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Summary record of the 68th meeting

Topic:
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68th MEETING

Friday, 14 July 1950, at 10 a.m.

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Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. Ricardo J. ALFARO

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, 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*)Question 2 (*concluded*)

1. Mr. YEPES pressed for a definition of the legal status of the continental shelf. It was essential to know whether it was *res nullius*, *res communis*, or the submarine extension of state territory. At the previous meeting, the Commission had started out by studying the extent of the continental shelf. In his opinion, it would be advisable to decide first of all what was the continental shelf. He asked the Commission to look into that fundamental question. In 1945, President Truman had issued a proclamation which had revolutionized international law; the Secretariat had submitted to the Commission a most valuable report (A/CN.4/32); scientific periodicals studied the question; why should the International Law Commission not do so? The scientific world awaited its decision, and it must tackle the problem.

2. Mr. HUDSON said he would be happy to support Mr. Yepes' proposal; but he wondered whether Mr. Yepes could submit a text which the Commission could discuss, and which he hoped would not take too definite a stand confining itself rather to urging the right of exploitation by the littoral State.

3. The CHAIRMAN said he was going to propose discussion of the same question under questions 5 and 6 on the list at the end of Mr. François' report. He suggested that the Commission continue the study of those questions in their proper order.

4. Mr. YEPES pointed out that when the meeting rose the previous day, the Commission was discussing

question 2: "If so how should this continental shelf be defined? Should an ocean depth line of 200 metres (a hundred fathoms) be adopted as the outer limit?" He would like the Commission to define the legal nature of the continental shelf.

5. Mr. ALFARO thought Mr. Yepes' proposal was quite apposite. On the previous day, the Commission had tried to evade the question, but it cropped up again continually. The Commission had decided to mention the continental shelf in the principle it had adopted at the previous meeting. In fact, the moment the basis for discussion emphasized the manner in which control and jurisdiction must be exercised in exploiting and exploring the sea bed and its subsoil, the problem of the continental shelf was back again.

5 a. He hoped the Commission would reject the expression "continental shelf". In some instances the shelf surrounded islands. In the Persian Gulf, there was no continental shelf; there were merely shallow waters. He suggested "the submarine platform", an expression used by the earliest writers on the subject—e.g., Bustamante. That would obviate the difficulty of shallow water areas. The submarine platform was the extension of the land up to a depth of 200 metres. That was what was generally understood by the expression "continental shelf". If the notion were accepted that in regard to the submarine platform there might be some limitation to the freedom of the high seas, it would be well first of all to determine the legal nature of the submarine platform. Was it *res nullius*, *res communis*, or part of the territory of the littoral State? They could then go on to the question how such a State should exercise its control and jurisdiction over that submarine platform. The Commission had a great many research monographs at its disposal. It must show that it was not bypassing the question, which was most important in contemporary legal thinking.

6. Mr. HUDSON found himself obliged to differ with regard to the continental shelf. He thought the Commission should define it as the area contiguous to the coast, and stretching as far as the point where the deep waters began. This drop to the deep ocean water was found at varying depths. The question was where the continental shelf ended. He did not think it was possible to fix any depth limit; the bottom of the sea must be taken as it was. It was out of the question to adopt an outer limit—an ocean depth line of 200 metres—as question 2 suggested. Mr. Yepes and Mr. Alfaro had put very forcibly the question whether the surface of the continental shelf should be regarded as a part of the territory of the littoral State and subject to its sovereignty. Was the area—obviously an area outside territorial waters—*res nullius* or *res communis*? He would like to avoid describing the continental shelf as either. The existence of the continental shelf could be granted. It was the area between the coast and the sudden drop to the ocean depths. It might be anywhere between zero and 200 metres. That was the point on which the claims of States were mainly founded; and he hoped the Commission would not fix any outer limit.

7. The CHAIRMAN explained how he had envisaged

the discussion. At the previous meeting, the Commission had found a starting point by adopting the formulas put forward by Mr. Hudson and Mr. Brierly. He had felt that once those decisions were taken, the question of the legal status of the continental shelf had ceased to be important and had become purely academic. But there still remained the question what rights littoral States had over the sea-bed and its subsoil outside territorial waters. That was the main question.

8. Mr. BRIERLY had had the impression that the question raised by Mr. Yepes and Mr. Alfaro was different from what Mr. Hudson suggested. They were not asking for a definition of the extent of the continental shelf; they merely asked the Commission to give its opinion on the legal nature of the shelf.

8 a. There were three possibilities for that area of control: it might be argued that it was *res nullius*. That must be counted out as being incompatible with the principle adopted the previous day. If the shelf were *res nullius*, it could be acquired by any State, whether littoral or not; and that was inadmissible. It could be argued again that it was *res communis*; but that too was incompatible with the previous day's decision. *Res communis* was common property, and the continental shelf in that case could not be subject to the control and jurisdiction of any particular State. It would be better to say that the continental shelf belonged *ipso jure* to the littoral State. Whether the littoral State had sovereign rights over the continental shelf hardly mattered, though he was inclined to think that control and jurisdiction, which were exclusive, amounted to sovereignty and could be so described. If this right belonged *ipso jure* to the littoral State, there was no necessity for the latter to make any claim or annexation. Such a proclamation or annexation might of course serve to indicate that a state had begun to work its zone of control, but legally it was not necessary.

9. Mr. KERNO (Assistant Secretary-General) thought the Commission was actually carrying out Mr. Yepes' proposal. His own view was that the problem was most important. When public opinion took an interest in the work of the Commission, it connected it almost exclusively with the Nürnberg principles and the continental shelf. Hence public opinion would find it odd if the Commission did not devote any of its discussions to the latter problem. Obviously, the Commission could find that there was no such legal concept, or that it could not be defined, or that it could not be defined as yet. But he thought the Commission should pay special attention to the problem and should lead the way. It must of course proceed cautiously, but it must tackle even the most intricate problems.

10. Mr. CORDOVA considered that there were two questions at issue: first of all there was the subsoil and the sea bed of the submarine platform; and then there were the waters, which might have a slightly different status from the sea bed, since they were subject to a sort of easement. Even where a State had full control over the waters of the sea, as in the case of territorial waters, it was not at liberty to prevent peaceful navigation through them. Hence there could be no

question of absolute sovereignty over such waters.

10 a. The Commission had not yet decided what type of control and rights littoral States could have over the submarine platform, which he thought belonged to the State of whose territory it formed an extension. In the case of exploitation of the resources of the sea-bed or subsoil starting from the mainland, and passing through any territory emerging from the waters, there was no question of its affecting the freedom of the high seas. The Rapporteur had declared that he did not feel such exploitation to be illegal. Mr. Hudson's formula adopted by the Commission on the previous day recognized exploitation via the surface of the waters as well. Hence, the real question to be decided was that of the nature of the right of control over the submarine platform vested in the littoral State.

11. Mr. FRANÇOIS felt that a distinction must be made between the regime of the sea bed and that of the waters above it. With regard to the sea bed and subsoil, he saw no objection to recognizing the sovereignty of the littoral State; with regard to the waters, on the other hand, he did not agree with Mr. Brierly's three possibilities. He wondered whether there might not be a fourth—namely, that such waters were part of the high seas—subject to certain restrictions for the benefit of the littoral State. Mr. Brierly had argued that such restriction amounted to saying that there was sovereignty, or control and jurisdiction. He himself was not altogether sure. If there were sovereignty, the State would have full right over such waters, and an agreement would be necessary to restrict those rights. Failing an agreement, the right of sovereignty would exist in full. If it were maintained that there was control and jurisdiction, the State would have only specific rights. What was not expressly recognized in that sphere would not belong to the State. There would be no question of State sovereignty, and the high seas would remain free. From the practical point of view, the consequences of adopting one or other of those courses were important—e.g., in regard to the air above the waters.

12. Mr. BRIERLY explained that he had no intention of suggesting control and jurisdiction, or sovereignty over the waters, still less over the air. He referred merely to the sea bed and subsoil. If the littoral State had exclusive rights of control and jurisdiction over the subsoil, it could be regarded as enjoying sovereignty.

13. Mr. HUDSON recalled that the Commission had stated that there would still be freedom of navigation and fishing.

14. Mr. FRANÇOIS was glad to find that Mr. Brierly and he were agreed as the subsoil. The decision taken amounted to admitting sovereignty. With regard to the high seas, it was one thing to speak of sovereignty subject to restrictions, and another to speak of control or jurisdiction. As to the sea above the continental shelf, there could be no question of sovereignty there. He could see serious objections. What would be the position in case of war? Possibly the chances of neutrality were not great; but of the sovereignty of littoral States over that area of the sea were recognized, it could not be the theatre of war operations so long as littoral States

remained neutral. He did not think that consequence could be accepted. He thought it would be a good thing for the Commission to stipulate that there was no question of recognizing any sovereign rights over the waters covering the submarine platform.

15. Mr. KERNO (Assistant Secretary-General) considered that if the Commission could reach the preliminary conclusion that the expression "continental shelf" signified merely the sea bed and its subsoil, that would be something. The public should know exactly what the position was. It was also desirable to study the effect of the existence of the continental shelf on the waters over the shelf.

16. Mr. HUDSON said he had made an attempt to set out the problem on the basis of what Mr. François and Mr. Brierly had said, and he read out the following text, in which he had used the terminology of the Treaty of 1942 between Great Britain and Venezuela:

"Is the submarine area (sea bed and subsoil) of the continental shelf off the coast of a littoral State and outside the area of its territorial waters (1) *res nullius*, (2) *res communis*, (3) subject *ipso jure* to the control and jurisdiction of the littoral State, or (4) subject to the exercise of control and jurisdiction by the littoral State for the limited purpose of exploring and exploiting the natural resources?"¹

He would say no to the first three questions, and yes to the fourth. His suggestion was in response to Mr. Yepes' appeal to the Commission to define the legal status of the continental shelf.

17. Mr. FRANÇOIS said he would say yes to the fourth question also.

18. Mr. ALFARO was glad to see that the Commission was at least dealing with the crux of the problem, and was on the way to a practical solution. He congratulated Mr. Brierly on the extremely lucid way in which he had explained the legal aspect of the problem; and he felt that the Commission agreed with him that the submarine region could not be either *res nullius* or *res communis*. Mr. Hudson's text would no doubt enable the problem to be solved. It was important for the Commission to express its opinion on the four questions put by Mr. Hudson. Doubtless, in doing so, the Commission would wish to make reservations as to some of the phraseology used in the questions; but it should not prejudge the final wording of the text to be inserted in due course in the draft code.

19. Mr. CÓRDOVA thought that after such a lengthy discussion, the Commission should go ahead and discuss the four points of Mr. Hudson's text, which constituted a concrete basis for solving the problem. The right of a State to control and jurisdiction was completely independent of exploration and exploitation of the subsoil. He agreed with Mr. Brierly that the sea bed and the subsoil of the sea over the continental shelf formed, *ipso jure*, part of the territory of the littoral State.

20. Mr. YEPES thought Mr. Hudson's text was most interesting. He was extremely pleased to find that the

Commission had finally agreed to discuss the fundamental problem. On the previous day the Commission had stated that the exercise of control and jurisdiction was independent of the existence of a submarine platform. In doing so, it had neglected its duty to take a decision on the problem of the continental shelf. It should now make amends and take a definite stand on the problem. He was glad to see that it was on the way to doing so.

20 a. He submitted to the Commission a further proposal which read: "A littoral State has a right to exercise control and jurisdiction over the submarine continental shelf along its seaboard." This proposal rounded off Mr. Hudson's; though, like the latter, it did not give a definition of the continental shelf. Such a definition could be given only by geologists or geographers, not by the International Law Commission, which had not the requisite knowledge. The continental shelf differed in different parts of the world. That was at the bottom of the great difficulty of finding a definition; whereas, if scientists provided a definition, they would know what rights over their continental shelf could be vested in States.

21. Mr. AMADO drew the Commission's attention to the fact that while Mr. Hudson's formula under point 4 was most ingenious, it made the right to exercise control and jurisdiction conditional on effective exercise of exploration and exploitation. Hence, Mr. Hudson was replying to Mr. François' third question, whether theoretical occupation was sufficient. If there was no exploitation, there were no rights. This suggestion called for close examination. Mr. Hudson took the interests of the community as his starting point. The Commission was not called upon to regard matters from that angle. On the contrary, it must ascertain how far the right of States went.

22. The CHAIRMAN said he would like to give his personal opinion. The starting point of the discussion had been the decision reached by the Commission the day before. He would have been willing to accept the principle that a littoral State had a right to exercise control and jurisdiction for the purposes of exploring and exploiting the subsoil, and that this right was exclusive. He would have voted against Mr. Hudson's third point and in favour of the fourth. What seemed to him important was that there should be exclusive rights to explore and exploit. The question of sovereignty seemed to him purely academic.

23. Mr. ALFARO pointed out that the formula adopted by the Commission the previous day referred to "a littoral State" and not to "the littoral States". Hence, the question remained completely in the air where there were several littoral States whose rights over the continental shelf might overlap—as might happen, for example, in the Persian Gulf or the Gulf of Mexico. The problem would be discussed at a later stage. But he thought the situation would be greatly clarified if the Commission spoke of "the littoral States" instead of "a littoral State".

24. Mr. HUDSON said he had no objection to the

¹ See text in *British and Foreign State Papers*, vol. 144, pp. 1065 - 1068.

use of this form, though he thought the problem worrying Mr. Alfaro would still remain.

25. Mr. FRANÇOIS recalled that it had been decided on the previous day that control and jurisdiction could be exercised even if there was no continental shelf. The texts submitted by Mr. Hudson and Mr. Yepes went back on that decision when they spoke of the continental shelf. Possibly, it was merely a matter of redrafting to bring their proposals into line the decision already taken by the Commission. But he wondered if the originators of the proposal had really intended to go back on the decision of the day before.

26. Mr. HUDSON said that he had no intention of going back on the decision taken by the Commission on the previous day. He was simply returning to the crux of the problem—the continental shelf. His proposal referred to this. If the Commission so desired, he was prepared to draw up a text covering cases where there was no continental shelf.

27. Mr. YEPES thought that the previous day's meeting had been rather unfortunate. It might have given the impression that the Commission was anxious not to discuss the question of the continental shelf, though it was of the utmost importance to the progressive development of international law and to the formulation of that new law which the world expected of them. They should have the courage to consider new problems in a genuinely progressive spirit.

28. Mr. CÓRDOVA said that the Commission had decided on the previous day that the exercise of control and jurisdiction was independent of whether a continental shelf existed. Hence, it had decided that States had certain rights, even though there might not be a continental shelf. But the question of the continental shelf had remained open. The formula put forward by Mr. Yepes said the same thing as the decision of the previous day, with the difference that it applied to the continental shelf. The Commission was thus reverting to that question, though it referred only to its seabed and subsoil. But the issue was not only the sea bed and subsoil; there were also the waters covering them.

29. Mr. BRIERLY pointed out that the Commission was discussing only the subsoil and the sea bed.

30. Mr. CÓRDOVA wondered why the question should be confined to the subsoil and sea bed. In a discussion of the continental shelf, the waters covering the sea bed and subsoil must be discussed too.

31. Mr. HUDSON pointed out that his second proposal of the previous day, which had been adopted by the Commission, referred to those waters and stipulated that freedom of navigation and fishing in waters overlying exploitation or exploration areas should not be appreciably affected by the control and jurisdiction exercised by the littoral State.

He repeated that the text he had presented during the present meeting was based on the decision taken on the previous day; but it referred specifically to the continental shelf.

32. Mr. CÓRDOVA hoped the Commission would take Mr. Yepes' proposal as the basis for discussion.

33. Mr. HUDSON thought it would be easier to reach a conclusion by passing judgment on the four points of his text. When they had been voted on, it might be possible to return to Mr. Yepes' proposal.

34. The CHAIRMAN put to the vote the first point of Mr. Hudson's proposal.

Point 1 was unanimously rejected.

35. The CHAIRMAN put to the vote point 2 of Mr. Hudson's proposal.

Point 2 was rejected by 8 votes to none, with one abstention.

36. The CHAIRMAN put to the vote point 3 of Mr. Hudson's proposal.

Point 3 was adopted by 6 votes to 4.

37. Mr. HUDSON said that the Commission's vote meant that the right to explore and exploit did not depend on any claim to that right by a littoral State; yet the right should be conditional upon such a claim. The situation might arise in various forms. A littoral State might declare that it had no intention of exploring or exploiting the subsoil or sea bed of its continental shelf. It might leave it to others to do so, even without granting them a formal concession. On the other hand, it might equally exercise its right over the continental shelf by granting a concession. In such circumstances, another State would have no rights over this shelf, and the right to exercise control and jurisdiction would still be vested in the littoral State. The historical development of the question of territorial waters showed that for the last hundred years or so, States had rights over their territorial waters *ipso jure*—i.e., without formally claiming such rights. The situation was somewhat analogous to that of the continental shelf. Personally, he thought that the right of littoral States to exercise control and jurisdiction over the continental shelf should not be granted to them *ipso jure*, but should be subject to the exercise of the right for the purposes of exploring and exploiting the continental shelf. Hence, he would have liked the Commission to reject point 3 and to adopt point 4 of his proposal.

38. Mr. CÓRDOVA remarked that the Commission had just taken a decision on the point.

39. Mr. HUDSON felt that the Commission had voted without fully realizing the scope of its decision.

40. Mr. AMADO said he would be prepared to accept a formula drawn up more or less as follows:

"The continental shelf off the coast of a littoral State is subject ipso jure to the exercise of control and jurisdiction of the littoral State for the purpose of present or future exploitation of its resources."

41. Mr. HUDSON thought that the words "the exercise of" were superfluous. The question was whether the right was conferred automatically, or whether there was any authorization to exercise it. But he agreed that the distinction he had just made was somewhat subtle.

42. Mr. ALFARO said that the vote on point 3 of Mr. Hudson's proposal was the logical consequence of rejecting points 1 and 2. The submarine platform

was neither *res nullius* nor *res communis*. The only thing to do was to wait and see what the littoral State would decide to do. He wondered, however, what was the position when a littoral State did not wish either to exploit or to explore the subsoil of the continental shelf. Could the resources of the subsoil be explored or exploited by another State so long as they had not been explored by the State itself?

43. Mr. HUDSON replied that a littoral State could at any time evict an intruder, by itself exercising its proper right.

44. Mr. BRIERLY thought that the Commission was discussing not so much the question of codification of existing international law as the development of international law; and he thought point 3 just adopted by the Commission was a principle on which future law might be based. He did not share Mr. Hudson's view that it was too early to consider the development of international law in that direction.

45. Mr. CORDOVA, referring to Mr. Brierly's statement, agreed that the Commission was faced with a new problem which had not yet produced a series of rules; but certain principles had already been put forward and provided an immediate basis. For example, he thought that the sea bed and subsoil were part of the territory of a littoral State, which had the right to explore and exploit the wealth of that subsoil. From the international law standpoint, the right must be recognized, with the stipulation that it must be subject to certain limitations.

46. The CHAIRMAN wondered how it would be possible to reconcile the vote on point 3 with the decision taken by the Commission the previous day.

47. Mr. HUDSON pointed out that, if the Commission had accepted point 4 of his proposal, littoral States could occupy the subsoil areas by either effective or "national" occupation. The question was very succinctly put in a report to the International Law Association by its Committee on Rights to the Seabed and its Subsoil.² This report, prepared by the Copenhagen Conference in 1950, stated that if the theory of the continental shelf outside territorial waters as "*res nullius* capable of acquisition by occupation by whichever State wishes to get control and jurisdiction over it" were recognized as current international law, the practice which had grown up in that connexion showed "a strong tendency to change the law". By this change international law could recognize that control and jurisdiction over the exploitable submarine areas—i.e., the continental shelf outside territorial waters (a) vested *ipso jure* in the coastal State, or (b) could be vested in the coastal State (without effective occupation if necessary by notional occupation (e.g., a proclamation) by that State).

He would be inclined to accept the suggestion under paragraph (b). If paragraph (a) were adopted, the idea of possible occupation was eliminated.

48. Mr. AMADO said he would like to read the following passage from the proposals made by that Com-

mission: "Control and jurisdiction by the coastal State (or States) over the seabed and subsoil of the continental shelf outside territorial waters... should be recognized as vested in it *ipso jure*—i.e., even in the absence of a proclamation."

49. Mr. HUDSON said that reading on further in that passage of the report, they would find the statement that "*A fortiori*... control and jurisdiction over the seabed and subsoil of the continental shelf outside territorial waters can be vested in the coastal State by a proclamation to this effect." The passage read by Mr. Amado seemed to state the very opposite of the passage he had just read himself.

50. The CHAIRMAN said that, in view of the vote on the third point of Mr. Hudson's proposal, the fourth point did not apply; he assumed the Commission agreed.

51. Mr. LIANG (Secretary to the Commission) on behalf of the Secretariat, strongly supported the attitude taken by Mr. Brierly. It was desirable that the Commission should pay more attention to article 15 of its statute, which made a distinction between codification of international law "as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice" and the progressive development of international law "as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States". In regard to many topics coming under the regime of the high seas, it was possible to go ahead with codification as defined in article 15, since the above conditions were fulfilled. In respect of these topics, there was already considerable state practice, precedent and doctrine. On the other hand, in regard to the continental shelf, those conditions were not fulfilled. There were doctrines concerning the continental shelf, but it could not be held that at the moment there were fully crystallized rules of positive international law.

51 a. The Commission had so far discussed the negative aspect of the problem—i.e., the fact that certain rights had not been granted by international law. He thought the only solution was to regard the problem as part of the Commission's task of encouraging the progressive development of international law, on the lines laid down for it in the Statute, including the preparation of a draft convention as prescribed in article 15.

52. Mr. HUDSON remarked that Mr. François had feared that by discussing the question of the continental shelf the Commission was going back on its decision of the previous day. He did not feel that was so. Today, the Commission was dealing with the continental shelf proper. Mr. François had urged the Commission to turn back to the question of countries not possessing a continental shelf, once it had examined the question of countries possessing one. Could the Commission not stipulate that where there was no continental shelf, littoral States would have no rights *ipso jure*? To grant the right to exercise control and jurisdiction it was essential

² See International Law Association, *Report of the Forty-fourth Conference, Copenhagen, 1950*, p. 112.

to wait until the littoral States had made a claim, the reason being that in a great many instances it was impossible to determine the boundaries of the continental shelf. He reminded those members of the Commission who had voted in favour of point 3 of his proposal that there were great variations in the matter of the continental shelf—for example, there were waters such as the Persian Gulf where there was no continental shelf, and where the littoral States were entitled to have their rights over the submarine areas recognized. It must be granted that such States had those rights.

53. The CHAIRMAN agreed that it was not possible to vote on Mr. Hudson's fourth proposal. But the Commission had to decide as to the scientific basis of its attitude; hence, it would be a good thing all the same to take a vote on point 4 to see which Members were in favour of the principle it laid down.

After some discussion, the Commission decided that it need not vote on point 4.

The meeting rose at 11.45 a.m.

69th MEETING

Monday, 17 July 1950, at 3 p.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 CORDOVA, 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*)

Questions 3 and 4

1. The CHAIRMAN observed that the decisions

adopted at the last two meetings had already answered questions 3 and 4 on the last page of Mr. François' report.

Question 5

2. The CHAIRMAN read out the text of question 5: "Is a right of sovereignty involved, or merely rights of control and jurisdiction?"

3. Mr. HUDSON recalled that the Commission had used the terms "control and jurisdiction", and had thereby decided to leave aside the concept of sovereignty.

4. Mr. FRANÇOIS agreed that the Commission had set aside the concept of sovereignty on that point.

Question 6

5. The CHAIRMAN read out the question: "What is the competence of the littoral State in the areas in question (continental shelf or contiguous zone) in regard to:

- (a) Working the mineral resources of the sub-soil;
- (b) Marine resources?

How far may nationals of the riparian State be given special treatment?"

He pointed out that, according to the Rapporteur, the question concerned the continental shelf and the contiguous zone.

6. Mr. HUDSON pointed out that the Commission had not discussed the question of the contiguous zone, and had left in abeyance the question of the exercise of control and jurisdiction by the littoral State in the submarine areas where there was no continental shelf. He hoped that the Commission would leave things as they stood. He considered that the Commission should not deal with sub-paragraph (b), since marine resources were contained in the waters of the sea and not in its subsoil. The right of control and jurisdiction referred to in that context applied to the sea bed and the subsoil. When he (Mr. Hudson) had submitted his text at the 68th meeting, Mr. François had raised no objection to the use of the words "sea bed".

7. The CHAIRMAN confirmed that the Commission was dealing with the sea bed and the subsoil, and was not discussing the rights exercised by littoral States over the waters.

8. Mr. HUDSON recalled that the Commission had stated that control and jurisdiction should not affect either navigation or fishing.

9. Mr. SANDSTRÖM said that was clear from paragraph 2 of the text proposed by Mr. HUDSON at the 67th meeting.

10. Mr. FRANÇOIS favoured a clarification of the rights enjoyed by littoral States over the waters lying above the continental shelf. It was not enough, he thought, to say that such control and jurisdiction must not affect either navigation or fishing.

11. Mr. HUDSON thought that those waters should continue to be subject to the regime of the high seas.

12. Mr. FRANÇOIS stated that there was of course no right of sovereignty over those waters. He asked to