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Summary record of the 204th meeting

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

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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. CORDOVA 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.

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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 7 (resumed from the 201st meeting)

1. The CHAIRMAN invited members to resume discussion of article 7, together with the experts' report (A/CN.4/61/Add.1). He would urge them to limit their comments to the points at issue, without enlarging on general problems which were sufficiently familiar to everyone. Apart from the Special Rapporteur's proposed amended text for article 7,¹ Mr. Pal and Mr. Yepes had submitted proposals.

2. Mr. PAL proposed the following text for article 7:

"1. Where the same continental shelf is contiguous to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to them shall, unless otherwise amicably determined by them, be the median line every point of which is equidistant from the outer limits of their respective territorial seas (waters).

"2. Where the same continental shelf is contiguous to the territories of two adjacent States, the boundary of the continental shelf appertaining to them shall, unless otherwise amicably fixed by them, be determined by the application of the principle of equidistance from the outer lines of their respective territorial seas (waters).

"3. Any dispute concerning the determination and location of boundary lines shall be submitted to arbitration."

3. A cursory glance at the proposal would show that it was based on the principle applied by the Special Rapporteur in his amended text, which followed the conclusions reached by the committee of experts on technical questions concerning the territorial sea. He therefore suggested, in the case of States whose coasts were opposite one another, that the boundary between their continental shelves should be equidistant from the outer limits of their respective territorial waters, the same principle being applied in cases where the continental shelf was contiguous to the territories of two

adjacent States. He believed that States should be given the opportunity of arriving at an amicable settlement, and had consequently included in paragraphs 1 and 2 the words "unless otherwise amicably determined by them".

4. Paragraph 3 laid down that any dispute concerning the boundary lines should be submitted to arbitration — a principle which was in accordance with that adopted by the Commission at its 203rd meeting in the additional article.²

5. Mr. FRANÇOIS (Special Rapporteur) was not opposed to the inclusion of the words "unless otherwise amicably determined by them", although he considered them to be superfluous. Obviously, when two parties agreed not to follow the prescribed rules and arrived at a settlement which did not conflict with the interests of a third party, no possible objection could be raised. He was more concerned about Mr. Pal's proposal to draw a boundary equidistant from the outer limits of the territorial waters and not from the coasts. On the face of it, the idea was logical, but it did not allow for the crucial difficulty that no unanimity obtained regarding the breadth of territorial waters. The consequence would therefore be that, by staking a claim for a wider territorial sea, a State would be able to secure a larger extent of continental shelf. That was why his proposal to draw the boundary equidistant from the coast was fairer.

6. The third paragraph was no longer necessary, since the Commission had adopted an additional article wherein provision was made for the submission of all disputes to arbitration.

7. Faris Bey el-KHOURI said that the only way of delimiting a continental shelf which was contiguous to the territories of two adjacent States was by applying the principle of equidistance from the coastlines. But that would necessitate the drawing of straight lines, and he presumed that that was what the Special Rapporteur had in mind in referring to "coastlines" instead of coasts.

8. Mr. YEPES said that three separate problems were involved: the delimitation of the continental shelf as between States facing one another; the delimitation of the continental shelf when it was contiguous to the territories of two adjacent States; and, finally, a method of solving disputes.

9. Taking the last problem first, he agreed with the Special Rapporteur that there was no longer any need to refer to arbitration in article 7 since the issue was covered by the additional article adopted by the Commission at its 203rd meeting. Consequently, paragraph 3 of Mr. Pal's proposal should be deleted.

10. As to paragraphs 1 and 2, he believed that it would be easier if the Commission discussed and voted on them separately, and he would consequently confine his observations to paragraph 1. In his view, the Special Rapporteur's version, based as it was on the conclusions

¹ See *supra*, 201st meeting, para. 37.

² See *supra*, 203rd meeting, para. 79.

of the experts, was the correct one. The experts had been consulted on a number of highly technical questions and the Commission should accept their views for which, indeed, there existed a precedent in the treaty between the United Kingdom and Venezuela, concluded in 1942 and relating to the submarine areas of the Gulf of Paria.³ The criterion of the median line should be maintained.

11. Mr. SANDSTRÖM said that on the whole he agreed with the Special Rapporteur. The clause relating to amicable settlement was not absolutely essential, but no harm would be done by including it. Paragraph 3 could be deleted.

12. The more practical solution for delimiting the boundary of the continental shelf would be to draw it equidistant from the opposite or adjacent coasts. On that point, the Special Rapporteur's arguments were pertinent, and his proposal had the merit of separating the question of the continental shelf from that of the territorial waters.

13. As to the question raised by Faris Bey el-Khouri, he (Mr. Sandström) did not consider that the term "coastlines" could be interpreted as meaning straight lines.

14. He was concerned about the point made by the experts (A/CN.4/61/Add.1, Annex, point VI) to the effect that there might be special reasons, such as navigation and fishing rights, which might divert the boundary from the median line. He feared that the clause relating to amicable settlement suggested by Mr. Pal would not suffice to cover those issues. The Commission should perhaps consider whether rules should not be laid down for such special cases where the application of the normal rule would lead to manifest hardship.

15. Mr. CORDOVA considered that Mr. Pal's proposal was the best, since the method of delimitation on the basis of equidistance from the coasts would give rise to difficulties in cases where the limits of the territorial waters had been fixed. Had the Special Rapporteur perceived that in those cases the drawing of the boundary of the continental shelf in accordance with the principle of equidistance from the coasts might cause overlapping between the territorial waters and the continental shelf?

16. He, too, thought that paragraph 3 of Mr. Pal's proposal could be deleted.

17. Mr. SPIROPOULOS said that the problem needed careful consideration. The Special Rapporteur proposed that the boundary of the continental shelf should be the median line equidistant from the two opposite coasts, whereas Mr. Pal proposed that it should be the median line equidistant from the outer limits of the territorial waters. If the outer limits of those waters were parallel to the coast no problem would arise, and the width of the territorial waters would be irrelevant; but in point

of fact the outer limits of the territorial waters did not always follow the coastline. If there were an island or an archipelago, the outer limits of the territorial waters were fixed at a certain distance from them, and not from the coastline. The ensuing complications of delimiting the continental shelf in accordance with the principle of equidistance from the coasts in such cases were obvious.

18. Mr. ZOUREK considered that the main merit of Mr. Pal's proposal was that it assimilated article 7 to article 1, which laid down that the continental shelf was situated outside the territorial waters. Mr. Spiropoulos had shown that it was impossible to delimit the continental shelf of opposite States except on the basis of equidistance from the outer limits of the territorial waters — a method which was both practical and logical. He was not sure whether he had quite followed the arguments to the effect that the application of that principle might lead States to claim a greater area of the continental shelf by extending the limit of their territorial waters. That issue did not arise, since under article 1, the continental shelf had been fixed in terms of a depth of 200 metres. It followed, therefore, that if the territorial waters were extended, the area of the continental shelf would be reduced.

19. As to paragraph 2 of Mr. Pal's proposal, it would seem to him that at least in theory, it involved the application of two different systems. Assuming, as Mr. Córdova had argued, that adjacent States had agreed on the delimitation of their territorial waters and the continental shelf was not delimited on the basis of the same principle, two different regimes might be applied in respect of the territorial waters and of the continental shelf. It would be better therefore to amend paragraph 2 by replacing the words "by the application of the principle of equidistance from the outer lines of their respective territorial seas (waters)" by the words: "In accordance with the principles applied to the delimitation of the territorial waters of the two States concerned".

20. Mr. LAUTERPACHT preferred the Special Rapporteur's formula, since the application of the criterion of the limits of the territorial waters would introduce an undetermined and highly controversial factor into the situation. If Mr. Pal's proposal were accepted, and two States whose coasts were opposite one another claimed the one a limit of three miles, and the other a limit of twenty miles, the continental shelf of one would be far larger than that of the other. It would be unwise to encourage extravagant claims for the extension of territorial waters.

21. As to the reference to amicable settlement, there were reasons in favour and reasons against its insertion. In any case, the word "amicably" was obviously superfluous.

22. Replying to the CHAIRMAN, he stated that he had no opinion on Mr. Zourek's amendment to paragraph 2 of Mr. Pal's proposal.

23. Mr. PAL said that the case for his proposal had already been ably argued by Mr. Córdova, Mr. Zourek

³ See text in *Laws and regulations on the régime of the high seas*, vol. I (United Nations publication, Sales No.: 1951.V.2), p. 44.

and Mr. Spiropoulos. He could not add very much, except to emphasize that the delimitation of the continental shelf must be based on equidistance from the outer limits of the territorial waters, since the continental shelf was defined as being *outside* the area of the territorial waters. The territorial waters must be delimited before the boundaries of the continental shelf could be fixed. The only equitable starting point for dividing the continental shelf between two States whose coasts were opposite one another was the median line equidistant from the outer limits of the territorial waters. If the boundaries were drawn from the coastlines, one State might be left without any part of the continental shelf in its possession.

24. He agreed that paragraph 3 had now become superfluous, and was prepared to agree to its deletion. As to the clause relating to amicable settlement, he was prepared to delete the word "amicably", but felt that the clause should be retained because the principle was expressed in mandatory form: "... the boundary of the continental shelf appertaining to them shall...". It would be preferable to give States the opportunity of settling differences by agreement.

25. He was not able to gauge the consequences of Mr. Zourek's amendment to paragraph 2.

26. Mr. ALFARO suggested that the Chairman rule that discussion be limited to paragraph 1, it being understood that paragraph 3 of Mr. Pal's proposal had been deleted.

27. The CHAIRMAN replied that he was averse to giving rulings unless it was absolutely essential to do so. The discussion was going well, the issues were becoming clear and the fate of paragraph 3 had obviously already been settled.

28. Mr. HSU was inclined to prefer the Special Rapporteur's text for article 7. Paragraph 2 of Mr. Pal's proposal was open to the objection that difficulties might arise between adjacent States, when each claimed a different limit for its territorial waters. As to paragraph 1, he considered that, though perhaps more logical, it was also more dangerous. He agreed with Mr. Lauterpacht about the inadvisability of opening the door to exaggerated claims, and noted that since the question of the continental shelf had acquired topical interest, the tendency to press for sovereignty should not be further reinforced.

29. Mr. CORDOVA supported Mr. Yepes' suggestion that paragraphs 1 and 2 should be considered separately, since they covered different cases. In the case of adjacent States, the territorial waters were also adjacent, and it would seem to him that there the continental shelf could be delimited by simple extension of the boundary between the respective territorial waters.

30. Mr. YEPES wished formally to move his proposal that a separate discussion should be held and separate votes taken on paragraphs 1 and 2 of article 7.

31. The CHAIRMAN said that, despite his reluctance

to do so, he would, in the present instance, *rule* that the Commission first discuss paragraph 1 of article 7.

32. Mr. LIANG (Secretary to the Commission) agreed with Mr. Spiropoulos that if the outer limits of the territorial waters were parallel to the coast, no problem would arise, and that there would be no difference between measuring the equidistant line from the outer limits of those waters and measuring the line from the coasts. But in view of the uncertainty of the limits of the territorial waters of the States concerned it might well happen that the measuring would not be the same. For example, if one State claimed three miles and the State opposite claimed twelve miles, where would the equidistant line be measured from? There would be no such difficulty if the line were measured from the respective coasts. If the Commission were to lay down that territorial waters should be "X" miles in breadth, Mr. Pal's proposal would be perfectly acceptable. But in the absence of such a decision the Special Rapporteur's proposal was less open to objection.

33. Mr. FRANÇOIS said he had listened with great interest to the discussion. Starting with Faris Bey el-Khouri's comment, he would reply that he had not intended the words "coastlines" to mean straight lines. He did not agree that the principle of equidistance necessitated the drawing of a straight line between two points. On the contrary, the configuration of the coast should be taken into account in applying the principle of equidistance. If the term "coastlines" was considered to be insufficiently clear, the term "base lines of the territorial waters" could be substituted therefor, and he would be prepared to accept it. But the question would still be open whether those base lines should be straight or should follow the configuration of the coast. Either alternative could be adopted.

34. He must reiterate his warnings about the dangers of Mr. Pal's proposal, which would lead to conflicting claims over the continental shelf on the basis of the breadth of the territorial waters. He feared that the adoption of Mr. Pal's proposal would make the whole draft unacceptable to a number of States. For instance, the United Kingdom and Netherlands Governments were both anxious that the three-mile limit for territorial waters be maintained. They would consequently, in the absence of general agreement, be placed at a great disadvantage in comparison with States which claimed a limit of four, six or even twenty miles.

35. Mr. Sandström had drawn attention to the fact that the experts whose report was annexed to the addendum to his second report on the régime of the territorial sea (A/CN.4/61/Add.1) had pointed out that there might be special reasons, such as navigation and fishing rights, for not taking the median line as the boundary between countries with coasts opposite one another at a distance of less than twice the width of the territorial sea. The experts, however, had been considering delimitation through the territorial sea, which was quite irrelevant to delimitation across the continental shelf, with regard to which navigation and fishing rights were protected by article 5 of the Commission's draft.

36. Similarly, the experts had pointed out that the same considerations might make it necessary in exceptional cases to depart from the rule of equidistance from the coast in determining the boundary between two adjacent States through the territorial sea. Again, those considerations did not apply to delimitation across the continental shelf.

37. There were cases, however, where a departure from the general rule was necessary in fixing boundaries across the continental shelf; for example, where a small island opposite one State's coast belonged to another; the continental shelf surrounding that island must also belong to the second State. A general rule was necessary, but it was also necessary to provide for exceptions to it.

38. An interesting case was that of the Gulf of Venezuela, in which were situated islands belonging to Venezuela, and where the "normal" jurisdiction line might ignore those islands. Members were all no doubt familiar with Mr. Whittemore Boggs' article on the "Delimitation of Seaboard Areas under National Jurisdiction" in which the problem was discussed.⁴

39. Mr. ALFARO pointed out that article 7 dealt solely with the problem of delimitation across the continental shelf, not with that of its definition, and that any solution which was not both practicable and fair to all States concerned must be rejected. Mr. Spiropoulos had said that it would make no difference whether the basis of delimitation was the coastline or the outer limits of the territorial sea. That was only true provided that general agreement was reached on the width of the territorial sea. Such agreement at present seemed remote, and in the circumstances the only possible basis of delimitation was the coastline. He was therefore opposed to Mr. Pal's proposal and agreed with the view expressed by Mr. François, Mr. Lauterpacht and other speakers, although it remained to be seen how that view could best be put into words.

40. Mr. FRANÇOIS suggested that that could be done by amending paragraph 1 of Mr. Pal's proposal to read as follows:

"Where the same continental shelf is contiguous to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall, as a general rule and unless otherwise agreed by them, be the median line every point of which is equidistant from the base lines from which the width of the territorial sea of each country is measured".

41. Mr. KOZHEVNIKOV said that he was still exceedingly doubtful about the wisdom of attempting an insert in the convention provisions of a highly technical nature, instead of adopting a flexible formula such as would be more acceptable to a larger number of States than any rigid formula could possibly be. He preferred the wording contained in the Special Rapporteur's fourth report (A/CN.4/60, chapter IV) to that which

the Special Rapporteur now suggested, and to that proposed by Mr. Pal; it had clearly stated that boundaries across the continental shelf should be established by agreement between the States concerned; he (Mr. Kozhevnikov) attached great importance to that idea, which did not find a place in the two later drafts, and therefore proposed the following text:

"The boundary of the continental shelf contiguous to the territories of two or more States shall be determined by agreement between them. In the absence of such agreement, any dispute between them shall be settled by applying one of the methods for the joint peaceful settlement of disputes."

42. Mr. PAL said that, in order to simplify the discussion, he would accept the wording suggested by Mr. François for paragraph 1 of his proposal.

43. Mr. YEPES still thought that the wording first proposed by Mr. François was the best, since "the coast" was a clear expression which would be universally understood in a way in which the wording he (Mr. François) now suggested could not be.

44. Mr. SANDSTRÖM said that he could accept the wording now suggested by Mr. François and drew Mr. Kozhevnikov's attention to the fact that the rule it laid down was subject to the proviso, "unless otherwise amicably determined by them". It did, however, give States some guidance as to how the boundary should be drawn, and in that way filled a gap which Mr. Kozhevnikov's proposal left unfilled.

45. Mr. FRANÇOIS said that his reason for preferring the wording he had suggested to that proposed by Mr. Kozhevnikov was the same as Mr. Sandström's. He disagreed with Mr. Yepes: "the coast" was not an expression such as could be used in a legal text; it was necessary to define it, and that was what he had sought to do.

46. Mr. YEPES replied that, on the contrary, the word "coast" had a clearly defined meaning in law. In French administrative law it was the line of low tide.

47. Mr. LAUTERPACHT pointed out that since the award in the *Norwegian fisheries* case, even the wording suggested by Mr. François might no longer be considered completely clear. He had, moreover, another doubt, namely, concerning the words "as a general rule"; it was not clear what they meant, and it was at least arguable that they deprived the rule of its legal character.

48. He did not agree with Mr. Kozhevnikov's proposal, under which the Commission would not lay down a rule at all, but would simply leave the parties free to agree between themselves. Moreover, in the event of their failing to agree, Mr. Kozhevnikov proposed that the question should be solved "by one of the methods for the peaceful settlement of disputes". If Mr. Kozhevnikov had proposed that in such an event recourse be had to arbitration or judicial settlement, he (Mr. Lauterpacht) could have accepted that part of his text,

⁴ *American Journal of International Law*, vol. 45 (1951), pp. 240-266.

but the wording proposed left the door open to conciliation, and conciliation might well fail, in which case the whole question would be left unresolved.

49. Mr. SANDSTRÖM assumed that it was the Special Rapporteur's intention to insert in his commentary an explanation of what was meant by the words "as a general rule".

50. Mr. FRANÇOIS agreed.

51. Mr. KOZHEVNIKOV requested that a vote on the various proposals and amendments which had been submitted should be deferred until they had been distributed in writing.

52. The CHAIRMAN felt that there was no reason why voting should not take place at once; he put that issue to the vote.

It was agreed by 8 votes to 2, with 4 abstentions, that voting should take place at once.

The wording proposed by Mr. Kozhevnikov for article 7 was rejected by 10 votes to 3, with 1 abstention.

The wording suggested by Mr. François and accepted by Mr. Pal was adopted by 9 votes to 4, with 1 abstention.

53. Mr. YEPES said that he had voted against the wording suggested by Mr. François because he thought it would be clearer, simpler and in every way better to say "the median line every point of which is equidistant from their respective coasts".

54. The CHAIRMAN next drew attention to paragraph 2 of Mr. Pal's proposal,⁵ to which Mr. Zourek had submitted an amendment.⁶ Mr. Córdova had also submitted a proposal that paragraph 2 be amended to read as follows:

"Where the same continental shelf is contiguous to the territories of two adjacent States, the boundary of the continental shelf appertaining to them shall, unless otherwise agreed by them, be the prolongation of the limits of their respective territorial seas over the common continental shelf."

55. Mr. FRANÇOIS said that he could not accept Mr. Córdova's proposal, as many of the special considerations which were involved in delimiting the territorial sea, particularly questions of navigation and fishing interests, were irrelevant in delimiting the continental shelf. A line which might be perfectly satisfactory as a boundary between two countries' territorial seas might, if extended, be far from satisfactory as a boundary between their sectors of the continental shelf. In a bay, for example, the boundary between two adjacent States' territorial seas might be drawn in such a way that if extended it would actually cut the coastline of one of them.

56. Although Mr. Zourek's proposal did not provide

that the boundary of the territorial sea should be extended, it was open to the same objection, namely, that considerations which arose with regard to the territorial sea did not arise with regard to the continental shelf. He (Mr. François) saw no difficulty in using a different method for fixing boundaries of the territorial sea and of the continental shelf, since the two did not overlap, and the latter only began at the outside limit of the former. For the continental shelf, he believed that the most appropriate general rule would be that of equidistance from the coasts, but that the same provision as in paragraph 1 should be made for departures from that rule in special cases where its application would be unsatisfactory. Mr. Pal's text should therefore be amended to read:

"Where the same continental shelf is contiguous to the territories of two adjacent States, the boundary of the continental shelf appertaining to such States shall, as a general rule and unless otherwise agreed by them, be determined by application of the principle of equidistance from the baselines from which the width of the territorial sea of each of the two countries is measured."

57. Mr. CÓRDOVA said that as his concern had been to ensure that the same method was used for fixing boundaries across the continental shelf as through the territorial sea, he would withdraw his amendment in favour of the text proposed by Mr. Zourek. He pointed out that the Commission had not yet decided how boundaries through the territorial sea were to be fixed.

58. Mr. PAL pointed out that the experts whose report was annexed to the addendum to Mr. François' second report on the territorial sea recommended "that the (lateral) boundary through the territorial sea—if not already fixed otherwise—should be drawn according to the principle of equidistance from the respective coastlines" (A/CN.4/61/Add.1, Annex, point VII). In practice, therefore, there would be no difference between the wording proposed by Mr. François and that proposed by Mr. Zourek, and he preferred the latter.

59. Mr. ZOUREK said that the purpose of his proposal was as Mr. Córdova had said. There was no reason why boundaries should be fixed by a single uniform method the world over, but it was desirable that they should be fixed in the same way for any two countries through the territorial sea and across the continental shelf.

60. Mr. KOZHEVNIKOV said that he was more and more convinced that it was unwise to attempt to lay down rigidly the manner in which the boundary across the continental shelf should be determined, and was therefore becoming increasingly drawn to the wording proposed by the Special Rapporteur in his fourth report. As Mr. François had withdrawn that text, he (Mr. Kozhevnikov) would sponsor it.

61. Mr. LAUTERPACHT said that for the reasons he had already given in connexion with paragraph 1 of

⁵ See *supra*, para. 2.

⁶ See *supra*, para. 19.

Mr. Pal's proposal he could only vote for the wording proposed by Mr. François if the words "as a general rule" were omitted, or if the commentary was to contain a full explanation of them, giving specific instances of cases where a departure from the rule was permissible.

62. Mr. SPIROPOULOS suggested, as a point of drafting, and leaving aside the question of substance, that it would be preferable to replace the words "as a general rule" by the words "unless another boundary line is justified by special circumstances".

Further discussion on paragraph 2 of Mr. Pal's proposal was adjourned.

The meeting rose at 6 p.m.

205th MEETING

Tuesday, 30 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, 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 7 (continued)

1. The CHAIRMAN expressed the hope that the Commission would soon be ready to vote on paragraph 2 of Mr. Pal's text for article 7,¹ since it had so thoroughly

explored the troubled waters of the continental shelf at the previous meeting. Ideal solutions were, unfortunately, impossible of attainment.

2. Mr. FRANÇOIS (Special Rapporteur) said he was unable to accept Mr. Zourek's amendment² to paragraph 2, since it proposed that the continental shelf between two adjacent States should be delimited on the same principle as the territorial waters. No such principle at present existed, and he considered that the Commission should adopt a definite rule in respect of the continental shelf rather than wait on the future.

3. He had redrafted his own amendment to Mr. Pal's proposal, and wished to submit it in the following form:

"Where the same continental shelf is contiguous to the territories of two adjacent States, the delimitation of the continental shelf between them shall as a rule, unless otherwise agreed between the two States, be effected by applying the principle of equidistance from the base lines from which the width of the territorial waters of each country is measured."

4. Mr. KOZHEVNIKOV agreed with the Chairman that ideal solutions were difficult, if not impossible, to achieve. That was why he considered that the Special Rapporteur's original text for article 7, as given in his fourth report (A/CN.4/60, Chapter IV), though not offering an ideal solution, at least provided a reasonable and practical basis for action. As he had said at the previous meeting,³ he wished to take over the text which the Special Rapporteur had withdrawn, and would now submit it to the Commission with some slight drafting changes.

The text of his proposal read:

"The boundaries of a continental shelf contiguous to the territories of two or more States shall be established by agreement between those States. Failing such agreement, a dispute between them shall be resolved by one of the methods for the joint peaceful settlement of disputes."

5. Mr. YEPES expressed surprise at Mr. Kozhevnikov's proposal, since he had understood Mr. Kozhevnikov to have said at the previous meeting that he wished to sponsor the Special Rapporteur's original text.

6. Mr. KOZHEVNIKOV recalled that at the previous meeting Mr. Yepes, too, had favoured the substitution of the original text for the new text proposed by the Special Rapporteur for paragraph 1 of article 7.⁴ His (Mr. Kozhevnikov's) amendment, the text of which was identical with the original text of article 7, had been rejected.⁵ He was now submitting a proposal which also followed the lines of the original text, because he wished the Commission to keep that text in mind. If his

² *Ibid.*, para. 19.

³ *Ibid.*, para. 60.

⁴ *Ibid.*, para. 43.

⁵ *Ibid.*, para. 52.

¹ See *supra*, 204th meeting, para. 2.