

Document:-  
**A/CN.4/SR.209**

**Summary record of the 209th meeting**

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

Extract from the Yearbook of the International Law Commission:-  
**1953 , vol. I**

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

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.

### CONTENTS

	Page
Régime of the high seas (item 2 of the agenda) (A/CN.4/60) ( <i>continued</i> )	
Chapter IV: Revised draft articles on the continental shelf and related subjects	
Part II: Related subjects	
Article 3: Sedentary fisheries ( <i>resumed from the 208th meeting</i> ) . . . . .	156
Articles 1 and 2: Resources of the sea ( <i>resumed from the 208th meeting</i> ) . . . . .	158

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.

to provide a basis for a compromise agreement on the subject. With that end in view, he submitted the following text :

“Sedentary fisheries on the continental shelf of a State shall be regulated by that State. Discrimination against nationals of another State shall only be permitted if it is not contrary to undertakings entered into by the coastal State with the State in question or to existing customary law of the region in question concerning the use of the sedentary fishery by nationals of the other State.”

2. It would be noted that he had omitted any mention of sedentary fisheries outside the continental shelf ; it was extremely doubtful whether such fisheries did in fact exist outside the shelf, but in so far as they did, they constituted quite exceptional cases, and could safely be left out of account.
3. If the text he proposed were adopted, it would be logical to include it with the articles on the continental shelf itself, since, in the form he proposed, it related only to that subject.
4. Mr. LAUTERPACHT supported the new text proposed by Mr. François, which was consistent with the articles already adopted by the Commission.
5. Mr. SPIROPOULOS was unable to support the new text. Apart from numerous points where the wording was obscure or illogical, he did not understand what was intended by introducing the idea of customary law ; reference had been made on a number of occasions during the discussions to “existing rights” or “acquired rights” in connexion with sedentary fisheries, but, so far as he knew, no reference had yet been made to customary law.
6. Mr. LAUTERPACHT, replying to Mr. Spiropoulos, said that all those best acquainted with the subject under discussion agreed that a customary law had developed, with regard to that very subject, in certain areas of the world.
7. Mr. SCELLE said that, leaving aside questions of drafting, he feared he could not vote for any text which conferred on a State sovereignty over an area of the high seas.
8. He saw no legal grounds for applying different systems to an area of the high seas above the continental shelf and to an area of the high seas not above the continental shelf, and although the fact that it had been made the coastal State’s duty, and not its right, to prescribe the necessary regulations constituted an improvement, he could not accept the new text.
9. Mr. CORDOVA drew Mr. Scelle’s attention to the fact that sedentary fisheries were situated in the high seas not above the continental shelf, but on the continental shelf ; now that the Commission had recognized that the coastal State had certain rights over the continental shelf, it was only logical to provide that it should have the right to regulate the sedentary fisheries on the shelf.
10. Mr. ALFARO agreed with Mr. François that there was a need for an article on sedentary fisheries, which were not covered by the terms of article 2 of the draft articles on the continental shelf itself. In principle, he supported the proposed new text, even though he felt that its drafting might be improved.
11. Mr. YEPES also supported the new text in principle, and especially welcomed the Special Rapporteur’s decision to limit it to sedentary fisheries on the continental shelf, since he understood that it was in fact impossible for sedentary forms of marine life to exist at depths greater than that fixed as marking the limit of the continental shelf.
12. Mr. SANDSTRÖM said that, although he could perhaps agree to the new text proposed by Mr. François, with certain modifications, if it were left in part II, he could not agree to its being placed in part I, among the articles on the continental shelf itself.
13. Mr. KOZHEVNIKOV felt that the objections raised to Mr. François’ new proposal showed that it would be unwise to attempt to go into the questions under consideration in too great detail.
14. Mr. François had suggested that, if adopted, the text proposed should be inserted in part I, but the Commission had surely completed its work on part I, except for voting on it as a whole, and was now engaged in studying part II.
15. Mr. SPIROPOULOS, on a point of order, recalled that at the previous meeting the Commission had rejected all the proposals submitted with regard to sedentary fisheries.<sup>2</sup> By doing so, it had exhausted its discussion of that question. Before considering any new proposals on the question at the present session, therefore, it must, under its rules of procedure, decide that it wished to reopen the subject. He therefore requested that, before allowing the discussion to proceed, the Chairman should ascertain whether that was in fact the Commission’s wish.
16. The CHAIRMAN said that the point of order raised by Mr. Spiropoulos was pertinent, and accordingly put to the vote the question whether the Commission wished to re-open the discussion on sedentary fisheries.

*It was decided by 6 votes to 4, with 4 abstentions, not to re-open the discussion on sedentary fisheries.*

17. Mr. SPIROPOULOS, explaining his vote, said that he had voted against re-opening of the discussion, not because he thought an article on sedentary fisheries was not necessary, but because he considered that the differences of view were such as to preclude all hope of a compromise solution at the present time. In those circumstances it would be a waste of time to re-open the discussion, although he hoped that a compromise would be reached at a later session, when the Com-

<sup>2</sup> *Ibid.*, para. 35.

mission came to consider the general régime of the high seas.

*Articles 1 and 2 : Resources of the sea  
(resumed from the 208th meeting)*<sup>3</sup>

18. The CHAIRMAN recalled that at the previous meeting the Commission had begun to consider the five articles<sup>4</sup> which Mr. François and Mr. Lauterpacht proposed should replace articles 1 and 2 of part II of the Special Rapporteur's fourth report.

19. Mr. CORDOVA said that he agreed with the criticisms of the text proposed by Mr. François and Mr. Lauterpacht because, first, it gave the right to regulate fishing activities off their coasts to only a limited number of States, and secondly, it unduly restricted the competence of the proposed international body. It had always been his view that the fish in the high seas were the common property of all mankind, and that all fishing activities in those seas should be regulated by an international authority, whose powers should not be limited to conducting investigations and making recommendations, as proposed by Mr. François and Mr. Lauterpacht, but should include enforcement measures.

20. He therefore wished to propose that the joint proposal be replaced by the following text :

"Article 1

"Within the frame of the United Nations an international authority shall be created for the purpose of protecting against waste or extermination the resources of the high seas.

"The authority shall consist of a permanent body composed of three neutral members technically competent in matters related with the resources of the sea and its exploitation.

"Article 2

"The authority shall have competence to conduct investigations and to make recommendations concerning fisheries in any area of the high seas and upon the methods employed in exploiting them. It shall have competence to regulate the fishing activities in the high seas. The authority shall also have jurisdiction to decide upon the differences between States with regard to fishing in any area of the high seas.

"Article 3

"All States shall be under a duty to accept, as binding upon their nationals, any system of regulation prescribed or any decision taken by the international authority; provided first that before issuing any regulation or decision it shall consult with the States whose nationals are engaged in fishing in the particular region in which the regulations are to be applied,

and provided further that, if the regulations or decision are to be applied in an area situated within a hundred miles of the territorial sea of a State, the authority, even if the nationals of that State are not engaged in fishing there, shall nevertheless consult with such coastal State.

"Article 4

"The regulations and decisions of the international authority shall be carried out by the States whom the authority shall designate from among those which the authority must consult, in each particular area of the high seas, according to Article 3."

21. Mr. SPIROPOULOS, on a point of order, said that the text proposed by Mr. Córdova was an entirely new proposal and could not be regarded as an amendment to the joint proposal. The Commission should base its discussions on the joint proposal and take up the various points contained in the new proposal only as the points to which they corresponded in the joint proposal were reached.

22. Mr. KOZHEVNIKOV agreed that the Commission should consider and vote on each of the five articles proposed by Mr. François and Mr. Lauterpacht in turn, together with any amendments directly relating to them.

23. The CHAIRMAN agreed, and recalled that Mr. Kozhevnikov had suggested that the words "and control" be inserted after the words "may regulate" in article 1 of the joint proposal.<sup>5</sup>

*Mr. Kozhevnikov's suggestion was adopted by 5 votes to 1, with 8 abstentions.*

24. Mr. SANDSTRÖM proposed that the words "where the nationals of other States do not carry on fishing" be inserted after the words "high seas" in the first sentence of article 1. He recalled that he had already proposed that the last sentence be replaced by the following text :

"In case nationals of other States want to fish in the area and these States do not abide by the regulations, the question shall, at the request of one of the interested parties, be referred to the international body envisaged in article..."<sup>6</sup>

*Mr. Sandström's amendment to the first sentence of article 1 was adopted by 8 votes to none, with 6 abstentions.*

25. Mr. KOZHEVNIKOV and Mr. SPIROPOULOS pointed out that it would be premature to vote on Mr. Sandström's amendment to the last sentence, and thereafter on the article as a whole, until a decision had been taken on article 3 of the joint proposal.

*It was so agreed.*

26. Mr. ZOUREK, after recalling that the Commission had not completed its discussion of article 2 of

<sup>3</sup> *Ibid.*, paras. 38-93.

<sup>4</sup> *Ibid.*, para. 38.

<sup>5</sup> *Ibid.*, para. 82.

<sup>6</sup> *Ibid.*, para. 43.

the joint proposal, said that in his view that article did not go far enough to attain what was clearly its purpose, namely: to safeguard the interests of the coastal State in areas within one hundred miles of its territorial sea, even if its nationals did not fish there.

27. The proposed text stated that such a State would be "consulted in relation to any system of regulation that may be accepted", that it would be entitled to participate "in the carrying out of the regulations thus adopted" and that it would be "entitled to object to any system of regulation which it considers unreasonable or violative of its rights". It was not clear what consultation entailed; it was important that the coastal State should be able to participate in drawing up the regulations as well as in carrying them out. It went without saying that it would be entitled to object to any system adopted, but what would happen if its objections went unheeded.

28. The proposed text was also too restrictive inasmuch as it limited the area of the coastal State's interest to within one hundred miles of its territorial sea. Its fisheries within the territorial sea might quite conceivably be affected by the fishing activities of nationals of other States more than one hundred miles away — for example, in the case of migrant fish.

29. Mr. KOZHEVNIKOV agreed with Mr. Zourek's criticisms, particularly with regard to the question of consultation. He recalled that he had suggested the insertion of the words "the establishment and" before the words "the carrying out of the regulations thus adopted",<sup>7</sup> and his impression was that Mr. Lauterpacht had accepted his suggestion.

30. Mr. SANDSTRÖM proposed, for the reasons advanced by Mr. Zourek, that article 2 be replaced by the following text, which in substance was identical with the third sentence of the first article of part II, in the form in which it had been approved at the third session:

"In any area situated within 100 miles from the territorial sea, the coastal State (or States) is (are) entitled to take part on an equal footing in any system of regulation, even though its (their) nationals do not carry on fishing in the area."

31. He should mention at that point that it was his intention in due course to propose the deletion of article 5 of the joint proposal, which would become redundant if his proposal were adopted.

32. Mr. YEPES supported Mr. Sandström's proposal which recognized the enjoyment by the coastal State of a right which was inherent in the nature of things. Furthermore, it safeguarded the principle of the equality of all States before the law.

33. Mr. LAUTERPACHT recalled that he had already said that he had no objection to the addition suggested by Mr. Kozhevnikov, if the latter did not agree that his point was met by the first paragraph of article 2. Unless

the reference to participating on a footing of equality in establishment of the regulations implied the power of veto, it seemed to him (Mr. Lauterpacht) to mean no more than that the coastal State should be consulted, as provided in the first paragraph.

34. He could not agree with Mr. Zourek that article 2 of the joint text failed to provide ample safeguard to the coastal State, particularly if the addition suggested by Mr. Kozhevnikov were made. The coastal State would take part on an equal footing in the establishment and implementation of the regulations, and would be entitled to object to any system of regulation which it considered to be unreasonable or to violate its rights. Any such objection would be referred to an independent tribunal, so that the coastal State would enjoy every assurance that if it were justified, it would receive due attention.

35. He would, however, have no objection to the text proposed by Mr. Sandström, provided its author made clear what he had in mind by the words "take part on an equal footing in any system of regulation".

36. Mr. CORDOVA could not support Mr. Sandström's proposal since, in his view, it was essential that the coastal State should enjoy more than equal rights with regard to any system of regulation laid down for fisheries off its coasts, even if its nationals did not fish there.

37. For the sake of clarity, it might be advisable to add at the end of article 2 of the joint text, the words "and the international authority provided for in article 3 shall decide the question".

38. Mr. SANDSTRÖM said that by the words "the coastal State or States is entitled to take part on an equal footing in any system of regulation" he meant the same as had been meant by the Special Rapporteur in the text approved at the third session, namely: that the coastal State should be entitled to take part in all the discussions concerning establishment and implementation of the regulations and that, if no agreement was reached, the matter should be referred to the international authority provided for in article 3. In his view, the coastal State's interests would be much better protected in that way than under the procedure provided for in the joint proposal.

39. Mr. KOZHEVNIKOV said that he could accept the joint proposal, with the addition suggested by himself. He could also accept Mr. Sandström's proposal, provided it was clearly understood that regulations must be based on the agreement of the parties mainly concerned.

40. The CHAIRMAN put Mr. Sandström's proposal to the vote.

*Mr. Sandström's proposal was adopted by 8 votes to none, with 6 abstentions.*

41. The CHAIRMAN invited members to consider article 3 of the joint proposal, in which Mr. Sandström had proposed the insertion of the words "existing or"

<sup>7</sup> *Ibid.*, para. 49.

before the words "to be created by the States concerned".

42. He would also remind the Commission that the Special Rapporteur had proposed the deletion of the last clause of the last sentence of the article; that clause read: "in cases in which the States concerned have been unable to reach agreement".

43. Mr. KOZHEVNIKOV said that he had already had the opportunity of expressing his opinion on articles 3, 4 and 5, where the setting-up of an international authority was proposed. In accordance with article 3, that authority would be empowered to draw up regulations and to undertake arbitral functions. He was opposed to a proposal of that kind. It went without saying that the States concerned could set up an international organ if they so wished, but the Commission was not called upon to anticipate such action.

44. He therefore formally moved the deletion of article 3.

45. Mr. SANDSTRÖM considered that article 3 formed the pivot of the draft, the value of which would be greatly diminished without it. Like Mr. Kozhevnikov, he interpreted the article to mean that the international authority would be competent to settle disputes by means of arbitration in the absence of agreement between States.

46. The Chairman had already drawn attention to the amendment he (Mr. Sandström) had submitted.

47. Mr. LAUTERPACHT agreed with Mr. Sandström that the conception of an international authority was of crucial importance to the draft, since three cases were prescribed when the international authority would come into play: first, under article 1 in the event of absence of agreement on measures to be taken; secondly, in relation to Mr. Sandström's amendment to insert the words "wherein nationals of other States do not carry on fishing" after the words "high seas", discussion having been deferred upon that amendment; thirdly, under article 2, in cases where a coastal State disagreed with other States.

48. Mr. Kozhevnikov, however, did not subscribe to Mr. Sandström's interpretation of article 2, and held that, in the absence of agreement, the term "on an equal footing" was to be interpreted as meaning that there would be no regulation.

49. In view of the importance of the issue, he wished to raise some general questions. When the Commission referred to an international authority already in existence or to be created, did it know exactly what it meant? Who was to assume responsibility for setting up such an authority? By what means should that be done, and by what procedure should its decisions become binding? Unless those issues were clarified, it would be impossible for the Commission to take effective action on article 3 or those other articles which article 3 was intended to implement. That led him to Mr. Córdova's

amendment. He would, however, only say that it required careful study and prolonged discussion.

50. Replying to the CHAIRMAN, he added that in principle he was in favour of an international authority, but must frankly admit that he was not clear about what form it should take.

51. Mr. KOZHEVNIKOV said that Mr. Lauterpacht had not interpreted his (Mr. Kozhevnikov's) position quite correctly. He would therefore reiterate that the setting up of an international authority was the responsibility of States. Governments were competent and able to decide whether they needed an international organ or not. He was opposed to stipulations which involved anticipating any decision governments might take in the matter. As to the competence of such an organ to initiate arbitral procedure, he was in principle opposed to the imposition of an obligation to have recourse to arbitration, since States must be free to choose their methods of settling disputes.

52. Mr. SANDSTRÖM said that, on reflection, he felt that his amendment to article 3 was not very clear and that it would be preferable to include the reference to existing international organs in the commentary rather than in the text.

53. He therefore withdrew his amendment.

54. Mr. SCELLE contended that if it were held that the Charter had value, then Mr. Córdova's amendment also had value. Article 52 of the Charter dealt with regional arrangements, and was just as vague, if not vaguer, than Mr. Córdova's proposal. It was negative in its approach to the problem, and he would suggest that if the Commission wished to stipulate regional agreements, it should at least do so in positive form.

55. He had not been very much impressed by Mr. Lauterpacht's arguments.

56. Mr. CORDOVA appreciated Mr. Lauterpacht's hesitations about the functioning of the proposed international body. Assuming that the parties agreed to set it up, the situation would be clear, but how would it be possible for the body to come into existence when the parties were not in agreement? That was why he had stipulated that it should be set up within the framework of the United Nations, but he must point out that the effect of that proposal would be to give the matter a political connotation, and make it dependent upon decision by the General Assembly. He was convinced that if the Commission really wanted a permanent body with jurisdictional powers to settle matters relating to the protection of the resources of the high seas, such a body would have to be set up independently of the interested parties.

57. The CHAIRMAN considered that the Commission had at least taken a step forward in admitting the possibility of an international authority. He consequently did not see why doubts should be expressed about it. The Commission must make a proposal, and it would be for the States themselves to find the appro-

priate formula for setting up the body. But at least the Commission would have stated a principle.

58. Mr. ZOUREK pointed out that, although reference had been made to the crucial importance of article 3, no reasons had been given to support such a view. A great many treaties existed relating to fishing on the high seas, and no special authorities were required. In 1951, at the Commission's third session, the issue had not been accorded crucial importance, with the result that it had been cast in the form of a mere recommendation. Furthermore, the proposed text was, as Mr. Lauterpacht had indicated, open to misinterpretation and to misgivings. Which were the States concerned? Coastal States or States whose nationals were engaged in fishing? He feared that the lack of precision would lead to endless difficulty.

59. As to the jurisdiction of the proposed international authority, it was to impose regulations that would be binding on States. Was that not tantamount to requesting States to surrender a portion of their sovereignty in a certain domain? That was something he could not accept: nor could he accept the interpretation that the proposed organ would be able to function as an arbitral tribunal. It seemed to him that there was a tendency to express new ideas in doctrinaire form. To impose obligatory arbitration would, he feared, be to court rejection of the whole draft by governments.

60. Mr. SPIROPOULOS said that the Commission must reach a sound decision as quickly as possible. Article 1, as adopted at the third session (A/1858, Annex, Part II), was drafted vaguely. No strict obligation was imposed therein. The joint proposal submitted by Mr. François and Mr. Lauterpacht was more precise, and Mr. Córdova's amendment thereto was absolute; he set out the whole question of the international authority, so to speak, in words of one syllable. The question was which of the three was the best text? Presumably the modifications which the Commission sought to embody in a new text tended to fulfil the aim of the progressive development of international law and not the aim of codification. In other words, the Commission was framing new rules, and not codifying existing practice. He liked Mr. Córdova's text, but doubted whether it was expedient to go into so much detail. What, for instance, did Mr. Córdova mean by "a permanent body composed of three neutral members"? Presumably members not engaged in fishing activities. Such a point must be elucidated, and the Commission had no time to study a proposal which it would be more appropriate to submit to a conference where expert technical knowledge was available.

61. On the other hand, he could not follow Mr. Kozhevnikov all the way. Some provision must be made to fill a gap in international law. The choice for the time being lay between the general formula of 1951 or the joint proposal. Whichever text might finally be adopted, the Commission could do no more than give governments a synopsis of its views in the form of a recommendation.

62. The CHAIRMAN, speaking as a member of the Commission, was glad that Mr. Spiropoulos's views coincided with his own. The Commission had studied the question of the protection of the resources of the high seas. It had considered the hypothesis of agreement between States, and the alternative hypothesis of a central organ. It could go no further. Indeed, although it had been hinted to him that it was as yet too early to close the discussion, he believed that no further arguments could shake members' convictions, and he would accordingly recommend that the Commission vote on article 3, glancing in due course at Mr. Córdova's interesting proposal.

63. He noted with some concern that Mr. Lauterpacht, who had joined the Special Rapporteur in drafting a composite text, was now shifting his position. He must appeal to him to be content with proposals which he himself had sponsored.

64. Mr. LAUTERPACHT agreed with the Chairman that if the Commission accepted article 3 as set out in the joint proposal, it would have lent its authority to the expression of a new and important principle. Article 3 clearly laid down that "States should be under a duty to accept... any system of regulation...". That meant that international regulation would be binding. The Commission must, however, realize that it would have done little else than accept a principle. Mr. Córdova had asked what would happen in cases when States were not in agreement. What provisions had been made for that eventuality? He had put the same question to Mr. Sandström, but had as yet received no reply.

65. As to Mr. Scelle's comments, he did not consider the analogy of the Charter to be satisfactory. The working of the Charter of the United Nations could not be invoked as an example for the effective regulation of the matters with which the Commission was concerned in the present draft.

66. Article 3, as proposed by Mr. François and himself, was open to the objection that the reference to the international authority was extremely vague. How was that authority to be constituted? What would be its procedure? Certainly, Mr. Córdova's amendment was more specific, but he had not explained how the three neutral members of the permanent body proposed by him would function.

67. Unless the Commission could propose something more definite, it might be wise to defer the whole question until the next session. If, however, a quick and limited decision were preferred to deferment, and the Special Rapporteur were still satisfied with article 3, he would vote in favour of it, despite the anxiety he always felt when voting on issues which were open to the reproach that they had been framed in artificial language.

68. The CHAIRMAN, speaking as a member of the Commission, could not see what grounds there were for thinking that the Commission would do any better in twelve months' time. He did not agree with

Mr. Kozhevnikov and Mr. Zourek on the fundamental principles to which they so frequently referred, but he did feel that the Commission must keep in mind the fact that States were able to act together in defence of their common interests. In adopting the draft on the resources of the sea, the Commission would have indicated its views about the usefulness of the international organ. He certainly would not be able to go further than that next year. Indeed, by voting for article 3 he would already have made a concession. He would do so because it was permissible for the Commission to inform States that if they wished to protect fisheries against wasteful extermination they must agree on appropriate measures among themselves, and have recourse to an international organ set up for the purpose if they were unable to agree.

69. Mr. CORDOVA said that it was clearly the Commission's duty to submit the results of its work to the General Assembly. For him, the essence of the problem was whether the international body should or should not be set up, and, if it should, what its jurisdiction and scope should be. He took the view, differing there from Mr. Lauterpacht, that if the States failed to agree, no agreement would be possible within the international organ. He did not accept the premise that legislation affecting the principle of the freedom of the seas should be drawn up by a few States, namely, "the States concerned", but considered that the proposed body should be truly international in character and should consequently be placed within the framework of the United Nations. In accordance with those views he would formally move that article 3 be amended by the inclusion of the words "within the framework of the United Nations" after the words "to be created", the last clause of the last sentence of the article being deleted. If article 3 were adopted in that form, any State would be in a position to submit its case to the international authority.<sup>8</sup>

70. Mr. KOZHEVNIKOV wished to draw attention to his formal motion that article 3 be deleted. The more the discussion continued, the clearer it became that that was the only sound solution both on grounds of principle and for the sake of facilitating the Commission's task.

71. Mr. YEPES felt that the Commission had reached an impasse. Certainly an international authority would be useful, but had the Commission the right to frame its views in mandatory form? He would suggest that the recommendation be phrased conditionally: "an international authority which the States concerned *should* create".

72. Furthermore, article 3 was badly drafted. It should be turned round, first stipulating the setting up of an international authority, perhaps with reference to Article 52 of the Charter, and then laying down that the regulations of that authority should be binding.

73. Mr. SANDSTRÖM felt that it would be regrettable to defer a decision until the next session. In his view, the

joint proposal was preferable to the article adopted by the Commission at its third session, because the former envisaged the setting up of a regional body or bodies, whereas the latter implied the exercise of international authority on a world-wide scale.

74. The effect of Mr. Córdova's amendment to article 3 would be to impose a supra-national authority acting on its own initiative. Like Mr. Spiropoulos, he felt that such a solution would be premature.

75. The CHAIRMAN held that the views of members were sufficiently clear to permit a vote to be taken. Mr. Kozhevnikov's proposal that article 3 be deleted was the furthest removed from the original text. Mr. Yepes had made a suggestion which amounted to a drafting change, and Mr. Córdova had submitted an amendment. It was clear that the Special Rapporteur had proposed, and the Commission had accepted, the deletion of the last clause of the last sentence of the article.

76. Faris Bey el-KHOURI said that before article 3 was put to the vote he would remind the Commission that the Food and Agriculture Organization of the United Nations (FAO) was competent to undertake the functions proposed for the international authority. Why should a new body be set up? The Economic and Social Council should be invited to consider the matter. Such an approach would, he believed, facilitate acceptance of the draft by governments.

77. The CHAIRMAN said that it had been indicated to him that there was no need to put Mr. Kozhevnikov's motion to the vote since Mr. Kozhevnikov could record his attitude by voting against the article.

78. Mr. SPIROPOULOS said that if article 3 were rejected, he would propose the adoption of the text as drafted by Mr. François in his report.

*Mr. Córdova's proposal that the words "within the framework of the United Nations" be inserted after the words "to be created" was adopted by 11 votes to 2, with 1 abstention.*

Article 3 was adopted, as amended, by 12 votes to 1, with 1 abstention.

79. Mr. KOZHEVNIKOV said that he had not participated in the vote on article 3 because he had moved its deletion. He did not agree with the Chairman that a motion for deletion need not be put to the vote. On the contrary, in his view, such a motion raised a question of principle, and should have been decided first.

80. The CHAIRMAN replied that he had been guided by the advice of the Secretary to the Commission, but that he would go into the matter fully and give his considered opinion to Mr. Kozhevnikov in due course.

81. He invited members to consider article 4 of the joint proposal.

82. Mr. KOZHEVNIKOV said that he would formally move the deletion of article 4, for the reasons which

<sup>8</sup> See *supra*, para. 44.

had prompted him to move that of article 3. He felt even more strongly on the matter in the present instance. The regulation of fishing in the high seas must be carried out by the States concerned and the setting up of an international organ would encroach upon their sovereign rights. That was why article 4 should be deleted.

83. Mr. SANDSTRÖM shared Faris Bey el-Khourî's hesitation about imposing yet another organ to conduct investigations and to make recommendations, particularly as the organ envisaged in article 4 was to be set up on a worldwide scale.

84. Mr. CORDOVA considered that the functions of investigation and recommendation should be allotted to the international body referred to in article 3. Alternatively, the functions envisaged in article 4 could be undertaken by FAO, but the decision on that point was, as he had already previously pointed out, a political one and dependent upon action by the General Assembly.

85. Mr. SCALLE was under the impression that FAO had never been alluded to. He had all along assumed that the international authority contemplated in article 3 would be an entirely different organ. Article 4 had no *raison d'être*. The reference to investigations and recommendations should be included in article 3.

86. Mr. LIANG (Secretary to the Commission) submitted that article 4, which followed the Commission's line of thought at its preceding session, did in point of fact refer to FAO. But article 3 went much further than article 4. He would submit that the competence conferred on the international body under article 4 fell within the general competence of FAO; that was hardly so in the case of the competence conferred on the international body under article 3. Presumably, the international authority set up in accordance with the last-mentioned article would also be empowered to conduct investigations and make recommendations. Thus there would be only one body created by international agreement.

87. Mr. ALFARO drew attention to the fact that Mr. Sandström's amendment to article 4, whereby the words "Competence may also be given to the authority mentioned in article 3" would be substituted for the words "Competence should be conferred on a permanent international body", did away with the necessity for setting up two different organs.

88. Mr. SANDSTRÖM said that he had submitted his amendment to article 4 on the understanding that the international authority contemplated under article 3 would be regional in character. Now that the authority contemplated was to be world-wide, since it had been placed within the framework of the United Nations, he would withdraw his amendment to article 4.

89. The CHAIRMAN considered that it would be premature for the Commission to vote on article 4.

The meeting rose at 6 p.m.

## 210th MEETING

Tuesday, 7 July 1953, at 9.30 a.m.

### CONTENTS

	<i>Page</i>
Régime of the high seas (item 2 of the agenda) (A/CN.4/60) ( <i>continued</i> )	
Chapter IV: Revised draft articles on the continental shelf and related subjects	
Part II: Related subjects	
Articles 1 and 2: Resources of the sea ( <i>continued</i> )	163
Article 4: Contiguous zones . . . . .	165
Part I: Continental shelf	
Proposal for reconsideration of article 2 . . . .	169

*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 SCALLE, 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

*Articles 1 and 2: Resources of the sea (continued)*

1. The CHAIRMAN recalled that at the previous meeting Mr. Kozhevnikov had formally moved the deletion<sup>1</sup> of article 4 of the joint proposal by Mr. François and Mr. Lauterpacht.<sup>2</sup> The Commission's rules of procedure did not permit a vote on deletion pure and simple, anyone who so desired being free to vote against an article or a proposal. Since, however, he wished to take Mr. Kozhevnikov's attitude into consideration, he would ask the Commission to allow him to put the question of principle to the vote in the following form: did the Commission admit the principle expressed in article 4 of the joint proposal? The text thereof read as follows:

"Competence should be conferred on a permanent international body to conduct investigations and to

<sup>1</sup> See *supra*, 209th meeting, para. 82.

<sup>2</sup> See *supra*, 208th meeting, para. 38.