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**A/CN.4/SR.198**

**Summary record of the 198th meeting**

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

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Lawyers were divided on the matter, and it was difficult to establish which theory prevailed.

79. Mr. SPIROPOULOS considered that there was no need for the Commission to discuss article 2 at great length. It should accordingly decide as soon as possible on Mr. Yepes' proposal, which was consistent with the views of the United Kingdom Government. If the proposal were rejected, the Commission could then consider the alternative solution offered by the Special Rapporteur.

The meeting rose at 1.05 p.m.

## 198th MEETING

Friday, 19 June 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. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, 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 I: CONTINENTAL SHELF

##### Article 2 (*continued*)

1. Mr. FRANÇOIS (Special Rapporteur) wished first to comment briefly on the various proposals submitted on article 2, and to reply to the questions which had been put to him at the previous meeting.

2. Mr. Kozhevnikov had asked what he meant by "sovereign rights of control and jurisdiction". The answer was that that term meant all the rights of control

and jurisdiction exercised by a sovereign State over its territory. The same notion was conveyed by the expression "exclusive rights of control and jurisdiction". It might be argued that to use the term "sovereignty" would suggest the enjoyment of rights over the waters and air space above the continental shelf. That, however, was expressly excluded by articles 3 and 4. The term "sovereignty" implied that the coastal state could cede to another state its rights in respect of exploitation and exploration.

3. It could be argued, as the Swedish Government had done (A/CN.4/60, mimeographed English text, p. 36; priated French text, No. 79), that where there was no exploration or exploitation the coastal state had no rights over the continental shelf except the right to prevent its exploitation or exploration by others, but he considered that it was impossible so to restrict the concept, and was himself inclined to support the Israeli Government's argument (*Ibid.*, p. 34 or No. 75). If the last clause of article 2 ("for the purpose of exploring it and exploiting its mineral resources") were interpreted as connoting some sort of control over the efficacy of exploration and exploitation operations, he would be opposed to its inclusion. In that respect, States must have the same rights as they enjoyed over the natural resources of their land areas.

4. What other rights could be exercised over the continental shelf? In advocating the use of the term "sovereignty", the United Kingdom Government (*Ibid.*, p. 35 or No. 77) held that it would leave no doubt that a crime committed in a tunnel under the continental shelf would come within the jurisdiction of the coastal state. Thus, should any doubt subsist in relation to the expression "sovereign rights of control and jurisdiction", the use of the term "sovereignty" would be preferable, since it was impossible to envisage plurality of jurisdiction over the continental shelf. But caution was necessary, since it was essential to avoid giving the impression that the coastal State might enjoy rights over fisheries or wrecks on the bed of the sea. Fish, which spent long periods at the bottom of the sea, and wrecks could not be regarded as natural resources. Mouton made a distinction between the seabed and the subsoil. He (Mr. François) was prepared to concede the validity of the distinction, provided it were interpreted as meaning that sovereignty would be enjoyed by the coastal State over the subsoil of the continental shelf, rights over the sea-bed being limited to exploitation and exploration of natural resources.

5. In view of the above-mentioned considerations, he wished to submit an amendment to article 2 in the following terms:

"The continental shelf is subject to the sovereignty of the coastal State. On the sea-bed, however, the coastal State has only the rights of control and jurisdiction for the purpose of exploring it and exploiting its natural (or mineral) resources."

6. Mr. YEPES, referring to the proposal he had submitted at the previous meeting, said that he had come to the conclusion that the second sentence raised a

number of difficulties. He would therefore withdraw that sentence while reserving the right to have it included in the comments.

7. In order to simplify procedure, he would suggest that Mr. Lauterpacht's proposal and his own should be combined to form one article, which would then read:

"The continental shelf is subject to the sovereignty of the coastal State. The coastal State possesses the same rights of sovereignty over the continental shelf as it exercises over its land area."

8. He preferred the term "sovereignty" to the term "sovereign rights of control and jurisdiction", since the latter was confusing, and implied a compromise solution. Although, he was a convinced opponent of the notion of absolute sovereignty, he considered that in the present instance that was the appropriate term to use. In fact, he agreed with the comments made by the United Kingdom, France and the Union of South Africa (*Ibid.*, pp. 35-36 or Nos. 77, 80 and 8).

9. He was unable to accept the Special Rapporteur's proposal that the term "mineral" be used instead of "natural" to qualify the term "resources". "Mineral" would impose what would be both a useless and a dangerous limitation. "Natural resources" was the correct term and must be used.

10. Mr. LAUTERPACHT felt that Mr. François and Mr. Yepes had clarified the situation, but wished to mention certain considerations affecting the sovereignty of the coastal State, to which Mr. François had not referred. If the Commission laid down that the continental shelf was subject to the sovereignty of the coastal State, it would merely be codifying existing practice. The United States Government, for instance, had, in the Presidential Proclamation of 28 September 1945 (Truman Proclamation), referred to the continental shelf as "appertaining" to that country. The same idea was expressed in the series of proclamations by Arab States concerning the Persian Gulf. The first existing instrument dealing with the continental shelf was that negotiated between the United Kingdom and Venezuela in 1942, where the term "annexation" was used.<sup>1</sup> Consequently, short of following Mr. Scelle's suggestion that existing practice be disregarded, the Commission could hardly fail to accept the Special Rapporteur's proposal. The doctrine was that the continental shelf formed the prolongation of the territory of the coastal State in virtue of physical fact, and not by legal fiction. In cases where disputes concerning the continental shelf had been submitted to arbitration, it had been assumed without discussion that the consequence of proclamations by governments had been to give the coastal State full rights of sovereignty. Of course, it went without saying that those rights were subject to the limitations of international law in respect of the freedom of the seas. The interests of navigation and fisheries must be safeguarded, and reference thereto would have to be made somewhere in the draft. That

consideration made it difficult to accept Mr. Yepes proposal, which stipulated that a State's rights of sovereignty over the continental shelf were the same as those exercised over its land area. He would submit that in the present instance sovereignty was, so to speak, a horizontal conception. It did not extend upwards, as did sovereignty over a land area. The superincumbent seas were excluded from it.

11. Another point to which he would refer was that the text adopted by the Commission at its third session was capable of a dual interpretation. It might be taken to mean either that the coastal State had exclusive control and jurisdiction only for the purpose of exploring and exploiting the natural resources of the continental shelf, or, alternatively, that the coastal State had full control and jurisdiction because of the necessity of fully exploring and exploiting the natural resources. He appreciated the reluctance that some members felt about conferring full sovereign rights over the continental shelf, and certainly the idea of international control in cases where exploitation was carried on ineffectually was attractive, but he feared that the Commission would only fulfil its intentions correctly by adopting the Special Rapporteur's formula, as expressed in the first sentence of his amendment submitted at the present meeting.

12. Mr. LIANG, Secretary to the Commission, said that the Secretariat, in compiling the volume<sup>2</sup> reproducing the proclamations of governments to which Mr. Lauterpacht had referred, had not been sure, in view of the protests directed against them by other governments, of the extent to which those declarations reflected the practice of States. In his own view, the most that could be claimed was that they indicated a tendency.

13. As to the choice between the terms "sovereignty" and "control and jurisdiction", he would recall that in cases where the latter expression had been explicitly included in a treaty, the interpretation of that expression as meaning sovereignty must be excluded.

14. Mr. Lauterpacht had stated in his book on "Private Law Sources and Analogies of International Law"<sup>3</sup> that leaseholds must be distinguished from a transfer of sovereignty. He, Mr. Liang, agreed with the view that where international leases conferred only control and jurisdiction, no sovereign rights could be claimed by the lessee State. He criticized the nineteenth century international law writers who considered those leases as "disguised cession of territory".

15. Mr. Lauterpacht's interpretation of the Truman Proclamation was only one of several interpretations that could be placed on it. One American writer had compared it with the United States declaration of 1856 on the Guano Islands.<sup>4</sup> The word "appertaining" was

<sup>2</sup> *Ibid.*

<sup>3</sup> London, 1927.

<sup>4</sup> See *The Statutes at Large and Treaties of the United States of America, Thirty-Fourth Congress, 1855-1856* (Boston, 1856), p. 119.

<sup>1</sup> See *Laws and regulations on the régime of the high seas*, vol. I (United Nations publication, Sales No.: 1951.V.2), p. 46.

used in both cases, but there was evidence that the United States Government had not intended to proclaim sovereignty over the Guano Islands. "Appertaining" did not mean "belonging to". He was under the impression that Gidel had stated that the United States Government had intentionally avoided the use of the word "sovereignty".

16. He made those general comments in order to emphasize that if the Commission wished to change its decision, it would have to justify the change in its comments, in order that the consequences thereof might be correctly estimated.

17. Mr. PAL submitted the following proposed wording for article 2 :

"The coastal State has the sovereign rights of control and jurisdiction over the continental shelf in respect only of its mineral resources and of the exploration and exploitation of the same."

"Explanation : The term mineral resources includes deposits of sand on the surface of the bed."

18. He had followed the discussion with very great attention, the more so that, being a newcomer to the Commission, he had not envisaged the possibility of an extension of sovereign rights to the continental shelf.

19. Such an extension had never been contemplated before the issue of the several government proclamations to which reference had been made by preceding speakers.

20. His own proposal had been based on the assumption that the Commission did not envisage the extension of full sovereignty, but merely the granting of certain rights to the coastal State, and to the coastal State alone.

21. If, however, the Commission was going to found its attitude on the proclamations, then his proposal was invalid, since it was opposed to the extension of sovereignty over the continental shelf.

22. Mr. ALFARO did not consider that it was correct to argue that a coastal State had full sovereignty over the continental shelf. In his view, the term "control and jurisdiction" sufficed to permit a state to explore and exploit the natural resources of the shelf. He would draw attention to the Israeli Government's argument (*Ibid.*, p. 34 or No. 75) to the effect that control and jurisdiction seemed to be indistinguishable from sovereignty. He could not accept that view. In that connexion, the treaty between Panama and the United States of America on the Panama zone was pertinent, as it was clear from its terms that the United States of America was not sovereign over the zone, although it had been granted certain rights of control and jurisdiction therein.

23. Further, the Israeli Government suggested that the coastal State might desire to exercise rights of sovereignty in other directions, namely, in those of protection against abuse of rights by third States, and of national defence. He would submit that if a State had

control and jurisdiction, it would be perfectly able to defend its rights. Nor was there any validity in the argument that a State must, by extending its sovereignty over the continental shelf, be able to acquire the possibility of exploring and exploiting it at some future date. The fact that a State did not exercise a right did not deprive it of that right.

24. In his view, the correct formula was "sovereign rights of control and jurisdiction".

25. Replying to the CHAIRMAN, he added that he preferred the word "sovereign" to the word "exclusive" in that connexion.

26. Mr. HSU recalled that at the previous meeting<sup>5</sup> he had stated that he was opposed to the extension of sovereign rights over the continental shelf. The theory of established practice was invalid. Nor was extension justified by proximity. He would remind the Commission that the claims advanced by certain States for the extension of the limits of their territorial waters had been strongly disputed. The subject was controversial, and involved a latent conflict with the doctrine of the freedom of the seas, about which, as a matter of fact, there was nothing sacrosanct; it was simply a method applied by States which could, if they so wished, decide to partition the ocean. But the initiative therein must be left to States themselves. It was not for the Commission to make recommendations the ultimate significance of which would be political.

27. He agreed with Mr. Alfaro's observations, although he would prefer to avoid any use of the word "sovereign", even though in the present context it were interpreted as meaning partial sovereignty. It would be wiser for the Commission to refrain from using a term which had a very definite colouring, and which called for interpretation.

28. Faris Bey el-KHOURI also held that the matter should be viewed from the political angle. Small States naturally wanted to enjoy rights over as wide an area of territorial sea as possible, for the simple reason that they wished to keep big States as far away from their coasts as they could. Thus, by providing for the extension of sovereignty to embrace the continental shelf, the Commission would be favouring small States, even though the exercise by them of those rights might be purely theoretical since they would lack the means of large-scale exploitation. But at least they would then be more inclined to accept the draft articles and no great harm would have been done from a juridical point of view. He consequently believed that the word "sovereignty" should be taken in its widest connotation.

29. The CHAIRMAN, speaking in his personal capacity, said that despite the brilliant expositions of the Special Rapporteur and Mr. Lauterpacht, he was still not convinced, and was inclined to side with Mr. Alfaro and the Secretary. He preferred the term "exclusive", which had been suggested by Mr. Sandström, to the term "sovereign".

<sup>5</sup> See *supra*, 197th meeting, para. 71.

30. Mr. LAUTERPACHT pointed out to the Secretary that the protests entered by governments against the proclamations expressed opposition, not to the claim that the continental shelf appertained to a certain coastal State, but to claims of rights over the superincumbent seas, which was a very different matter.
31. Mr. YEPES said that, having studied the Special Rapporteur's amendment, he was prepared to accept it.
32. The CHAIRMAN said that he would put to the vote the various proposals relating to article 2.
33. Mr. ALFARO considered that it would be better to defer the voting until the Commission had examined article 6.
34. Mr. FRANÇOIS thought that there was much to be said for Mr. Alfaro's suggestion, since articles 2 and 6 were closely linked. In any case, there was the question of "mineral" *versus* "natural" resources, and that issue was inseparable from the question of sedentary fisheries dealt with in article 6.
35. The CHAIRMAN suggested that the Commission might vote on the issue of principle, namely, whether it wished in article 2 to stipulate the exercise of sovereignty, or of control and jurisdiction.
36. Mr. LAUTERPACHT proposed that the first sentence of the Special Rapporteur's amendment be put to the vote. So far as he was himself concerned, he was prepared to accept the second sentence also, subject to certain drafting changes.
37. Mr. FRANÇOIS said that he would move the second sentence of his amendment<sup>6</sup> as a sub-amendment to Mr. Lauterpacht's proposal,<sup>7</sup> which was in point of fact identical with the text of his first sentence.
38. Mr. KOZHEVNIKOV and Mr. ZOUREK considered that the issue of principle should be put to the vote first, and that the second sentence of the Special Rapporteur's amendment should be considered in relation to the technical problems which it raised. Reference had been made earlier to the distinction between the sea-bed and the subsoil.
- Mr. Lauterpacht's proposal reading: "The continental shelf is subject to the sovereignty of the coastal State" was adopted by 6 votes to 5, with 1 abstention.*<sup>8</sup>
39. The CHAIRMAN explained that he had abstained from voting because he had not yet formed a definite opinion on the question of principle involved.
40. Mr. ZOUREK said that he would prefer the vote on the Special Rapporteur's sub-amendment to Mr. Lauterpacht's proposal to be deferred until after article 6 had been examined. He was not yet sufficiently enlightened on the question of natural and mineral resources.
41. Mr. LAUTERPACHT and Mr. FRANÇOIS said they were prepared to agree to Mr. Zourek's suggestion.
42. Mr. ALFARO reminded the Commission that he had originally suggested that the vote on article 2 be deferred until after the discussion on article 6. But now that the principle had been put to the vote, it was surely essential to consider the proposed limitation of the principle.
43. Mr. SPIROPOULOS could not see how article 2 was linked with article 6, and suggested that the Commission continue the voting.
44. The CHAIRMAN concurred.
45. Faris Bey el-KHOURI asked why the Special Rapporteur wished to restrict the enjoyment of sovereign rights over the sea-bed. Restrictions on the surface of the water were perfectly understandable, but what could a State do about the sea-bed, except explore and exploit it?
46. Mr. FRANÇOIS recalled that he had explained the necessity for restricting those rights in order to exclude fish and wrecks from their purview. It was very important indeed to ensure the application of the doctrine of the freedom of the seas in that respect.
47. Mr. ZOUREK pointed out that his difficulty was that the Special Rapporteur's amendment provided for a special régime for the sea-bed. The comments of M. W. Mouton (*Ibid.*, pp. 28-29 or No. 67) on the sea-bed and the subsoil would have to be carefully studied.
48. Mr. LAUTERPACHT said that most members of the Commission were obviously reluctant to continue with the vote. He felt that the second sentence of the Special Rapporteur's amendment (which was now a sub-amendment to his own proposal) took, so to speak, the edge off the rigid conception of sovereignty. He, for his part, was anxious to add a proviso to the effect that sovereign rights could not be extended to the superincumbent seas. It would be both more logical and more convenient if all statements relating to sovereignty were grouped in a single article.
49. Mr. LIANG (Secretary to the Commission) said that the Commission seemed to be on the way to establishing three different régimes: for the subsoil; for the sea-bed; and for the superincumbent waters. Due consideration should be given to the practical consequences of such a step. For his part, he failed to see what justification there was for distinguishing between the kind of rights to be exercised by States over the subsoil and over the sea-bed respectively.
50. Mr. SCALLE said that, despite the explanations given, he was still unable to grasp what difference there was between the sea-bed and the continental shelf.
51. Mr. FRANÇOIS pointed out that the sea-bed was the surface of the continental shelf. It was perfectly feasible to devise different rules for the surface and for the subsoil of the continental shelf.

<sup>6</sup> See *supra*, para. 5.

<sup>7</sup> See *supra*, 197th meeting, para. 67.

<sup>8</sup> See, however, *infra*, 210th meeting, paras. 73-79.

52. Mr. LAUTERPACHT pointed out that an analogous distinction was drawn between the surface and the subsoil of land areas.
53. Mr. SCELLE disagreed. Mining operations, for example, were frequently carried on so near to the earth's surface as to render such a distinction meaningless.
54. Mr. LIANG (Secretary to the Commission) said that it was not clear to what the word "it" referred, in the second sentence of the Special Rapporteur's text.
55. Mr. FRANÇOIS said that the word "it" in the second sentence should be replaced by the words "the continental shelf".
56. The CHAIRMAN suggested that article 3 should form the second paragraph of article 2, but in amended form, reading: "The exercise of sovereignty by the coastal State over the continental shelf does not affect the legal status of the superjacent waters as high seas."
57. Mr. KOZHEVNIKOV observed that in the interests of consistency the principle already adopted by the Commission should be amplified. The whole text would then read:
- "The continental shelf is subject to the sovereignty of the coastal State for the purpose of exploring and exploiting its natural resources."
58. Mr. FRANÇOIS asked whether Mr. Kozhevnikov's proposal would mean that the sovereignty of States over the continental shelf would be absolute or that it would be exercised solely for the purpose of exploring and exploiting the natural resources.
59. Mr. ZOUREK said it was unnecessary to complicate matters by establishing three superimposed régimes to govern the continental shelf. For practical purposes, therefore, the second sentence in the Special Rapporteur's text should be omitted. The question of bottom fish and wrecks could be dealt with in another article.
60. Mr. PAL said that if the last sentence in the Special Rapporteur's comment on article 2, which read, "On the other hand the sand, constituting as it does the upper layer of the subsoil, should be regarded as covered by the term 'mineral resources'" (*Ibid.*, chapter IV, art. 2, last sentence of comment) were retained, some of the objections to the text would be removed.
61. Mr. FRANÇOIS observed that at first sight Mr. Zourek's suggestion seemed simple; but it would eliminate the qualification on the sovereignty of coastal States made in the first sentence. The result would be to extend to coastal States exclusive rights to, for example, bottom fish.
62. Mr. YEPES supported Mr. Zourek's suggestion. If, by definition, the continental shelf included the sea-bed, there was no need whatsoever to devise a separate régime for the latter.
63. Mr. SPIROPOULOS pointed out that States might wish to use the surface of the continental shelf for the construction of defence installations. According to the Special Rapporteur, however, the only kind of installations allowed would be those required for the exploitation of the mineral resources.
64. Mr. LAUTERPACHT said that in an effort to reconcile the various views expressed, he would propose the following wording to replace that suggested by the Special Rapporteur.
- "On the sea-bed the exclusive rights of the coastal States are limited to the exercise of rights of control and jurisdiction for the purpose of exploring and exploiting the mineral resources of the sea-bed and its subsoil."
65. Mr. SPIROPOULOS said that Mr. Lauterpacht's text would be acceptable. It was not essentially different from the Special Rapporteur's. On the other hand, he agreed with Mr. François that the meaning of Mr. Kozhevnikov's proposal was not clear.
66. Mr. KOZHEVNIKOV observed that his text contained nothing new. If the use of the word "natural" caused difficulty, he would be prepared to replace it by the word "mineral".
67. Mr. SCELLE asked how the exercise by coastal States of their special rights over the continental shelf was to be supervised. Normally, it was possible to ascertain by inspection on the spot whether rules of international law were being observed. It was hardly likely, however, that that would be possible in submarine areas. It would be virtually impossible to prevent any coastal State from using the continental shelf for purposes other than those laid down in Mr. Lauterpacht's proposal.
68. By extending the sovereignty of coastal States to the continental shelf, the Commission would be creating yet another source of contention between States. He was therefore categorically opposed to such a revolution in international law as would result from the recognition of sovereignty over a continental shelf, the limits of which in time would inevitably have to be extended when the present regulations became obsolete.
69. Mr. SPIROPOULOS said that an international lawyer reading the Special Rapporteur's text would interpret it as meaning recognition, subject to the rules of international law, of the absolute sovereignty of coastal States over the continental shelf. Mr. Kozhevnikov now appeared to be seeking to whittle down the principle already accepted. The addition he had proposed would serve only to confuse the meaning of the article.
70. Mr. KOZHEVNIKOV remarked that his amendment merely gave concrete expression to the principle already adopted, and, in his opinion, corresponded to the Special Rapporteur's intentions.
71. Mr. LAUTERPACHT appealed to Mr. Kozhevnikov to answer the question put by the special rapporteur.

teur, namely, whether his text meant that coastal States should only exercise sovereignty over the continental shelf for the purpose of exploring and exploiting its natural resources. Unless a satisfactory answer was forthcoming, the first sentence should perhaps be left as adopted.

72. Mr. KOZHEVNIKOV said that if his text were adopted, the comment would explain its meaning. The addition he had proposed did not affect the principle already accepted by the Commission.

73. Mr. LAUTERPACHT said that surely in that case Mr. Kozhevnikov's amendment was superfluous? His point could be made in the comment.

74. Mr. YEPES, referring to Mr. Spiropoulos' remarks, explained that he had voted in favour of the principle contained in the first sentence on the understanding that the sovereignty over the continental shelf which it conferred upon the coastal State would be subject to the rules of international law. That, however, was what the Commission had already decided in its draft Declaration of the Rights and Duties of States, which included an article to the effect that the sovereignty of States must be subject to international law and limited by it.<sup>9</sup>

75. Mr. LIANG (Secretary to the Commission) considered that the first and second sentences in the Special Rapporteur's text were contradictory since the general principle stated in the first sentence was invalidated by the second.

76. Mr. Lauterpacht's text would raise a problem of interpretation. Exclusive rights might be understood as tantamount to sovereignty.

77. Mr. LAUTERPACHT said in answer to the Secretary's argument that there was no contradiction in stating a general principle and then a series of exceptions to it.

78. He agreed, however, that the word "exclusive" in his text required explanation. If it were omitted, it would be impossible for coastal States to exploit sedentary fisheries.

79. The CHAIRMAN was unable to see why the first sentence of the Special Rapporteur's text should refer to the continental shelf, and the second to part of that shelf, namely, the sea-bed.

80. Mr. LAUTERPACHT said that no inconsistency was involved.

81. Mr. SCELLE said that the Commission was using the word sovereignty not in its usual connotation, but in a restricted sense. He was opposed to its being applied at all to the exercise of special powers. If sovereignty had any meaning it could only be the aggregate of powers exercised by a State.

82. There was an obvious contradiction between the first and second sentences of the Special Rapporteur's proposal. The issue dealt with in the second sentence was clearly analogous to concessions granted for the exploitation of mineral resources on land. No one had ever claimed that a concession entailed sovereign rights. It would be a major legal blunder to introduce the concept of sovereignty into such a provision.

83. Mr. ALFARO said that he would vote in favour of Mr. Lauterpacht's proposal, which was consistent with the Special Rapporteur's second draft of article 2. It was essential to safeguard the principle of the freedom of the seas, and therefore to qualify the sovereignty exercised by coastal States over the continental shelf.

84. It was extremely difficult to draw tenable distinctions between the sea-bed and the subsoil. He therefore felt that the continental shelf should be regarded as a single entity.

85. Mr. KOZHEVNIKOV proposed that while the Commission was awaiting the texts of the proposals submitted during the discussion, it might dispose of article 3, which should present no difficulties.

86. Mr. ALFARO seconded Mr. Kozhevnikov's proposal.

*It was so agreed.*

### Article 3

87. Faris Bey el-KHOURI said he was unable to vote in favour of any provision restricting the sovereignty of States, since that concept did not lend itself to qualification. He wondered whether it might not be possible to bring the continental shelf within the régime of the territorial sea, and the superjacent waters within the régime of the high seas.

88. Mr. LIANG (Secretary to the Commission) said that at the fourth session, when discussing the territorial sea, the Commission had decided not to make any provisions about the air space above it. If the same course were to be followed in the case of the superjacent waters, the reasons for doing so would have to be stated in the commentary.

89. Mr. PAL proposed that article 3 should be amended to read:

"The sovereignty of a coastal State over the continental shelf does not affect the legal status of the superjacent waters as high seas."

90. Faris Bey el-KHOURI accepted Mr. Pal's wording.

91. Mr. SPIROPOULOS thought that it would be difficult for the Commission to dispose of article 3 before it had taken its final decision on article 2.

92. Mr. ALFARO said that he was very anxious for article 3 to be accepted unanimously, since it would safeguard the general principle of the freedom of the seas.

<sup>9</sup> See article 14 of the draft Declaration in "Report of the International Law Commission covering its first session", *Official Records of the General Assembly, Fourth Session, Supplement No. 10 (A/925)*, p. 9.

93. In view of Mr. Scelle's objections to the use of the word "sovereignty", perhaps the opening words of the article might read "The rights of the coastal State . . ."

94. Mr. LIANG (Secretary to the Commission) said that the use of the word "sovereignty" in article 3 would necessitate extended explanations.

95. Mr. KOZHEVNIKOV said that at first sight it seemed to him that the wording proposed by Mr. Alfaro would be inconsistent with other articles in the draft.

96. Mr. ZOUREK observed that whatever term the Commission decided to use to describe the rights of coastal States must be used consistently throughout the draft.

The meeting rose at 1 p.m.

### 199th MEETING

Monday, 22 June 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. 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 I: CONTINENTAL SHELF

##### Article 2 (*resumed from the 198th meeting*)

1. The CHAIRMAN recalled that at the previous meeting the Commission had adopted Mr. Lauterpacht's

proposal,<sup>1</sup> which now formed the first sentence of article 2. Mr. Yepes had withdrawn his amendment. The Commission had therefore now to consider Mr. Pal's<sup>2</sup> and Mr. Kozhevnikov's proposals. The text of the latter read as follows:

"The continental shelf is subject to the sovereignty of the coastal State for the purpose of exploring and exploiting its natural resources."

2. Mr. PAL said that as a result of discussions with Mr. Lauterpacht, and in view of the Commission's decision at the preceding meeting, he had made several drafting changes in his proposal, which now read as follows:

"The continental shelf is subject to the sovereignty of the coastal State.

"This sovereignty of the coastal State over the continental shelf does not affect the legal status of the superjacent waters as high seas or of the air space above such superjacent waters.

"On the sea-bed the sovereignty (exclusive rights) of the coastal State is (are) limited to the rights of user, control and jurisdiction for the purposes of exploration and exploitation of the natural (mineral) resources of the sea-bed and its subsoil."

3. The first paragraph was that already adopted by the Commission; the second and third were based on articles 3 and 4 as set out in the report.

4. Mr. LAUTERPACHT said that, since Mr. Pal's proposal was wholly in accordance with his views, he would withdraw his own proposal for paragraphs 2 and 3 of article 2.

5. Mr. FRANÇOIS (Special Rapporteur) said that he would be prepared to accept Mr. Pal's proposal provided that he used the word "mineral" instead of "natural". He would then withdraw his amendment to article 2 and the text proposed by him in the report.

6. Replying to Mr. LAUTERPACHT, he added that he would be prepared to agree that the question of "mineral" or "natural" be left in abeyance.

7. Mr. ZOUREK recalled that at the previous meeting he had proposed the deletion of the second sentence from the Special Rapporteur's amendment. Since that amendment had now been withdrawn and the Commission apparently wanted to include in the article some limitation of the sovereignty of the coastal State, he withdrew his own proposal.

8. Mr. SANDSTRÖM said that as he had been absent from the previous meeting he had been unable to follow the Commission's work and therefore wished once more to reiterate his opposition to the notion that a coastal State enjoyed sovereign rights over the continental shelf. He reserved his right to vote against the article.

<sup>1</sup> See *supra*, 198th meeting, para. 38.

<sup>2</sup> *Ibid.*, para. 17.