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Summary record of the 205th meeting

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

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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.

proposal were adopted, it should replace both paragraph 1 and paragraph 2 of article 7.

7. Mr. CORDOVA pointed out that Mr. Kozhevnikov's proposal suffered from a serious defect. The Commission wanted to prescribe a rule; Mr. Kozhevnikov left the whole issue in the air. It was in fact in order to avoid vagueness that the Special Rapporteur had modified the original text of article 7.

8. On the other hand, he agreed with Mr. Zourek that the same principle of delimitation should be applied to the continental shelf as was applied to the territorial waters. He would suggest that Mr. François incorporate Mr. Zourek's amendment in his proposal for paragraph 2.

9. Mr. LAUTERPACHT said that Mr. Kozhevnikov's proposal reflected his attitude to the whole of the Commission's work. For reasons which were perfectly legitimate as far as Mr. Kozhevnikov was concerned, he (Mr. Kozhevnikov) was opposed to the formulation of rules or, if a rule were laid down, insisted that there ought to be no authority competent to take a decision binding on the parties in regard to the application of the rule. Mr. Kozhevnikov was wholly in favour of settlement between the parties on the basis of good will and mutual agreement. However, it was the business of the law—and of the International Law Commission—to provide for situations in which no such agreement or good will was forthcoming.

10. Turning to Mr. François's proposal, he would draw attention to the words: "shall as a rule... be effected... etc." He was prepared to vote for any precise rule, or indeed to agree that there be no rule at all, but it was difficult to adopt a kind of half-way-house formula. No judge or arbitrator could interpret a text so worded, because any party to a dispute could always argue that its case did not fall within the general rule, but formed an exception to it. He appreciated the point that some mention should be made of exceptions, but was convinced that it would be better to specify the cases rather than to open the door to difficulties of interpretation.

11. Mr. YEPES submitted the following proposal for paragraph 2:

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

The term "coastline" here signifies the low-water line as usually marked on the large-scale charts officially recognized by the coastal State. If there are no charts showing the low-water line, the "coastline" shall be understood to mean the high-water line."

12. Mr. HSU considered that Mr. Zourek's amendment was sound in its intentions and did not conflict with Mr. François's proposal. Although, at the present time, there was no fixed rule for the delimitation of territorial

waters, such a rule might be established in future. As to the continental shelf, he agreed that it would be wise to lay down a rule of delimitation, since the submarine area beyond the territorial waters might be very extensive. He would therefore be prepared to support Mr. François's proposal.

13. However, he agreed with Mr. Lauterpacht's objection to the words "as a rule", which should be deleted. A reference to exceptions should be included, but it should be worded differently. In any case, arbitrators would be aware of the difficulties and the exceptions.

14. Mr. FRANÇOIS said that that was exactly what he was afraid of. If no exceptions were admitted to an inflexible rule, and disputes were submitted to arbitration, it would be the rule that the arbitrators would have to apply. The purpose of inserting an escape clause was to enable arbitrators to deviate from the rule in such circumstances. If the Commission felt that it would be enough to refer to that point in a comment, he would not object, but he could not regard such a solution as satisfactory as a reference in the text itself. It was a moot point whether arbitrators would feel authorized to deviate from a text on the strength of an interpretation included in the comments.

15. The CHAIRMAN noted a wide divergence of views. Mr. Lauterpacht considered that the words "as a rule" deprived the text of its juridical significance, whereas Mr. François considered that they were necessary in order to ensure the proper application of the principle in law.

16. Mr. SANDSTRÖM shared Mr. François's apprehensions, and considered that provision for exceptions should be made in the text. Would not the best solution be to go back to a suggestion made at the previous meeting by Mr. Spiropoulos,⁶ to the effect that the words "unless another boundary line is justified by special circumstances" be substituted for the words "as a rule"?

17. Mr. LAUTERPACHT feared that the adoption of Mr. Spiropoulos's formula would not solve the difficulty. If the Commission had certain specific exceptions in mind, it should say so. But to state generally that arbitrators should take exceptions into consideration was tantamount to giving them the power to judge *ex aequo et bono*, which the Commission did not intend to do.

18. Mr. ALFARO was in favour of deleting the words "as a rule", on the grounds that they would lead to conflict. The Commission wished to lay down a rule for the delimitation of the continental shelf between two adjacent States. Nothing would be gained by prescribing a rule qualified by a very general exception.

19. Mr. PAL drew attention to the fact that whereas the Special Rapporteur's proposal made use of the words "as a rule", the first paragraph of article 7, which

⁶ *Ibid.*, para. 62.

had been adopted at the previous meeting, contained the words "as a general rule", so that in point of fact the mischief had already been done. So far as paragraph 2 was concerned, he considered that those words would be less harmful because they would be taken in juxtaposition with the following clause: "unless otherwise agreed between the two States". Exceptions would fall under that clause.

20. Mr. ZOUREK said that he had voted in favour of Mr. Kozhevnikov's amendment at the previous meeting and would vote in favour of the proposal he had submitted at the present meeting. Since it was impossible to foresee all possible contingencies, the original text of article 7 had rightly reserved the future, thus allowing for the creation of precedents. Codification would be easier once the practice of States had been established. Paragraph 1 of article 7 as adopted offered convincing proof of the fact that no uniform rule could be laid down. It conceded the principle of equidistance, and immediately weakened that principle by introducing the qualification "as a general rule", and by a reference to agreement between the parties. Furthermore, it left unanswered the question of what were to serve as the base lines from which the width of the territorial seas should be measured. As such, paragraph 1 manifestly contained the elements of future discord.

21. Mr. SPIROPOULOS, noting Mr. Pal's argument that exceptions would come under the clause which provided for agreement between States, said that other members of the Commission approached the problem from a different angle, namely, that the principle would prove inapplicable in practice because of the numerous exceptions and special circumstances. Mr. Lauterpacht and Mr. Alfaro were opposed to vague formulation. The Commission could choose only between accepting a principle without exceptions, or admitting exceptions. Further, he would point out to Mr. Lauterpacht that the amendment originally proposed by him and now re-introduced by Mr. Sandström would itself enable arbitrators to settle disputes *ex aequo et bono*. For instance, in cases where an island belonged to one State but was situated in the territorial waters of another, arbitrators would have to judge *ex aequo et bono*.

22. Mr. LIANG (Secretary to the Commission) said that the difference between the Special Rapporteur's proposal for paragraph 2 and his original text for article 7 was slight. The first sentence in the original text said no more and no less than the clause "unless otherwise agreed between the two States". The second sentence provided that, failing agreement, the parties must submit the dispute to conciliation procedure. In the new version, the principle of equidistance was laid down, but was accompanied by the proviso that it was inapplicable where special circumstances prevailed. That meant that the principle of equidistance was attenuated almost to the point of non-existence, and the new text was no stronger than the original. Was it worth while formulating a principle in such terms? If the Commission did not feel happy about equidistance, surely the original version of article 7 would do. But if the

Commission desired to adopt a clear statement of the principle of equidistance, it should state it in its integrity, without weakening it.

23. Mr. LAUTERPACHT proposed the following formula which, in his opinion, was less indefinite than Mr. Spiropoulos's amendment:

"In cases in which such delimitation is physically impossible or in which it may cause undue hardship to one of the coastal States, the line shall be determined by arbitration in a manner approximating as closely as possible to the principle of equidistance."

24. The CHAIRMAN, speaking as a member of the Commission, objected to the word "physical" on the grounds that a delimitation could never be theoretical.

25. Mr. CORDOVA considered that Mr. Lauterpacht's formula was open to countless objections. The words "undue hardship" were no better than the words "as a rule".

26. At the CHAIRMAN's request, Mr. SANDSTRÖM said that he would word Mr. Spiropoulos's original amendment as follows: "except where special circumstances call for some other solution" ("*à moins qu'exceptionnellement à la suite de circonstances spéciales une autre solution ne soit indiquée*"). Those words should be added at the end of the text proposed by Mr. François.

27. Mr. YEPES considered that the Commission had approached the problem in the wrong way. It had discussed a general rule without examining what that general rule consisted in substantively. It was not as yet clear whether the Commission accepted the principle of equidistance.

28. Mr. PAL thought that one way out of the predicament might be to delete the words "as a rule" and add at the end of the text the phrase "except where the special circumstances of the case require otherwise". It would be not for the parties but for the arbitrators to decide whether the circumstances did or did not warrant special adjustment.

29. Mr. SPIROPOULOS considered that the Commission should adopt the Special Rapporteur's proposal together with the amendment which had just been suggested by Mr. Sandström and which he would formulate as follows: "unless special circumstances justify another delimitation" ("*à moins que des circonstances spéciales ne justifient une autre délimitation*"). After all, the Commission had accepted the principle of arbitration, and must therefore leave it to the arbitrators to assess the special circumstances. The other alternative was to accept Mr. Kozhevnikov's proposal and leave everything to the parties.

30. Turning to Mr. Zourek's amendment, he agreed with its underlying principle, but considered that it was impossible to cut the Gordian knot of delimitation of the territorial waters forthwith.

31. Mr. CORDOVA did not consider Mr. Spiropoulos's amendment any improvement on the words "as a rule".

As to Mr. Zourek's amendment, he felt it would be more appropriate to insert it in a separate article, provided always that the Commission accepted the principle of equidistance. As Mr. Yepes had pointed out, it had not yet done so.

32. The CHAIRMAN wished to draw attention to the fact that the words "as a rule" ("*en règle générale*") related to a question of procedure, and not to a rule in law.

33. Mr. LAUTERPACHT urged the Commission to conclude the discussion. All the proposals gave, as they must, latitude to the arbitrators. What was causing him concern was that, although money had been spent on calling together experts, no clear rule had been proposed by them.

34. In order to simplify matters, he would withdraw his proposal and vote either for the Special Rapporteur's proposal or for that proposal as amended by Mr. Sandström and Mr. Spiropoulos, provided an explicit reference were included in the comments to the extent of the latitude to be given to arbitrators.

35. Mr. ALFARO said that it was essential to lay down a clear-cut rule and to devise some means of providing for such special circumstances as were not defined in the text. The arbitral tribunal would have to pronounce on the existence or on the non-existence of such special circumstances. If it made no pronouncement then the rule would have to be applied.

36. He accordingly submitted the following amendment:

"...unless otherwise agreed upon by the parties, or unless special circumstances should justify any method of delimitation and the existence of such circumstances should be pronounced by an arbitral tribunal".

37. Mr. SANDSTRÖM considered that Mr. Alfaro's formula added nothing to his own.

38. The CHAIRMAN expressed the opinion that the formula proposed by Mr. Sandström and Mr. Spiropoulos stressed the exceptions rather than the rule. He hoped, therefore, that the Special Rapporteur would accept that formula, which was preferable to the bald expression "as a rule".

39. Mr. SPIROPOULOS agreed with the Chairman. If the words "as a rule" were retained, arbitrators would not know how to act. His formula made it perfectly clear that only in cases where the application of the rule would lead to manifest unfairness would it have to be waived.

40. Mr. Alfaro's proposal had the disadvantage that it stated a principle and then made two exceptions to it. Moreover, his reference to arbitration raised a somewhat delicate issue. He (Mr. Spiropoulos) had all along been wondering whether the additional article adopted at the 203rd meeting (para. 79), which related to disputes arising in respect of the exploitation and exploration of

the continental shelf also covered the question of delimitation.

41. Mr. SCALLE said that the purpose of the additional article was to ensure that all disputes arising out of the exploration, exploitation or utilization of the continental shelf would be submitted to arbitration. But the concept of arbitration was dual. It could bear either the strict juridical meaning as expressed in the draft on arbitral procedure, or a wider meaning which made it akin to mediation. In the present instance, where there was no rule in law, the Commission was really thinking in terms of mediation. It was reluctant to have recourse to a supra-national organ, and had therefore transferred the powers of such an organ to arbitrators, relying upon them to correct mistakes and make such adjustments as special circumstances might warrant *ex aequo et bono*. The arbitrators must judge a dispute, but the disputes in the present instance would not be juridical disputes. That was why it was hardly surprising that the discussion had been so prolonged. There was no way out of a quandary which was of a political nature.

42. Mr. ALFARO and Mr. YEPES withdrew their proposals.

43. Mr. FRANÇOIS said that he would be prepared to accept Mr. Sandström's amendment as re-formulated by Mr. Spiropoulos.

44. The CHAIRMAN said that he would first put to the vote Mr. Kozhevnikov's proposal, and then the Special Rapporteur's proposal.

Mr. Kozhevnikov's proposal was rejected by 10 votes to 2, with 1 abstention.

45. Mr. ZOUREK considered that his amendment should be put to the vote before the Special Rapporteur's proposal, since it was farther removed from the original text.

46. Mr. CORDOVA reiterated his suggestion that Mr. Zourek's amendment should form a separate article.

47. Mr. ZOUREK was prepared to accept that suggestion.

Mr. François' proposal was adopted by 8 votes to 5.

48. Replying to a question by Mr. KOZHEVNIKOV, the CHAIRMAN recalled that there had been general agreement that paragraph 3 of Mr. Pal's proposal could be deleted in view of the fact that the Commission had already adopted a separate article on arbitration.

49. Mr. CORDOVA wondered whether the Special Rapporteur agreed that the procedure laid down in that article applied equally to disputes concerning the determination and allocation of boundary lines.

50. Mr. FRANÇOIS replied in the affirmative. Such had certainly been the Commission's intention; mention of the fact could be made in the commentary, and the Drafting Committee could also be asked to attempt to make the point clear in the text.

Mr. François' suggestions were adopted.

51. The CHAIRMAN then put to the vote article 7 as a whole in its amended form.

Article 7, as amended and as a whole, was adopted by 9 votes to 3, with 1 abstention.

52. The CHAIRMAN recalled that Mr. Córdova had suggested that the amendment which Mr. Zourek had submitted to paragraph 2 of Mr. Pal's proposal should be made a separate article.

53. Mr. FRANÇOIS felt that in view of the text which had been adopted for article 7, no further provisions concerning delimitation of the continental shelf were necessary, even if the text proposed by Mr. Zourek were compatible with that already adopted. On the other hand, there could be no objection to its being said in the commentary that the principles governing delimitation of the continental shelf and those governing delimitation of territorial waters should be the same, although the actual method used for delimiting the latter might be affected by certain considerations, particularly as regards navigation and fishing interests, which would not apply in the case of the continental shelf.

54. Mr. ZOUREK said that the sole aim of his proposal was to ensure that the same principles should govern delimitation of territorial waters and delimitation of the continental shelf. It seemed only logical that they should, particularly now that the principle of sovereignty over the continental shelf was accepted; and if they did not, practical complications would ensue. If his view was generally accepted, as seemed to be the case, he saw no reason why it should not be reflected, in general terms, in the text.

55. Mr. SPIROPOULOS thought that all members of the Commission were agreed that the principles governing delimitation of the continental shelf should be the same as those governing delimitation of the territorial waters. The latter principles, however, had not yet been formulated, and until they had been defined he saw little point in considering Mr. Zourek's proposal.

56. Mr. CORDOVA and Mr. KOZHEVNIKOV pointed out that agreement on the principles governing delimitation of the territorial sea might well be long delayed. If there were no objections to the substance of Mr. Zourek's proposal, there was no reason why it should not be adopted at once. If it were rejected, Mr. François' suggestion should next be put to the vote.

57. Mr. SPIROPOULOS said that if the majority of the Commission thought it opportune to insert Mr. Zourek's proposal in the text, he would have no objection.

58. Mr. LAUTERPACHT feared that there was at least a possibility of conflict between Mr. Zourek's proposal and paragraph 2 of article 7, in the form in which it had been adopted.

59. Mr. ZOUREK pointed out that paragraph 2 reserved to the parties the right to fix the boundary of the continental shelf amicably by some means other

than that indicated. There was therefore no contradiction between it and his proposal.

60. Mr. ALFARO could not regard Mr. Zourek's proposal in any other way than as a substitute for paragraph 2. As paragraph 2 had already been adopted, he did not see how the Commission could vote on Mr. Zourek's proposal.

61. Mr. HSU suggested that Mr. Zourek's point might be met if a recommendation were inserted in the commentary to the effect that where the States concerned agreed to depart from the rule laid down in article 7, they should adopt the same principles for delimiting the continental shelf as for delimiting their territorial seas.

62. Mr. YEPES said that, although sympathetic to Mr. Zourek's proposal, he could not support it, as there was a possible conflict between it and paragraph 2 of article 7, which had already been adopted; if the Commission later decided that delimitation of the territorial waters should be governed by some principle other than that of equidistance from the coasts, the contradiction would be patent.

63. Mr. SANDSTRÖM agreed.

64. Mr. SPIROPOULOS thought that all members of the Commission could accept the suggestion that it should be stated in the commentary that the principles governing delimitation of the continental shelf and those governing delimitation of the territorial waters should be the same. On the other hand, if Mr. Zourek's proposal were adopted and the Commission came to consider how the territorial waters should be delimited, it might find that the rule of equidistance from the coasts was unsuitable; then it would have to alter the draft on the continental shelf, a course which, in view of its definitive character, would be impossible.

65. The CHAIRMAN put Mr. Zourek's proposal to the vote.

Mr. Zourek's proposal was rejected by 7 votes to 2, with 4 abstentions.

66. Mr. KOZHEVNIKOV said that he had abstained because, although warmly supporting the principle of Mr. Zourek's proposal, he firmly believed, as he had already said, that it was essential that all questions of delimitation should be decided solely by mutual consent between the parties.

67. Mr. SCELLE explained that he had voted against Mr. Zourek's proposal, first, because it tended to equate the continental shelf with the territorial sea, despite the fact that they were two quite different things, and secondly, because it would open the door to division of the sea-bed by simple bilateral agreement between States.

68. The CHAIRMAN then put to the vote the suggestion that it should be stated in the commentary that the principles governing delimitation of the continental

shelf and those governing delimitation of the territorial waters should be the same.⁷

That suggestion was adopted by 12 votes to 1.

Article 6 (resumed from the 202nd meeting)⁸

69. The CHAIRMAN recalled that article 6 had been adopted conditionally, subject to decision as to whether the word "resources" should be qualified by the word "natural" or by the word "mineral".⁹

70. Mr. LAUTERPACHT pointed out that the definition of the continental shelf adopted by the Commission covered both the sea-bed and the subsoil. The Commission had now to decide whether it wished to limit the exclusive right of exploration and exploitation to the mineral resources which were to be found on the sea-bed and in the subsoil, or whether it should be extended to cover the pearl and oyster beds, sponge deposits and other resources which would be included under the term "natural" resources. He saw no good reason why mineral and non-mineral resources should be treated differently. It was true that President Truman's original proclamation of 28 September 1945 had used the term "mineral resources", but the term "natural resources" had frequently been used in later statements of policy.

71. There were two reasons for allowing the coastal State exclusive rights of exploration and exploitation over its continental shelf. In the first place, it would be more convenient in practice for the coastal State to engage in such activities. Secondly, it would not be desirable to permit other States to engage in such activities close to the coastal State's shores. Both those considerations applied with as much force to the exploration and exploitation of non-mineral resources as to those of mineral resources. He therefore proposed that the term "natural resources" be used, it being made clear, either in the text or in the commentary, that "natural resources" did not include swimming fish or bottom fish.

72. Mr. FRANÇOIS recalled that a number of governments, particularly the Swedish Government, had expressed a preference for the term "mineral resources", in order that there might be no doubt that the coastal State's exclusive rights of exploration and exploitation did not cover fishing. It might be considered that that point was met by Mr. Lauterpacht's suggestion, but it would be well for the Commission to exercise extreme caution, especially as one government at least proposed that sedentary fisheries should be regarded as part of the "natural resources" of the continental shelf, while it was the Commission's clear intention that they should be dealt with quite apart from the continental shelf. If there was no compelling reason for using the term

"natural resources", it might be wiser, in the circumstances, to keep to the term "mineral resources".

73. Mr. SANDSTRÖM said that there was one important difference between exploitation of the mineral resources of the sea-bed and subsoil and exploitation of their non-mineral resources, namely, that exploitation of the latter had already been going on for some time. For that reason it seemed preferable to limit the exercise of exclusive rights of exploration and exploitation to mineral resources.

74. Mr. YEPES felt that that was unnecessarily restrictive. He would vote in favour of the term "natural resources" being used both in the text and in the commentary.

75. Mr. SCALLE feared that any exploitation of the sea-bed and its subsoil would necessarily be total in its effect, and that even use of the term "mineral resources" in the draft would not suffice to protect the fish.

76. Mr. LAUTERPACHT suggested that the point made by Mr. Sandström might be met by adding to the text some such phrase as "subject to any established rights".

77. Mr. CORDOVA emphasized that the Commission should approach the question from a legal point of view, from which there could be no doubt that everything attached to the sea-bed, including oysters etc., belonged to the sea-bed. The Commission had already agreed that the continental shelf comprised the sea-bed and its subsoil, and had therefore no choice but to use the term "natural resources".

78. Mr. FRANÇOIS pointed out that sedentary fisheries were also attached to the sea-bed, but that the Commission had already decided to deal with them separately. It would only lead to confusion if it now regarded other non-mineral resources attached to the sea-bed as part of the resources of the continental shelf. He was therefore in favour of the term "mineral resources".

79. Mr. HSU said that he was altogether opposed to the principle of sovereignty over the continental shelf, but that if that principle was adopted, he did not see why it should not be extended to the non-mineral, as well as to the mineral, resources present.

Mr. Lauterpacht's proposal was adopted by 6 votes to 4, with 3 abstentions.

Points of terminology

80. Mr. KOZHEVNIKOV suggested that the opportunity be taken to discuss another question of terminology, that of the terms "territorial sea" and "territorial waters". He personally felt that the Commission should continue to use both.

81. Mr. FRANÇOIS recalled that at its fourth session the Commission had already decided, during its consideration of the régime of the territorial sea, to use the term "territorial sea" in lieu of "territorial waters"

⁷ See *infra*, 236th meeting, para. 22 and 238th meeting, para. 25.

⁸ See *supra*, 202nd meeting, para. 26.

⁹ See *supra*, 201st meeting, para. 99.

in view of the fact that the latter expression had sometimes been taken to include also inland waters.¹⁰ That decision could, of course, be reversed, but so long as it stood it should be respected, although the commentary might indicate that there was still some doubt as to whether the term "territorial sea" was the best and that the Commission therefore reserved the right to change it at a later stage, when it reverted to the subject.

82. Mr. KOZHEVNIKOV recalled that the decision to use the term "territorial sea" had been taken by a very narrow majority, and had never been intended to be other than provisional. He would have no objection to an indication being included in the commentary along the lines suggested by Mr. François, provided it was made clear that the decision taken at the fourth session was provisional.

83. Mr. CORDOVA felt that such an indication would correspond with the facts, since all the Commission's work to date on the territorial sea had been subject to review.

84. Mr. SPIROPOULOS said that the importance of the question should not be over-rated. The Commission was not at present discussing the régime of the territorial sea; it was discussing the continental shelf, which was one aspect of the régime of the high seas. It was the intention that its work on that subject should be completed at the present session and then submitted to the General Assembly; it could not submit a provisional text to the General Assembly, and had therefore no choice but to use the term which had been provisionally adopted in connexion with another subject, namely, the term "territorial sea".

It was agreed that the term "territorial sea" should be retained in the draft articles on the continental shelf and related subjects, and that a reference to the question should be made in the commentary along the lines suggested by Mr. François and Mr. Kozhevnikov.

85. Mr. FRANÇOIS recalled that another terminological point remained to be settled, with regard to the term "contiguous to the coast". The question might be referred to the Drafting Committee.

86. Mr. LAUTERPACHT feared that the question was not one of drafting. The Commission had adopted a rigid limit of 200 metres, which had met with serious objections from governments. After very careful consideration the Special Rapporteur had submitted a new proposal, which had important substantive implications and which would have to be thoroughly discussed by the Commission itself.

87. The CHAIRMAN agreed.

88. Mr. KOZHEVNIKOV asked whether it was the intention that a vote should be taken on part I of the

draft articles on the continental shelf and related subjects. In his view that would be desirable.

89. Mr. LAUTERPACHT agreed that a vote should be taken on part I as a whole, once it had been reviewed by the Drafting Committee.

90. Mr. LIANG (Secretary to the Commission) pointed out that the various questions dealt with in part II were not directly "related" to the continental shelf at all. That being the case, it might be desirable to split up part II, making each sub-section independent, and it certainly seemed desirable that a vote should be taken on part I as a whole.

It was agreed that a vote should be taken on part I as a whole.

The meeting rose at 1 p.m.

206th MEETING

Wednesday, 1 July 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

Additional article proposed by Mr. Yepes

1. Mr. YEPES proposed the addition to the revised draft articles on the continental shelf of a new article reading as follows:

¹⁰ See "Report of the International Law Commission covering the work of its fourth session", *Official Records of the General Assembly, Seventh Session, Supplement No. 9* (A/2163), para. 37.