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**Regime of the High Seas - Comments on the Draft Articles on the Continental Shelf,
Fisheries and the Contiguous Zones, adopted by the International Law Commission at its
Fifth Session: Comments transmitted by the Government of Denmark**

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Law of the sea - régime of the high seas

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M. Mann, « Foreign Affairs Officer in the Office of Transport and Communications Policy » :

« En conclusion, il paraît raisonnable de supposer que l'on fait des progrès substantiels en ce qui concerne la prévention de la pollution de l'eau de mer par les hydrocarbures grâce à la mise en œuvre de la législation nationale et locale et à l'action bénévole de certains intérêts privés. Aux Etats-Unis où des résultats appréciables ont été obtenus par ces moyens, on peut mentionner l'installation aux ports de têtes de ligne et dans la plupart des ports principaux, de récipients pour les eaux contaminées par les résidus d'hydrocarbures; mais il semble que les gouvernements de certains autres pays, où le problème est probablement plus urgent, sont convaincus de la nécessité d'une action internationale. Des recommandations actuellement à l'étude envisagent la création de régions ou de zones en haute mer, à l'intérieur desquelles il serait interdit de rejeter des hydrocarbures ou des eaux contaminées. Aucune pression ne s'exerce en vue d'obliger tous les pays à installer des séparateurs. Il y a lieu de noter que l'étude britannique d'ensemble, achevée au mois de juillet dernier, ne recommande d'imposer l'installation de séparateurs qu'aux navires immatriculés dans le Royaume-Uni et utilisant des réservoirs pour les hydrocarbures combustible et l'eau de lestage alternativement; le rapport constate que des pétroliers de haute mer peuvent, sans utiliser des séparateurs, effectuer la séparation de la plus grande partie de l'eau par dépôt dans une cuve à déchets. Certains gouvernements n'ont pas manqué, dans leurs rapports officiels, d'envisager la possibilité d'utiliser le traitement chimique pour prévenir la pollution par les hydrocarbures, mais leurs recommandations indiquent l'utilité de nouvelles études dans ce domaine. Ces diverses études ont fait ressortir le besoin d'installations adéquates pour la réception des résidus d'hydrocarbures dans les ports pétroliers de têtes de ligne, auprès des ateliers de réparation des navires, dans les ports et dans les rades; mais il semble que, dans certains pays, les mesures prises à cet effet soient insuffisantes. »

3) Il y a lieu de compléter les renseignements qui précèdent en résumant brièvement les activités des Nations Unies dans ce domaine. Après l'adoption à la date du 6 mars 1948 par une conférence tenue sous les auspices des Nations Unies de la Convention relative à

la création d'une organisation intergouvernementale consultative de la navigation maritime, le problème fut discuté de nouveau en 1950, 1951 et 1953 par la Commission des transports et des communications et par le Conseil économique et social. Les gouvernements disposant des moyens techniques nécessaires à cet effet furent invités à procéder à des études relatives à la question et à en communiquer les résultats au Secrétaire général des Nations Unies. Celui-ci fut autorisé par la résolution 468 B (XV), adoptée par le Conseil économique et social le 15 avril 1953, à prier les gouvernements des Etats Membres,

« Qui s'intéressent à la question de mettre à sa disposition, aux frais desdits gouvernements, des spécialistes qui seront chargés de coordonner les études et les communications présentées par les gouvernements intéressés et de tirer les conclusions qui s'imposent, pour transmission à l'Organisation intergouvernementale consultative de la navigation maritime, lorsque cette Organisation aura commencé de fonctionner... »

Conformément à ladite résolution, le Secrétaire général s'est mis en rapport avec les gouvernements des Etats Membres dont trois, celui de la France, celui des Pays-Bas et celui du Royaume-Uni, ont accepté en principe de mettre des spécialistes à sa disposition (E/2522, par. 2). Cependant, par une note en date du 6 novembre 1953 (E/2522, par. 3 et annexe), le Gouvernement britannique informa le Secrétaire général de son intention de réunir en 1954 à Londres une conférence diplomatique spéciale des principales puissances maritimes et d'inviter les Nations Unies à s'y faire représenter. Le Gouvernement britannique déclara en outre que la mise en œuvre de tout accord pouvant résulter des travaux de ladite conférence serait assurée par l'Organisation consultative susmentionnée, à partir du moment où elle commencerait à fonctionner. Il exprima également l'avis que, dans ces conditions, « il était inutile de continuer à envisager la convocation de la réunion des spécialistes... » prévue par la résolution 468 B (XV) et le Secrétaire général, dans sa réponse, prit note des réserves ci-dessus résumées du Gouvernement du Royaume-Uni et ajouta que dans ces circonstances il avait proposé que la question de la pollution de l'eau de la mer fut inscrite à l'ordre du jour provisoire de la dix-septième session du Conseil économique et social (E/2522, par. 3, 4 et 7).

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Comments on the draft articles on the continental shelf, fisheries and the contiguous zone adopted by the International Law Commission at its fifth session, transmitted by the Government of Denmark

[Original text: English]
[13 May 1954]

By a note of 28 April 1954, the Permanent Representative of Denmark to the United Nations transmitted to the Secretary-General, with the request that they be brought to the attention of the International Law Commission, the following observations by the Danish Committee to Investigate Matters relating to the Continental Shelf :

At its session on 12 November 1953 the Committee discussed the new draft articles on the continental shelf adopted by the International Law Commission at its fifth session.

The Committee considered that the new draft articles were an improvement upon the previous draft, and especially that the amendments submitted by Denmark

had received a considerable measure of consideration.

In the course of the Committee's discussions it was emphasized that any codification of this new, far-reaching, and highly complex issue would entail great difficulties, not least in view of the fact that it must be formulated in a comparatively brief text of general rules. On the other hand, the establishment of certain basic principles, even if they may be inadequate in some respects, should be preferable to the existing lack of codification which has already caused a substantial amount of international difficulties and disputes.

Consequently the Committee has agreed to recommend to the Government of Denmark to support these draft articles when they come up for discussion by the General Assembly of the United Nations.

The Committee further suggests that in article 2 the word "especially" be inserted after the words "sovereign rights" in order to indicate that the present formulation should not give rise to the negative inference that no rights exist other than the exploration and exploitation of natural resources for which it would be natural to recognize for the coastal State a preferential right in its continental shelf.

During its session on 18 November 1953 the Committee discussed the new draft articles prepared by the International Law Commission covering the basic aspects of the international regulation of fisheries.

The essence of the system embodied in these draft articles is:

(1) States whose nationals engage in fishing in any area of the high seas may regulate and control fishing activities to protect fisheries against waste or extermination (article 1);

(2) A State whose territory is within 100 nautical miles from such areas of the high seas shall be entitled to participate in the regulation, even though the nationals of such State do not carry on fishing in the area (article 2);

(3) An international authority shall be created within the framework of the United Nations to settle disputes and prescribe a general system of regulation for the protection of fishing resources (article 3).

In the course of the Committee's negotiations doubt and uncertainty were expressed about this new proposal which, in the Committee's opinion, is not likely, in its present form, to win support among the States.

However, the Committee is not prepared to recommend that Denmark should reach a final decision on this proposal at the present time. It is agreed that it would be useful to examine the prospects of reaching international agreement for the protection of the important interests involved.

The Committee is therefore inclined to recommend that the Danish Delegation to the General Assembly of the United Nations should advocate continued studies of this matter and that the Delegation should support a resolution or other statement by the General Assembly to that effect. However, the Committee wishes, already at this stage, to submit the following comments to the draft articles—also for the information of the Danish Delegation:

(1) It is assumed that any system of regulation which may be proposed should be binding upon fishermen also

from other countries who may occasionally carry on fishing in the area. This rule, which is not in conformity with the existing international law applying to a group of States which have prescribed regulations, is considered a natural consequence of the new system proposed in the draft articles. The Committee further assumes that in its present formulation article 1 is to be interpreted to mean that systems of regulation must be binding also upon other States, as long as such systems have not been changed by the international authority referred to in article 3.

In the second sentence of article 1 the Committee proposes the words "in any area of the high seas" to be deleted. This will make it clear that the second sentence refers to the same areas as the first sentence, except that two or more States are engaged in such fishing.

Further, in article 1 the Committee would find it desirable to lay down detailed rules for the scope and nature of the control which the regulating States shall be entitled to exercise under this provision over fishermen and fishing vessels from other countries.

(2) At the end of article 1 the Committee would suggest an addition to the effect that disputes shall be submitted to the international authority referred to in article 3 only "unless the States involved have already undertaken to settle such disputes in other ways".

(3) In article 2 it is suggested to calculate the 100 nautical miles from the base lines from which the territorial sea of the coastal state is measured instead of from the outer limit of the territorial sea. This would make the rule clearer since the width of the territorial sea is often in dispute and is defined differently by different States and at different times.

(4) Article 3 contains common provisions for solution of two different problems which, in the opinion of the Committee, should be solved by different means, viz., (a) settlement of disputes arising between States in pursuance of articles 1 and 2, and (b) the general powers of the international authority to prescribe new regulations of fisheries.

In the former case the Committee agrees that a system providing for binding settlement of such disputes should be aimed at, but in its decisions the international authority should, in the Committee's opinion, have regard, as far as possible, to existing international bodies concerned with fisheries and international regulations governing fishing, in cases where a large number of States are members of such bodies or take part in such regulations. On the other hand, with respect to the new general regulations which go beyond the settlement of specific disputes pursuant to articles 1 and 2 of the draft articles, the Committee suggests that the rules drawn up by the international authority should not, *a priori*, be binding upon the States, but merely be regarded as a proposal for consideration and decision by the States and that the matter in dispute should be discussed with the appropriate international bodies before any actions is taken.

Consequently, the Committee proposes to divide article 3 into three paragraphs, viz.,

(1) Binding settlement of disputes pursuant to articles 1 and 2;

(2) Obligation for such international bodies to take into consideration, to the greatest possible extent, any existing international regulations accepted by large groups of States;

(3) Provision, after previous discussions with the appropriate international bodies, for referring general proposals for regulation to the State for consideration and decision.

In view of Denmark's particular interest in the preservation of the fauna of arctic regions, the Committee would suggest that the convention—in conformity with its objectives : to protect and promote the development of the resources of the sea—should apply also to marine mammals, notably seals, and that provisions to that effect be incorporated in the draft.

At a meeting on 24 November 1953 the Committee discussed the provisional draft articles on the Régime of the High Seas prepared by the International Law Commission.

The Committee considers these draft articles as an attempt to cover the existing need for extension of the authority of States over the waters contiguous to their territories, without at the same time extending the territorial sea. The proposed rules, on which no decision will be required at the present time, must be studied carefully and in some detail. The Committee has therefore not found the provisional draft articles ripe for adoption by the States. Hence the Committee has not found it practicable to use the draft articles as a basis for a detailed examination of the many, and often very difficult, problems arising in this connexion, and prefers to await the outcome of renewed deliberations on these problems.