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Summary record of the 207th meeting

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

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Council. That was a point which he was prepared to elaborate at a later stage.

The meeting rose at 1 p.m.

207th MEETING

Thursday, 2 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 said that the Special Rapporteur and Mr. Lauterpacht had acted on Mr. Córdova's suggestion, and had drafted a joint text to replace the existing articles 1 and 2 on the resources of the sea. The text would be distributed shortly. He assumed that in the meantime the Commission would be prepared to examine article 3, which dealt with sedentary fisheries.

2. He would, however, first call upon Mr. Kozhevnikov, who wished to make some general comments on article 2.

3. Mr. KOZHEVNIKOV recalled that he had stated that article 1, as adopted by the Commission, was, despite a certain lack of clarity, on the whole acceptable to him, since governments were therein invited to act within the framework of sovereignty.[1] Furthermore, the article contained elements for international collaboration. The proposals submitted at the preceding meeting did not improve the text.

4. As to article 2, he was utterly opposed to its main features. Fishing in the high seas had been regulated in the past, and was regulated at present, on the basis of agreement between the States concerned. Consequently, the setting up of an international organ might violate the rights of those States. He then referred to several agreements in support of his argument. Indeed, he was convinced that, for the sake of securing acceptance of the draft, that article should be left out.

5. Furthermore, he must express his growing concern at the Commission's tendency to lay down dictatorial provisions for international organs, for jurisdiction by the International Court of Justice, for sanctions, and so on. Not only was that tendency dangerous; it was anti-democratic. According to the democratic interpretation of international law, States had to seek agreement of their own free will. The position was becoming very curious. Governments, which were responsible for creating the norms of international law, could not take a step without being threatened by international authority or the International Court, or police measures. He feared that the Commission was setting out along a path that would lead it into very strong criticism from the progressive public.

6. Article 2 should be deleted.

7. The CHAIRMAN noted that the representative of one of the world's legal systems had expressed his views with considerable vigour. He invited members to consider article 3 on sedentary fisheries.[2]

Article 3: Sedentary fisheries

8. Mr. FRANÇOIS (Special Rapporteur) pointed out that the Commission's decision taken at its 205th meeting,[3] to use the term "natural resources" instead of "mineral resources", raised some very delicate questions with regard to sedentary fisheries. He would draw attention to the comment which accompanied the text in the Commission's report on its third session (A/1858, Annex, Part II), and which read, in part, as follows:

> "The Commission considers that sedentary fisheries should be regulated independently of the problem of the continental shelf. The proposals relating to the continental shelf are concerned with the exploitation of the mineral resources of the subsoil. . . ."

9. The Commission had taken the view that a coastal State could only regulate sedentary fisheries on the continental shelf if it possessed historic rights thereto. Rights over the continental shelf allowed only for the

[1] See *supra*, 206th meeting, paras. 23 and 37.

[2] Discussion of articles 1 and 2 was resumed at the 208th meeting, para. 38.

[3] See *supra*, 205th meeting, paras. 69-79.

exploitation and exploration of mineral resources, and sedentary fisheries were not mineral resources.

10. In the light of the Commission's decision, the argument might perhaps be stated thus: the sovereign rights of a State over the continental shelf and its exclusive right to exploit the natural resources thereof could be interpreted as granting that State the exclusive right to exploit sedentary fisheries except in so far as another State or States possessed historic rights to those fisheries. Mr. Córdova had suggested previously that the article on sedentary fisheries imposed a new restriction on the principle of the freedom of the seas. It might be stipulated that the right to exploit and explore the natural resources of the sea-bed and subsoil was not intended to modify the régime applied to sedentary fisheries. The question was far from academic. For instance, Australia was opening up new pearl fisheries in its continental shelf. Could it reserve those fisheries to its nationals and prevent the Japanese from exploiting them? That was the point on which the Commission must take a decision. One thing was certain and that was Mr. Scelle's opinion on the matter.

11. Mr. SCELLE intimated that the Special Rapporteur's interpretation of his attitude was correct.

12. Mr. YEPES considered that sedentary fisheries were included in the continental shelf, since they were attached to the soil. He would therefore vote in favour of the idea that such fisheries formed part of the natural resources and were accordingly subject to the same régime as the continental shelf.

13. Mr. LAUTERPACHT noted that Mr. François seemed to be suggesting that the Commission should reverse its decision to use the term "natural resources". Certainly, when that decision had been taken, he had been aware of its relevance to article 3. He entirely agreed with Mr. Yepes.

14. As to the argument that further restriction would thereby be imposed upon the freedom of the seas, he would point out that articles 3 and 4 of the draft rules on the continental shelf clearly reserved that principle in its integrity. The Commission had decided to insert a comment relating to swimming fish.

15. Mr. CÓRDOVA agreed with Mr. Yepes and Mr. Lauterpacht, and considered that everything had been said on the issue when the Commission had taken its decision about natural resources. He would consequently limit himself to stating for the record that the comments he had made then[4] applied also in the present instance.

16. Mr. ALFARO said that the logical consequence of articles 1 and 2 on the continental shelf was that the coastal state had exclusive rights over the sedentary fisheries situated in its continental shelf. A case in point was the Gulf of Panama, which was almost entirely continental shelf. In the past his country had possessed a fine mother-of-pearl industry and pearl fisheries, which had been completely destroyed by foreign fishermen. He held, therefore, that article 3 should be modified in order to ensure the enjoyment by the coastal state of control over sedentary fisheries situated in the continental shelf.

17. Mr. PAL agreed with the preceding speakers, but pointed out that article 3 was not concerned only with the continental shelf, but with areas of the high seas contiguous to territorial waters. The extent of the contiguous areas should be defined.

18. Mr. LAUTERPACHT pointed out that those areas were equivalent to the continental shelf.

19. Mr. SANDSTRÖM agreed with Mr. Pal, and said that the difficulty of interpretation arose because reference was made in the draft on the continental shelf to the exploitation and exploration of the sea-bed and subsoil. Had the word "sea-bed" alone been used, then clearly only natural resources would be involved. But the reference to the subsoil opened the door to difficulties of interpretation.

20. Mr. HSU agreed that article 3 should be amended to make it tally with the Commission's decision to use the term "natural resources" in article 6 of the draft rules on the continental shelf.

21. Mr. Pal had raised an important question. Since the Commission had admitted sovereignty of coastal States over the continental shelf, it should also recognize their right to control sedentary fisheries beyond the continental shelf. As to which State should enjoy the right in a given area, his answer was the one closest to it. He thought that vested rights of distant States should be respected, subject to change by agreement.

22. Mr. CÓRDOVA said that the concepts must be clarified. Article 3 dealt not only with the continental shelf, but also with the areas of the high seas contiguous to territorial waters. The question of fishing in the high seas had already been disposed of, but sedentary fisheries lay at the bottom of the sea. In his view, the change of the word "mineral" to "natural" meant the admission of the right of coastal States to regulate sedentary fisheries.

23. Mr. LAUTERPACHT said that Mr. Córdova evidently assumed that no sedentary fisheries could exist outside the 200-metre limit. That was a matter of scientific fact which he was not competent to discuss. He would suggest that article 3 be retained as adopted by the Commission at its third session, with the addition of the words "and its continental shelf" after the words "territorial waters" (A/1858, Annex, Part II). There was no getting away from the fact that by adopting the formula "natural resources", the Commission had greatly reduced the scope and significance of article 3.

24. Mr. LIANG (Secretary to the Commission) recalled that although, both at its third and present sessions, the Commission had concentrated its attention on the continental shelf and on the exploitation of natural resources, it had had in mind the exploitation of oil,

[4] *Ibid.*, para. 77.

which was a mineral. That was why the special rapporteur had taken the realistic view and had in his draft used the words "mineral resources". Discussion at the present session had clearly shown that the whole concept of the continental shelf was closely related to the problem of the exploitation of oil. Thence arose the necessity for an article on sedentary fisheries. In his view, the problem should be treated separately from that of the continental shelf, since not all coastal States possessed such a shelf.

25. Finally, he would express the opinion that the second sentence of article 3 as drafted by the Special Rapporteur (A/CN.4/60, Chapter IV, Part II), needed modification. Reference to the past was appropriate in a treatise, but out of place in that article.

26. Mr. SCELLE was unable to agree with the views expressed by several members of the Commission. Sovereign rights over the continental shelf had been granted to States, sovereign rights must now be granted over the high seas and over sedentary fisheries. What would be left of the principle of the freedom of the high seas at the end of that process of extension? He feared that so little would be left of the high seas as would not suffice to drown a celebrated little book, the author of which was one named Grotius.

27. Mr. KOZHEVNIKOV disclaimed any special competence in a highly technical matter, but was under the impression that the Commission had wished to correlate sovereign rights over the sea-bed and subsoil of the continental shelf with the principle of the freedom of the seas and the interests of navigation and fishing. That had been the guiding principle, and should remain so. He recalled that he had abstained from voting on the decision to use the words "natural resources", and noted that in general article 3 seemed to be correct in its approach and to need only slight modification.

28. Mr. ALFARO said that, in view of the Commission's earlier decisions, he was unable to agree that article 3 could be accepted by the Commission as it stood. It was essential to admit the theory of the coastal State's exclusive rights, with the result that no concession could be made to historic rights.

29. Mr. FRANÇOIS said that at the beginning of the meeting he had explained the position without expressing his own views. It had been suggested that he was in favour of reversal of the decision to use the term "natural resources". Members had declared that they had all along been aware that that decision would affect the problem of sedentary fisheries, but at the time not a word had been said about them.

30. According to Mr. Lauterpacht, the principle of the freedom of the seas was in no way affected. He (Mr. François) doubted whether the Japanese fishermen who would be barred access to the pearl fisheries off the Australian coast would agree with Mr. Lauterpacht. Under the original text they would have been able to exercise their trade in that area because Australia possessed no historic rights therein. It was now proposed that Australia should have exclusive rights: surely, therefore, it was inadmissible to argue that the principle of the freedom of the seas was not affected. If Mr. Córdova, who had espoused the Australian point of view, were followed, the article would have to be changed completely. For his part, he failed to see how one could violate historic and acquired rights.

31. Mr. SPIROPOULOS agreed with Mr. François that historic rights must be safeguarded, and did not consider that the Commission's decision on the term "natural resources" vitiated article 3.

32. Mr. CÓRDOVA reminded the Commission that when, at the 206th meeting, the Commission had discussed the proposal of Mr. Yepes for an additional article recognizing that the rights of the coastal State over the continental shelf were independent of any occupation by that State,[5] members had taken the view that occupation was not a prerequisite of sovereignty. Yet the Special Rapporteur now argued that in the case of sedentary fisheries historic occupation must be taken into account. His proposed text read: "The regulation of sedentary fisheries may be undertaken by a State in areas... where such fisheries have long been maintained." But no reference was made to the length of time during which those historic rights had been exercised. Before the last war Japanese fishermen had been accustomed to fish in the Gulf of California. Had they any historic rights? It was impossible to allow a coastal State to oust all foreigners from those areas of the high seas.

33. Mr. LAUTERPACHT pointed out that, according to the articles adopted by the Commission on the continental shelf, a State had an exclusive right over the sea-bed and the subsoil regardless of whether the continental shelf did or did not actually exist. If his amendment to article 3 were adopted, the text would clearly mean that States had no rights over sedentary fisheries beyond the continental shelf, provided always that they had no historic rights in the area. He agreed with the Special Rapporteur that those rights must be admitted, and considered that the second sentence of article 3 as drafted by him (A/CN.4/60, Chapter IV, Part II) was wholly justified.

34. Mr. SANDSTRÖM said that the Commission was getting further and further away from its original ideas. He would vote for article 3 as drafted at the third session.

35. The CHAIRMAN, speaking as a member of the Commission, said that he took the same view as Mr. Sandström.

36. Mr. SPIROPOULOS pointed out to Mr. Córdova that in international law occupation could only be carried out by a State. Fishermen could not occupy an area. The conception of occupation had originated in certain special circumstances, and was clearly defined as involving action by a State.

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[5] See *supra*, 206th meeting, paras. 1-14.

37. As to the controversy about the term "natural resources", he would point out that the question had not really been solved, and that article 3 as adopted by the Commission at its third session allowed both for natural and mineral resources. One of the reasons for the difficulty was that the subsoil must be distinguished from the sea-bed. The subsoil was not a mere legal fiction.

38. Mr. PAL said that the discussion clearly showed that article 3 was intended to apply to areas beyond the continental shelf, and he was opposed to the granting of exclusive powers to a State beyond the continental shelf for any purpose whatsoever. In his view, therefore, the first sentence of article 3 must be so modified as to make it clear that rights could only be exercised within the area covered by the continental shelf. He took the strongest exception to the second sentence of the text proposed by the Special Rapporteur (A/CN.4/60, Chapter IV, Part II), since it was clearly inadmissible that a State should have to solicit the permission of a coastal State in order to fish in the high seas. He could not but reiterate that article 3 must be applicable to the continental shelf and to the continental shelf alone.

39. Mr. YEPES agreed with Mr. Lauterpacht that the Commission must either alter its definition of the continental shelf, or agree that the term "natural resources" covered not only the sea-bed and the subsoil but sedentary fisheries as well. Actually, the Commission was failing to distinguish between two very important principles of international law: the freedom of the seas; and the rights of coastal States to control zones wherein they could exploit the riches of the sea for the benefit of their people.

40. Too much emphasis had been placed on the principle of the freedom of the seas at the expense of the principle of the coastal State's right to take steps to protect the essential interests of its population. The first sentence of the draft article in the Special Rapporteur's fourth report would limit the right of a State to regulate sedentary fisheries in areas of the high seas contiguous to its territorial sea to cases where such fisheries had long been maintained and conducted by its nationals. If they had not been maintained and conducted by its nationals for such a period, the State would be powerless in that respect. In its comments, reproduced in the same report (mimeographed English text, pp. 75-77; printed French text, No. 154), the Chilean Government had rightly said that the Commission's text should be re-examined in the light of the situation which had arisen since the proclamation of the United States President on 28 September 1945.[6] As the Chilean Government said, "the seas are in reality dominated, used and — it may almost be said — possessed by States maintaining powerful navies, fishing and merchant fleets, bases, supply ports, docks and shipyards. The nationals of those States are the only persons who fully enjoy all the privileges of the 'freedom of the seas'.... It is a well-known fact that fishing fleets under the direct control of the great sea powers engage in activities prejudicial to the States bordering upon the Pacific coast".

41. Such had been the situation until recently. Throughout North and South America, however, increasing resistance had developed to the "*beati possidentes*". The proclamation by the United States President, declaring his country's right to establish fishery conservation zones in the high seas areas contiguous to the coasts of the United States of America, had been followed, as the Chilean Government had pointed out in its comments, by similar declarations made by the Governments of Mexico, Argentina, Chile, Peru, Costa Rica, El Salvador and Honduras, all proclaiming their national sovereignty over the seas adjacent to their coasts within the limits necessary to conserve the natural resources found on, within and below those seas, for the benefit of their inhabitants. The Chilean Government concluded: "All this is ground enough for saying that the doctrine that the State may establish exclusive zones of control and protection of maritime fishing and hunting in areas of the high seas contiguous to its territory, known as 'continental seas or waters', has become part of the American international system."

42. It was because those considerations and that system had been somewhat overlooked in the text presented by the Special Rapporteur that he had felt it necessary to draw attention to them at some length.

43. The CHAIRMAN pointed out that the Commission had a specific question to decide, namely: whether an article on sedentary fisheries should be kept, and, if so, what its form should be; or whether the point of view advanced by Mr. Pal and Mr. Alfaro should prevail.

44. Mr. HSU said that it should be clearly understood that, although the entry into force of whatever provision the Commission adopted would not abolish established rights, neither would it deprive the coastal State of its right to press for the abandonment of such rights.

45. Mr. KOZHEVNIKOV thought that the Commission should avoid formulating any too rigid or dogmatic rules. Its task was to reconcile the principle of the freedom of the seas and the principle of the coastal State's right to protect the essential interests of its population. He had no doubt that the article in question was required, and that even with the words "natural resources" substituted for "mineral resources" article 2 of part I did not fully meet the case. For that article referred only to "exploration and exploitation" of the natural resources of the continental shelf, and thus did not apply to fisheries.

46. Mr. ZOUREK felt that before voting on article 3, the Commission should define its exact scope, making it clear whether it related to sedentary fisheries outside the continental shelf as well as to sedentary fisheries situated upon it. The Special Rapporteur had suggested that the question of sedentary fisheries outside the

[6] See text in *Laws and regulations on the régime of the high seas*, vol. I (United Nations publication, Sales No.: 1951.V.2), p. 38.

continental shelf would not in practice arise, but Mr. Lauterpacht seemed to be of the opinion that such fisheries could exist, for example, where a submarine plateau was separated from the continental shelf proper by a deep channel.

47. The article as drafted by the Special Rapporteur did not solve the case where the nationals of one State maintained sedentary fisheries on the continental shelf of another State. Moreover, the second sentence seemed to imply that permission from the coastal State would be required before the nationals of another State could conduct sedentary fisheries in areas of the high seas contiguous to the former's territorial sea. Such was not the case, and the wording used was inappropriate.

48. He agreed with Mr. Kozhevnikov that an article on sedentary fisheries was required, despite the substitution of the term "natural resources" for "mineral resources" in article 2 of the draft articles on the continental shelf itself. The wording of article 2 was in other respects inapplicable to the actual fish, and he considered that although the stakes, pots and other equipment attached to the sea-bed and used for catching the fish were covered by it, the fish themselves were not.

49. Mr. FRANÇOIS said that he wished to withdraw the text which he had presented in his fourth report (A/CN.4/60, Chapter IV, Part II) and to propose the following clearer and shorter text:

> "The regulation of sedentary fisheries in areas of the high seas may be undertaken by a State either on its continental shelf or in other areas where such fisheries have long been maintained and conducted by nationals of that State. In both cases, the rights acquired by nationals of other States must be protected."

50. The new text which he proposed drew a distinction between sedentary fisheries on the continental shelf and sedentary fisheries in other areas; in the former case it was not necessary that such fisheries should have been long maintained and conducted by nationals of the coastal State; in the latter case it was. Even though the case of sedentary fisheries outside the continental shelf might be purely hypothetical, there could be no harm in providing for it.

51. There was a further difference between the new text and that contained in his fourth report. The text approved at the third session had contained a proviso to the effect that non-nationals should be permitted to participate in the fishing activities on an equal footing with nationals. A number of objections to that provision had been made. In particular, the United Kingdom Government had expressed the view that "where the coastal State has in the past permitted non-nationals to participate in the fishing, then there is no right to exclude such non-nationals in the future; where, however, the coastal State has in the past reserved the fishing exclusively for its own nationals, then non-nationals have no right under international law to participate in the fishing in the future".[7] Mr. Young had observed that it was doubtful "whether the Commission's proposed admission of non-nationals reflects existing practice with respect to many sedentary fisheries, where non-nationals of one class or another appear often to be excluded".[8] He felt that those objections were valid, and it was for that reason that in the new text he had introduced the concept of acquired rights.

52. Mr. SPIROPOULOS wondered whether the term "acquired rights" expressed exactly what the Commission had in mind. How were the rights acquired, and by whom? If by individuals, as seemed to be implied, was it to be taken that they lapsed with the death of those individuals?

53. Mr. ALFARO agreed with Mr. Spiropoulos. He recalled that the classic definition of an acquired right was: "a right legally and duly acquired by a person in accordance with the law existing at the time the right had been acquired." It was, therefore, very difficult to see how the term could be applied in international law not by States, but by persons in respect of which it was impossible to say what was the international law in force at a certain time and at what time the right was acquired.

54. It was also not sufficient to refer to "the regulation" of sedentary fisheries. It must be made clear whether or not such regulation extended to the right to exclude the nationals of certain States.

55. Finally, he was in complete agreement with Mr. Pal that the traditional freedom of the seas could not be limited to the extent of giving the coastal State the right to regulate fishing beyond the limits of its continental shelf.

56. Mr. SCELLE said that the wording used in the last sentence of Mr. François' new proposal, in which he referred to the acquired rights of nationals of States other than the coastal State, raised extremely important questions relating to the legal status of the high seas. To provide that individuals could acquire rights under international law would be to make them subjects of international law, and although he personally would be warmly in favour of such a step, it was essential that the Commission should realize what it was doing; the wording proposed by the Special Rapporteur ran absolutely counter to the traditional concept of international society as a community of States.

57. Mr. KOZHEVNIKOV said that as he had only the French text before him, he must reserve the right to comment further on Mr. François' new proposal at a later stage. For the present, he could merely say that he was afraid he did not agree with Mr. François that it was clearer than the text in his fourth report. Previous speakers had already pointed out a number of weaknesses in the new text, the most serious of which was the suggestion, implicit in the second sentence, that the subjects of international law were individuals, not States. Again, he drew attention to the curious position when he had to defend the first text proposed by the Special Rapporteur against the Special Rapporteur him-

[7] See document A/CN.4/60 (mimeographed English text, p. 119; printed French text, para. 86).

[8] *Ibid.*

self. Since Mr. François had withdrawn the proposal contained in his fourth report, he (Mr. Kozhevnikov) would take it over.

58. Faris Bey el-KHOURI said that the new text proposed by the Special Rapporteur would be quite meaningless in the Arab world, as in Moslem law rights could only be "acquired" for a definite period of time. Moreover, no rights could be acquired over *domaine public*. The text proposed was therefore unacceptable.

59. Mr. LAUTERPACHT felt that the points which had been raised had been raised unnecessarily. "Rights acquired by the nationals of other States" was an expression often used in international treaties, and no abstruse and complicated points were ever raised concerning its meaning such as had been raised in connexion with Mr. François' new proposal. He supported that proposal, and hoped that the vote on it would not be long delayed.

60. Mr. YEPES agreed with Mr. Alfaro that it was going much too far to provide that a State could regulate sedentary fisheries in areas other than its continental shelf, and proposed that the new text proposed by the Special Rapporteur should be amended to read:

> "The regulation of the sedentary fisheries established in the high seas included in its continental shelf shall be undertaken by the coastal State itself."

61. Mr. FRANÇOIS drew Mr. Kozhevnikov's attention to the fact that the proposals he submitted as Special Rapporteur were not so much the expression of his own views as an attempt to find a basis for agreement within the Commission. It was therefore only natural that he should sometimes have to make more than one such attempt, even though his first attempt might commend itself to certain members.

62. He agreed that the term "acquired rights" was not altogether happy, but, as Mr. Lauterpacht had said, every jurist knew what it meant. If adopted, the text could be referred to the Drafting Committee.

63. Although the reference to the regulation of sedentary fisheries by a State in areas other than its continental shelf might be unnecessary, he could not agree with Mr. Yepes and Mr. Alfaro that it was dangerous, having regard to the qualification which accompanied it, namely: "where such fisheries have long been maintained and conducted by nationals of that State". In cases where a kind of customary law had been built up in that way, he did not see how the Commission could consider that the practice should stop.

64. Finally, replying to another point raised by Mr. Alfaro, he said that it was his intention that "regulation" should cover the right to prohibit the nationals of certain States from fishing in a given area.

65. Mr. SANDSTRÖM proposed that the Commission should adopt the text provisionally approved by it at the third session, which read:

> "The regulation of sedentary fisheries may be undertaken by a State in areas of the high seas contiguous to its territorial waters, where such fisheries have long been maintained and conducted by nationals of that State, provided that non-nationals are permitted to participate in the fishing activities on an equal footing with nationals. Such regulation will, however, not affect the general status of the areas as high seas."[9]

66. Mr. SPIROPOULOS supported Mr. Sandström's proposal. The new text proposed by Mr. François covered areas outside the continental shelf, and Mr. François himself had just said that the right of regulation should include the right of excluding non-nationals from fishing activities. It would be going much too far to allow a coastal State to exclude the nationals of another State from fishing in an area of the high seas outside its continental shelf.

67. Mr. ZOUREK said that one obvious difference between the new text proposed by the Special Rapporteur and that contained in his fourth report was that the former contained no safeguards for navigation. He also agreed with previous speakers that it went much too far. Above all, however, he objected to the use of the term "acquired rights". There was no rule of international law by which any such rights could have been acquired, and he failed to see how a State, let alone an individual, could acquire rights over the high seas.

68. After some discussion of the order in which the various text proposed should be put to the vote, in the course of which Mr. LIANG (Secretary to the Commission) pointed out that the text proposed by Mr. Sandström was in a different category from the rest, since it had already been approved by the Commission, and that it should therefore be voted on last, the CHAIRMAN suggested that he should first put Mr. Yepes' amendment to the vote, then the Special Rapporteur's new proposal itself, then Mr. Kozhevnikov's proposal (the text contained in the Special Rapporteur's fourth report) and finally Mr. Sandström's.

It was so agreed.

69. Mr. KOZHEVNIKOV and Mr. ZOUREK requested that the vote should be deferred until the next meeting, when the various proposals would be available in English, French and Russian.

It was so agreed.

The meeting rose at 1.55 p.m.

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[9] "Report of the International Law Commission covering the work of its third session", *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858), Annex, Part II.