Document:-
A/CN.4/SR.210

Summary record of the 210th meeting

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

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

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-Khouri'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. CÓRDOVA 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. SCELLE 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.

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

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Roberto CÓRDOVA, 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

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[1] of article 4 of the joint proposal by Mr. François and Mr. Lauterpacht.[2] 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

[1] See *supra*, 209th meeting, para. 82.

[2] See *supra*, 208th meeting, para. 38.

make recommendations concerning fisheries in any area of the high seas and the methods employed in exploiting them."

The principle expressed in article 4 of the joint proposal was rejected by 8 votes to 6.

2. The CHAIRMAN stated that article 5 of the joint proposal had been withdrawn by the authors, and invited the Commission to resume consideration of article 1 together with Mr. Sandström's amendment to the last sentence thereof.[3]

3. Mr. ZOUREK considered that Mr. Sandström's amendment was unnecessary, since article 1 was concerned with cases where one State whose nationals were engaged in fishing in any area of the high seas regulated fishing activities in that area, or with cases where two or more States were so engaged, the regulation being then dependent upon agreement between them. The cases where there was no agreement were covered by other articles in the joint proposal, particularly article 3.

4. Mr. SANDSTRÖM was not sure that Mr. Zourek's interpretation was wholly correct. Provision must be made for a case when the nationals of a State which was not party to the agreement engaged in fishing activities in a given area. It was true that that point might be mentioned in the commentary, but he still considered that it would be preferable to refer to it in the text itself.

5. The CHAIRMAN drew attention to the fact that the main purpose of article 1 was to ensure the protection of fisheries against waste or extermination. Was it necessary to assume that nationals of States not parties to the agreement would endanger the resources of the sea?

6. Mr. CÓRDOVA considered that Mr. Sandström's amendment was covered by article 3.

7. The CHAIRMAN said that he would put Mr. Sandström's amendment to the vote forthwith. That amendment consisted in replacing the last sentence of article 1 by the following text:

"In case nationals of other States want to fish in the area and these States do not abide by the regulation, the question shall, at the request of one of the interested parties, be referred to the international body envisaged in article 3."

Mr. Sandström's amendment was adopted by 5 votes to 4, with 5 abstentions.

8. Mr. YEPES wished to emphasize that article 1 would be wholly inadequate if the first sentence were retained in the optional form in which it was drafted. It read: "A State... may regulate...". In his view it was the duty of States to regulate fishing, and the Commission should impose that responsibility upon them. He therefore proposed that the word "must" be substituted for the word "may".

9. The CHAIRMAN, speaking as a member of the Commission, thought that Mr. Yepes' amendment was open to the objection that governments might ask in virtue of what powers and what competence the Commission sought to impose duties or obligations upon them.

10. Mr. SCELLE said that the Commission was a body of jurists; that was why it could and should try to impose certain duties upon States.

11. The CHAIRMAN replied that, being a body of jurists, the Commission well knew that certain rules existed and were capable of formulation. He doubted, however, whether the Commission could express a preference for one rule over another or one system over another, and impose such preferences upon governments.

Mr. Yepes' amendment was rejected by 8 votes to 2, with 4 abstentions.

12. Mr. CÓRDOVA asked the Special Rapporteur what the situation would be in regard to those fish which were to be found not only in certain well-defined areas but everywhere. Article 1 would suffice for salmon or tunny, but what would be the position in respect of whales?

13. Mr. FRANÇOIS (Special Rapporteur) saw no necessity for identical regulations in all parts of the world. Should difficulties arise, the international authority would deal with them.

14. Mr. KOZHEVNIKOV said that he had already expressed his opinion on article 1. He would regretfully be obliged to vote against it, now that it incorporated Mr. Sandström's amendment, which referred to the international body.

15. Mr. LAUTERPACHT asked whether there was any necessity for the Commission to vote on the articles as a whole.

16. Faris Bey el-KHOURI asked that before any article was put to the vote as a whole the text should be read out by the Secretary and included in the summary record.

17. The CHAIRMAN *ruled* that articles 1, 2 and 3 be put to the vote as a whole.

18. Mr. LIANG (Secretary to the Commission) read out the text of articles 1, 2 and 3, as amended:

"Article 1

"A State whose nationals are engaged in fishing in any area of the high seas where nationals of other States do not carry on fishing, may regulate and control the fishing activities in such areas for the purpose of protecting fisheries against waste or extermination. If the nationals of two or more States are thus engaged in any area of the high seas, the States concerned shall prescribe such measures by agreement. In case nationals of other States want to fish in the area and these States do not abide by the

[3] See *supra*, 209th meeting, para. 24.

regulation, the question shall, at the request of one of the interested parties, be referred to the international body envisaged in article 3.

"Article 2

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

"Article 3

"States shall be under a duty to accept, as binding upon their nationals, any system of regulation of fisheries in any area of the high seas which an international authority, to be created within the framework of the United Nations, shall prescribe as being essential for the purpose of protecting the fishing resources of that area against waste or extermination. Such international authority shall act at the request of any interested State."

19. Mr. ALFARO suggested that, in order to enable Mr. Kozhevnikov to vote in favour of the first two sentences of article 1, that article be divided into two, the last sentence, namely Mr. Sandström's amendment, forming a separate article.

20. Mr. CÓRDOVA did not consider that any useful purpose would be served by such a course, since Mr. Kozhevnikov would in any case vote against the set of articles, because he was opposed to the creation of an international authority.

21. The CHAIRMAN stated that Mr. Alfaro's suggestion would be taken into consideration by the Drafting Committee.

Articles 1, 2 and 3 of the joint proposal were adopted as amended by 12 votes to 2.

22. Mr. ZOUREK, in explanation of his vote, said that he would have been able to accept article 1 without Mr. Sandström's amendment. The adoption of that amendment had obliged him to vote against the article.

Article 4: Contiguous zones

23. Mr. FRANÇOIS, introducing article 4 on contiguous zones (A/CN.4/60, Chapter IV, Part II), said that, generally speaking, governments had approved the proposed text, most of the changes suggested being of a drafting nature. A more substantive suggestion had been that punishment should be referred to as well as prevention. He had consequently redrafted the second clause of the first sentence to read as follows: "A coastal State may exercise the control necessary to prevent *and punish* the infringement." The Norwegian Government had urged that in the last sentence the demarcation of the control area should run, not from the coast, but from the base lines forming the inner limit of the territorial sea. He had modified the text accordingly. He would further draw attention to the point that governments interpreted the term "customs regulations" as meaning not only regulations concerning import and export duties, but also all other regulations concerning the import and export of goods, and immigration and emigration. That point could be mentioned in the commentary.

24. Mr. KOZHEVNIKOV stated that, had the rules of procedure permitted, he would have proposed the deletion of article 4 on the grounds that it was based on a premise which the Commission should consider in relation to territorial waters. Moreover, the article would be an unnecessary addition to a text which was already unwieldy. He would therefore ask the Chairman to put the issue of principle to the vote in the following form: Could the Commission endorse the principles laid down in article 4 on contiguous zones?

25. Mr. CÓRDOVA agreed with Mr. Kozhevnikov that the article prejudged consideration of the question of the breadth of the territorial sea. If the contiguous zones, being zones adjacent to the territorial sea, could not extend beyond twelve miles from the inner limit of the territorial sea, the breadth of the territorial sea would necessarily be limited to less than twelve miles. That issue apart, the article was acceptable and necessary. He would therefore suggest that the limits of the contiguous zones should not be specified. In any case, the breadth of the zones should be measured from the outer limits of the territorial sea.

26. Mr. SCELLE said that he was wholly in favour of the article, which aimed a blow at the doctrine of the territorial sea. The concept of contiguous zones, which had been generally accepted by the Hague Codification Conference in 1930, substituted control zones for territorial waters, thus avoiding encroachment by coastal States on the high seas. Mr. François had been right in selecting the base lines as the point of departure for the measurement since it was more precise than the coast.

27. The CHAIRMAN, speaking as a member of the Commission, said that it was impossible to overlook the fact that there was no unanimity about the breadth of the territorial sea, the Soviet Union, for instance, claiming twelve miles.

28. Mr. LIANG (Secretary to the Commission) considered that the questions of the resources of the sea and of contiguous zones were not intrinsically related to the problem of the continental shelf. He believed it would be preferable to divide the draft into three parts — continental shelf, resources of the sea, contiguous zones — under the general heading of the régime of the high seas.

29. Turning to the article on contiguous zones, and Mr. Kozhevnikov's suggestion that it ought to be deleted, he would point out that in theory those zones were conceived by writers on the subject as areas contiguous to the high seas, and not to the territorial waters. At the Hague Codification Conference the Committee entrusted with the study of the problem of the territorial sea had devoted a great deal of time to the subject of contiguous zones. The Commission would have to tackle that problem, whether in relation to the régime of the high seas or in relation to that of the territorial sea. A procedure had been proposed for the

delimitation of those zones, but no figure could be fixed unless and until the breadth of the territorial sea had been determined. In view of that difficulty it might perhaps be advisable to refrain from dimensional definition, and to confine the article strictly to questions of jurisdiction.

30. Mr. FRANÇOIS recalled that when the question of contiguous zones had first been discussed at the Hague Codification Conference, agreement on a uniform limit of the territorial sea had proved unattainable, and certain rights had been granted in the high seas in the hope that claims for the extension of the breadth of the territorial sea might be kept within reasonable bounds. It was impossible to argue that the question of contiguous zones was independent of the breadth of the territorial sea. A breadth of twelve miles would do away with contiguous zones as at present conceived. But the latter were obviously necessary if the territorial sea was to be only three miles wide. He was consequently unable to accept Mr. Córdova's point of view that the contiguous zone should be measured from the outer limits of the territorial sea.

31. He was naturally aware that the provisions of the article would not be considered satisfactory by States which claimed a wider territorial sea.

32. Mr. SANDSTRÖM expressed his wholehearted agreement with Mr. François, and wished to draw attention to a point of drafting. The expression "base lines forming the inner limit of the territorial sea" was not entirely accurate. The drafting Committee should consider the point.

33. Mr. SPIROPOULOS felt in duty bound to recall that he had on several occasions criticized the system underlying the report on the régime of the high seas. The Commission had unfortunately not heeded his warnings, with the result that the report entitled "Fourth report on the Régime of the High Seas" (A/CN.4/60) dealt with questions which related to the territorial possessions of States. The continental shelf was part of the high seas, but at the same time the Commission had accepted the view that it constituted a prolongation of a State's territory. Now the Commission had been dealing with three problems under the heading of "Related subjects", a title that was valid in respect of sedentary fisheries, but that question had been voted out of existence. He was prepared to admit that the problem of the resources of the sea and of the contiguous zones formed part of the problem of the high seas. Yet the Secretary's question was perfectly admissible: was there any point in considering contiguous zones under the régime of the high seas and at the same time relating them to the territorial sea? The Hague Codification Conference had tackled the problem of contiguous zones in relation to the territorial sea and had been right to do so.

34. He entirely agreed with Mr. Scelle that the freedom of the seas should not be restricted, but unfortunately the realities of the situation must be taken into account. States recognized the existence of territorial seas and of contiguous zones; the Commission was entrusted with the task of codifying existing practice. But obviously the time was not ripe for decision.

35. The CHAIRMAN, speaking as a member of the Commission, said that when the problem had first arisen lawyers had held notions about the contiguous zones which he would venture to describe as sacrosanct. Remarkable works had been written as a result of the Hague Codification Conference. It was an accepted principle that the contiguous zones formed part of the high seas. But the realities of the situation were that States wished to exercise certain controls in areas beyond the territorial waters. In that connexion he need hardly mention again the classic instance of the effects of prohibition policy in the United States of America, when by using fast vessels, that country had extended its control to twenty miles and beyond. As a result, the problem of the relationship between the contiguous zone and the territorial sea had acquired urgency, and the Commission had tackled the subject in full awareness of the fact that no confusion should be allowed to persist. How could one attribute to States fragments of rights in a sea which was common to everyone?

36. In view of those considerations, he was inclined to advocate the acceptance of a text on contiguous zones that made no reference to limits.

37. Mr. KOZHEVNIKOV pointed out that the Commission was holding a very interesting discussion on the problem of territorial waters. Obviously, when it came to tackle that item of its agenda, it should take up the question of contiguous zones as well. But the proper place for the article was not in the report on the régime of the high seas. That was why he was in favour of deleting it.

38. Certain comments had been made concerning Soviet law. He represented the Soviet system of law, a system which had clearly defined the breadth of the territorial waters, fixing it at twelve miles. That definition was in accordance with existing international law, whereby each State laid down the breadth of its own territorial sea. The question of sanctioning that decision did not arise, since it was sanctioned by international law.

39. Mr. PAL said that in his view the article was not out of place, although it did not quite seem to fit in with the title given to chapter IV of the report: "Revised draft articles on the continental shelf and related subjects, prepared by the International Law Commission". He would submit that, since States had been granted sovereign rights over the continental shelf, apprehension might arise lest the superjacent waters be affected by the régime drawn up for the continental shelf. Such apprehensions would be dispelled by the article on the contiguous zones.

40. It was most unfair to accuse the Special Rapporteur of trying by implication to fix the breadth of the territorial sea. The article dealt with the infringe-

ment of certain rules and regulations applied by coastal States, which were empowered to pursue offenders up to a certain limit. Whence Mr. François' calculation. The twelve miles referred to in the text had nothing whatsoever to do with claims by States regarding the breadth of their territorial waters.

41. He would suggest that the words "adjacent to its territorial sea" be deleted, since what mattered in the present instance was the limit from the coast, whether fixed at ten, twelve or sixteen miles.

42. Mr. YEPES felt some hesitation about the substance of article 4 and its relevance to the problem of the continental shelf. The issue should be deferred until the Commission had examined the problem of the territorial sea. The solution, implicit in the article, of the latter problem was incorrect. The limits of the territorial sea should be extended, and he was under the impression that American international law admitted a greater breadth. The last sentence of article 4 would tend to favour those States which claimed and enjoyed rights over a three-mile territorial sea. Moreover, the article violated the principle of the legal equality of all States by stipulating that control might not be exercised more than twelve miles from the base lines forming the inner limit of the territorial sea.

43. Mr. CÓRDOVA felt that the main objection to the article was the reference to the twelve-mile limit. The solution represented a compromise offer to those States which wanted to have full sovereign rights for certain purposes beyond the three-mile limit of the territorial sea, claiming the need for control over a broader area for fiscal and other purposes. There could be no doubt that the word "contiguous" meant contiguous to the territorial sea and not the coast. The Commission should try to avoid the mistake made by the Hague Codification Conference, which had been unable to agree about the breadth of the territorial sea. Actually, there was no reason why the important issues covered by article 4 should not be studied on their own merits, so to speak, without reference to that thorny issue.

44. The problem of contiguous zones should be tackled on the assumption that coastal States must be granted certain extended rights for fiscal and police purposes.

45. Mr. SANDSTRÖM was unable to let pass Mr. Kozhevnikov's statement that the twelve-mile limit claimed by the Soviet Union was sanctioned by international law. That was a wholly untenable premise, and he need only recall the recent discussions between the Soviet Union and other States on the subject. The Soviet Union had refused to submit the question to international authority. That, however, was not the issue which the Commission was discussing, except incidentally.

46. A possible way out might be to state in the commentary that a claim by a State to a wider area of the territorial sea necessarily entailed a corresponding reduction in the contiguous zone.

47. Mr. LAUTERPACHT recalled, with regard to the question whether the subject of contiguous zones should be disposed of at the present session, that in their comments reproduced in Mr. François' fourth report (A/CN.4/60) only two governments had voiced their preference for its being deferred until the Commission had considered the régime of the territorial sea. The others apparently had no objection to the subject being examined in connexion with the régime of the high seas, and he agreed, since otherwise it would be put off indefinitely.

48. The text presented by the Special Rapporteur avoided any reference to the question of the outside limit of the territorial sea. It was therefore not the case, as Mr. Córdova had seemed to suggest, that it was intended as some kind of compromise in that respect. However, although the text proposed had no direct bearing on that question, he believed that, if it could be accepted by the Commission, it might well eliminate some at least of the major difficulties which at present attached to the subject. Moreover, as Mr. Pal had already pointed out, the fact that the Commission had drafted provisions for the continental shelf made it imperative to remove any suspicion that the régime thus formulated amounted to an indefinite extension of the notion of the contiguous sea, both in substance and extent.

49. With regard to the text proposed by Mr. François, it could not be disputed that it was the present practice of States to claim and to exercise certain rights in areas of the high seas adjacent to their territorial seas. That practice was reasonable. It did not basically violate the principle of the freedom of the seas, and he considered that in those circumstances it was the Commission's duty to give it its formal endorsement.

50. His only doubt, in fact, was whether it would be possible to reach agreement on the text proposed. For, although Mr. Córdova had accepted the principle of contiguous zones, he had expressed the view that no outer limit should be laid down for them. That would rob the concept of contiguous zones of its whole purpose, which was severely practical, namely, that a coastal State should be able, in the words used in the text proposed, "to prevent and punish the infringement, within its territory or territorial sea, of its customs, fiscal or sanitary regulations". In that connexion, he noted that in the commentary the Special Rapporteur interpreted the term "customs regulations" as covering regulations concerning immigration and emigration. That was surely stretching the meaning of the term too far, and he suggested that the word "immigration", be inserted in the text after the word "customs".

Mr. Lauterpacht's suggestion was adopted.

51. Mr. PAL pointed out that the article presented by the Special Rapporteur would not apply to States which already claimed a territorial sea twelve miles or more in breadth. That was perfectly justifiable. The purpose of the article was not to extend the jurisdiction of States beyond the outside limits of their territorial seas,

wherever those limits might be placed, but to give them certain specific rights which they needed, in cases where they did not exercise those rights, and more than those rights already.

52. The CHAIRMAN feared that Mr. Pal was being unrealistic in thinking that States would not claim a contiguous zone whatever the width of their territorial sea.

53. Mr. KOZHEVNIKOV said that if the principle of contiguous zones were adopted, a coastal State would certainly claim a contiguous zone outside the limit of its territorial waters, and would have a perfect right to do so, on the principle of equality for all States. He would not stress that point further, however, since, as he had already made clear, it was his view that consideration of the whole article should be postponed.

54. In reply to Mr. Sandström, he wished to stress that a coastal State had no need of international sanction to fix the width of its territorial waters, since there was no rule of international law in the matter. It lay solely within the sovereign competence of each State to fix the width of its territorial waters, having regard only to such rules of international law as did exist.

55. Mr. HSU said that, although he had first been of the opinion that the subject of contiguous zones should be deferred, he had been so disturbed by the claim that no outside limit should be fixed for such zones that he now felt it most desirable that the subject be regulated without delay. For that purpose, he supported the text presented by the Special Rapporteur. The latter had been prudent in dissociating the subject from the question of the outside limit of the territorial sea. Practice had shown that it was sufficient, to meet the purely practical needs which they were designed to meet, for such zones to extend to twelve miles from the coast. Those States which had already extended their territorial sea that far had no need of a contiguous zone, and the text proposed should therefore give rise to no difficulties in practice.

56. Mr. SPIROPOULOS pointed out to Mr. Lauterpacht that governments had only been asked to comment on the substance of the text approved at the third session; the fact that only two of them had expressed the view that consideration of the article in question should be deferred did not therefore necessarily mean that that view was not shared by others. Contiguous zones were zones adjacent to the territorial sea, and should therefore, in his view, be dealt with at the same time as the territorial sea. That, in fact, was how they always had been dealt with, not only at the Hague Codification Conference, but also in the treatises produced by those very members of the Commission who were now proposing that the two subjects should be dealt with independently.

57. He shared the views of those members of the Commission who considered that restrictions should be placed on the coastal State's right to extend its territorial sea, but he did not agree with those of them who apparently considered that the article at present under consideration offered a suitable opportunity of doing so.

58. Mr. ZOUREK said that the fact that contiguous zones had always been regarded as adjuncts to the territorial sea made it illogical to measure them, as proposed in the text presented by the Special Rapporteur, from the base lines forming the inner limit of the territorial sea. To do that would lead to regrettable confusion, since the coastal State exercised full sovereignty up to the outside limits of the territorial sea. As a representative of the legal system of the people's democracies, he would remind the Commission that Bulgaria and Rumania, for example, had already fixed the width of their territorial seas at twelve miles. The article in its present form would therefore have no meaning for them.

59. He agreed with those members of the Commission who felt that the whole subject of contiguous zones should be deferred until the Commission had considered the subject of the territorial sea, to which it was so closely and directly related. Practice in the matter, moreover, varied so much that the subject was more involved than appeared at first sight, and the Commission could not spare the time to consider all its aspects at the present session. It had been suggested that to defer the subject until the Commission had considered the régime of the territorial sea would be tantamount to abandoning it indefinitely; the Commission, however, had had a draft on the latter subject before it at the present session, and, although it had deferred its discussion until the sixth session, there was no reason why it should not be examined then.

60. Mr. ALFARO said that he was in complete agreement with the view expressed earlier by Mr. Scelle. As he saw it, two questions were involved: that of the principle of contiguous zones, which was dealt with in the first sentence of the text presented by the Special Rapporteur; and that of their extent, which was dealt with in the second. He thought all members of the Commission could accept the first sentence, but there was no doubt in his mind that adoption of the second would to some extent be equivalent to determining the outside limits of the territorial sea. It had therefore been his intention to propose that the article be divided into two, but since Mr. Córdova had proposed the deletion of the second sentence, he would await the outcome of the vote on that proposal.

61. The CHAIRMAN *ruled* the discussion closed, and put to the vote Mr. Kozhevnikov's proposal that further discussion of the subject of contiguous zones should be deferred.

Mr. Kozhevnikov's proposal was rejected by 9 votes to 4, with 1 abstention.

62. The CHAIRMAN put to the vote Mr. Córdova's proposal that the second sentence of article 4 be deleted.

Mr. Córdova's proposal was rejected, 7 votes being cast in favour and 7 against.

63. Mr. SPIROPOULOS, explaining his vote, said that he had voted in favour of Mr. Córdova's proposal, not because he was opposed to the substance of the second sentence, but because he did not think that any provision on the subject should be adopted at the present time.

64. Mr. ALFARO requested that each of the two sentences of the article be made an article, and voted on separately.

65. Mr. SANDSTRÖM was opposed to such a course, as he could only accept the first sentence if qualified by the second.

66. Mr. ALFARO pointed out that other members of the Commission might be in the position of being unable to vote for the first sentence so long as it was qualified by the second.

67. The CHAIRMAN regretted that he could not agree to Mr. Alfaro's request. The Commission had rejected a proposal that the second sentence be deleted. It only remained for it to vote on the article as a whole, with the amendment made at Mr. Lauterpacht's suggestion.

Article 4, on contiguous zones, was adopted, as amended, by 9 votes to 5.

The text read as follows:

> "On the high seas adjacent to its territorial sea, a coastal State may exercise the control necessary to prevent and punish the infringement, within its territory or territorial sea, of its customs, immigration, fiscal or sanitary regulations. Such control may not be exercised more than twelve miles from the base lines forming the inner limit of the territorial sea."

68. Mr. CÓRDOVA explained that he had voted against the article because he considered it wrong to attempt to limit the width of the territorial sea by limiting the width of contiguous zones by the procedure adopted. There could be no doubt that the article would be interpreted as constituting such an attempt.

69. Faris Bey el-KHOURI said that he had voted against the article, and for Mr. Córdova's proposal, for the same reasons as Mr. Córdova.

70. Mr. KOZHEVNIKOV said that he had voted against the article because he had already proposed its deletion, since it had no direct bearing on the draft under consideration. He reserved the right to revert to the question of the outer limit of the territorial waters at the proper time, and felt that the Commission had been unwise to prejudge that issue.

71. Mr. YEPES explained that he had voted against the article for reasons he had already made clear, and particularly because he considered that it was contrary to the principle of the legal equality of States.

72. Mr. ZOUREK explained that he had voted against the article for reasons he had already given, but also because it had been insufficiently discussed, and because it would certainly be interpreted as prejudging the question of the outside limit of the territorial sea.

PART I: CONTINENTAL SHELF

Proposal for reconsideration of article 2

73. Mr. SANDSTRÖM moved that the Commission reconsider the text which it had adopted for article 2 of the draft articles on the continental shelf which read:

> "1. The continental shelf is subject to the sovereignty of the coastal State.
>
> "2. The exclusive rights of the coastal State are limited to the rights of user, control and jurisdiction for the purposes of exploration and exploitation of the natural resources of the sea-bed and its subsoil."[4]

74. He recalled that the vote on the first paragraph[5] had been taken in his absence; had he been able to be present, the result would have been a tied vote, and the paragraph would have been rejected. He had other reasons for believing that that paragraph did not really represent the considered views of the majority of the Commission, and he thought it most undesirable that a provision of such importance should be included in the draft articles unless it clearly did so represent them.

The motion that article 2 in part I be reconsidered was adopted by 9 votes to 4, with 1 abstention, having obtained the required two-thirds majority.

75. Mr. SANDSTRÖM proposed that the first paragraph of article 2 be deleted. He had no need to explain the grounds for his proposal, since the matter had already been discussed at length.

76. Mr. LAUTERPACHT pointed out that some members of the Commission had had no knowledge of Mr. Sandström's intention to move that the article in question be reconsidered. It was clearly important that all members of the Commission should have sufficient time to consider their attitude on the proposal that the first paragraph of the article be deleted, and it was also desirable that it should be fully discussed. He therefore felt that further discussion of Mr. Sandström's proposal should be deferred.

77. Mr. KOZHEVNIKOV agreed that the whole question would have to be further discussed, in order to enable the Commission to hear the views of Mr. Sandström and Mr. Córdova, who had not been present during the concluding stages of the debate.

78. Mr. SPIROPOULOS said that to give members of the Commission food for thought in the interval before the matter was again discussed, he would reintroduce the text which he had proposed for article 2,[6] but which he had subsequently withdrawn[7] as it had not appeared likely to bring the Commission nearer agreement at that time. That proposal read as follows:

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[4] See *supra*, 200th meeting, para. 83.
[5] See *supra*, 198th meeting, para. 38.
[6] See *supra*, 200th meeting, para. 22.
[7] *Ibid.*, para. 47.

"The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources."

79. After further discussion, Mr. LAUTERPACHT suggested that reconsideration of article 2 of part I be taken at a further meeting.[8]

Mr. Lauterpacht's suggestion was adopted.

[8] See *infra* 215th meeting.

211th MEETING

Wednesday, 8 July 1953, at 9.30 a.m.

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* The number within brackets corresponds to the article number in the Commission's report.

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, 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.

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64)

1. The CHAIRMAN drew attention to Mr. Córdova's "Report on the Elimination or Reduction of Statelessness" (A/CN.4/64) and asked whether it was the Commission's wish to hold a general exchange of views, during which each member might speak once, before proceeding to examine article by article the two draft conventions proposed.

2. Mr. YEPES felt that a general exchange of views was unnecessary, in view of the lengthy discussions on the subject that had taken place at the fourth session.

3. Mr. AMADO did not agree. A general exchange of views would provide the best introduction to the subject.

4. Mr. LAUTERPACHT thought a general exchange of views was necessary, in order to enable the Commission to decide whether it wished to concentrate on the draft Convention on the Elimination of Future Statelessness or on the draft Convention on the Reduction of Future Statelessness, or whether it wished to discuss both drafts.

It was agreed to hold a general exchange of views, during which each member could speak once, after the Special Rapporteur had introduced his report.

5. Mr. CÓRDOVA (Special Rapporteur) said that he sincerely regretted the fact that it was to him that it fell to present the report on the elimination or reduction of statelessness, instead of to his eminent predecessor, Judge Manley O. Hudson, to whose scholarly work on the subject of nationality and statelessness he would begin by paying tribute. When it appointed him in Mr. Hudson's place, the Commission had made it clear that his report was expected to cover only one aspect of the general problem of nationality, namely, the question of statelessness; it had also agreed that he should leave existing cases of statelessness, for example, those resulting from refugee movements occasioned by the second World War, out of account.[1] It had instructed him to prepare two conventions — one for the elimination of future statelessness and one for its reduction, and had agreed that the draft convention should be in the form of articles, accompanied by comments. In the report which he now had the honour of submitting (A/CN.4/64) he had endeavoured faithfully to follow the Commission's instructions.

6. For the substance of his report he had drawn on the relevant resolutions adopted by the Institute of International Law at Venice in 1896, on the report of the Committee on Nationality and Naturalization, adopted by the International Law Association at Stockholm in 1924, on the Draft Law of Nationality prepared by the Harvard Research in preparation for the 1930 Hague Codification Conference, on the Convention on Certain Questions Relating to the Conflict of Nationality Laws and the Protocol Relating to a Certain Case of Statelessness adopted by that Conference, and on the Convention on Nationality, signed at Montevideo in 1933, and the Draft Convention on Nationality and Statelessness prepared by the Inter-American Juridical Committee in 1952. He had also been greatly assisted by the documentary material assembled by the Secretariat in its two reports, "The Problem of Statelessness" (E/2230) and "A Study of Statelessness",[2] as well as by the "Report on Nationality including Statelessness" (A/CN.4/50) prepared by Mr. Hudson.

7. In addition, he had had before him the memoranda (A/CN.4/66 and A/CN.4/67) prepared by Mr. I. S. Kerno, whom the Commission had appointed as expert on the subject of nationality including statelessness. The Commission had also requested him to prepare extracts from Mr. G. Kaeckenbeeck's book "The Inter-

[1] See *Yearbook of the International Law Commission, 1952*, vol. I, 163rd meeting, para. 79.

[2] United Nations publication, Sales No.: 1949.XIV.2.