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**Summary record of the 208th meeting**

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

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## 208th MEETING

Friday, 3 July 1953, at 9.30 a.m.

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Chairman : Mr. Gilberto AMADO, First Vice-Chairman.

Rapporteur : Mr. H. LAUTERPACHT.

## Present :

*Members* : Mr. Ricardo J. ALFARO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

*Secretariat* : Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

**Régime of the high seas (item 2 of the agenda)**  
**A/CN.4/60) (*continued*)**

**CHAPTER IV : REVISED DRAFT ARTICLES ON THE CONTINENTAL SHELF AND RELATED SUBJECTS.**

**PART II : RELATED SUBJECTS**

*Article 3 : Sedentary fisheries (continued)*

1. The CHAIRMAN recalled that it had been agreed at the close of the previous meeting that voting on the various texts proposed for article 3 (Sedentary Fisheries) of part II of the revised draft articles on the continental shelf and related subjects should be deferred till the present meeting and that the texts should be put to the vote in the following order: first Mr. Yepes' amendment<sup>1</sup> to the Special Rapporteur's new proposal, then the Special Rapporteur's new proposal itself,<sup>2</sup> then Mr. Kozhevnikov's proposal<sup>3</sup> and finally Mr. Sandström's.<sup>4</sup> Finally, he recalled that Mr. Kozhevnikov had reserved the right to comment further on the texts proposed, once he had them before him in the Russian translation. Before proceeding to the vote, therefore, he would call on Mr. Kozhevnikov.

<sup>1</sup> See *supra*, 207th meeting, para. 60.

<sup>2</sup> *Ibid.*, para. 49.

<sup>3</sup> *Ibid.*, para. 57.

<sup>4</sup> *Ibid.*, para. 65.

2. Mr. KOZHEVNIKOV suggested that now that the proposals for articles 1 and 2 were available in mimeographed form and in translation as well as the text proposed for article 3, it would be more logical to vote first on the proposals for article 1, then on those for article 2 and finally on those for article 3.

3. With regard to the last named, his only further question was whether the amendment proposed by Mr. Yepes conferred an exclusive right on the coastal State to regulate the sedentary fisheries on its continental shelf in such a way as to exclude non-nationals of that State, and whether it did not present a danger to international navigation and to the freedom of the high seas.

4. Mr. YEPES replied that his amendment made regulation of the sedentary fisheries a duty placed upon the coastal State instead of a right which could or could not be exercised by it at its discretion. Naturally such regulation would have to be undertaken in accordance with the rules of international law, and in particular in accordance with the provisions of the other articles which the Commission had already approved. It must not be left to States to regulate sedentary fisheries or not, as they chose. Protection of the interests of the international community required that such regulations should be treated as a bounden duty and not merely as an optional right.

5. Mr. FRANÇOIS (Special Rapporteur) could not accept Mr. Yepes' amendment. The whole purpose of article 3, as he saw it, was to place restrictions on the coastal State's right to regulate the sedentary fisheries on its continental shelf. The text proposed by Mr. Yepes merely reaffirmed that right and placed no restrictions on it.

6. Faris Bey el-KHOURI said that he could not vote for or against Mr. Yepes' amendment before knowing what effect it would have on the existing rights of States other than the coastal State, and whether the regulations adopted by virtue of it would be binding on them. He therefore agreed with Mr. Kozhevnikov's suggestion that articles 1 and 2 should be voted on first, and if that suggestion were not adopted, he would have to abstain from the vote on Mr. Yepes' amendment.

7. Mr. CORDOVA felt that the considerations put forward by Faris Bey el-Khoury applied with even greater force to the new text proposed by the Special Rapporteur. It would be quite impossible for him to vote on that text without knowing whether a permanent international body was to be set up to make the necessary regulations in cases where the States concerned were unable to agree among themselves, as provided in article 2 of the draft contained in the Special Rapporteur's report.

8. The CHAIRMAN very much hoped Mr. Kozhevnikov would not press his suggestion, and that the Commission would abide by the decision it had taken at the previous meeting.

9. Mr. SCELLE said that he was not in favour of the

second part of Mr. Yepes' amendment, which consisted in deleting all reference to sedentary fisheries outside the continental shelf and to the rights of other States; but he was in favour of the substitution of the word "shall" for the word "may". It was of the utmost importance that no State should permit its nationals to despoil the resources of the sea, whether within the limits of its continental shelf or beyond them. As soon as its nationals engaged in fishing activities, a State by very reason of its sovereign status, had a duty — towards its own nationals, towards the nationals of other States, and towards the concept of the high seas as "*domaine public*" — to regulate their fishing activities. Until that was generally agreed, it was useless to consider what further progress might be made, for example by the establishment of a permanent international body. It was for that reason that it was logical to vote on article 3 before voting on articles 1 and 2.

10. Mr. KOZHEVNIKOV said that he was opposed to the use of the word "shall", since with it the text could be interpreted as placing a binding obligation on States and was therefore incompatible with the principle of their sovereignty.

11. The CHAIRMAN put to the vote the amendment proposed by Mr. Yepes to the new text proposed by the Special Rapporteur.

*Mr. Yepes' amendment was rejected by 7 votes to 4, with 2 abstentions.*

12. Mr. HSU asked the Special Rapporteur whether he did not agree that in the new text which he proposed, a comma should be inserted after the words "either on its continental shelf" in the English text, so as to leave no possible room for doubt that the qualifying clause, "where such fisheries have long been maintained and conducted by nationals of that State", applied only to the words "other areas".

13. Mr. FRANÇOIS agreed.

14. Mr. ALFARO requested that the two sentences of the Special Rapporteur's new proposal should be voted on separately.

*The first sentence was adopted by 8 votes to 4, with 2 abstentions.*

*The second sentence was rejected by 5 votes to 4, with 4 abstentions.*

*The Special Rapporteur's new proposal, as amended, was rejected by 6 votes to 4, with 3 abstentions.*

15. Mr. FRANÇOIS explained that he had voted against the proposal in its amended form as he could only have supported it with the second sentence included.

16. The CHAIRMAN recalled that the next text to be voted on was that proposed by Mr. Kozhevnikov, the text contained in the Special Rapporteur's fourth report (A/CN.4/60, Chapter IV, Part II).

17. Mr. ALFARO, after pointing out that the Commission had had no opportunity of discussing Mr. Koz-

hevnikov's proposal, proposed the deletion of the second sentence of the text contained in the Special Rapporteur's fourth report, which read as follows: "Where the coastal State had in the past permitted non-nationals to participate in the fishing, it has no right to exclude them in the future." That sentence would enable non-nationals to return to an area where they had fished in the past, regardless of any abuses they might have committed or any damage they might have done there.

18. Mr. LAUTERPACHT suggested that the Chairman should rule Mr. Kozhevnikov's proposal out of order, as the text he proposed was incompatible with the articles which the Commission had already adopted on the continental shelf.

19. The CHAIRMAN recalled that he was reluctant to give rulings from the Chair, except when circumstances compelled him to do so. It was for the Commission to decide whether or not it wished to adopt the text proposed.

20. Mr. CORDOVA asked Mr. Kozhevnikov whether adoption of the text he proposed would not mean that sedentary fisheries would remain unregulated in cases where they had not "long been maintained and conducted by nationals of [the coastal] State".

21. Mr. KOZHEVNIKOV said that he did not intend to reply to any questions on the text, which was not his, but had been submitted by him in an attempt to find a compromise solution, even though the Special Rapporteur had later withdrawn it. In those circumstances he considered that it should be voted on without discussion or delay, and he was not prepared to accept any amendments to it.

*The amendment proposed by Mr. Alfaro to Mr. Kozhevnikov's proposal, was rejected by 6 votes to 5, with 3 abstentions.*

*Mr. Kozhevnikov's proposal was rejected by 9 votes to 3, with 2 abstentions.*

22. The CHAIRMAN recalled that the last text on which the Commission had to vote was that proposed by Mr. Sandström, namely, the text which had already been provisionally approved at the third session.

23. Mr. KOZHEVNIKOV asked whether Mr. Sandström would be willing to add to the end of the text the last sentence of the text proposed by the Special Rapporteur in his fourth report, reading as follows:

"Sedentary fisheries must not result in substantial interference with navigation."

If that sentence were added, he could vote in favour of Mr. Sandström's proposal.

24. Mr. SANDSTRÖM said that he had no objection to the substance of Mr. Kozhevnikov's proposal, but pointed out that the last sentence of the present text, reading: "Such regulation will, however, not affect the general status of the areas as high seas", already met the point.

25. Both Mr. YEPES and the CHAIRMAN, speaking as a member of the Commission, agreed that the addition proposed by Mr. Kozhevnikov was superfluous.

26. Mr. KOZHEVNIKOV agreed that the present text could be interpreted as covering the point he had in mind, but felt it desirable, particularly in view of certain statements which had been made during the debate, to make the point explicitly.

27. Mr. LAUTERPACHT said that he would again suggest that the Chairman rule the proposal under consideration out of order as incompatible with the articles which the Commission had already adopted.

28. Mr. CORDOVA agreed with that view.

29. The CHAIRMAN said that he could not accept Mr. Lauterpacht's suggestion. It had never been suggested during the discussion that the text proposed by Mr. Sandström was incompatible with the articles already adopted. He repeated that he was averse to giving rulings except when absolutely necessary, preferring to oblige the Commission to shoulder its responsibilities.

30. Mr. SANDSTRÖM said that he could not accept the suggestion that the text which he proposed was incompatible with the articles already adopted. Those articles did not give the coastal State unconditional rights over the continental shelf, but only certain specific rights which it could exercise for certain specific purposes.

31. Mr. ZOUREK supported Mr. Kozhevnikov's suggestion, and pointed out that in the text which he had proposed in his fourth report (A/CN.4/60, Chapter IV, Part II) the Special Rapporteur had included the sentence which Mr. Kozhevnikov suggested be added as well as the last sentence of the text approved in 1951. He had done so in order to meet objections raised by certain governments to the latter text, and in doing so he had given the whole article a better balance.

32. Mr. SANDSTRÖM said that although the addition suggested by Mr. Kozhevnikov was perhaps unnecessary, it could do no harm and as Mr. Kozhevnikov and Mr. Zourek appeared to attach importance to it, he was prepared to accept it.

33. Mr. CORDOVA said that he would be obliged to vote against the text proposed by Mr. Sandström, since it failed to distinguish between sedentary fisheries on the continental shelf and any sedentary fisheries that might exist outside it.

34. Mr. ALFARO proposed the deletion of the words "provided that non-nationals are permitted to participate in the fishing activities on an equal footing with nationals", for the same reasons as had prompted his amendment to the text proposed by Mr. Kozhevnikov.

*The amendment proposed by Mr. Alfaro was rejected by 6 votes to 5 with 3 abstentions.*

*The text proposed by Mr. Sandström was rejected, 6 votes being cast in favour and 6 against, with 2 abstentions.*

35. The CHAIRMAN noted that there would, therefore, after all, be no article dealing with sedentary fisheries.<sup>5</sup>

36. He then expressed his concern at the time spent by the Commission on the question of the continental shelf. He had on several occasions drawn the attention of members to the great deal of work which remained to be done, and to the necessity for avoiding delays. He must remind members that Mr. Spiropoulos and himself, in their capacity as members of the Sixth Committee of the General Assembly, had great difficulty in defending the Commission's cause there.

37. He would invite the Commission to resume consideration of articles 1 and 2 on the resources of the sea.

*Articles 1 and 2: Resources of the sea (resumed from the 207th meeting)<sup>6</sup>*

38. Mr. FRANÇOIS said that the discussion at the 206th meeting on articles 1 and 2 on the resources of the sea had shown that members were not wholly satisfied with the manner in which the principles had been expressed. Mr. Lauterpacht and he had consequently tried to draft new texts which retained the original conception. Their joint proposal read as follows:

#### "Article 1

"A State whose nationals are engaged in fishing in any area of the high seas may regulate fishing activities in such areas for the purpose of protecting fisheries against waste or extermination. If the nationals of two or more States are thus engaged in any area of the high seas, the States concerned shall prescribe such measures by agreement. The measures thus taken are binding only upon the nationals of those States which have accepted or concurred in these measures.

#### "Article 2

"Whenever a State, or a number of States, regulate the fishing activities of their nationals within an area situated within 100 miles of the territorial sea of a State, that coastal State, even if its nationals do not fish there, shall be consulted in relation to any system of regulation that may be accepted.

"It shall be entitled to participate, if it so desires, on a footing of equality in the carrying out of the regulations thus adopted. The coastal State shall also be entitled to object to any systems of regulation which it considers unreasonable or violative of its rights.

<sup>5</sup> See, however, *infra*, 209th meeting, paras. 1-16.

<sup>6</sup> See *supra*, 207th meeting, paras. 1-7.

### “Article 3

“States shall be under a duty to accept, as binding upon their nationals, any system of regulation of fisheries in any area of the high seas which an international authority, to be created by the States concerned, shall prescribe as being essential for the purpose of protecting the fishing resources of that area against waste or extermination. Such international authority shall act at the request of any interested State in cases in which the States concerned have been unable to reach agreement.

### “Article 4

“Competence should be conferred on a permanent international body to conduct investigations and to make recommendations concerning fisheries in any area of the high seas and the methods employed in exploiting them.

### “Article 5

“States are under a duty to accept, as binding upon their nationals, measures adopted by the coastal State in areas situated within fifty miles of its territorial sea, provided that such measures are not discriminatory against foreign nationals and that they are essential for protecting fisheries against waste or extermination. In cases of disagreement as to the measures thus adopted, the dispute shall be settled by arbitration. Such measures, if objected to, shall not enter into force until the arbitral tribunal has rendered its decision.”

39. The Commission would note that article 5 was not new in substance. The point covered therein had been set out in comment 5 to articles 1 and 2 on the resources of the sea in the Commission's report on its third session (A/1858, Annex, Part II). The idea of providing for regulation by a coastal State in a zone contiguous to its territorial waters had been sponsored by Mr. Córdova, but as the vote on the proposal had yielded an inconclusive result—6 votes being cast in favour and 6 against<sup>7</sup>—the Commission had decided to draft an appropriate comment and include it in its report. The Norwegian Government had expressed itself in favour of the proposal, which had been opposed by the United Kingdom and the Union of South Africa. His exposé of the issue would be found on pages 117-118 of the report (A/CN.4/60).

40. Mr. SANDSTRÖM said that it was not wholly for reasons of conservatism that he preferred the original text. The joint proposal was complicated and had serious shortcomings. Article 1 to some extent conflicted with article 5. The last sentence of article 1 read: “The measures thus taken are binding only upon the nationals of those States which have accepted or concurred in these measures.” But under article 5 coastal States were granted the exclusive right to regulate fishing activities in areas situated within 50 miles of their territorial sea. Some adjustment was obviously

necessary either by the transposition of article 5 into article 1, or by a cross-reference in the latter.

41. Furthermore, article 2 laid down that the coastal State should be consulted in relation to any system of regulation imposed within 100 miles of its territorial sea and should be entitled to object to that system if it considered it unreasonable or violative of its rights. The contradiction was patent.

42. Three different kinds of international authority were provided for in articles 3, 4 and 5. Article 3 referred to “an international authority”; article 4 referred to “a permanent international body” and article 5 referred to “arbitration” and “an arbitral tribunal”. Article 2 as adopted by the Commission at its third session conferred competence on a permanent international body to conduct continuous investigations of the world's fisheries and to make regulations in any area where the States concerned were unable to agree among themselves. The principle of arbitration was therein admitted. In his view, that formula was preferable, in that it would be simpler, more comprehensive and easier to implement. He could see no justification for complex provisions and subtle distinctions which did not lend greater clarity to the issue.

43. He would ask permission to draw attention to his amendment to article 1 which read as follows:

“In case nationals of other States want to fish in the area and these States do not abide by the regulation, the question shall, at the request of one of the interested parties, be referred to the international body envisaged in Article 2.”

44. Mr. SPIROPOULOS agreed with Mr. Sandström that the joint proposal was complicated and unsatisfactory. He would prefer either the text adopted by the Commission at its third session (A/1858, Annex, Part II), or that proposed by Mr. François in his report (A/CN.4/60, Chapter IV, Part II). The new ideas contained in the joint proposal introduced fresh complications, and he would advocate the adoption of one of the earlier versions together with Mr. Sandström's amendment.

45. Mr. ALFARO said that in general the joint proposal covered his objections to Mr. François' redraft of articles 1 and 2. The issues had been set out methodically in the five articles, but he would prefer article 1 to be split into separate paragraphs.

46. He had one question to ask on article 3, in which reference was made first to “States”, then to “the States concerned”, and lastly to “any interested State”. He assumed that “the States concerned” were those responsible for the system of regulation, and that it was only those States which would also be responsible for establishing the international authority. But if the States concerned were very few in number, any such authority as they might set up would not be truly representative. Furthermore, the last sentence was not clear. What exactly was meant by “at the request of an interested State” and “to reach agreement”? Which were the

<sup>7</sup> See *Yearbook of the International Law Commission, 1951*, vol. I, 118th meeting, para. 89.

interested States, and on what were they supposed to reach agreement?

47. Mr. KOZHEVNIKOV also felt that the joint proposal failed to clarify the issues. It had, moreover, the disadvantage of being extremely cumbersome. Quantity at times had a positive value, but at others—as in the present case—it had a negative effect.

48. Articles 3, 4 and 5 reproduced the main ideas of article 2 of the original text, and he had stated his views on that article at the previous meeting.<sup>8</sup> Consequently, if the joint proposal were taken as a basis for discussion and decision, he would vote for the deletion of articles 3, 4 and 5.

49. Would the authors be prepared to amend the second sentence of article 2 by adding the words “establishment and the” before the words “carrying-out of the regulations”? That was merely a suggestion, not a formal amendment.

50. Mr. LAUTERPACHT thought that the discussion would be clearer if members confined their observations to articles 1 and 2 in the new proposal, which represented a redraft of article 1. He must plead with the Commission to recognize that that article as proposed by the Special Rapporteur (A/CN.4/60, Chapter IV, Part II) was not satisfactorily drafted. It dealt with two different issues, that of regulation by a State for the purpose of preserving the resources of the sea, and that of the rights of a coastal State to take part in a system of regulation within a 100-mile area beyond the territorial sea. The new text was much clearer.

51. Mr. SANDSTRÖM was perhaps right in thinking that there was some contradiction between articles 1 and 5. Assuming that the latter were adopted, the words “subject to article 5” might be inserted in article 1. He would be prepared to accept Mr. Kozhevnikov's suggestion, although he felt that the point was covered by the words “shall be consulted” in the first sentence of article 2.

52. It seemed to him that the Commission evidently agreed with the principles stated in the joint proposal, and believed that the matter was simply one of drafting which could be entrusted to the Drafting Committee.

53. Mr. CORDOVA appreciated Mr. François' and Mr. Lauterpacht's efforts, but feared that they had not been crowned with success. The whole draft was based on the assumption that in the high seas all States whose nationals fished in a certain area would have absolute authority to impose regulations. The last sentence of article 3 meant that if the States concerned were in agreement, another State would be unable to lodge a complaint. Thus, supposing the United Kingdom, the Netherlands and Sweden had drawn up regulations for an area in the high seas, a fourth State would be unable to have recourse to the international authority since such recourse was provided for only when the States concerned had not reached agreement. That, at least, was how he interpreted the last sentence of article 3.

54. Furthermore, the Commission must decide whether it really wanted to set up an organ with world-wide authority or whether authority should devolve on the States concerned. He had at the 206th meeting advocated the setting up of an organ composed of States which were directly interested in the protection of fisheries.<sup>9</sup> Why should Mexico, for instance, participate in regulations drawn up for the Behring Sea? The Commission must first decide that point, and then revert to article 1 and prescribe the appropriate régime.

55. Article 2 obviously contradicted article 5, as indeed had already been pointed out by Mr. Sandström.

56. Mr. LAUTERPACHT explained that the difference between articles 2 and 5 was the following. If a coastal State had taken certain measures in areas situated within 50 miles of the territorial sea, such measures would be binding upon other States. But, in the other event, if a State or States imposed regulations within an area situated within 100 miles of the territorial sea, then the coastal State, not having taken any measures, had the right to be consulted.

57. Mr. CORDOVA said that presumably coastal States would be free to impose regulations within the 50-mile area.

58. Mr. LAUTERPACHT drew Mr. Córdova's attention to the fact that the regulations of other States would be binding only on their own nationals.

59. Mr. CORDOVA pointed out that according to article 2 a coastal State was entitled to object to a system of regulation imposed by other States within an area situated within 100 miles of the territorial sea. But that right was withdrawn from the coastal State by the last sentence of article 3, since if the interested States had agreed on a system, the international authority could not intervene and the coastal State's objection would not be valid.

60. Mr. LAUTERPACHT agreed that the point must be clarified.

61. Mr. PAL also felt that the whole issue was one of drafting. When the articles had first been discussed, the Secretary had pointed out that article 1 related to regulations for the conservation of fish. In his first proposal<sup>10</sup> on article 1 submitted at the 206th meeting<sup>11</sup>, Mr. Lauterpacht had not dealt with that issue. In the joint proposal emphasis was correctly laid in the first sentence of article 1 on the protection of fisheries against waste or extermination. It clearly and adequately conveyed the views expressed by members.

62. He considered, however, that in view of the intention of the article to ensure protection, the last sentence should be more rigorous, and stipulate that

<sup>9</sup> See *supra*, 206th meeting, para. 70.

<sup>10</sup> “A State may regulate, either separately or by agreement with other States, the fishing activities of its nationals on the high seas. Such regulation is not binding upon nationals of other States.”

<sup>11</sup> Para. 32.

<sup>8</sup> See *supra*, 207th meeting, paras. 3-6.

the measures should be binding upon all States, and not only on those which had accepted or concurred in the measures agreed upon by the States concerned.

63. It was not at all clear what was meant by the words "its rights" in the last sentence of article 2. Were they rights of objection or rights of participation or rights of consultation?

64. He would comment later on articles 3, 4 and 5.

65. Mr. SCELLE agreed with Mr. Córdova and Mr. Pal, and wished to make the following points.

66. Article 5 conferred powers of jurisdiction on coastal States within 50 miles of their territorial seas. That meant that the latter could be considered as being 50 miles wide or, alternatively, that the area would be regarded as a contiguous zone. He was opposed to such a provision.

67. He agreed with Mr. Kozhevnikov that articles 1 and 2 of the joint proposal reproduced the main lines of the text adopted by the Commission at its third session. Apart from the contradictions to which attention had already been drawn, they were on the whole an improvement. The last sentence of article 1 was faulty. According to article 3 States engaged in fishing in the high seas were invited to set up a regional organ whose decisions would be binding, but according to the last sentence of article 1 the measures would be binding only on the States which accepted them. It would be more logical to start with the international body. If the States concerned did not agree, there must be some authority to deal with the situation; if they did agree, their agreement must be binding on other States. Article 1, so to speak, fell between two stools. He would therefore propose that the last sentence be deleted. Articles 3 and 4 marked a real advance, and he was prepared to support them.

68. Mr. SANDSTRÖM agreed with Mr. Lauterpacht that the difficulty involved in article 1 was one of drafting, but considered that article 2 differed substantially from the original texts in that it referred to consultation and objection. He agreed with Mr. Scelle that when one State interfered with the application of a system the international authority should be able to act forthwith. That, indeed, was what he had proposed in his amendment.

69. Mr. FRANÇOIS could not but voice his disappointment that the Commission which had criticized his original proposals seemed to find the new text little to its liking. Would members therefore submit amendments to the joint proposal?

70. He would tell Mr. Córdova and Mr. Scelle that their misunderstanding was due to bad drafting. It was not intended that international authority should be exercised only in regard to certain interested States. Mr. Lauterpacht and he himself had agreed on an international authority on which all States fishing in a given area would be represented. Although not opposed to the idea of one organ competent to deal with fisheries in the whole world, he believed that regional organs were preferable.

71. He would be prepared to agree to the deletion of the last clause of the last sentence of article 3, which read: "in cases in which the States concerned have been unable to reach agreement."

72. Mr. SCELLE was strongly in favour of the proposed deletion. There was nothing to prevent South African fishermen from fishing in the North Sea. That last clause might prove dangerous.

73. Mr. ALFARO considered that the texts of articles 1, 2 and 5 were in harmony with each other and dealt with clearly defined situations. Articles 3 and 4 dealt with the question of an international authority. Rational procedure required that articles 1, 2 and 5 should be considered together, the question of the international authority being examined afterwards.

74. Mr. KOZHEVNIKOV was unable to agree that articles 1, 2 and 5 were in harmony, and suggested that each article be taken separately, beginning with article 1.

75. Mr. SCELLE concurred with Mr. Kozhevnikov, and said that he would ask that the joint proposal be voted upon article by article. He intended to propose the deletion of the last sentence of article 1 on the grounds of its incompatibility with article 3.

76. That sentence was in keeping with existing law, but it approached the issue from the treaty aspect. Agreement between States in a certain region constituted a treaty. Should that treaty be invalidated on the pretext that another State wished to exploit the resources of the sea in the same area? The correct procedure was for that State to be invited to accede to the treaty and to the regional organ. The last sentence led straight back to anarchy. If a State had objections, means must be found to deal with them either by arbitration or through the permanent body envisaged in article 4. It did not matter which solution was adopted. What mattered was that the sovereignty of a third party should not be taken into account, since that would undermine the foundations of the work.

77. Mr. LAUTERPACHT said that Mr. Scelle's argument raised difficulties. He presumably did not mean to suggest that the adoption of measures by one State should be binding on all other States.

78. The binding nature of the regulations imposed by the international authority was provided for in article 3.

79. Mr. SCELLE said that an international authority set up by two or three States could be acceded to by others. As in the case of a treaty, States which acceded to an international organ after it had been set up had exactly the same rights as the original members.

80. Mr. LAUTERPACHT considered that the joint proposal went very far towards meeting Mr. Scelle's views, but maintained that two or three States could not by means of a treaty impose regulations on the nationals of other States which were not parties to the treaty or the agreement.

81. As regards Mr. Pal's question about the meaning of the words "violative of its rights" in the last sentence of article 2, the matter admittedly required clarification.

82. Mr. KOZHEVNIKOV asked whether the authors of the joint proposal would be prepared to add the words "and control" after the words "may regulate" in the first sentence of article 1.

83. Mr. CORDOVA agreed with Mr. Lauterpacht that it was impossible to require that a contract concluded between several States should be binding upon other States. But if the Commission desired that the authority of the international body should have the effect of law for all States, the last sentence of article 1 should be amended to read as follows: "When such regulations have been approved by the international authority referred to in article 3, they shall be binding...etc."

84. Mr. ZOUREK wished to confine his comments to article 1, reserving his position in regard to the others. On the whole, article 1 as now drafted in the joint proposal was acceptable, and he would oppose the deletion of the last sentence. It was wholly inadmissible that an international treaty should be imposed upon States which were not parties thereto. The question of an international authority did not arise in regard to article 1, which dealt with regulations intended to protect fisheries against waste and extermination. The possibility had been mentioned that fishermen from South Africa might go to fish in the North Sea. Examples of that type could be adduced in any domain. In such cases if a dispute ensued, settlement must be reached in accordance with the normal methods.

85. The structure of article 1 should be maintained unaltered.

86. The CHAIRMAN, speaking in his personal capacity, agreed with Mr. Sandström, and said that he would vote in favour of the text proposed by the Special Rapporteur in his report together with Mr. Sandström's amendment thereto. He also agreed with Mr. Zourek's views on the last sentence of article 1 in the joint proposal and its interpretation in international law.

87. Mr. PAL thought Mr. Scelle has been misunderstood. The proposed articles were subject to acceptance by States. Normally, if article 1 were accepted, it would be binding, like a treaty. That was why Mr. Scelle argued that if the first sentence were accepted, there was no reason why it should not be binding on all parties.

88. Mr. LAUTERPACHT assumed that the discussion on articles 1 and 2 was finished, and asked the Chairman which proposal he intended to take as a basis for decision.

89. Mr. ZOUREK pointed out that he had not yet spoken on article 2.

90. Mr. CORDOVA considered that the Commission would get into endless difficulties unless it retained the joint proposal as a basis for discussion. Mr. Sandström's proposal should be treated as an amendment thereto.

91. Mr. SCELLE agreed with Mr. Córdova.

92. The CHAIRMAN stated that the Commission would in due course vote on article 1 as drafted in the joint proposal, subsequently taking up article 2 and following the logical order in which the articles had been set out. Discussion at the next meeting should be confined to amendments to the joint proposal.

93. Mr. KOZHEVNIKOV supported the Chairman.

The meeting rose at 1 p.m.

## 209th MEETING

Monday, 6 July 1953, at 2.45 p.m.

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Chairman: Mr. Gilberto AMADO, First Vice-Chairman.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

### Régime of the high seas (item 2 of the agenda) (A/CN.4/60) (*continued*)

#### CHAPTER IV: REVISED DRAFT ARTICLES ON THE CONTINENTAL SHELF AND RELATED SUBJECTS.

##### PART II: RELATED SUBJECTS

##### Article 3: Sedentary fisheries (*resumed from the 208th meeting*)<sup>1</sup>

1. Mr. FRANÇOIS (Special Rapporteur) said that, as it seemed to have been the general feeling of the Commission that it would be deplorable if, as a result of the rejection of all the proposals submitted, there were no article at all on sedentary fisheries, he had felt it his duty as Special Rapporteur to make one further attempt

<sup>1</sup> See *supra*, 208th meeting, paras. 1-35.