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Summary record of the 203rd meeting

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

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92. Mr. CÓRDOVA 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.

CONTENTS

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

Rapporteur : Mr. H. LAUTERPACHT.

Present :

Members : Mr. Ricardo J. ALFARO, Mr. Roberto CÓRDOVA, 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 [1] 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.

[1] See *supra*, 202nd meeting, para. 27.

8. The first difference between Mr. Pal's and Mr. Yepes' texts mentioned by Mr. Spiropoulos was an obvious one. Moreover, there were disputes that might not be covered by either of the texts. For instance, Mr. Yepes had not envisaged the possibility of disputes arising between two adjacent States, as a result of the uneconomic and wasteful exploitation by one of them of a common oil deposit in their respective continental shelves. There was a whole range of possibilities that would not be covered by Mr. Pal's wording, which might, therefore, be extended by the substitution of the words "concerning the exploration or exploitation of the continental shelf or concerning the interpretation of these articles" for the words "arising out of... continental shelf".

9. Mr. KOZHEVNIKOV regretted that a fundamental cleavage of opinion should have emerged which had dashed his first hope that a large measure of agreement might be reached on the article under consideration. He could not accept Mr. Lauterpacht's contention that his amendment was contrary to the purpose of Mr. Pal's draft. Surely the Commission had already rejected the notion that States would be under an obligation to submit disputes to a definite procedure for settlement. To impose methods for the peaceful settlement of disputes was a veritable contradiction in terms. He had not proposed anything new in his amendment, which had been inspired by the wise addition to article 7 suggested by the Special Rapporteur in his fourth report.

10. Mr. FRANÇOIS (Special Rapporteur) remained a faithful protagonist of arbitration, but doubted whether the Commission would be wise to adopt either Mr. Yepes' or Mr. Scelle's text. Its task was the codification of international law, not its practical application. What the Commission had to do was to decide what should be the rule in any particular instance. To introduce a clause at every stage in the Commission's work on specific texts, concerning the obligatory submission of disputes to arbitration would be outside its competence and would diminish the possibility of acceptance by governments of the rules of law it was concerned to codify. That consideration must of necessity be a guiding one. He did not wish in any sense to argue that such a clause was always inappropriate. Indeed, it had its proper place in cases where it was impossible to draft rules with any precision, and when the special circumstances of each case had to be taken into account. In such matters the Commission had to convey its responsibility to the arbitral tribunal, which would then begin to fulfil legislative functions. He fully recognized, for instance, that there are certain articles in the draft, and notably articles 2 and 7, dealing with very special matters, whose scope was so indefinite that the parties must accept the obligation to submit to arbitration any dispute about their interpretation or application.

11. He could not, however, accept a general clause on compulsory arbitration applicable to the whole draft, particularly as the draft had now been made more precise. There was nothing, on the other hand, to prevent the Commission from stating in the commentary that if many States felt that it would be impossible to accept the draft in the form of a convention without such provision for compulsory arbitration, it could be included, together with an article allowing for reservations on that point.

12. Mr. Faris Bey el-KHOURI was unable to agree with Mr. Lauterpacht's reading of the effect on Mr. Pal's text of Mr. Kozhevnikov's amendment. As he had already stated at the previous meeting (para. 44), the parties should be free to choose any of the methods, including "other peaceful means of their own choice" for the settlement of their disputes, enumerated in Article 33 of the Charter of the United Nations. If they failed to agree after one or more of those methods had been tried, their dispute would probably become a threat to the maintenance of international peace and security, and would accordingly be brought within the orbit of the Security Council. He was convinced that the freedom of choice of the parties as to the method of settlement to be used must be safeguarded.

13. Mr. SPIROPOULOS said that as a jurist who was at the same time a citizen of the small State which had been the cradle of arbitration, he was naturally an adherent of that procedure. But, as the Special Rapporteur had said, the task of the Commission was to codify international law and to establish rules governing the relations of States. Surely it could not be argued that in each case provision must be made for compulsory arbitration. He therefore asked the Commission to consider whether it would be wise to accept so general a provision as that envisaged by Mr. Yepes. If analogous clauses were included in every convention, States would be hesitant to ratify them, and the practical application of the rules codified by the Commission would thereby be hampered.

14. The Commission had already adopted a general draft on arbitral procedure. If accepted by States, the whole problem facing the Commission at the present moment would be solved, since all disputes would be submittable to arbitration. For the special instances referred to by the Special Rapporteur, where no general rule could be devised for technical reasons, special provision could be made for arbitration of limited scope.

15. To reinforce his argument, he pointed out that there would be nothing to prevent States from adding a general clause on compulsory arbitration to the draft if it finally took the form of a convention. At the present stage, however, the Commission was not in a position to foresee the ultimate fate of the text. If the General Assembly went no further than to take note of it, a general arbitral clause would be totally ineffective. For those reasons he was opposed to the several proposals before the Commission.

16. Mr. LIANG (Secretary to the Commission) referring to the second sentence in Mr. Scelle's draft, said that there could be no doubt that it would be desirable to have a general article at the end of part I of the draft concerning the interpretation of the articles and the settlement of disputes arising therefrom. The

question was whether the provision should apply to all articles, or only to those concerning the exploration and exploitation of the continental shelf. He did not consider it inappropriate to include such a clause, since any legal text, whether codifying or developing existing rules, must specify some procedure for the settlement of disputes. That was all the more true of a draft on the continental shelf, since there was very little customary law on it. In that connexion he agreed with Lord Asquith's view (A/CN.4/60, mimeographed English text, p. 52; printed French text, No. 111), that the Commission's work in the field was more in the nature of progressive development of law than its codification. A general clause for compulsory arbitration would, moreover, ensure further development by leading to a whole series of arbitral decisions. Without the creation of such case law, the Commission's texts would never pass beyond the theoretical stage.

17. He added that the words "to the Permanent Court... of any of the parties" in Mr. Scelle's text were not sufficiently precise. Moreover, the Permanent Court of Arbitration was merely a panel, and not a judicial body. Those words might therefore be replaced by the words "to a tribunal to be established according to the provisions of The Hague Convention of 1907."

18. As a matter of procedure, he suggested that as certain amendments to Mr. Scelle's first sentence had been voted on at the previous meeting, that text itself should now be put to the vote.

19. Mr. SCELLE withdrew his proposal.

20. The CHAIRMAN said that after the amendments to Mr. Scelle's proposal had been put to the vote at the previous meeting (paras. 88 and 93), he had informally sounded the Commission as to whether the first sentence in Mr. Scelle's text should be voted on, and had concluded that no one thought that necessary. He could not therefore be charged with a contravention of rule 129 of the rules of procedure of the General Assembly.

21. Mr. HSU said that he would vote in favour of Mr. Pal's text since, without such a provision, the draft would be incomplete. He shared the Secretary's views about the Commission's functions and felt that, inasmuch as the grant to coastal States of sovereignty over the continental shelf was a very considerable development in international law, a provision on compulsory arbitration could not be regarded as an inadmissible imposition upon States. Moreover, any decision taken by the Commission in the matter would not be final, and the General Assembly could always jettison the provision. From a procedural point of view, therefore, there would be no danger in including such an article.

22. He could not agree with Faris Bey el-Khouri that the parties should be left free to choose the method for the settlement of the dispute, since any procedure which was not a judicial one would be subject to abuse. Conciliation was often merely another word for appeasement or surrender.

23. Mr. Spiropoulos's claim that it would be unwise to have a general provision on compulsory arbitration was arguable. In his own view, it would be unwise to omit it.

24. Mr. LAUTERPACHT said that the issue with which the Commission was faced had inspired a debate on a very high level which, he hoped, would be maintained. He regretted that much of what he had to say would conflict with the views of the Special Rapporteur, with his unrivalled knowledge of the subject. Mr. François had, on the grounds that the Commission was concerned with codification, expressed doubts about the wisdom of including a general clause on compulsory arbitration. However, the General Rapporteur had submitted that part of the Commission's work on the subject was to formulate new rules of law. The Commission should ponder carefully his argument that it was not concerned with the practical application of the rules it codified. Surely, when preparing the draft on arbitral procedure, the Commission's main purpose had been to give concrete form to a principle in order to ensure its practical application. He would suggest to the Special Rapporteur that the provision under consideration was typical of most general international conventions. Mr. François, who had attended the Conference for the Codification of International Law held at The Hague in 1930, would remember that most of the texts relating to technical matters adopted by it had contained a provision for the judicial settlement of disputes on interpretation and application. Was the Commission to be first in departing from that practice? Was it to lead the way in the direction of regression? Mr. Spiropoulos' argument that the draft on the régime of the high seas was not a draft convention was not convincing. Unless the draft embodied something which was eventually to become a convention, namely, a statement of binding rules, it had little purpose. The Commission was striving to achieve as complete and workable a statement of law as possible. Without a general provision of the type under consideration the text would be both dangerous and incomplete.

25. Mr. Spiropoulos had claimed that the inclusion of such a provision would increase the reluctance of governments to ratify. But there was substance in the view that the fears of many governments that the draft might weaken the principle of freedom of the seas would be allayed if the essential safeguard contemplated in the additional article were included. It was all the more necessary inasmuch as the draft was vague in almost every detail. Who, for instance, was to interpret the meaning of the words "unreasonable interference"? Mr. Córdova's interpretation had been particularly illuminating, because it had confirmed his particular concept of the nature of the sovereignty exercised by the coastal State over the continental shelf. In the opinion of other members, however, those words constituted a limitation on the exercise of sovereignty.

26. Article 7 was another example. Though it appeared to lay down clear and definite rules on the delimitation of the continental shelf, yet the Special Rapporteur had found it necessary to provide for the submission of disputes to arbitration.

27. Faris Bey el-Khouri had placed his views and those of Mr. Kozhevnikov in their proper perspective by pointing out that if the parties were unable to agree, the dispute would come before the Security Council. Experience had shown that no final settlement could be anticipated from that procedure, which was hampered by the rule of unanimity. Faris Bey el-Khouri had really succeeded in strengthening the thesis that a provision for the settlement of disputes was indispensable.

28. Mr. CÓRDOVA believed in arbitration as a means of resolving disputes between States and of assuring the principle of equality. He therefore felt that great progress would be made if the Commission now decided that all disputes concerning the continental shelf should be submitted to arbitration. The more so since the Commission was legislating rather than codifying, and could not, therefore, precisely foresee how the rules could be applied. In the absence of a provision on compulsory arbitration, it was doubtful whether disputes would ever be settled. If the Commission were properly to discharge its tasks of developing international law, it must not only state what the rules were in any particular case, but also indicate the means by which they were to be applied. He would, therefore, vote in favour of Mr. Pal's text.

29. Mr. ALFARO said that he would vote in favour of Mr. Pal's text because he considered it appropriate to include a general clause on arbitration in the draft. Any law or treaty must provide for the effective application of its provisions. Disputes about the continental shelf would have to be settled by arbitration or judicial procedure, since, from the very nature of things, the other methods enumerated in Article 33 of the Charter were not likely to suceed. Governments were not inherently unjust or unfair, but were unable to resist the human failing of always regarding themselves as in the right. Some effective way of judging between two parties in dispute had therefore to be found.

30. The Commission was making its contribution towards the creation of a new and peaceful world, and must, to that end, ensure that the reign of law prevailed. The draft on the régime of the high seas dealt with vital economic interests. It was therefore essential that it contain a provision which would make the rules effective.

31. In answer to Mr. Spiropoulos's argument that such a clause might prevent governments from accepting the draft, he pointed out that if it were incorporated in a convention, States would always have the possibility of making reservations.

32. Mr. SPIROPOULOS said that is was quite mistaken to argue that rules drafted for the purpose of the progressive development of international law would not be applied in the absence of a general provision about the settlement of disputes. No provision of such a procedural nature, moreover, existed in any civil code, or in the texts adopted by the Conference for the Codification of International Law or in the Convention respecting the laws and customs of war on land of 1907. The question whether the rules were new or not was irrelevant, since in any event they would be applied.

33. In order to refute Mr. Lauterpacht's affirmation that the text was a draft convention, he would draw attention to article 23 of the Commission's Statute which read:

> "1. The Commission may recommend to the General Assembly:
>
> "(*a*) To take no action, the report having already been published;
>
> "(*b*) To take note of or adopt the report by resolution;
>
> "(*c*) To recommend the draft to Members with a view to the conclusion of a convention;
>
> "(*d*) To convoke a conference to conclude a convention.
>
> "2. Whenever it deems desirable, the General Assembly may refer drafts back to the Commission for reconsideration or redrafting."

34. Thus the General Assembly would have to decide what was to be done with the text on the régime of the high seas. If he were a delegate at a conference called for the purpose of drafting a convention on the basis of that text he would support the inclusion of a general clause stipulating the procedure to be followed for the settlement of disputes, but he could not agree that that could be fittingly done by the Commission itself, which was a body of experts with certain well-defined functions.

35. Another consideration which should be taken into account was that the inclusion of a general provision on the settlement of disputes would in all probability reduce the number of members who would be prepared to vote in favour of the draft.

36. Mr. FRANÇOIS also felt that the Commission as a whole would be gratified by a discussion which had been held on such a high level, and which had touched upon the fundamental issues of its work.

37. Mr. Lauterpacht, arguing that the application of law did concern the Commission, had mentioned the draft on arbitral procedure. In that case, however, the Commission had been requested to codify the methods of applying arbitral procedure. It was, generally speaking, not its task to prepare conventions, and he would remind Mr. Lauterpacht of the views expressed by Sir Cecil Hurst, who had played a leading role in the setting up of the Commission.

38. Sir Cecil Hurst's view had been that the codification of international law had reached an *impasse*, because all the work being done was in the form of conventions which required accession and ratification by Governments. Sir Cecil had suggested the setting up of a body of such high juridical standing as would confer on it decisive influence and enable it to do authoritative work, so that in due course the international community would not need to depend entirely on rules framed in conventional form. That was an important aspect, which must always be kept in mind,

and was the reason why he deprecated the General Assembly's tendency to treat the International Law Commission as just another body of experts. The Commission, which indeed had been created by the General Assembly, was more than that. It was a group of specialists of recognized standing whose decisions had weight in virtue of the personal authority of the members.

39. The Commission had not prepared a convention on the continental shelf. Had it done so, article 2 on the resources of the sea would have been couched in wholly different terms. The Commission expressed its opinions, and need not provide rules of application. That was a task which could be undertaken by the General Assembly. But in cases where there was uncertainty about existing rules, such uncertainty must be provided for. In his view, there was no uncertainty or lack of precision in the rules on the continental shelf. Certainly there were debatable points, as Mr. Lauterpacht had said. The Commission would never at any time be able to formulate rules which would not be debatable. But if that premise were made the starting point for codification, provision for arbitral procedure would have to be made in every subject. He had accepted the view of the experts that the rules applicable to the continental shelf were not capable of a single interpretation or of a uniform solution, and that they must be complemented by decisions, the character of which must depend on the circumstances of each particular case. It was for that reason that he had made arbitration compulsory in article 7, but he did not consider that a general provision for compulsory arbitration was absolutely essential to the draft.

40. Mr. YEPES considered that Mr. Pal's proposal was too limited, since disputes involving interpretation were as likely to arise as disputes related to the exercise of the right of exploration or exploitation. Would Mr. Pal accept the inclusion of a reference to that point in his text.

41. As to the question whether the draft constituted a convention in preparatory form or simply a declaration of principles, he would submit that that did not really matter, since the results would ultimately be the same. States would only accept principles in the form of a convention, and that was why principles should be so stated as to be acceptable to governments. He believed that the methods he proposed for the solution of disputes would prove acceptable.

42. Mr. Spiropoulos had very ably challenged the advocates of a general clause on the settlement of disputes, and had reminded members that Greece had served as the cradle of philosophy as well as of arbitration. He would, however, remind Mr. Spiropoulos that Greece was also the home of sophistry, and it was sophistry that Mr. Spiropoulos had offered the Commission when he had spoken of the dangers of inserting the proposed article and of the apprehensions to which it might give rise. He (Mr. Yepes), on the contrary, was convinced that a number of States would decline to accept the proposals unless they were accompanied by a method for solving disputes. The principles were being formulated for the first time; without means of settling disputes they would have no significance. It was simple caution to forestall enquiries from governments as to how they were to settle disputes, by prescribing methods therefor. He must insist, therefore, on the inclusion of the additional article.

43. The Secretary had stated that there was no customary law on the continental shelf. In his opinion, customary law did exist, although it did not respect traditional rules. Customary law was in the process of formation. Thus, the United Kingdom and Venezuela had shared the continental shelf between the mainland and the island of Trinidad. Thus, too, the Truman proclamation of 1945, the proclamations made by a number of Latin-American States and by the Arab States in respect of sovereignty over continental shelves, had created international customary law. It was true that in the formation of that customary law on the continental shelf no account had been taken of *diuturnitas* which some publicists regarded as a necessary condition for the existence of a customary law. But they were dealing with an exceptional case and *diuturnitas* was not absolutely essential provided they observed the principle of *opinio juris sive necessitatis*.

44. It had been argued that arbitral procedure and judicial settlement should be abandoned in favour of conciliation. He was always in favour of conciliation, which happened to be an American conception, but conciliation was a preliminary stage in the settlement of a dispute. No obligation was involved in conciliation, and unless an obligation were imposed the Commission would have achieved nothing. The next step on from conciliation was arbitration. In the Pact of Bogotá, conciliation was obligatory, but if it failed, arbitral procedure was also imposed as an obligation.

45. He would be prepared to accept the principle of conciliation provided that Mr. Kozhevnikov would accept arbitration, once conciliation had failed.

46. Mr. KOZHEVNIKOV wished to offer some comments on the nature of the Commission's work in relation to the problem under discussion. Surely the Commission's aim was to prepare texts in such a manner as to render them acceptable to the greatest number of States. The criterion of the effectiveness of the Commission's work was the attitude of governments towards it. The Commission was not working *in vacuo*, and was not engaged on pure research. It was preparing standards for governments and endeavouring to secure the development of international law. The members of the Commission were not law-givers, but they must help to make international relations more normal. That was why it was necessary to avoid any action likely to frustrate that aim. The Commission's texts must ultimately be applicable in practical life. If they were unacceptable, they would serve no purpose. He was convinced that compulsory arbitration would make it difficult for many governments to accept the draft on the continental shelf, with the result that all the work done on it would be wasted. And surely the Commis-

sion's authority would only be enhanced if its work led to concrete results and promoted peaceful relations between States.

47. It was for those reasons that he was insisting on the adoption of a more flexible formula.

48. Faris Bey el-KHOURI wished to propose the following amendment to Mr. Pal's proposal:

> "Any disputes between States arising out of or in relation to the continental shelf shall be settled by arbitration or by any other peaceful means of the choice of the parties".

49. The purpose of that amendment was to widen the scope of Mr. Pal's proposal in order to cover not only disputes arising from the exercise of the right of exploration or exploitation, but all other types of dispute, such as, for instance, those which might arise under article 7. Moreover, he considered that the method of settling disputes should be left to the discretion of States. That was why he had included the words "or by any other peaceful means of the choice of the parties". Why should arbitration be insisted upon? If States chose some other method, so much the better. He hoped that Mr. Pal would be able to accept his amendment, which he would then allow Mr. Pal to make his own. Otherwise he would maintain it himself.

50. The CHAIRMAN, speaking as a member of the Commission, said that the argument did not hinge on the question of arbitral procedure itself. Everybody was in favour of arbitration. Indeed, if it were thought in his own country that he was opposed to arbitration his career would be ruined. The question was whether the principle should be included in the present draft. Despite all the eloquence displayed, he was still not prepared to dissociate himself from the Special Rapporteur.

51. Mr. PAL said he hesitated to speak on the general issue after so many brilliant interventions.

52. The first point that he must, however, make was that the proposal which was attributed to him was really Mr. Scelle's.[2] He had taken the second part of Mr. Scelle's original proposal and slightly changed its drafting. Thus, for instance, he referred to the "exercise of the right"; and he had used the words "arising out of". But the substance of the proposal was Mr. Scelle's, and should be expressly associated with his name. He trusted that the Commission would be clearly aware of that and he would ask Mr. Scelle to accept his verbal changes and make the proposal his own.

53. As to the questions which had been raised, Mr. Spiropoulos had argued against the inclusion in the draft of a procedural article, and had referred to the practice of national courts. The difference was that national communities lived wholly under the rule of law, and any questions arising in law could be solved peacefully. There was consequently no need for the explicit provision of remedy and relief. But the international community was not as yet living wholly under the rule of law. The Commission was trying to bring the international community under that rule and that was why it had occasionally to make a provision for compulsory relief, since only thus could any progress be achieved. Was the international community ready for the kind of régime which the Commission was seeking to establish? Time would show. He would submit that the Commission must take the step forward.

54. Mr. Yepes had referred to customary law. It was perfectly correct that in so far as relief was concerned no customary law existed, the sole customary law being resort to force. A procedural clause of that kind was essential in a wholly new subject where the Special Rapporteur had found no rules for his guidance.

55. As to the scope of the article as framed in his own proposal, he considered that it was sufficiently comprehensive to cover all kinds of dispute. The question of boundaries fell under article 7. Furthermore, doubts as to interpretation would arise only in relation to the exercise of the right to explore or exploit the continental shelf. Questions of interpretation could not arise without some foundation.

56. Much had been said about the fact that the articles should be generally acceptable. That did not mean that the Commission must take into account the attitude of nations which were not wholly in favour of the peaceful settlement of disputes. Actually, his proposal in no way precluded the possibility of conciliation. If conciliation yielded results, the dispute would be settled. But the Commission could not fail to recommend recourse to arbitration at the subsequent stage, if and when conciliation failed.

57. Mr. HSU considered that Mr. Pal had fully disposed of Mr. Spiropoulos' objections. The Commission was not drawing up a domestic code, but formulating rules of international law to regulate the new problem of the continental shelf. He saw no season why a rule like the one under discussion could not go into a convention. At any rate, if the General Assembly, to which the draft was to be submitted, should prefer to relegate it to some other place, it could always do so. So far as the Commission was concerned, if the rule were considered essential to the scheme to be recommended, it was only sensible that it be given a place in the text of the articles rather than in the commentary.

58. On the question of whether the formulation of rules governing the continental shelf was codification or progressive development, he asserted that it was progressive development. The theory that acquiescence in the claim of sovereignty justified the view that sovereignty was in existence for the Commission to codify was false, inasmuch as the time that had elapsed was too short for opposition to have become articulate, especially in view of the fact that the encroachments were upon collective rather than individual interests.

59. Mr. LAUTERPACHT, intervening on a point of order, said that speakers should confine themselves to the point at issue.

[2] See *supra*, 202nd meeting, para. 27.

60. Mr. HSU concluded his exposition by going over some other arguments in favour of sovereignty, which he considered false.

61. Mr. SPIROPOULOS, intervening, moved the closure of the debate after the members on the Chairman's list had spoken.

62. Mr. LAUTERPACHT supported the motion.

63. Mr. YEPES opposed the motion on the grounds that closure of the debate was permissible in political, but not in scientific bodies.

The motion for the closure was carried by 7 votes to 1, with 3 abstentions.

64. The CHAIRMAN said that before taking the vote, he would call on Mr. Alfaro and Mr. Scelle, the last speakers on his list.

65. The Commission now had before it a proposal submitted jointly by Mr. Scelle, Mr. Yepes and Mr. Pal. It read:

> "Any disputes between States arising out of or in relation to these articles shall be submitted to arbitration or judicial settlement at the instance of any of the parties."

66. Mr. ALFARO waived his right to speak.

67. Mr. SCELLE first apologized for having wrongly interpreted the procedure adopted at the present meeting in respect of his proposal.

68. He would be able to vote for Mr. Pal's proposal, which was identical with his own, but not for the joint proposal, which referred to "judicial settlement". In his view, it would be very dangerous to use that term, since if a dispute arising out of the continental shelf were submitted to the International Court of Justice, the latter would only be able to consider the question in terms of violation of existing law. Mr. Yepes was wrong in stating that rules of customary law existed. The only rule was the freedom of the seas. It was because the Court would only be able to judge in law that he had avoided any reference to it, and had instead proposed arbitration.

69. He would, therefore, ask that he be dissociated from the joint proposal.

70. The CHAIRMAN said he fully appreciated the reasons given by Mr. Scelle. Members of the Commission represented different legal systems and it was inevitable that certain conflicts and differences of opinion should arise. Mr. Scelle was unanimously acknowledged as the brilliant representative of the European attitude of mind in the Commission.

71. Mr. CÓRDOVA asked whether Mr. Scelle would be prepared to accept the deletion of the words "the Permanent Court of Arbitration" from his original proposal, and to refer simply to arbitration.

72. Mr. SCELLE replied in the affirmative.

73. Mr. PAL said that that amendment would be acceptable to him. He asked whether Mr. Yepes would be prepared to withdraw the joint proposal.

74. Mr. YEPES agreed to do so.

75. The CHAIRMAN said that he would consequently put Mr. Scelle's original proposal to the vote.[3]

76. Mr. KOZHEVNIKOV asked whether Mr. Scelle would be prepared to agree to the deletion of the word "compulsorily", and the amendment of the last clause to read: "at the request of *both* parties," instead of "any of the parties."

77. If Mr. Scelle's proposal were amended in that sense, he would be able to vote in favour of it.

78. Mr. SCELLE said he was perfectly aware that Mr. Kozhevnikov did not expect him to accept those amendments.

79. Mr. KOZHEVNIKOV formally moved his amendments.

Mr. Kozhevnikov's amendments were rejected by 8 votes to 2, with 1 abstention.

Mr. Scelle's proposal as amended was adopted by 7 votes to 4, with 1 abstention.

80. The CHAIRMAN said that he had voted against Mr. Scelle's proposal for the same reasons as those given by the Special Rapporteur during the debate.

81. Faris Bey el-KHOURI said that he had voted against the proposal because it would have the effect of rendering arbitration compulsory for one of the parties. He was always opposed to compulsory arbitration, and was unable to accept the principle either in the present instance or in the draft on arbitral procedure. Proposals of that nature would be perfectly acceptable only if world government were a reality.

The meeting rose at 1.10 p.m.

[3] *Ibid.*

204th MEETING

Monday, 29 June 1953, at 3 p.m.

CONTENTS

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

Rapporteur: Mr. H. LAUTERPACHT.