a detailed provision on the matter.

23. Mr. FRANÇOIS said that, in the light of the discussion, he now felt that it would be preferable to leave the text of paragraph 4 as it stood in Mr. Pal's proposal. The point raised by Mr. Scelle could be dealt with in the comment.

24. Mr. LAUTERPACHT and Mr. ALFARO agreed with the Special Rapporteur.

25. The CHAIRMAN put to the vote Mr. Pal's text for paragraph 4.

*Mr. Pal's text was adopted by 10 votes to 1, with 2 abstentions.*

26. Mr. YEPES said that he had voted against the text, which he regarded as superfluous, for the reasons he had already given.

*Article 6 as a whole was adopted unanimously.<sup>3</sup>*

*Additional article relating to arbitration*

27. The CHAIRMAN invited the Commission to consider Mr. Scelle's proposal for an additional article to read:

"A permanent international organ should be empowered to investigate the methods of exploring and 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".

28. Mr. YEPES said that he wished to submit an alternative text to read:

"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."

29. Mr. SCELLE said that his text had been inspired by article 2 in Part II of the draft rules relating to resources of the sea (A/CN.4/60, chapter IV). The arguments in favour of a provision of that kind on fisheries applied all the more to the exploration and exploitation of the continental shelf.

30. Mr. CORDOVA suggested that the first sentence in Mr. Scelle's text was not drafted in a form suitable for incorporation in an article, as it was more in the nature of a recommendation.

31. Mr. ALFARO endorsed the idea underlying Mr. Scelle's text. The protection of the freedom of the seas was indeed a noble aspiration. However, the provision as part of a draft convention should not be drafted as a mere recommendation, but should be cast in the form of an undertaking to arbitrate. He therefore proposed the following text:

"Should a permanent international organ be created with power 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 and its effect on navigation and fishing shall be submitted to such international organ. Disputes of the same nature outside the competence

<sup>3</sup> See however *infra* 205th meeting, para. 69.

of such an organ shall be submitted to the Permanent Court of Arbitration.”

If his proposal were rejected, he would vote for Mr. Scelle's text.

32. Mr. SANDSTRÖM asked whether Mr. Scelle envisaged the permanent international organ examining the actual methods of an exploration or exploitation. Surely the situation was not at all analogous with that provided for in article 2 of part II (Resources of the Sea) concerning fisheries (A/CN.4/60, chapter IV)? He would therefore propose the substitution of the words “plans for” for the words “methods of”.

33. Mr. LIANG (Secretary to the Commission) said that there was a similarity between the substance of Mr. Scelle's proposal and article 2 of part II. It would be remembered that, before a last minute change, the Commission, at its third session in 1951, had intended in the latter text to designate the United Nations Food and Agriculture Organization as the permanent international body empowered to conduct continuous investigations of the world's fisheries.<sup>4</sup> There was, however, a difference in that FAO was an existing permanent organization, whereas the organ contemplated by Mr. Scelle had to be created. He doubted whether FAO would have jurisdiction over the matters under discussion.

34. Mr. KOZHEVNIKOV said that, though he had not participated in the discussion on the Special Rapporteur's draft at the third session, he supposed that Mr. Scelle's proposal had been prompted by anxiety to safeguard the principle of the freedom of the high seas. But his purpose was achieved by the articles already adopted. Mr. Scelle's text went a very long way, and would result in the creation of a supranational organ which might threaten the interests of States. That would be entirely contrary to international law, the purpose of which was to reconcile the interests of sovereign States. He would therefore vote against the text.

35. Mr. HSU said that he wholeheartedly supported the principles underlying Mr. Scelle's proposal, but could not accept Mr. Sandström's suggestion that the function of the permanent international organ should be limited to reviewing projects for exploration or exploitation. It was conceivable that certain States might lack the technical knowledge to exploit the resources of their continental shelf. They would therefore need the advice and help of an international organ in the matter.

36. Mr. PAL said that as the Commission was virtually creating new rights pertaining to the continental shelf, it would be appropriate to make provision for the settlement of disputes which might arise concerning them. Though he agreed with Mr. Scelle's purpose, he believed the provision should be cast in simpler form and, therefore, proposed the following wording:

“Any disputes between States arising out of or in

relation to the exercise of the right of exploration or exploitation of the continental shelf shall be submitted to arbitration (the Permanent Court of Arbitration) at the instance of any of the parties.”

37. Mr. SCELLE asked whether Mr. Pal was in favour of the deletion of the first sentence from his (Mr. Scelle's) text.

38. Mr. PAL replied in the affirmative.

39. Mr. CORDOVA considered the first sentence in Mr. Scelle's text unnecessary. The second sentence should be acceptable if its application were not restricted solely to disputes concerning fishing or navigation. Other matters connected with the continental shelf might give rise to conflicts between States and should also be submittable to arbitration. If, however, Mr. Scelle's intention was that the permanent international organ should exercise, as it were, police control over coastal States, he could not accept it. The permanent international organ should only intervene if coastal States exceeded their rights as laid down in the rules being drawn up by the Commission.

40. Mr. FRANÇOIS said that he could not agree that Mr. Scelle's proposal was analogous to article 2 of part II. The permanent international body referred to in the latter text was a purely scientific advisory organ. If in the former the functions of the permanent international organ were to be restricted to studying the best methods of protecting the freedom of navigation, the objections it had raised would be largely met.

41. Mr. YEPES was in entire agreement with the principles underlying Mr. Scelle's proposal. There was no reason to fear the limitation it placed upon the exercise of sovereignty by coastal States. The Commission had already stated in its draft Declaration on the Rights and Duties of States that the sovereignty of each State was subject to the supremacy of international law. However, he saw no need for creating a new international organ to exercise functions which might well be discharged by the Economic and Social Council of the United Nations. He therefore proposed an alternative text for that submitted by Mr. Scelle reading:

“The Economic and Social Council, through one of its organs, shall 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 or with the conservation of the resources of the sea. The Economic and Social Council shall issue the results of these investigations in the form of an advisory opinion.”

42. Mr. LAUTERPACHT hoped that the second sentence in Mr. Scelle's text would be accepted subject to certain modifications. He agreed with certain other members of the Commission that it was unnecessary to create a new supranational organ with compulsory jurisdiction over States and therefore proposed the following text for the first sentence:

<sup>4</sup> See *Yearbook of the International Law Commission, 1951*, vol. I, 132nd meeting, para. 59.

“A permanent international organ shall be created for the purpose of making investigations and recommendations concerning the methods of exploring and exploiting the continental shelf and safeguarding the freedom of the seas.”

43. Faris Bey el-KHOURI pointed out that Mr. Scelle's text could not be interpreted to mean that a new organ must necessarily be created. In his own view, existing organs of the General Assembly were competent to investigate disputes connected with the continental shelf.

44. He could not support the second sentence in Mr. Scelle's text because it provided for compulsory arbitration. He believed that States should be free to choose the method for the settlement of the dispute according to the provisions of article 33 of the Charter of the United Nations.

45. The CHAIRMAN, speaking as a member of the Commission, said that he could not support any of the proposals before the Commission, from a conviction that States should be free to exploit the continental shelf without its methods being subject to control by a permanent international organ. Furthermore, it would be extremely difficult to select any international organ for the purpose, since it would have to be highly qualified both on the scientific and the legal side. He did not share Mr. Scelle's view regarding the predatory instinct of States and preferred to act in the belief that they would not abuse their rights.

46. Mr. SANDSTRÖM said that, taking into account the points made by the Special Rapporteur, he had prepared an alternative text for the first sentence of Mr. Scelle's proposal, reading:

“A permanent international organ shall be empowered to give its opinion, at the request of a State concerned, on the question whether intended exploration or exploitation of the continental shelf will interfere with the free use of the high seas.”

47. Mr. SCELLE, replying to the points made concerning his text, said that he had never suggested that the permanent international organ should carry out police functions of supervision over the exploration and exploitation of the continental shelf.

48. Faris Bey el-KhourI had been perfectly right in thinking that he had not envisaged the creation of a new organ. The powers conferred upon the Economic and Social Council under the Charter would enable it to exercise the functions he had in mind. It could, for instance, set up a commission for the purpose of making general recommendations on the exploitation of the continental shelf so as to ensure that there was no interference with navigation and fishing. The commission would be of a technical character, and not dissimilar to other functional commissions of the Council.

49. He would probably be able to accept Mr. Sandström's and Mr. Alfaro's proposals, though both of them went somewhat further than his own.

50. In answer to Mr. Kozhevnikov, he said that the freedom of the seas must be safeguarded. It was also

essential to make every effort to obviate the possibility of international disputes about the continental shelf. Such disputes could be prevented if a commission of the kind he had in mind were set up.

51. Mr. HSU considered that the second clause of the first sentence of Mr. Scelle's proposal really belonged to the second sentence, being relevant to the problem of the application of the principle of the freedom of the seas and to such disputes as might arise between States concerning the exploration or exploitation of the continental shelf.

52. The first problem, however, was that of setting up an international organ. He believed that what the Commission really had in mind was a body functioning on lines similar to those of the specialized agencies which worked full time and did carry out administrative work. The commissions which were created by and functioned under the aegis of the Economic and Social Council generally dealt with principles, and performed specific tasks which were assigned to them. If the problem were viewed from that angle, Mr. Sandström's proposal was perhaps too restrictive.

53. Mr. ALFARO said that Mr. Scelle had rightly expressed the opinion that his (Mr. Alfaro's) proposal went farther than his own (Mr. Scelle's). The reason was that he believed in the principle of promoting international co-operation. The sense of interdependence was stronger today than the doctrine of sovereignty, which was being daily curtailed. Indeed, even membership of the United Nations implied some limitation on national sovereignty. He was in favour of the international supervision of and control over the continental shelf, and would draw the attention of members to a chapter in Mouton's work *The Continental Shelf* (The Hague, 1952, entitled: “Is international control (supervision) possible or desirable”? (p. 309). It was stated in that chapter that at the Conference of the International Law Association held at Copenhagen in 1950 Lapradelle had expressed his views on the continental shelf as follows:

“The control of and jurisdiction over all maritime installations should be vested in an international organization in which all nations should be able to be represented, either directly or indirectly”. [translation]

54. Mouton expressed views on identical lines. Whatever the final form given to Mr. Scelle's proposal, he would vote in favour of the principle of international supervision and the principle of the peaceful settlement of disputes concerning the continental shelf.

55. Mr. SPIROPOULOS wished to comment on the statement that the Economic and Social Council was competent to create commissions or organs at will. He failed to see how the relevant articles of the Charter could be interpreted in that sense. The Economic and Social Council was empowered to prepare draft conventions for submission to the General Assembly, but it could not create commissions, attribute powers to them and impose them upon States. Current practice within the United Nations supported that view.

56. Mr. SCELLE disagreed with Mr. Spiropoulos, and cited the Commission on Human Rights as an example of a commission created by the Economic and Social Council. The latter was ultimately dependent on the General Assembly, but there could be no question of its competence to create commissions.

57. Mr. SPIROPOULOS said that all the General Assembly could do was to draft a text and submit it to governments for their acceptance. It could impose nothing on governments.

58. Mr. SCELLE protested against such an interpretation, and cited paragraph 1 of Article 62 of the Charter in support of his view. It went without saying that the Economic and Social Council could not impose any decisions taken by any commissions it might create.

59. Mr. KOZHEVNIKOV wished to amplify his preceding comments. The arguments in favour of creating an international organ had not convinced him. The conception that the proposed organ should have wide powers of investigation, control and supervision, and that it should be competent to lay down certain rules, was fundamentally a faulty one. Its advocates started out from a false premise, namely, that no trust could be placed in the good will of States. He would submit that it was wrong to build up a system of international law on such a premise. His view was inspired by faith in the good will of States and in a reasonable correlation between the interests of sovereignty and the interests of international co-operation. He failed to see how any agreement could be secured unless good will were assumed. Every question was capable of solution on the basis of mutual agreement between States. That was why it was wrong to try and impose a dictatorial organ upon peace and good will. It was possible to set up a body for consultation and research, but it was unnecessary, since the Charter provided full opportunities for such methods. He agreed with Faris Bey el-Khoury on that point.

60. Mr. CORDOVA asked whether Mr. Yepes would be prepared to include the word "unjustifiably" after the word "interfere" in the fourth line of his proposal.

61. Mr. YEPES accepted Mr. Córdova's suggestion. Commenting on his own proposal, he said that he took the view that the Economic and Social Council was the proper organ to institute inquiries and to make certain that there was no interference with the freedom of the seas or with the conservation of resources. He supported Mr. François' conception that the proposed organ should merely function in a consultative capacity and offered his proposal as a synthesis of the views expressed in the course of the debate.

62. Mr. KOZHEVNIKOV considered that it was difficult for the Commission to vote on particular proposals before it had taken a decision on the issue of principle. Should an international organ be set up or not? That was the first question that the Commission must answer.

63. Mr. FRANÇOIS was not in favour of voting on principles. In the present instance he failed to see how the Commission could vote on whether an international organ should or should not be set up, since that decision must be taken in the light of what the functions and competence of that organ were to be. The Commission must vote on the basis of concrete proposals, taking Mr. Yepes' first. For his part, he preferred Mr. Lauterpacht's proposal because it was more general. It was the better part of wisdom to leave the General Assembly a free hand, the more so as certain doubts had been expressed with regard to the competence of the Economic and Social Council. Could Mr. Yepes not withdraw his proposal in favour of Mr. Lauterpacht's?

64. Mr. LIANG (Secretary to the Commission) noted that both Mr. Lauterpacht's and Mr. Sandström's proposals referred to a "permanent international organ". At the same time, article 2 of part II (A/CN.4/60, chapter IV) clearly fell within the terms of reference of FAO. But was it really necessary to have a permanent international organ merely for purposes of investigation?

65. Mr. SANDSTRÖM said that he would be prepared to delete the word "permanent".

66. Mr. KOZHEVNIKOV did not agree with the interpretation which Mr. François had placed on his proposal that a vote should be taken on the principle. The issue of the competence of various United Nations bodies was of secondary importance. His view was that no international organ should be set up.

67. The CHAIRMAN pointed out that he was averse to giving rulings, and preferred the Commission to make its attitude clear on such proposals as that made by Mr. Kozhevnikov.

68. He also agreed with Mr. Spiropoulos that neither the Economic and Social Council nor the General Assembly could impose an international organ on governments. The creation of a body with such wide powers as Mr. Scelle envisaged would place it outside the framework of current international law.

69. Finally, he did not agree with the views expressed regarding the curtailment of sovereignty. Limitations of sovereignty were voluntarily accepted by States; there, again, the factor of good will came into play.

70. Mr. CORDOVA doubted whether the Commission could address to the General Assembly a recommendation which was more of a political than of a juridical nature. Actually, the Commission proposed to suggest to governments the creation of a body which would have powers of policing. That type of recommendation had nothing whatsoever to do with the codification of international law or its progress and development. According to the Charter, the Economic and Social Council was competent to make recommendations of that type, but the International Law Commission was not.

71. The CHAIRMAN stated that the Commission must vote on Mr. Lauterpacht's, Mr. Sandström's and

Mr. Yepes' amendments to Mr. Scelle's proposal. The last-named was the farthest removed from the original.

72. Mr. SCELLE said that he wholly agreed with Mr. Lauterpacht's proposal, which was surely of such a character as to allay Mr. Kozhevnikov's apprehensions. The proposed permanent organ would study questions in the abstract, and would give considered opinions, acting as a consultative body. It was not intended to create an organ which would be a kind of police court.

73. It was possible to go further than Mr. Lauterpacht had gone, but his proposal offered an acceptable basis.

74. Mr. LAUTERPACHT, answering the Secretary, said that his proposal referred to a permanent organ, because the latter should study scientifically the technical questions arising with regard to the continental shelf, research being aimed at eliminating and preventing possible friction between the owners of adjoining continental shelves. There was no reason why the proposed organ should be expensive, but surely the discussion had shown that it was necessary.

75. Mr. YEPES supported Mr. Kozhevnikov's proposal that a vote should be taken on the principle.

76. Answering Mr. François, he said that he had related his proposal to the Economic and Social Council for the simple reason that that was the appropriate existing organ. There was consequently no need to set up another body. Furthermore, there was also FAO, which was competent to deal with certain questions arising with regard to the continental shelf.

77. Mr. SPIROPOULOS pointed out that an organ could be permanent and yet not work full time. That, indeed, was how the International Court of Justice functioned. Unless the life of an organ were expressly limited, it was permanent even if it only met when necessary. He offered those comments for the sake of clarification. He had no views on the question as such.

78. Mr. KOZHEVNIKOV having reiterated his proposal that the Commission should first take a vote on the principle,

79. Mr. LAUTERPACHT expressed the view that in order to prevent future difficulties the Commission should formally decide not to vote on principles but only on concrete proposals.

80. Faris Bey el-KHOURI said that the question of principle was in any case contained in Mr. Lauterpacht's proposal. Those who voted against it would vote against the principle.

81. Mr. KOZHEVNIKOV strongly objected to Mr. Lauterpacht's suggestion, and held that it was impossible to prevent the Commission from voting on principles. After all, the Commission was supposed to be formulating principles. Mr. Lauterpacht's suggestion was entirely contrary to democratic procedure.

82. Mr. HSU asked the Chairman to invite the Commission to decide whether it wished to vote on the

issue of principle in accordance with Mr. Kozhevnikov's motion.

83. Mr. SPIROPOULOS said that, according to the Commission's rules of procedure, it was usual for votes to be taken on concrete proposals incorporated in documents. But the possibility of voting on principles was not expressly precluded. Indeed, he could himself recall at least two occasions when a vote on principle had been taken in the Sixth (Legal) Committee of the General Assembly. If the Chairman did not wish to give a ruling, he should consult the Commission.

84. Mr. PAL said that even if the Commission agreed to vote on an issue of principle, that principle must first be formulated.

85. The CHAIRMAN invited the Commission to vote on Mr. Kozhevnikov's proposal that the issue of principle should be voted upon before the several proposals before the meeting were put to the vote.

*Mr. Kozhevnikov's proposal was rejected by 8 votes to 4, with 1 abstention.*

86. Mr. SCELLE asked Mr. Lauterpacht whether he would be prepared to add the words "by the Economic and Social Council" after the word "created" in order to meet Mr. Yepes' point.

87. Mr. LAUTERPACHT said that it would be difficult for him to accept such an amendment.

88. Mr. LIANG (Secretary to the Commission) drew Mr. Scelle's attention to Article 66, paragraph 3, of the Charter, which read in part as follows:

"It [the Economic and Social Council] shall perform such other functions . . . as may be assigned to it by the General Assembly".

If the words "by the Economic and Social Council" were not included in Mr. Lauterpacht's proposal, a request by the International Law Commission to the General Assembly would suffice. The proposal, however, was perhaps worded somewhat peremptorily.

*Mr. Yepes' proposal was rejected by 8 votes to 1, with 3 abstentions.*

89. Faris Bey el-KHOURI said that he would vote against Mr. Lauterpacht's proposal. The text was not sufficiently clear. Would a State have to secure the permission of the proposed organ before it started exploring and exploiting the continental shelf? Viewing the problem from the other angle, would the proposed organ investigate and recommend on its own initiative or would it wait until it was requested to do so?

90. Mr. CORDOVA said that he would vote against Mr. Lauterpacht's proposal, since the Commission was neither competent to create an organ nor to address to the General Assembly a recommendation which was not of a juridical nature.

91. Mr. SANDSTRÖM assumed that the recommendation would be addressed to governments.



92. Mr. CORDOVA emphasized that, in his view, the proposed recommendation fell entirely outside the framework of the draft on the continental shelf.

93. Mr. YEPES said that he would vote in favour of Mr. Lauterpacht's proposal, because it expressed the principles which Mr. Scelle advocated, but proposed that it be amended by the inclusion of the words "and the conservation of the resources of the sea" after the words "freedom of the seas".

*Mr. Lauterpacht's proposal was rejected by 7 votes to 6.*

*Mr. Sandström's proposal was rejected by 7 votes to 6.*

94. The CHAIRMAN said that the vote on Mr. Scelle's proposal would be deferred until the next meeting.

The meeting rose at 1 p.m.

### 203rd MEETING

*Friday, 26 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. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES.*

*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

*Additional article relating to arbitration (continued)*

1. Mr. PAL proposed that the second sentence in Mr. Scelle's text<sup>1</sup> be replaced by the following words:

"Any disputes between States arising out of or in relation to the exercise of the right of exploration or exploitation of the continental shelf, shall be submitted to arbitration or judicial settlement at the instance of any of the parties."

2. Such a provision would apply to all disputes, of whatever nature, and should remove the difficulties mentioned during the discussion.

3. Mr. YEPES asked whether there was any difference between Mr. Pal's proposal and his own text, in which disputes concerning the interpretation or application of the provisions of the draft were to be decided by the International Court of Justice or by an arbitral tribunal constituted in accordance with the rules adopted by the Commission.

4. Mr. SPIROPOULOS replied in the affirmative. In the first place, Mr. Yepes' text referred to disputes, whereas Mr. Pal's was restricted to disputes connected with the exploration or exploitation of the continental shelf. Secondly, the former mentioned an arbitral tribunal constituted according to the rules adopted by the Commission, whereas the latter spoke of arbitration in general.

5. Mr. KOZHEVNIKOV said that, without seeing Mr. Pal's text in writing, it would be difficult for him to give his considered opinion. On first hearing, however, it seemed that it should be rendered more flexible by the substitution of the words "conciliation procedure" for the words "arbitration or judicial settlement", and by the deletion of the words "any of" from before the words "the parties".

6. Mr. LAUTERPACHT said that the articles of the draft on the continental shelf constituted a significant step, which might be interpreted in some quarters as potential interference with the freedom of the seas and other important principles of international law. Certain safeguards had, it was true, been provided. However, the Commission and governments could only be assured that the principle of the freedom of the seas had not been abandoned if provisions were inserted to give effect to those safeguards. He therefore considered the provision under consideration to be an essential part of the draft.

7. He hoped that the Commission would not accept Mr. Kozhevnikov's amendment, which its author had described as introducing a measure of elasticity into Mr. Pal's text. In reality, the result of the adoption of that amendment would be to nullify the purpose of the proposal, which was the final settlement of disputes. Conciliation would offer no solution seeing that the procedure of conciliation did not result in a finding binding the parties. It could not prevent unrestricted unilateral action by States.

<sup>1</sup> See *supra*, 202nd meeting, para. 27.