

Document:-
A/CN.4/SR.283

Summary record of the 283rd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1955 , vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

the régime of the high seas, the Commission had always regarded it as a special subject, and the Commission's report to the General Assembly on it had been presented as such.

13. During the present session the Commission would be considering other aspects of the régime of the high seas and the territorial sea. To revert to a subject already disposed of would be both illogical and, from the practical point of view, undesirable, since a final report had been submitted to the General Assembly. Moreover, the Commission would have its time fully occupied with the other aspects of the régime of the high seas.

14. The CHAIRMAN said Mr. Scelle had not meant to suggest that the whole question of the continental shelf should be reopened, but only that its place in the special rapporteur's sixth report on the régime of the high seas (A/CN.4/79) should be considered.

15. Mr. SCELLE said that he had given the matter a great deal of thought, for he was convinced that the Commission should not regard any question as closed merely on the grounds that it had been the subject of a report to the General Assembly. Any question could be re-opened, and there was always the possibility of the Commission having to revise or review an opinion. It had consistently affirmed that the term "continental shelf" referred to areas outside the territorial sea, so that if the subject of the high seas was to be dealt with at the present session he saw no reason why the continental shelf should not also be discussed, as he suggested. Reconsideration was, in his view, indispensable, because the Commission's decisions concerning the continental shelf conflicted with the decision on fisheries.

16. The CHAIRMAN observed that Mr. Scelle could submit his proposal under item 2 or item 3 of the agenda. In the meantime, he saw no necessity for adding an additional item to the provisional agenda, which appeared to be acceptable.

17. Mr. ZOUREK assumed that it would always be possible to modify the order in which items were taken up. He had in mind particularly item 7, which should be discussed well before the end of the session, since debates could be considerably shortened if it were agreed that dissenting opinions should be included in the report. Otherwise, certain members had to expound their views at length in order to ensure their incorporation in the summary records.

18. The CHAIRMAN considered that the adoption of the provisional agenda in no way bound the Commission to a rigid order of discussion; some measure of flexibility was desirable. However, he did not think that item 7 should be taken up first.

The provisional agenda (A/CN.4/89) was adopted on the understanding that consideration of item 1 would be deferred until 9 May.

19. Mr. GARCÍA AMADOR observed that, in accordance with General Assembly resolution 900 (XI), an International Technical Conference on the Conser-

vation of the Living Resources of the Sea was being held at Rome. It would be remembered that the Conference had been requested to present a report and recommendations for consideration by the Commission in connexion with draft articles concerning the international regulation of fisheries. The Conference was to end on 6 May, and he had been informed that the Chairman of the Conference would be prepared to come to Geneva for two days during the following week. It would be useful and appropriate to invite him to make an oral statement before the Commission on the results of the Conference, especially on any aspect of particular interest.

It was so agreed.

The meeting rose at 5.5 p.m.

283rd MEETING

Tuesday, 3 May 1955, at 10 a.m.

CONTENTS

	<i>Page</i>
Régime of the high seas (item 2 of the agenda) (A/CN.4/79).	2
Draft articles (A/CN.4/79, section II)	
Article 1[1]*: Definition of the high seas	3
Article 2 [2]*: Freedom of the high seas.	4
Proposal by Mr. Krylov for hearing and observer from Poland	6
Régime of the high seas (item 2 of the agenda) (A/CN.4/79) (<i>resumed from para. 43</i>)	
Draft articles (A/CN.4/79, section II) (<i>resumed from para. 43</i>)	
Article 2 [2]*: Freedom of the high seas (<i>resumed from para. 43</i>)	7
Article 3: Freedom of the high seas.	7

* The number within brackets indicates the article number in the draft contained in Chapter II of the Report of the Commission (A/2934).

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. Douglas L. EDMONDS, Mr. J. P. A. FRANÇOIS, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

Régime of the high seas (item 2 of the agenda) (A/CN.4/79)

1. The CHAIRMAN invited discussion of the Special Rapporteur's sixth report on the régime of the high seas (A/CN.4/79).

2. Mr. FRANÇOIS (Special Rapporteur) introducing his sixth report, said that the question had been before the Commission from the latter's inception, as it had been

included among the topics for consideration at the first session, at which time he had been appointed Special Rapporteur. At its second session, the Commission had discussed certain general aspects of his first report (A/CN.4/17), and had decided that, as it was not in a position to undertake a comprehensive codification of maritime law, it should select for study the following questions: nationality of ships, collision, safety of life at sea, the right of approach, slave trade, submarine telegraph cables, resources of the sea, right of pursuit, contiguous zones, sedentary fisheries and the continental shelf.¹ It had further been agreed that subjects under examination by other United Nations organs or specialized agencies, as well as those which, because of their technical nature, were not suitable for study by the Commission, should be left aside.

3. His second report (A/CN.4/42) had been considered at the third session, and the Commission had subsequently reported to the General Assembly on the chapters concerning the continental shelf, conservation of the resources of the sea, sedentary fisheries and contiguous zones, giving him certain general directives about the other topics dealt with in the report.² Consideration of his third report (A/CN.4/51), submitted at the fourth session, had been postponed until the following year, when the Commission had, to some extent, reversed the decision taken at its second session by requesting him to prepare a new report, for consideration at the sixth session, on subjects not touched upon in his third and fifth reports.³ The Commission had thus reverted to the idea of codifying the law of the high seas without, however, including any detailed provisions on technical matters or trespassing on ground already covered by special studies undertaken by other United Nations organs or specialized agencies.

4. His sixth report (A/CN.4/79) submitted the previous year, but not then discussed for lack of time, was now before the Commission. As the subject had already been debated at length, he believed that the Commission could proceed at once with its detailed consideration, article by article.

5. The CHAIRMAN agreed that little purpose would be served by a general discussion, particularly on such a heterogeneous subject, and suggested that the procedure suggested by the Special Rapporteur be followed.

It was so agreed.

DRAFT ARTICLES (A/CN.4/79, SECTION II)

*Article 1 [I]: Definition of the high seas*⁴

6. Mr. FRANÇOIS (Special Rapporteur) pointed out that the adoption of article 1 would, to some extent,

¹ A/1316, Ch. III, in *Yearbook of the International Law Commission, 1950*, vol. II, pp. 383-385.

² A/1858, Annex in *Yearbook of the International Law Commission, 1951*, vol. II, pp. 141-144.

³ A/2456, Ch. V, in *Yearbook of the International Law Commission, 1953*, vol. II.

⁴ Article 1 read as follows:

"For the purposes of the articles hereunder, the term 'high seas' means all parts of the sea which are not included in the territorial sea or inland waters of a State."

prejudge the Commission's decision concerning the territorial sea, but such action could be taken without prejudice to the limit fixed for the latter.

7. In his opinion, article 1 contained the most satisfactory definition of the term "high seas".

8. Mr. SCELLE was prepared to accept the definition as it stood.

9. Mr. HSU strongly opposed the article, which was, moreover, incomplete if the principle were accepted that coastal States possessed sovereignty over the continental shelf. In that event, the continental shelf should be listed in article 1 as not being subsumed under the term "high seas". On the other hand, if the Commission adopted article 1 as it stood, it would have to reconsider its decisions about the continental shelf.

10. Mr. SPIROPOULOS asked whether it was necessary to mention inland waters in the definition, since they were always separated from the high seas by the territorial sea.

11. Mr. FRANÇOIS (Special Rapporteur) admitted that, strictly speaking, Mr. Spiropoulos was correct; but the reference to inland waters did serve to clarify the text.

12. Mr. SCELLE favoured the original wording because it indicated clearly that there existed special régimes for the high seas on the one hand and for the territorial sea on the other.

13. Mr. SPIROPOULOS accepted Mr. Scelle's argument, but asked how inland waters were to be defined. Article 1 did not provide a genuine definition, but a definition by exclusion. If the reference to inland waters were removed, it would be possible to lay down that the term "high seas" meant all parts of the sea outside the territorial sea.

14. Mr. GARCÍA AMADOR endorsed Mr. Spiropoulos's arguments in favour of the deletion of the words "or inland waters", which could be interpreted as including lakes, rivers and inland seas—at least, so far as the Spanish language was concerned. If such a reference were kept, it must be made clear that it related to inland seas.

15. Mr. KRYLOV said that as he was opposed to overloading the text with unnecessary detail, he would be prepared to vote for article 1 as it stood.

16. The CHAIRMAN observed that the terminological difficulty did not arise in the case of the English text. In his view, the reference to "inland waters" did serve a purpose, because it could include bays where there was no territorial sea.

17. Mr. FRANÇOIS (Special Rapporteur) suggested that Mr. García Amador's concern should be allayed by the presence of the words "all parts of the sea", which made it clear that "inland waters" did not refer to rivers and lakes.

18. Mr. SPIROPOULOS, referring to the Chairman's last intervention, asked whether there were any known instances where there was no territorial sea.

19. The CHAIRMAN replied that he had in mind those cases where "bays" formed part of the inland waters.

Article 1 was approved with 1 abstention.

Article 2 [2]: Freedom of the high seas⁵

20. Mr. FRANÇOIS (Special Rapporteur) said that the proposition which formed the subject of article 2 was generally accepted in international law, and required no further elucidation. He could not accept the point raised by Mr. Scelle at the previous meeting as to the incompatibility of the present draft with the provisions on the continental shelf,⁶ because the latter did not imply that coastal States exercised sovereignty over the superjacent waters.

21. Mr. SCELLE said that he was prepared to support article 2, which, as drafted, was a perfectly correct statement of principle. But, unlike the Special Rapporteur, he considered it to be completely at variance with the provisions on the continental shelf adopted by the Commission at its fifth session. On that occasion the Commission had expressed the view that coastal States exercised sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources.⁷ Its attempts to establish one régime for the seabed and another for the subsoil had soon shown that the two could not be separated. Similarly, it was impossible to deal separately with the seabed and the high seas, as was demonstrated by the action of certain States, notably in the South American continent, which claimed sovereign rights over the high seas above the continental shelf. It would be remembered that President Truman, in his declaration of 28 September 1945 on the subject of the continental shelf, had eschewed all mention of sovereignty—a concept which had first been applied to the high seas in 1953.

22. Whatever the disadvantages, it would be pointless for the Commission to close its eyes to the fact that once coastal States were allowed to construct installations on the continental shelf, and to protect them, they would thereby be endowed *de facto* with sovereign rights over the high seas. The possibility was, perhaps, not very apparent at the present time, but as science progressed States would undoubtedly lay claim to the superjacent waters, and it was idle to expect that the pious enunciation that formed article 2 would be capable of withstanding the pressure of events. In other words, the provisions relating to the continental shelf would make it possible for States to exercise sovereignty—or at least territorial dominion—over installa-

tions on the continental shelf which could only be reached by traversing the territorial sea. He was not at the moment concerned with theory, but with practice, and must point out that the Commission, by adopting the provisions on the continental shelf which had no foundation either in customary or in statutory international law, had deprived article 2 of all meaning.

23. Mr. LIANG (Secretary to the Commission) said that he had not yet studied with all the attention it deserved Mr. Scelle's recent article on the continental shelf,⁸ and was therefore not in a position to discuss his arguments in detail. He would accordingly confine himself for the time being to expressing the view that though there appeared no flagrant contradiction between article 2 and the provisions adopted in 1953 by the Commission concerning the continental shelf, if could be argued that the two drafts, read together, implied the existence of four maritime zones: inland waters, the territorial sea, superjacent waters above the continental shelf, and the high seas.

24. At its fifth session the Commission had stated unequivocally that the superjacent waters were part of the high seas, and had stipulated in its commentary that the "rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas or of the airspace above the superjacent waters".⁹ However, the provisions concerning measures for the exploration of the continental shelf and the exploitation of its natural resources might create the impression that the principle of the freedom of the high seas, as stated in article 2 of the present draft, had to some extent been affected.

25. Mr. HSU said that, were it not for the Commission's previous decisions concerning the continental shelf and the possibility of their being reconsidered, he would have been prepared to accept article 2. The Commission should not deceive itself. If the continental shelf were not to be regarded as part of the high seas, and accordingly became subject to acts of sovereignty and territorial dominion, States would proceed to lay claim to parts of the high seas since the continental shelf and its superjacent waters formed an indivisible entity.

26. Mr. SPIROPOULOS was unable to grasp fully the nature of Mr. Scelle's difficulty, because to him it was clear that the concept of the high seas had no connexion with the continental shelf. However, he did not propose to dwell on that issue, and would simply point out that, at least so far as the French text was concerned, article 2 seemed to require some modification, since the meaning of the words *l'objet d'actes de souveraineté* was not clear.

27. Mr. FRANÇOIS (Special Rapporteur) reminded the Commission that the articles on the continental shelf had been adopted at the fifth session with only two

⁵ Article 2 read as follows:

"The high seas shall be immune from all acts of sovereignty or territorial dominion on the part of any State."

⁶ 282nd meeting, para. 15.

⁷ A/2456, para. 62, in *Yearbook of the International Law Commission*, 1953, vol. II.

⁸ G. Scelle, "Plateau continental en droit international", *Revue générale de droit international public*, 1955, pp. 5-62.

⁹ A/2456, para. 75, in *Yearbook of the International Law Commission*, 1953, vol. II.

votes, those of Mr. Hsu and Mr. Scelle, cast against them,¹⁰ although Mr. Kozhevnikov and Mr. Zourek had entered a reservation on articles 7 and 8.¹¹ Since that time Mr. Scelle had further developed his argument in a recent paper, but after reading it carefully he (Mr. François) was still not convinced that the Commission had been mistaken in deciding to treat the seabed and subsoil as something separate from the superjacent waters. Mr. Scelle, supported by Mr. Hsu, now wished to overturn the whole complex of articles already agreed upon. To his great regret, he could not persuade himself that such a procedure was consistent with the Commission's task as laid down in General Assembly resolution 899 (IX).

28. Mr. LIANG (Secretary to the Commission), referring to the drafting point raised by Mr. Spiropoulos, said that the meaning of the words "all acts of sovereignty" in the English text was not open to doubt; but perhaps the text would be improved by the substitution of the word "any" for the word "all". The phrase referred of course to measures for the acquisition of territory, such as discovery, occupation, prescription, conquest, etc.

29. Mr. HSU was unable to let pass in silence the procedural issue raised by the Special Rapporteur, particularly as the final vote on the draft articles on the continental shelf had been misleading. It was essential to bear in mind that the vote on the provision concerning sovereignty over the continental shelf, which had been the crucial issue at stake, had been very close; indeed, the article in question had been carried by only a single vote.

30. He would not dispute the thesis that the Commission should endeavour to avoid going back on its decisions, but when such a course was indispensable it should not allow procedural considerations to deflect it from its purpose. Two years had passed since the adoption of the articles on the continental shelf, and perhaps the Commission, which had since gained some new members, had grown in wisdom in the meantime. It was not a sign of weakness to admit one's mistakes, and the Commission would accordingly be well advised to review the earlier text to enable it to stand up to future examination, and to serve the interests of humanity instead of introducing confusion.

31. Mr. ZOUREK said that article 2 proclaimed a generally accepted rule. However, the text should be amplified by a provision clearly stating that States must refrain from any acts which might be prejudicial to the use of the high seas by the nationals of other States.

32. As to the question whether article 2 was compatible with the provisions adopted on the continental shelf, he saw no problem, since the latter contained an express reservation concerning the régime of the superjacent waters. If the Commission were to re-open its lengthy

debates on the continental shelf, it would certainly not be able to finish its task within the term fixed by the General Assembly in resolution 899 (IX).

33. Mr. GARCÍA AMADOR said that, as he had not been a member of the Commission in 1953, he wished to take the present opportunity of stating his views on the vital issue of the continental shelf.

34. Considering the superjacent waters to be part of the high seas and subject to the same régime, he fully endorsed article 3 of the rules adopted two years previously, and had consistently defended that view in the Inter-American Council of Jurists. There was, however, a tendency, dictated by practical considerations, to extend the principle of territorial sovereignty to the subsoil of the continental shelf, and the issue raised by Mr. Scelle and Mr. Hsu as to whether that would be compatible with the freedom of the seas seemed to have been satisfactorily resolved in the earlier draft by the limitations (articles 3, 5 and 6) upon the exercise of rights over the continental shelf. Navigation and fishing rights would accordingly be fully protected. Recognition that coastal States possessed certain rights for purposes of exploring and exploiting the natural resources of the continental shelf in no way weakened the principle of freedom of the seas.

35. Mr. SCELLE pointed out that none of the foregoing considerations could alter the fact that the Commission had already adopted a series of provisions which were in flagrant contradiction with articles 2 and 3 of the present draft, the second of which could not but affect the régime of the high seas in superjacent waters whatever the Commission's intentions. Coastal States had been given every facility to obstruct free navigation and the laying or maintenance of submarine cables. In the circumstances, he was unable to see how the freedom of the seas could be respected, and looked forward with the greatest apprehension to the provisions on the continental shelf becoming law, although absolutely contrary to existing rules, and to the possibility of acceptance of the concept of four maritime zones mentioned by the Secretary, for which there was no authority in customary or statutory international law.

36. If sovereign rights over the continental shelf were to be conferred on States, a whole series of international disputes would inevitably ensue, to the detriment of world peace. He was categorically opposed to allowing coastal States freedom to exploit the resources of the continental shelf, whatever the consequences for other States, and would therefore favour an amendment of the kind suggested by Mr. Zourek, which would go some way towards eliminating the contradiction inherent in article 2.

37. Mr. SALAMANCA agreed with Mr. Scelle that the Commission must be realistic. The concept of the continental shelf was a new one, but did not affect the freedom of the seas. However, if the continental shelf were to be exploited, the sovereign rights of coastal States, already claimed by certain South American countries and others, would have to be recognized.

¹⁰ See *Yearbook of the International Law Commission*, 1953, vol. I, 234th meeting, para. 67.

¹¹ *Ibid.*, paras. 68 and 71.

He had the impression that the tendency to recognize four maritime zones as enumerated by the Secretary, and which, perhaps, had its origin in the Special Rapporteur's drafts, would be followed by most members of the United Nations; and the consequences of such a development must be faced. He therefore supported articles 2 and 3, but agreed that if the earlier debate on the provision contained in article 4 were to be reopened, Mr. Scelle should be given the opportunity of elucidating his views further.

38. The CHAIRMAN said that Mr. Scelle was certainly right in drawing attention to the contradiction between article 2 and the articles on the continental shelf, for the provisions of those articles clearly encroached upon the rights of States in respect of freedom of the high seas. That contradiction, however, could be resolved by adding to article 2 the phrase "without prejudice to the provisions of the articles on the continental shelf".

39. The final merging of the two sets of articles would render articles 3 and 4 of the text under consideration superfluous, and they might therefore be deleted.

40. Mr. HSU doubted the wisdom of such a course; the articles on the continental shelf had not yet been approved by the General Assembly, and it would be premature to assume that they would inevitably become law.

41. The CHAIRMAN said that it would, however, be misguided to dismiss those articles as though they were no longer of concern to the Commission.

42. Mr. FRANÇOIS (Special Rapporteur), supporting the Chairman, said that he would go even further, and reserve not only the articles on the continental shelf, but also article 5 of the present set, relating to the high seas adjacent to the territorial sea. It must not be forgotten that the articles on the continental shelf would finally be embodied in those of the régime of the high seas to form a single whole.

43. Mr. SCELLE said that such a procedure would lead to a Janus-like series of provisions, in which the inherent contradictions between the two sets of draft articles would be even more marked.

Proposal by Mr. Krylov for hearing an observer from Poland

44. Mr. KRYLOV formally proposed that the Commission allow Mr. J. Balicki, the observer for Poland at the Commission's seventh session, whose nomination as such had been notified to the Chairman, to address the Commission on some future occasion, either on the subject of article 2 or on that of article 7. The Polish Government took a particular interest in the question of freedom of the seas, and a precedent for such a procedure had been established when Mr. V. Belaunde, observer for Peru, had addressed the Commission at its first session.¹² It was also common practice in other

organs of the United Nations for observers for the governments of States Members to take the floor.

45. Mr. LIANG (Secretary to the Commission) then read out the letter from the Under-Secretary of State in the Polish Ministry of Foreign Affairs to the Chairman of the Commission, notifying the latter of Mr. Balicki's nomination as an observer at the present session.

46. The CHAIRMAN regretted that he had no power to authorize an observer to address the Commission. The methods of communication between governments and the Commission had been set forth in the Commission's Statutes and it was quite clear that they contained no provision for oral communications. It would, therefore, be contrary to the Statutes to accede to Mr. Krylov's request.

47. Mr. ZOUREK drew attention to the fact that in resolution 821 (IX)—Complaint of violation of the freedom of navigation in the area of the China Seas—the General Assembly had specifically invited governments to give their views on the principle of freedom of navigation on the high seas. He therefore failed to understand why the Chairman should treat Mr. Krylov's proposal so illiberally.

48. The CHAIRMAN, after quoting the relevant paragraph of the resolution in question, said that it seemed to confirm his previous interpretation of the Commission's Statutes.

49. Mr. KRYLOV failed to see how General Assembly resolution 821 (IX) could be quoted as an argument against his proposal; the functions of observers had been fully recognized in international legal usage. The Commission was a body of experts which should study all aspects of the question under examination, and it should not therefore deprive itself of the valuable opportunity of hearing the Polish observer. It was, moreover, anomalous that the International Law Commission should be singled out as enjoying special status in that respect.

50. Mr. EDMONDS said the problem was a familiar one in cases of pleadings of *amicus curiae*. In such cases, however, the right of oral presentation was always denied on practical grounds.

51. Mr. FRANÇOIS (Special Rapporteur) said that, if Mr. Krylov thought that observers at sessions of United Nations organs had the right to take part in the discussions, he had been misinformed. Nor could he (Mr. François) agree that international custom allowed each State to send observers to all commissions with the right to intervene in the discussions. The Commission should respect its Statute with regard to methods of communicating with governments. The Polish Government had unfortunately not hitherto seen fit to comply with that procedure. If Polish observers were allowed to address the Commission there would be some risk of its judicial atmosphere being disturbed. To accede to Mr. Krylov's request would create a bad precedent.

¹² See *Yearbook of the International Law Commission, 1949*, 9th meeting, p. 69.

52. Mr. HSU, endorsing the previous speaker's viewpoint, said that the Commission had, on occasion, invited individuals to address it, but it had not hitherto acceded to any unsolicited request to do so.

53. The CHAIRMAN put to the vote Mr. Krylov's proposal that the observer for Poland be allowed to address the Commission.

Mr. Krylov's proposal was rejected by 6 votes to 3, with 1 abstention.

54. Mr. GARCÍA AMADOR, explaining his abstention, recalled the case of Mr. V. Belaunde mentioned by Mr. Krylov. The decision to hear him had infringed the Commission's Statute; it had nevertheless created a precedent. The Commission should adhere strictly to its own rules, and make no distinction between one individual and another.

55. Mr. HSU said that the previous speaker had misunderstood the point at issue. Mr. V. Belaunde had not asked to address the Commission; he had been invited to do so. No precedent therefore had been created on that occasion, whereas Mr. Krylov's proposal had raised an entirely new point.

56. Mr. SALAMANCA said that he had voted for Mr. Krylov's proposal because he saw no objection to the Commission's hearing Mr. Balicki on article 2. The Commission should welcome the views of governments on a specific point such as that at issue.

The CHAIRMAN declared the discussion on Mr. Krylov's proposal closed.

Régime of the high seas (item 2 of the agenda)

(A/CN.4/79) (resumed from para. 43)

DRAFT ARTICLES (A/CN.4/79, SECTION II) (resumed from para. 43)

Article 2 [2]: Freedom of the high seas (resumed from para. 43)

57. The CHAIRMAN put to the vote his own proposal that the phrase "without prejudice to the provisions of the articles on the continental shelf" be added to article 2.

The Chairman's proposal was adopted by 6 votes to 3, with 1 abstention.

58. Mr. SCHELLE said that he had voted against the proposal because he had no very precise idea of the meaning that the term "without prejudice" was intended to convey.

59. Mr. GARCÍA AMADOR explained that, owing to a misapprehension, he had voted in favour of the proposal, which he had thereupon realized contained an inherent contradiction. The continental shelf was not the only element to be considered in the régime of the high seas: there were other related subjects such as right of pursuit, etc. If the reservation concerning the continental shelf were accepted, there would be contra-

diction with the other articles. As the articles had been drafted, the exceptions were implicit, but if one item were to be specified, all would have to be mentioned.

60. The CHAIRMAN said that he took the previous speaker's point, and suggested that further consideration of the article be deferred until the second reading.

It was so agreed.

61. After a short discussion, in which the CHAIRMAN, Mr. FRANÇOIS, and Mr. ZOUREK took part, *it was agreed* that Mr. Zourek's amendment¹³ should also be considered on a subsequent occasion.

*Further discussion of article 2 was adjourned.*¹⁴

*Article 3: Freedom of the high seas*¹⁵

62. The CHAIRMAN, supported by Mr. FRANÇOIS (Special Rapporteur), suggested the deletion of articles 3 and 4, as being superfluous in the light of the articles on the continental shelf, the Special Rapporteur adding that article 5 might similarly be deleted.

63. Mr. SCHELLE said that he had already expressed his opinion on the articles on the continental shelf and had put forward a proposal, which was being circulated as document A/CN.4/L.51.¹⁶

64. Mr. KRYLOV suggested that further consideration of the point be deferred until the next meeting in order to give members time to study both proposals.

It was so agreed.

The meeting rose at 1 p.m.

¹³ Mr. Zourek's amendment (A/CN.4/L.52) read as follows:

"Add the following sentence to article 2:

"Since the high seas are open to all nations they cannot be utilized, save in the exceptional cases provided for in the following articles, for activities prejudicial to their use by the nationals of other States."

¹⁴ Resumed at the 284th meeting.

¹⁵ Article 3 read as follows:

"The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas."

¹⁶ A/CN.4/L.51 read as follows:

"Prof. J. Scelle has never been able to associate himself with the Commission's votes on the draft relating to the continental shelf, because it is simply a question of upholding governmental claims which are mutually contradictory and are not based on any rule of customary or conventional law. On the contrary the text adopted constitutes a flagrant violation of the traditional and constitutional regime of the high seas and their subsoil laboriously established during past centuries. The introduction of the concept of sovereignty in the Commission's latest draft appears, on reflection, particularly inadmissible and should be abandoned. It is calculated to multiply the causes of friction between governments and to jeopardise peaceful relations by reverting to imperialist and mercantile occupation practices."

"It is hard to understand why the International Law Commission did not follow in this field the course it adopted with regard to fisheries on the high seas, whereby the necessary power of regulation is entrusted to an international administrative authority. This method would strengthen the efforts of the international community towards integration, which are being pursued within the framework of the San Francisco charter and the United Nations."

"A brief text based on that adopted in regard to fisheries might therefore be discussed, this text to read more or less as follows: