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Summary record of the 67th meeting

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

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community? Why not a joint exploitation of continental shelf resources?

83. Mr. HUDSON wished to draw attention to two points in the report. Mr. François had said: "The number of proclamations laying claim to special rights is, it is true, increasing but it is still small. Up to the present, most States have not laid claim to such rights nor have they specifically recognized the validity of such claims."³ To his knowledge, a certain number of States had been consulted before President Truman made his proclamation in 1945. No protest had been raised against that declaration by the States in question. Due weight should be attached to the absence of such protest.

84. Mr. FRANÇOIS pointed out that there had been protests as soon as proclamations had been issued laying claim to sovereignty over the continental shelf, as for instance the proclamations of some South American countries.

85. Mr. HUDSON replied that the cases cited by Mr. François had nothing to do with the exploitation of continental shelf resources. The other point on which he wished to speak was to be found on page 40 of the report, where it was stated that: "With regard to the industrial utilization of the marine soil and sub-soil, the present stage of technical development is far from being such as to permit the working of the natural resources situated more than 200 metres from the surface. However this may be, it must be borne in mind that the adoption of a depth line of 100 fathoms as the outer limit of the continental shelf is likely to allot to the various States portions of the high seas varying greatly in extent. This would establish an unjustifiable inequality between States."⁴ He could not agree with that statement. He did not believe that an unjustifiable inequality between States would be created by adopting a depth line of 100 fathoms. That depth was commonly used by geologists. Further, most countries suffered from inequality in regard to the continental shelf. The continental shelf of the United States on the Pacific coast was extremely narrow owing to the fact that the sea depth increased rapidly. On the other hand there was a large continental shelf on the Atlantic coast of the United States. He hoped the Rapporteur would not lay too much stress on the idea of inequality.

86. Mr. BRIERLY said that it was purely a question of geography.

87. Mr. HUDSON said that the problem of the continental shelf had been exhaustively discussed for what was really a very short period. As regards air navigation, the law had taken shape quite suddenly. In the case of the continental shelf, they were likewise faced with very rapid development. He hoped the Commission would find some means of establishing a principle. He had been greatly struck by a statement made by Mr. Altamira twenty years ago, to the effect that there was a time when a new thing blossomed forth and developed

rapidly; one should not allow oneself to be overtaken by the event, but should try to direct it into the required channel. He hoped the Commission would bear in mind those very wise words.

88. The CHAIRMAN asked the Commission whether it was prepared to search for a general principle which would cover the matter.

89. Mr. el-KHOURY would prefer to discuss the question raised by Mr. Yepes in regard to the continuity of territory. It would be as well know what was the extent of that territory.

90. Mr. HUDSON said that there was yet another principle, that of contiguity. That principle had been adopted in a certain number of proclamations, and Prof. Max Huber had published a remarkable word on the principle of contiguity in international law. He would like the Commission to take note of that study.

The meeting rose at 1 p.m.

67th MEETING

Thursday, 13 July 1950, at 10 a.m.

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Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO (Assistant Secretary-General in charge of the Legal Department); Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Regime of the High Seas: Report by Mr. François (item 7 of the agenda) (A/CN.4/17) (*continued*)

SECTION 22: THE CONTINENTAL SHELF (*continued*)

1. Mr. YEPES stated that the problem was the most important one that the Commission had to discuss. It was confronted with what was perhaps an entirely new conception of international law and was dealing with a phenomenon which might be classed among the great events in the history of international law. It had

³ See A/CN.4/17, para. 114 (printed text), p. 37 (mimeographed English text).

⁴ Mimeographed English text; para. 122 of printed text.

been suggested the day before that it would be better not to take up the problem of the continental shelf at that stage, because there were no legal rules on the subject to be codified. All the more reason then for undertaking the study. It was the Commission's task not only to codify existing law but also to work for the progressive development of international law, as laid down in sub-paragraph a of paragraph 1 of Article 13 of the Charter. It should be pointed out that progressive development could only be in a forward direction. The Commission had been reproached with being more static than dynamic, but the study of the problem of the continental shelf would enable it to show that new questions held no terrors for it.

There was no need to expatiate on the importance of the continental shelf from the point of view of the production of wealth at a time when the increase in the earth's population made it necessary to exploit the whole of its resources. He would confine himself to the legal aspect of the question.

1 a. The various theories relating to the formation of the continental shelf, those of abrasion, sedimentation, accession etc., could only be of interest to the Commission in so far as they justified the rights of the coastal State over the said shelf. The theory of accession was the one he preferred. There was naturally a considerable difference between the type of accession generally covered by civil law and that involved in the case of the continental shelf which had existed for centuries. It was nevertheless a fact that the latter was the result of a process of sedimentation through which a coastal State recovered, on the sea-bed, land which it had lost by erosion.

1 b. Just as in private law, accession was a legitimate source of increment to property so, in international law, the conclusion must be reached that the continental shelf "must belong to the countries with whose coasts it was contiguous". That was clearly a fiction. But was not international law a body of more or less justified fictions and hypotheses? The legal equality of States, the territorial sea, the theory of extra-territoriality, the pacific intentions of States when in fact they were preparing for war, were not all those things also fictions? The theory of accession by sedimentation was likewise a hypothesis and perhaps also fiction, but it would serve to establish the right the coastal State possessed over the continental shelf. It only remained then to draw conclusions from that juridical fiction.

1 c. The first and the most important was the rule of continuity, according to which the continental shelf was only the submarine continuation of the territory above water. That rule required that, as far as possible, a State should exercise over its continental shelf the rights of exclusive sovereignty that it exercised over its terrestrial territory. As geology had shown, the natural resources of a country, minerals, coals, oil, did not stop at the edge of the sea. In that connexion, the old doctrine of Roman law that the accessory followed the principal, which explained why the small islands around a country belonged to it *de facto* and *de jure* even without effective occupation, had some bearing.

1 d. It might perhaps be objected that the continental shelf could not be effectively occupied by a coastal State, but that was a fact which remained to be proved. The progress achieved by science as each day passed justified the boldest conclusions and it was the duty of jurists to allow for all hypotheses and not to reject the possibility that in the near future the continental shelf might be effectively occupied by a coastal State. On the other hand, it was questionable whether effective occupation was a condition required by international law for a State to exercise exclusive jurisdiction over its territory. The old manuals of international law said it was, but if one investigated the practice of States very different conclusions would be reached. The Rapporteur himself spoke of a "theoretical" occupation. It was also possible to talk of symbolic occupation. Could it be asserted that all States occupied the whole of the space over which they claimed to exercise their jurisdiction? How would such an assertion fit, for example, the polar regions or the Amazon basin? The great novelty of the Monroe doctrine lay in its declaring, one hundred and thirty years ago, that there was no ownerless land in America.

1 e. A further objection which could be raised with regard to the theory of the continental shelf was that it limited the principle of freedom of the seas. That was not correct however because the navigable portion of the ocean was not affected by anything carried out on or under the continental shelf. If it was not admitted that the continental shelf came under the jurisdiction of the coastal State, it would be necessary to say that it was *res nullius* or *res communis* and neither of those doctrines was admissible.

1 f. From the Proclamation of President Truman of 28 September 1945, and from the measures adopted by certain Latin American republics and some Arab countries, could be derived the basic elements justifying the subjection of the continental shelf to the jurisdiction of the coastal State. That Proclamation and those measures could be considered, if not as a veritable customary law in the sense already given to that expression by the Commission, at least as an embryonic customary law. There was, as the Commission had decided, no need at all for the practice to date back a long time. It was sufficient for States to recognize it as constituting law and for it to have aroused no protests from other States. The United Kingdom, which had been the champion of maritime law, had hastened to claim that the territory of the islands of Jamaica and the Bahamas extended to the limits of their continental shelf, thus recognizing the existence of a custom whereby the continental shelf belonged to the State to which it was contiguous.

1 g. The study of some of the paragraphs of President Truman's Proclamation would show that the theory of the continental shelf possessed sound legal bases. The Proclamation began by mentioning "the long range world-wide need for new sources of petroleum and other minerals". That was the social and humanitarian justification for the Proclamation, which then affirmed that: "jurisdiction over these resources is required in

the interest of their conservation and prudent utilization when and as development is undertaken”, and continued: “the effectiveness of measures to utilize of conserve these resources would be contingent upon cooperation and protection from the shore”. Those words showed that, in his Proclamation, President Truman had spoken not merely from a narrow national standpoint but in the general interest of the whole international community. That explained why a number of nations, both medium and small, had hastened to follow the example given by the President of the United States of America to the world. After recognizing the need for a partition of the continental shelf, when the latter was common to different States, the Proclamation ended by re-affirming the principle of the freedom of the seas.

1 h. It could be seen then that the Proclamation of 28 September 1945 might rightly be regarded as one of the most important documents of our epoch and that it constituted a veritable customary law to which the Commission should give recognition by incorporating it in its code of international law.

1 i. He proposed that the Commission should confine itself, during that session, to defining the legal status of the continental shelf, i.e.—to declaring whether it considered, as he himself did, that it was a submarine continuation of the terrestrial domain of the coastal State or whether, on the contrary, it was *res nullius* or *res communis*. It was for the Commission to say what the legal status of the continental shelf was; it could leave to others the task of determining the detailed application of that status. He finally proposed that the Commission should appoint a special rapporteur to deal with the problem of the continental shelf.

2. The CHAIRMAN reminded the Commission that it had decided to endeavour to lay down certain general principles and suggested that perhaps the wisest method would be to consider one by one the questions at the end of the report (A/CN.4/17).

3. Mr. FRANÇOIS thought that some of the questions might perhaps be left aside.

Question 1

4. Mr. HUDSON affirmed that the questions formulated by the Rapporteur were, in his opinion, ones on which governments could be consulted. If, for its own guidance, the Commission desired to take a decision on the principle involved, it might examine that principle before drafting the questions to be submitted to governments. The previous day, the Chairman had suggested a very interesting idea to him, pointing out that either a continental shelf or shallow waters might be involved. The principle of shallow waters was broader than that of the continental shelf.

4 a. He wondered whether it would not be possible to say, roughly reproducing the words of the report of the Committee of the International Law Association to be submitted to the Copenhagen Conference, that:

1. Control and jurisdiction over the sea-bed and subsoil of submarine areas outside the marginal

sea may be exercised by a littoral State for the exploration and exploitation of the natural resources therein contained, to the extent to which such exploitation is feasible.

2. Such control and jurisdiction do not affect the right of free navigation of the waters above such submarine areas, or the right of free fishery in such waters.

In other words, the utilization of the high seas, of their bed and subsoil for the good of mankind was thereby made possible while at the same time the freedom of navigation and fishing was maintained.

5. The CHAIRMAN noted that Mr. Hudson's communication corresponded fairly closely to the first question of the report: “Should recognition of special rights as regards the working of the marine subsoil and the protection of marine resources be linked with the presence of a continental shelf?”

6. Mr. HUDSON explained that he had endeavoured to interpret the Chairman's idea. A continental shelf was not always present; in the Persian Gulf, for example.

7. The CHAIRMAN agreed with Mr. Hudson and said that were the latter's idea accepted the question would go beyond that of the continental shelf.

8. Mr. HUDSON considered that from a practical standpoint it was impossible to exploit the bed of the sea or the marine subsoil beyond the limit of the continental shelf.

9. Mr. KERNO (Assistant Secretary-General) noted that Mr. Hudson drew a distinction between the waters and the soil and enquired where the boundary-line occurred. Under which element would sponges be classified, for instance?

10. Mr. FRANÇOIS thought that Mr. Hudson had provided a very useful answer to the first question asked in his report, since by not mentioning the continental shelf, his proposal implied that the recognition of special rights should not be linked with the presence of a continental shelf. In the example of the Persian Gulf which Mr. Hudson had mentioned, no continental shelf existed.

11. Mr. HUDSON declared that if it was desired to use the expression “continental shelf” he would ask for shallow waters to be assimilated to it. He wished to make it clear that he did not desire to discuss the questions to be put to governments: he thought the Commission wished to take up a position on the general principle.

12. The CHAIRMAN mentioned that the questions listed at the end of the report were intended for the Commission.

13. Mr. SANDSTRÖM said he was in agreement, in the broad outline, with the ideas of Mr. Hudson. He wondered whether the Commission should confine itself to stating that the utilization of the sea-bed and subsoil did not affect free navigation and fishing. He thought that an attempt should be made to find a formula to the effect that such utilization should not seriously affect the freedom of navigation and fishing.

14. Mr. HUDSON, explaining that he was endeavouring to formulate directives for the Rapporteur,

stated that he was quite prepared to modify his text in that sense by substituting the words "must not substantially affect".

15. Mr. CORDOVA approved the general principle laid down by Mr. Hudson, but the extension of the zone as far as exploitation was possible was a rather frightening suggestion since the zone was undetermined. No country had hitherto asked for so much; in the case of the continental shelf they had not gone beyond 200 metres in depth.

16. An exchange of views between Mr. HUDSON, Mr. CORDOVA and Mr. SANDSTRÖM made it clear that, in Mr. Hudson's view, exploitation became impossible beyond a depth of 200 metres. The first paragraph of his proposal was, in fact, restrictive, but claim rights beyond that limit nevertheless seemed to him justifiable if exploitation actually took place.

17. The CHAIRMAN considered that the purpose of the true conception of the continental shelf was to permit States to exploit the marine subsoil in the common interest of mankind as a whole. If exploitation could be properly carried out beyond the continental shelf why should not such wealth be exploited? Mr. Hudson's formula did not limit exploitation to the continental shelf but said "to the extent to which such exploitation is feasible".

18. Mr. HUDSON said he was concerned solely with the practical problem. Some very costly experiments in boring for oil had been made in the Persian Gulf. Naturally, he left it to the Rapporteur to find a solution for cases in which several States would be operating in the same area.

19. Mr. YEPES wished to raise a point of order. He had put forward a proposal and asked that the Committee first decide whether or not the coastal State had rights over the continental shelf.

20. The CHAIRMAN considered that that was precisely the matter the Commission was discussing.

21. Mr. ALFARO drew attention to the fact that the question proposed by Mr. Hudson was very closely linked with the question Mr. Yepes wished to be considered. It was not possible to consider the right of coastal States to exploit the sea-bed wherever that was feasible, even if part of the continental shelf belonging to another State was involved, without first determining whether there was a continental shelf and to whom it belonged. Once that was done, the formula proposed by Mr. Hudson "... to the extent to which such exploitation is feasible" was a very sound one. The Commission should first decide whether a continental shelf existed, what it was and who had rights over it. Unless it did that it would have no solid basis from which to approach the problem.

22. Mr. AMADO pointed out that the problem had a number of political implications. The first point to discuss was the question whether the right that may be exercised by the coastal State was a right of control based on the right of sovereignty that that State might claim over the continental shelf. If the conclusion was in the affirmative, then the Commission would deny any value to the Proclamations of Argentina, Chile and

Peru, those States having no continental shelf. The Governments of Argentina, Chile and Peru left out of account the question of the continuation of the super-marine territory of a State. Following on President Truman's Proclamation, Argentina, Chile and Peru had claimed rights of sovereignty over a certain zone extending from the coast.

22 a. The Commission might endeavour to determine what the continental shelf was but it should first fix the rights of coastal States, independently of the existence of such a shelf and of geological researches.

23. The CHAIRMAN had also interpreted Mr. Hudson's proposal, in which no mention was made of the continental shelf, in the same manner. The first question of the Commission to resolve was whether the rights of coastal States were bound up with the existence of a continental shelf. Personally, he did not think so but the Commission might clearly be of another opinion.

24. Mr. HUDSON said he was endeavouring to keep in mind the world interest underlying the extension of the control and jurisdiction of a State for the exploration and exploitation of natural resources. He thought they should confine themselves to the need to explore and exploit natural resources, though perhaps, at some later date, it might prove possible to go beyond the continental shelf. He had wished to emphasize the idea enunciated by President Truman concerning the need for natural resources to be utilized.

25. Mr. FRANÇOIS noted that, so far, no member of the Commission had declared himself in favour the recognition of special rights with the presence of a continental shelf. He felt therefore that he had been given sufficient guidance on that question.

26. The CHAIRMAN understood that Mr. François drew the conclusion that the exploitation of natural wealth was not bound up with the presence of a continental shelf. States possessing and States not possessing a continental shelf enjoyed the same rights, provided of course they were coastal States.

27. Mr. CORDOVA thought it would be necessary to make clear whether the coastal State could exclude other States from exploitation, particularly in cases where a continental shelf existed. He was not referring to the exploitation of the high seas or of their subsoil. He merely wished to know to what extent the coastal State had rights over certain submarine areas described as the continental shelf and what those rights were.

28. The CHAIRMAN pointed out that if there were no continental shelf, the coastal State had no special rights.

29. Mr. YEPES thought the question was whether the Commission considered that the coastal State had or had not rights of control over the continental shelf contiguous to its territory.

30. Mr. SPIROPOULOS found a certain confusion in the Commission's discussion which sometimes dealt with the continental shelf and sometimes with the exploitation of natural wealth. The question of the continental shelf was the main one, and the question whether it was desired to link the exploitation of natural wealth with the

presence of a continental shelf was a secondary matter. The point to be decided was whether beyond the bounds of the territorial sea, the State could exercise any rights and what those rights were; the right of control was a right of sovereignty. On that point, there was no rule of international law. They were faced with a vacuum. No State had so far considered exploiting the wealth of the continental shelf, as technique was not sufficiently advanced.

31. The CHAIRMAN thought there was at least one rule—namely, that no right existed beyond the limit of the territorial sea.

32. Mr. SPIROPOULOS agreed that so far as the water was concerned, a rule existed, but no work on international law made mention of the subsoil. As, furthermore, the majority of jurists ignored the question, there was in his opinion no rule of international law relating to the continental shelf. Must the Commission therefore conclude that no solution could be reached? When the International Court at The Hague had given a ruling on the right of the United Nations to intervene to protect its representatives, it had likewise been unable to find any rule of international law but had interpreted existing rules in order to recognize that the United Nations had that right. Similarly, the Commission would manage to derive rules relating to the continental shelf. There were no prohibitive rules forbidding a State to exercise rights over the continental shelf but there were, on the other hand, no permissive rules either. They were faced with a question to be regulated for the first time. It was for that reason that, at the previous meeting, he had inquired whether the Commission should codify the matter. What was involved was rather the establishment of a new right, a matter which came within the sphere of the progressive development of international law and was a very delicate question.

32 a. With regard to Mr. Hudson's proposal which was based on technical possibilities, it might be dangerous to permit a State to extend its rights to the middle of the ocean. The issue was whether the Commission wished to limit the rights of the coastal State to a certain distance from its coasts or whether it should be permitted to extend them to any distance whatsoever, so long as exploitation was feasible. Was it desired to reserve the right of exploitation of the subsoil to the coastal State and to leave the rest of the sea at the disposal of all? It seemed to him difficult to give any ruling on the series of questions he had just formulated.

32 b. President Truman's Proclamation and the proclamations of the other States were quite natural ones. Needs existed, and when there was no rule, man could not stand still but must act. Divergent interests and conflicts would arise but in the end the members of the international community would come to an understanding. They stood at the beginning of a process of development. The proclamations were the first manifestations of a new right but as yet there was nothing definite on the matter. He wondered therefore whether the time had come to lay down rules. He did not think the Commission should confine itself to codification. It might lay down a general principle but in doing so

must proceed with extreme caution. If the principle laid down was not approved by the majority of the States concerned, the success of the text which the Commission was to submit to the General Assembly might thereby be jeopardized.

33. Mr. AMADO considered that Mr. Spiropoulos' presentation of the question was correct. The treaty relating to the Gulf of Paria and the proclamations made showed that the United States of America and the United Kingdom were among the first States to seek to extend their sovereignty over the continental shelf. If the continental shelf and the waters above it could already at that stage be occupied, modern technique also enabled its exact extent to be measured. True, a principle of international law could not be based solely on the proclamations of a few States. However, the absence of any protest from the other members of the international community was very significant and justified the conclusion that the legal concept of the continental shelf was accepted. History showed that the law of the sea had been built up rather from a series of unilateral declarations by States than from general conventions. The Declaration of Panama of 3 October 1939 which had nevertheless received the signature of almost all the countries of the American continent had not succeeded in imposing the security limit of 300 miles. An international convention to determine in detail the number and extent of the rights that each State might have over the continental shelf seemed to be most desirable and even necessary. Should the continental shelf extend to the shore of another State, it would be divided between the two States.

33 a. In short, as the law stood, claims to sovereignty over a zone 200 sea miles in breadth were exaggerated, since one State could not alone exploit such an expanse. The continental shelf had a natural limit beyond which the efforts of technicians were at present of no avail. He would like to emphasize the vagueness of the rules of both conventional and customary law on the subject.

34. Mr. HUDSON proposed modifying as follows the first paragraph of the text he had submitted to the Commission: for "to the extent that such exploitation is feasible" to substitute "to the extent that those areas are located on the continental shelf connected with its territory."

35. Mr. FRANÇOIS said that the change was a very important one which entirely altered the sense of the original text.

36. Mr. el-KHOURY said he had given his opinion on the presence of a continental shelf the day before. Since then, he had become more than ever convinced that after a decision had been taken on the presence of a continental shelf, it would be desirable to leave to specialists the determination of its breadth.

36 a. With regard to Mr. Hudson's proposal, he was prepared to accept the change the latter had just suggested. He also accepted, in principle, that the continental shelf should be considered as a continuation of the national territory. Finally, he accepted the second paragraph of Mr. Hudson's text, on condition that fisheries should not hamper the exercise of the right

enunciated in the first paragraph. It was clear that the subsoil of the territorial sea belonged to the coastal State. Mr. HUDSON's text must hence apply to the high seas. As for the expression "to the extent to which such exploitation is feasible", he would like to draw attention to the fact that what was not feasible at that time might become so in the future. The expression was therefore too broad and should be made more precise.

37. Mr. BRIERLY feared that the Commission was rather in the air and that it could not, in those circumstances, arrive at any conclusions. After the long discussion which had taken place, in the course of which various members had stated their ideas, each dealing with different aspects of the problem, the Commission should turn to Mr. HUDSON's proposals and take a decision on the first one.

38. The CHAIRMAN accepted Mr. Briery's suggestion, remarking that he too had observed that the various members of the Commission were envisaging the problem of the continental shelf from entirely different viewpoints.

39. Mr. AMADO was in favour of Mr. HUDSON's first proposal which seemed to him to offer the possibility of reaching an agreement in principle. The proclamation so far made by various States constituted the beginning of a practice which was gradually becoming established. Mr. HUDSON's proposal did not conflict with the spirit of the various proclamations and he had accordingly no objection to its being discussed.

40. The CHAIRMAN suggested that the Commission should take a decision on Mr. HUDSON's first proposal, which ran as follows:

"Control and jurisdiction over the sea bed and subsoil of submarine areas outside the marginal sea may be exercised by a littoral State for the exploration and exploitation of the natural resources therein contained, to the extent to which such exploitation is feasible."

41. Mr. YEPES thought that Mr. HUDSON had suggested an amendment to that proposal.

42. Mr. HUDSON replied that he had not done so, but had submitted a second proposal which was exactly the opposite of that which the Chairman had just read out. He would like to read the text of the second proposal, which was as follows:

"Control and jurisdiction over the sea bed and subsoil of submarine areas outside the marginal sea may be exercised by a littoral State for the exploration and exploitation of the natural resources therein contained to the extent to which such areas are located on the continental shelf connected with its territory, including regions which may be assimilated to the continental shelf by reason of the shallowness of their waters."

43. The CHAIRMAN noted that Mr. HUDSON's proposal was entirely bound up with the presence of the continental shelf.

44. Mr. HUDSON said that, in his opinion, the Commission should begin by voting on the first of the

proposals he had made. Should it be rejected, it could then examine the second proposal.

45. Mr. CORDOVA said that, as far as the first proposal was concerned, he was obliged to vote against the second part of it beginning with the words "to the extent to which". He did not think that the Commission would be able to agree on that clause. On the other hand, he accepted the first part of the proposal because it seemed to him that an agreement was possible on the principle it enunciated. He called for a vote by show of hands.

46. Mr. YEPES would like the word "exclusive" to be inserted before the words "control and jurisdiction". Such qualification seemed to him essential if misinterpretations were to be avoided. He enquired whether Mr. HUDSON would accept that addition to his text.

47. Mr. HUDSON replied that he had not wished to submit a precise text to the Commission and that his proposals were only in the nature of suggestions for the Rapporteur who could take account of them or not, as he chose. It seemed to him, in any case, that in his wording the notion of exclusiveness was already implicit.

48. The CHAIRMAN put to the vote the first part of Mr. HUDSON's first proposal, down to "therein contained".

The Commission adopted the proposal by 10 votes to 1.

49. Mr. YEPES explained that he had voted for the first part on the understanding that it referred to exclusive control and exclusive jurisdiction.

50. Mr. AMADO said he wished to explain his vote. He had voted in favour of the proposal because it constituted a first attempt at the formulation of a principle. He would not have been prepared to vote for a text which went any further than that because the question as a whole did not seem to him ripe enough for codification.

51. The CHAIRMAN invited the Commission to take a decision on the second part of the first proposal submitted by Mr. HUDSON, which ran as follows:

"to the extent to which such exploitation is feasible".

52. Mr. CORDOVA enquired whether Mr. HUDSON intended by those words to limit control and jurisdiction to the breadth of the continental shelf. He thought that the delimitation of the breadth of the continental shelf was extremely difficult. It was, in fact, a purely technical question on which technicians alone were qualified to express an opinion. The Commission was certainly not in a position to decide on a delimitation of the continental shelf and for the time being should leave the question aside but request the Rapporteur to reflect upon it and to give in his next year's report some more definite conclusions which would perhaps make it possible to undertake such a delimitation.

52 a. The Commission had just decided that the coastal State had the exclusive power of control and jurisdiction over the sea bed and subsoil of the submarine areas outside its territorial waters. That was a principle which might be applied in practice, but it would be premature to take a decision on the breadth of the continental shelf. Who was to define it? Certainly not

the Commission. The only possibility that remained for it was to fix a very vague limit, and he did not think that would be desirable.

53. Mr. BRIERLY said it would be desirable for the Commission to decide whether the control and jurisdiction, on which the Commission had just taken a decision, depended on the possession or non-possession of a continental shelf by the coastal States. Personally, he did not think they were. Legally speaking the presence or absence of a continental shelf was of no importance. Chile, for instance, possessed no continental shelf, but if that State wished to explore or exploit the subsoil of the sea and was able to do so, there was nothing against it from a legal standpoint.

53 a. He accordingly suggested first submitting the following proposal to the Commission:

“Control and jurisdiction do not depend on the presence of a continental shelf.”

54. The CHAIRMAN accepted that suggestion. He pointed out that the first part of Mr. Hudson's proposal which had been adopted by the Commission a few moments ago did not presuppose the presence of a continental shelf. The vote that the Commission was now called upon to take bore on the question whether the exercise of control and jurisdiction required the presence of a continental shelf.

55. Mr. HUDSON thought Mr. Brierly's thesis was correct. The exercise of control and jurisdiction did not depend on the presence of a continental shelf.

56. Mr. CÓRDOVA confessed that he failed to grasp the point which the Commission was discussing. It had spoken of the presence of a continental shelf over which the coastal State could exercise its control and jurisdiction. At the same time it spoke of the high seas. Did it wish to give States exclusive control and jurisdiction? But to what States and, moreover, over what? If the problem was envisaged in relation to the continental shelf, he could understand the discussion and the proposals put forward. But in any case he considered that a limit must be set to the rights conferred on States, and it seemed to him that such a limit was the breadth of the continental shelf. Would the United Kingdom not be authorized to exploit the wealth of the Mexican Gulf solely because Mexico claimed exclusive control and jurisdiction over those waters? The idea of control and jurisdiction must be linked with something clearly defined. It was essential to limit to a specific zone the exclusive control and jurisdiction which it was intended to attribute to States. Such a limitation seemed possible so long as one kept to the zone of the continental shelf, but on the high seas all limitation seemed impossible.

57. Mr. BRIERLY thought Mr. Córdova was misinformed. The Commission had taken no decision with regard to a delimitation of the zone over which a State might exercise its control and jurisdiction. That question had been left entirely open and would have to be considered later. The Commission had simply decided that the coastal State should have a right of control and jurisdiction over certain zones without so far delimiting them.

58. The CHAIRMAN agreed with Mr. Brierly that no limit had been set, but that one would have to be established later.

59. Mr. el-KHOURY thought that Mr. Brierly's opinion would be correct had the Commission not accepted the first part of Mr. Hudson's proposal. That part expressly provided for exclusive control and jurisdiction of the coastal State over certain zones which, it was true, had not so far been delimited. A limitation was, however, necessary; otherwise the right of control and jurisdiction of a State would be completely unlimited. If, for example, Norway claimed exclusive rights of control and jurisdiction over the North Sea of which she was a coastal State, the United Kingdom would no longer have any right to such control and jurisdiction, simply as a result of Norway's claim. A limitation to that right must therefore be laid down. Before it could vote on Mr. Brierly's proposal, the Commission would have to annul the vote it had just taken.

60. Mr. CÓRDOVA said he had voted under the impression that it was a question of the continental shelf.

61. Mr. BRIERLY said that, if the Commission was of the opinion that the right of control and jurisdiction depended on the presence of the continental shelf, it was committing an injustice towards certain countries, such as Chile, that possessed no continental shelf.

62. Mr. CÓRDOVA thought that any injustice there was, was at the most a geographical one.

63. The CHAIRMAN felt that the discussion was becoming more and more involved.

64. The CHAIRMAN invited Mr. Brierly to act as mediator and make a proposal.

65. Mr. BRIERLY was not sure whether he would have any success in his task as mediator. The Commission had adopted, as a directive, the first part of the proposal made by Mr. Hudson. The question had then arisen whether the zone in which the coastal State could exercise an exclusive right of control and jurisdiction depended on the presence of a continental shelf or not.

65 a. As he had already said, he felt that the right did not depend on the presence of a continental shelf. Certain countries not possessing a continental shelf might desire to exploit the marine subsoil and the number of such countries was fairly large. If, for technical reasons, they were unable to exploit that subsoil, there was nothing to be done about it. On the other hand, there were regions where such exploitation was feasible and should be permitted to coastal States. Those areas required definition but not necessarily one based on the presence of a continental shelf. If the Commission conferred the right of control and jurisdiction on countries possessing a continental shelf, it would be committing an injustice towards countries which were without one. For that reason he had said and would repeat that the area over which the right could be exercised would need definition, but it need not depend on the existence of a continental shelf. It was of course difficult to define a continental shelf. One might say that where a continental shelf existed, it would be the limit of the

submarine area envisaged in the text which the Commission had just adopted. Where there was no continental shelf, the criterion could be the depth of the water or the number of miles. He did not think the Commission at that stage could select either criterion. For that reason he submitted the following proposal:

“The area for such control and jurisdiction will need definition, but it need not depend on the existence of a continental shelf.”

66. Mr. SPIROPOULOS thought that the proposal to define the area later should be left out. He thought that, as a matter of fact, no definition was possible. How could the Commission really attempt to define an area which so far was not in existence? If the Commission said that control and jurisdiction could be exercised over the subsoil, without defining the area, he could support that opinion, but he doubted whether the Commission would ever be in a position to resolve the problem of delimitation. Only a conference of experts would be capable of doing that.

67. Mr. SANDSTRÖM stated that there were already certain technical limits to the exploration and exploitation of the seabed or the marine subsoil. The determination of a limit had its utility in waters such as the Gulf of Mexico, the North Sea or the Baltic, but in such areas the delimitation of the respective zones would be made by a convention between the States concerned.

68. Mr. CORDOVA thought the matter was a very important one. The question, as presented by the Rapporteur, was one relating to the rights of a State over certain zones of the high seas limited to the continental shelf. In the proclamations of certain States, however, the right was claimed of control and jurisdiction over the high seas. The Commission was not dealing with those rights over the high seas. It was examining the rights of control and jurisdiction from the point of view of the sea bed and the marine subsoil. The Commission did not seem to him to be very clear on the point. He thought therefore that the best solution would be to leave it to the Rapporteur to study the question afresh in the light of the views expressed. The question of the depth of the waters was entirely distinct from that of the continental shelf. Moreover, the idea that certain States might extend their territorial waters beyond certain limits had likewise nothing to do with the question of the continental shelf. It was essential for the Commission to confine its discussion to the problem of the continental shelf.

69. Mr. SANDSTRÖM did not understand the explanations just given by Mr. Córdova, who wanted the right of a State to explore and exploit the marine soil and subsoil to be limited to the continental shelf. He wondered why Sweden, for example, a country without a continental shelf, should not have the right of exploring and exploiting the subsoil of the Baltic in so far as, by so doing, she did not prejudice the freedom of the seas, from the point of view of navigation and fishing in particular.

70. Mr. CORDOVA replied that Sweden could not do so because it was the high seas which were involved.

71. The CHAIRMAN noted that the same question

continued to arise, namely: was the marine subsoil a continuation of the territory of the contiguous State? If the Commission concluded that it was, it would be going against existing international law. He also observed that some of the members of the Commission appeared to take the view that the territorial waters should be extended as far as the continental shelf.

72. Mr. FRANÇOIS moved that a vote be taken.

73. The CHAIRMAN said he would consult the Commission on the question whether it considered that the control and jurisdiction that a State might exercise over certain submarine areas depended on the presence of a continental shelf. He would recall that the Commission had taken as its starting point the idea that an interest of the international community was involved.

74. Mr. LIANG (Secretary to the Commission) thought that if the Commission wished to take a vote, the best formula on which it could vote was that submitted by Mr. Brierly. By taking a decision on that formula and thus determining whether the exercise of the right of control and jurisdiction depended on the presence of the continental shelf or not, it would have cleared up a certain amount of confusion. That formula would not however settle the other important question of the breadth of the continental shelf.

75. The CHAIRMAN shared Mr. Liang's view. The Commission should break the present deadlock by voting on Mr. Brierly's formula. The problem of the breadth of the submarine regions in question would be dealt with later. The Commission had already accepted the first part of Mr. Hudson's first proposal establishing the right of control and jurisdiction. The formula proposed by Mr. Brierly further clarified the proposal already accepted by the Commission. He would therefore consult the Commission on that formula which ran as follows:

“The area for such control and jurisdiction will need definition but it need not depend on the existence of a continental shelf.”

The Commission adopted the formula by 6 votes to 4 with 2 abstentions.

76. Mr. AMADO wished to explain his vote. In his opinion the principle the Commission sought to establish could not yet be enunciated by it because neither conventional law nor customary law was sufficiently developed on the point. As however the vote it had just taken constituted only a tentative conclusion, he had not wished to vote against the adoption of the formula and had accordingly abstained.

77. Mr. ALFARO declared that he had abstained because the formula conflicted with the principles he favoured. He approved of the thesis that any exploration and exploitation of the marine subsoil should be for the benefit of mankind. He was also in favour of the principle of avoiding the establishment of inequality with regard to States which possessed no continental shelf. He could have accepted the formula only if the Commission had expressly recognized those two principles, if it had furthermore clearly defined the sense attached

to the words "control and jurisdiction", and finally if it had recognized that the term "coastal States" could give rise to difficulties in maritime zones such as those of the Baltic, the North Sea, the Gulf of Mexico and the Persian Gulf where the submarine areas of the different coastal States overlapped. The formula as adopted might be interpreted as giving a State the right to penetrate for purposes of control and jurisdiction into the area of another State. Had the text been so drafted as to eliminate those difficulties he would have voted in favour of the formula.

78. The CHAIRMAN invited the Commission to vote on Mr. Hudson's second proposal that: "such control and such jurisdiction should not substantially affect the right of free navigation of the waters above such submarine areas nor the right of free fishing in such waters".

79. Mr. HUDSON repeated that the text was not a formal proposal on which a vote should be taken but had been submitted by him with the idea that it might serve as a very general directive to the Rapporteur.

80. The CHAIRMAN accepted that statement, adding that he, likewise, did not regard it as a final text.

81. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) asked Mr. Hudson whether he regarded the word "substantially" as essential.

82. Mr. HUDSON replied that he did not and had inserted it simply to meet a suggestion of Mr. Sandström.

83. Mr. BRIERLY thought that that word or a similar phrase was essential. Any control was liable to affect navigation and fishing. There would also be installations on the sea that ships would be obliged to avoid or go round. Finally, it was possible that the installations and operations might give rise to pollution of the water. He was afraid that freedom of navigation and fishing could not always be maintained unimpaired. The word "substantially" did not seem to him indispensable but he was nevertheless in favour of keeping it since States should be compelled to reduce to a minimum the obstacles which control measures or installations might create for navigation and fishing.

84. Mr. HSU proposed that the words "should not substantially affect" be replaced by the words "should be such that they avoid affecting".

85. The CHAIRMAN thought that the point in question was one on which the Rapporteur should be left free to choose his own terms.

86. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) agreed with the Chairman's suggestion. He felt bound to point out however that as soon as there was anything on the surface of the sea, it constituted an impediment to the freedom of navigation, though it would always be possible for a ship to go round such obstacles, provided they were not too voluminous. By using the word "substantially" the Commission emphasized the necessity for States to see that the installations did not constitute an excessive impediment to the freedom of navigation.

87. The CHAIRMAN requested the Commission to take a decision on Mr. Hudson's second proposal.

The Commission adopted the proposal by nine votes.

88. The CHAIRMAN remarked that one difficulty had been eliminated but that a few others remained for the Commission to deal with. He invited the Commission to pass to consideration of the definition of the breadth of the continental shelf (question 2 formulated by the Rapporteur, at the end of his report).

Question 2

89. Mr. FRANÇOIS thought the whole question should be left aside.

90. Mr. YEPES said that the question could be settled only by geographers or geologists. The Commission had neither the competence nor the requisite knowledge.

91. Mr. AMADO wished to draw the Rapporteur's attention to a text submitted to the International Law Association by Mr. Govare, Mr. Blondel, Mr. Le Gall and Mr. Zuber, containing a criterion which the Rapporteur might take into consideration in his study. The passage in question read as follows:

"In the event of the break in the continental shelf occurring at a distance less than 20 sea miles from the coast, sovereignty, together with control and the exclusive right of exploitation would be prolonged to 20 sea miles from that coast."

He had quoted the passage because it could be applied to countries without a continental shelf and because the rights of such States would be unlimited unless a limit were prescribed to them. Those who had studied the problem thought that that limit should be established at 20 sea miles from the coast. He requested the Rapporteur to take the text into account in his future work.

92. The CHAIRMAN pointed out that Mr. Brierly's formula, adopted by the Commission, likewise stipulated that a limit should be fixed.

93. Mr. CÓRDOVA thought that after the two decisions taken by the Commission with regard to the right of exploration and exploitation of the marine subsoil, the delimitation of the zone in which that right could be exercised should be fixed quite independently of the presence of the continental shelf as well as in relation to States which possessed one.

94. Mr. BRIERLY wondered whether the Commission might not be willing to accept a formula in some such terms as the following:

"When a continental shelf exists, its limit is also the limit of the zone in which the State has the right to explore and exploit the marine subsoil."

95. Mr. FRANÇOIS and Mr. CÓRDOVA thought that account should be taken of the fact that in certain cases the continental shelf was very narrow. Mr. Brierly's formula might accordingly lead to an inequality in favour of States possessing no continental shelf.

96. Mr. SPIROPOULOS thought that if it adopted Mr. Brierly's proposal, the Commission might also commit an injustice towards States possessing perhaps only 20 metres of continental shelf, whereas others had a shelf extending for 200 kilometres. He wondered whether, precisely in order to avoid any injustice, it would not be fairer to fix a limit.

97. Mr. HUDSON shared the view of Mr. Spiropoulos that Mr. Brierly's formula adopted by the Commission (para. 75 above) did not entirely eliminate the factor of the continental shelf. A great variety of cases existed: the case of the State which had no continental shelf; cases where the continental shelf existed; the cases mentioned by Mr. Alfaro of zones to which there were concurrent claims by several States. It seemed to him difficult to find a single formula which would cover all those cases. When there were concurrent claims by several States to a single zone, he thought that those States should and could arrive at a solution by a mutual agreement. That was the point mentioned by the Rapporteur in his seventh question. There remained the question whether a limit should be set to the continental shelf. The geologists were not unanimous on the point. There were geographical facts that none of the countries could escape. The solution offered great difficulties. The Commission might perhaps consider question 2 of the report without however fixing a limit. In any case, he thought that in every instance the possibility of exploration and exploitation would always be limited by the configuration of the ocean bed.

98. Mr. AMADO thought it should be possible to find a certain limit. It might assist the Commission if he read another passage from the report submitted to the International Law Association by the French branch.

The passage read:

"This limit (of 20 sea miles) is more than adequate to cover all the possibilities of exploitation which may occur even within a fairly distant future, in cases where the continental shelf does not exist or does not stretch far from the coast. The claim of sovereignty (control and protection) for as far as 200 sea miles, formulated by certain States, cannot, in this same case, apply to anything but fisheries. . . ."

He thought the Commission could accept the thesis put forward in the report, making allowance however for the possibility of waivers by bilateral agreement. Just as it was difficult to adopt a uniform delimitation of the zones for purposes of customs, fiscal and sanitary control, there were also difficulties in arriving at a uniform delimitation of the zone of exploration and exploitation. The Rapporteur might perhaps reflect on the idea and see whether there was a possibility of fixing a limit.

99. Mr. HUDSON was unable to accept the thesis in the report of the French branch of the International Law Association. In the Persian Gulf, for example, exploration and exploitation operations could be undertaken by the various States if there was an agreement between them. He saw no need for fixing a limit. States, for instance the United States of America and Mexico, frequently came to such agreements. The report quoted by Mr. Amado did not seem to him to be at all relevant.

100. The CHAIRMAN also thought that there was no need to fix a limit, but for another reason—namely, that he did not accept the legal notion of the continental shelf.

101. Mr. CORDOVA asked the following question: if Mexico and the United States of America, for exam-

ple, came to an agreement on certain points with regard to the Gulf of Mexico, could they thereby exclude other countries from the zone?

102. Mr. HUDSON replied that they could.

103. Mr. AMADO thought that if Mr. Hudson's thesis were accepted, it would mean a return to the principle of *res nullius*. However, if the problem was correctly formulated, it would have to be admitted that, according to the principles of international law, all States had the right of exploration and exploitation on the seas or in the Gulf of Mexico or, again, in the Persian Gulf. If other States could be excluded, it would be a violation of the principle of the freedom of the high seas.

104. Mr. SPIROPOULOS repeated his opinion that any attempt to fix a limit was doomed to failure from the start. It had not proved possible so far to arrive at an international definition of the breadth of territorial waters and the Commission would be no more successful in arriving at an international delimitation of the breadth of the continental shelf.

105. The CHAIRMAN replied that delimitations of territorial waters existed, but each State defined that limit to suit itself; some fixing it at 3 sea miles, others at 6 sea miles. In spite of all such divergencies, States had managed to find a *modus vivendi*.

106. Mr. SPIROPOULOS said that, in point of fact, each State would establish its own rule. As far as codification from the point of view of international law was concerned, that was quite another question.

107. Mr. CORDOVA thought that if no limit was fixed to the zone in which a State had the right of exploration and exploitation, the whole idea of freedom of the high seas was abandoned.

108. The CHAIRMAN said that the situation was identical with that occurring in the case of territorial waters, in which no one had ever succeeded in determining the line of the waters in a precise and uniform manner. In the case in point the Commission could therefore also accept the idea of reasonable limits to be provisionally fixed by the States themselves.

109. Mr. SPIROPOULOS thought that all States should be left free to establish their own limits and to come to agreement with other States.

110. The CHAIRMAN agreed but thought that some sort of limit should be prescribed. He repeated that the situation was the same as in the case of territorial waters.

111. Mr. Yepes said that the Commission had not so far defined the legal status of the continental shelf. That was of no importance, he thought, so long as the zone was a fairly broad one, but difficulties would be bound to arise unless a clear definition of the legal notion was reached.

The meeting rose at 1 p.m.