

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:

A/CONF.13/C.1/L.36-L.51

Annexes

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume III (First Committee (Territorial Sea and Contiguous Zone))*

DOCUMENT A/CONF.13/C.1/L.36

Spain: proposal

[Original text : Spanish]
[25 March 1958]

Article 18

The article to read as follows :

"Ships passing through the territorial sea shall remain under the jurisdiction of the flag State, but shall comply with the laws and regulations enacted by the coastal State in conformity with the rules of international law and of this convention and, in particular, with the rules relating to transport and navigation."

Article 19

The article to read as follows :

"No charge may be levied upon ships passing through the territorial sea in exercise of the right of innocent passage except as fees in payment for services specifically rendered to them."

Article 21

The article to read as follows :

"1. A coastal State shall not exercise civil jurisdiction in relation to ships passing through its territorial sea or to persons on board such ships and, accordingly, it may not arrest or divert ships for such a purpose. It may, however, take proceedings in relation to the ship as the result of obligations or liabilities incurred by it on account of its passage.

"2. The foregoing provisions notwithstanding, the coastal State may, in accordance with its municipal law, arrest or

levy execution against a ship lying in or passing through the territorial sea after leaving its internal waters."

Articles 22 and 23

Combine into one article worded as follows :

Government ships

"1. The rules contained in sub-sections A and B shall apply to government ships operated for commercial purposes.

"2. The rules contained in sub-section A alone shall apply to government ships operated for non-commercial purposes."

Articles 24 and 25

Combine into one article worded as follows :

Warships

"1. The coastal State may make the passage of warships through its territorial sea subject to previous authorization or notification. Normally it will be obliged to grant such passage provided that there is every reason to expect that the provisions of articles 17 and 18 will be observed during the passage.

"2. If any warship fails to comply with the rules lawfully established by the coastal State regulating the exercise of the right of passage and likewise disregards any request for compliance which may be brought to its notice, the coastal State may require the warship to leave the territorial sea."

DOCUMENT A/CONF.13/C.1/L.37*

United Kingdom of Great Britain and Northern Ireland: proposal

[Original text : English]
[25 March 1958]

Section III. Right of innocent passage

HEADINGS

1. Delete "Sub-section A. General rules" and substitute "Sub-section A. Rules applicable to all ships".
2. Delete "Sub-section B. Merchant ships" and substitute "Sub-section B. Rules specially applicable to all ships except warships and government ships operated for non-commercial purposes".
3. Delete Sub-Section C.
4. Delete "Sub-section D. Warships" and substitute "Sub-section C. Warships".

Article 16

PARAGRAPH 1

Delete the words "and must now allow the said sea to be used for acts contrary to the rights of other States".

PARAGRAPH 2

1. Delete the word "due" and substitute the word "appropriate".
2. Add after the word "navigation" the words "within its territorial sea."

Article 17

PARAGRAPH 1

Delete the words "any act" and substitute "the commission of acts which are in themselves".

PARAGRAPH 3

1. Delete the word "definite" and substitute "specified".
2. Delete the words "it should deem" and add after "suspension" the word "is".

PARAGRAPH 4

Add the words "or waters constituting the sole means of access to a port".

* Incorporating A/CONF.13/C.1/L.37/Corr.1.

Article 18

1. Delete "enacted" and substitute "made and published".
2. Delete "in conformity with the present rules and other rules of international law and, in particular, with the laws and regulations relating to transport and navigation" and substitute "to secure the safety of navigation through the territorial sea, the protection of channels and buoys and the prevention of pollution, provided these are in conformity with international law".

Article 19

PARAGRAPH 1

After the words "territorial sea" insert a semicolon and add the words "that is to say, upon foreign ships that do not enter, leave or make use of any port of the coastal State."

PARAGRAPH 2

Add the words "but not for services undertaken by the coastal State for the benefit of shipping generally."

Article 20

PARAGRAPH 1

1. Delete "by reason of" and substitute "in connexion with".
2. Add after "passage" the words "through the territorial sea".
3. In sub-paragraph (a), delete the words "beyond the ship" and substitute "to the coastal State".

PARAGRAPH 2

Delete the word "lying" and substitute "moored or at anchor".

ADDITIONAL PARAGRAPH

"4. A coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed elsewhere than on board the ship during its passage through the territorial sea."

Article 20 A

After article 20 add a new article 20 A as follows :

*"Definition of government ships
operated for non-commercial purposes"*

"For the purposes of the present convention, government ships operated for non-commercial purposes are ships which being owned or operated by a government fall into one or other of the following categories :

- "(i) Yachts, patrol vessels, hospital ships, fleet auxiliaries, military supply ships, troopships ;
- "(ii) Cable ships, ocean weather ships, vessels carrying out scientific investigation, fishery protection vessels ;
- "(iii) Vessels employed in services of a similar character to (i) and (ii)."

Article 21

Delete the whole of the article which it is proposed to cover by the following resolution :

"The United Nations Conference on the Law of the Sea,

"Desiring to affirm the principles governing the arrest of ships in the territorial sea,

"Conscious of the need to avoid the conflicts of interpretation and application which are likely to arise if principles which are embodied in and given effect to by existing international instruments are embodied in a new convention.

"1 Draws attention to the International Convention of 10 May 1952 relating to the Arrest of Seagoing Ships ;

"2. Commends acceptance of it to all States which are not yet parties to it ;

"3. Expresses the belief that world-wide acceptance of this instrument is the most effective method of putting into effect and securing universal respect for the principles of international law governing the arrest of ships."

Articles 22 and 23

Delete these articles.

Article 24

Delete this article.

DOCUMENT A/CONF.13/C.1/L.37/Corr.2**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[10 April 1958]

Article 24

Replace the proposal to delete article 24 (A/CONF.13/C.1/L.37) by the following proposal :

Add a new paragraph 2 to article 24, worded as follows :

"2. The right of warships to innocent passage through straits used for international navigation between two parts of the high seas may not be made subject to previous authorization or notification."

DOCUMENT A/CONF.13/C.1/L.38**United States of America: proposal**

[Original text . English]
[25 March 1958]

Article 16

PARAGRAPH 1

Delete the second sentence.

Comments

The above amendment is submitted⁵ for the following reasons :

(a) The two rules embodied in this sentence impose upon the coastal State duties which go far beyond existing principles of international law and full compliance with their terms might constitute an onerous economic burden.

(b) This sentence in the International Law Commission's text might be construed as constituting a rule of absolute liability on the part of the coastal State for failure to remove obstacles to passage or failure to take other effective steps to assist passage.

(c) The International Law Commission rules in question derive from dicta found on page 22 of the opinion of the International Court of Justice in the Corfu Channel case, (*I.C.J. Reports, 1949*), which were never intended for and are wholly unsuited for codification usage. They were supported by a bare majority of those voting in the International Law Commission (5 to 4 with 3 abstentions : See A/CN.4/SR 263).

DOCUMENT A/CONF.13/C.1/L.39**United States of America: proposal**

[Original text : English]
[25 March 1958]

Article 17

PARAGRAPH 1

Amend to read as follows :

" 1 The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent."

Comments

The above amendment is proposed for the following reasons :

(a) The original French text of paragraph 1 declares that the coastal State may take the necessary steps in its territorial sea to prevent (prévenir) the specified acts. The English translation "... to protect itself against" is subject to the construction that a coastal State cannot take preventive action. This is an unintended limitation.

(b) The last twenty-eight words of the International Law Commission's text are merely a description of passage which is not innocent under the definition adopted in paragraph 3 of article 15, and the amendment proposed avoids this unnecessary repetition by reference to "... passage which is not innocent"

PARAGRAPH 3

Amend to read as follows :

" The coastal State may suspend temporarily in definite areas of its territorial sea other than in straits used for international navigation between two parts of the high seas the exercise of the right of innocent passage if it should deem such suspension essential for the purpose of security. Should it take such action, it is bound to give due publicity to the suspension."

Comments

The above amendment is offered for the following reasons :

(a) The proposed text deletes the phrase in paragraph 3 of draft article 17 which limits the coastal State's power to suspend passage rights to those cases in which it deems

such suspension essential for the " protection of the rights referred to in paragraph 1." This phrase has no discernible meaning, since paragraph 1 contains no such reference.

(b) The conditions allowing suspension of passage rights under existing state practice relate almost exclusively to military, naval, defence and similar requirements which appear to be covered by the comprehensive term " security", which is proposed

(c) The language proposed excepts certain international straits as required by the International Court of Justice holding in the Corfu Channel case (*I.C.J. Reports, 1949, p. 4*).

(d) The proposed amendment limits application of the rule, as of all others in this section, to innocent passage.

PARAGRAPH 4

Amend to read as follows :

" The coastal State must not prohibit innocent passage through straits used for international navigation between two parts of the high seas."

Comments

The above amendment is proposed for the following reasons :

(a) The rule contained in paragraph 4 of draft article 17 is based on the Corfu Channel case, according to paragraph 3 of the International Law Commission's commentary, but that opinion does not include reference to the word " suspension" which is used in the Commission's text. The cited holding was limited specifically to those acts of the coastal State which " prohibit" innocent passage (*I.C.J. Reports, 1949, p. 29*) and the same word is used in the proposed text.

(b) The Corfu Channel case ruling is limited in its application to " straits used for international navigation between two parts of the high seas" The Court's opinion did not qualify this phrase by use of the word " normally", which appears in paragraph 4 of the draft article, and this word is deleted in the proposed text.

DOCUMENT A/CONF.13/C.1/L.40

United States of America: proposal

[Original text : English]
[25 March 1958]

Article 18

Amend the text of article 18 to read as follows :

“ Foreign ships exercising the right of innocent passage shall comply with the laws and regulations of the coastal State, except those which prohibit innocent passage or subject it to the requirement of advance authorization in violation of the present rules ”

Comments

The above amendment is proposed for the following reasons :

(a) The International Law Commission's text of draft article 18 should be limited to “ innocent ” passage, as are all other rules in section III of part I of its report.

(b) The requisite contained in draft article 18 that the laws and regulations of the coastal State be “ enacted ” is an unreasonable one. Enactment connotes formal legislative

action All laws and regulations of the coastal State that meet the other stated qualifications should be given equal recognition in this rule.

(c) The limitation on the type of rules to which passing ships owe compliance in the International Law Commission's text is vague and subject to conflicting interpretations. The text proposed indicates that compliance is owed to all coastal State rules with the exception of those which “ prohibit innocent passage or subject it to the requirements of advance authorization. . . . ” Coastal-state action which amounted to such a denial of passage rights was specifically condemned by the International Court of Justice in the Corfu Channel case (*I.C.J. Reports, 1949, p. 4*), and the proposed language is taken from that ruling. The final words in the proposed text “ . . . in violation of the present rules ” give recognition to the fact that a coastal State is permitted to prohibit innocent passage temporarily under the circumstances and limitations set forth in paragraph 3 of article 17.

DOCUMENT A/CONF.13/C.1/L.41

United States of America: proposal

[Original text : English]
[25 March 1958]

Article 20

PARAGRAPH 1

Paragraph 1 : The first eight words should be amended to read as follows :

“ The criminal jurisdiction of the coastal State should, generally, not be exercised on board, etc. ”

Comment

It is the practice of most nations not to arrest persons or conduct criminal investigations on ships exercising the right of innocent passage except in the three cases cited by the International Law Commission in paragraph 1 of draft article 20. However, the declaration that a coastal State “ may not ” make arrests or conduct investigations

except in such cases is a departure from the strict theory of international law. Such theory holds that the criminal jurisdiction of the coastal State in its territorial sea is unlimited

PARAGRAPH 2

Delete the words “ lying in its territorial sea or ”.

Comment

The proposed deletion is suggested because ships which are “ lying in ” territorial sea are not considered to be in innocent “ passage ” as the latter term is defined in paragraph 4 of article 15, unless they are stopped or anchored “ . . . incidental to ordinary navigation or . . . by *force majeure* or by distress ”.

DOCUMENT A/CONF.13/C.1/L.42

United States of America: proposal

[Original text : English]
[25 March 1958]

Article 21

HEADING

Amend the heading by substituting the word “ stopping ” for the word “ arrest ”.

PARAGRAPH 1

Replace the words “ may not arrest ” by the words “ should, generally, not stop . . . ”

Comments

The above amendments are offered for the following reasons :

(a) The word “ arrest ” which appears in the title and paragraph 1 of the English text should be “ stopping ” in the title and “ stop ” in paragraph 1 in order to be a correct translation of the original French text.

(b) No limitation on the civil jurisdiction of the coastal State such as that proposed by the International Law Commission's text in paragraph 1 of draft article 21 is established in international law. The second amendment proposed above is designed, therefore, to indicate that the coastal State's civil jurisdiction extends to the limits of its territorial sea, although recognition is given in the balance of the rule to the existing practice of not exercising such

jurisdiction in the case of ships that are traversing the territorial sea without contacting inland waters.

PARAGRAPH 2

Amend to read as follows :

“2. The civil jurisdiction of the coastal State over ships in innocent passage shall be exercised with due regard to the interests of navigation.”

Comments

The above amendment is offered for the following reasons :

(a) International law does not recognize the curtailment

of a coastal State's civil jurisdiction which is stated in paragraph 2 of article 21.

(b) The proposed language that such civil jurisdiction shall be exercised “with due regard to the interests of navigation” gives needed recognition to the fact that the interests of international shipping must be considered.

PARAGRAPH 3

Delete this paragraph.

Comment

Paragraph 3 of draft article 21 is redundant to the text proposed for paragraph 2.

DOCUMENT A/CONF.13/C.1/L.43

United States of America: proposal

[Original text : English]
[25 March 1958]

Article 24

Delete this article.

Comments

(a) The existing text of article 24 contradicts the general rule in article 15 that “. . . ships of all States shall enjoy the right of innocent passage through the territorial sea”.

(b) The definition of “innocent” proposed for para-

graph 3 of article 15 gives the coastal State full authority to reject passage which is “prejudicial to the security of the coastal State or contrary to the present rules”. The interests of the coastal State need no greater protection than that supplied by this definition of “innocent”. As stated by the International Law Commission in its commentary (3) to article 15 : “For the right in question to be claimable, passage must in fact be innocent.”

DOCUMENT A/CONF.13/C.1/L.44

Romania: proposal

[Original text : French]
[25 March 1958]

Article 17

PARAGRAPH 3

Delete the word “temporarily”.

Article 22

Add at the end of the article the following : “without prejudice to the immunity enjoyed by such ships in matters of civil jurisdiction.”

DOCUMENT A/CONF.13/C.1/L.45

Mexico: proposal

[Original text : Spanish]
[25 March 1958]

Article 18

Replace by the following text :

“Foreign ships exercising the right of passage shall comply, in conformity with the present rules and other rules of international law, with the laws and regulations enacted by the coastal State, and, in particular, with those relating to transport and navigation.”

DOCUMENT A/CONF.13/C.1/L.46

Bulgaria and Union of Soviet Socialist Republics: proposal

[Original text : Russian]
[25 March 1958]

Articles 16 and 18 A

1. In sub-section B, before article 19, insert a new article 18 A as follows :

*“ RIGHT OF PASSAGE**“ Article 18 A*

“ The coastal State must not hamper the innocent pas-

sage through its territorial sea of merchant and other ships, other than warships, of any nationality, in accordance with the principles of equality, provided that such ships use the usual or specified navigational channels and observe the rules of passage laid down by the coastal State.”

2. Consequentially delete from article 16, paragraph 1, the words :

“ The coastal State must not hamper innocent passage through the territorial sea.”

DOCUMENT A/CONF.13/C.1/L.47

Portugal: proposal

[Original text : English]
[25 March 1958]

Article 17

PARAGRAPH 1

Delete the words “ security or to such others of its ”.

PARAGRAPHS 3 AND 4

Replace by the following text :

“ 3. Except as laid down in paragraph 4 hereunder, the coastal State may suspend temporarily in definite areas of its territorial sea the exercise of the right of innocent passage if it should deem such suspension essential for the protection of the rights referred to in paragraph 1. Should it take such action, it is bound to give due publicity to the suspension.

“ 4. There must be no suspension of the innocent passage of foreign ships through straits and sea lanes normally used for international navigation.”

Article 18

Replace the words “ and navigation ” by the words “ navigation and fishing ”.

Article 19

Include this article in sub-section A (General rules). Sub-section B (Merchant ships) would therefore begin with article 20.

Article 21

Replace the heading of article 21 by the following : “ Arrest of foreign ships for the purpose of exercising civil jurisdiction ”.

Sub-section C*Heading*

Replace by the following text :

“ Sub-section C Government ships ”.

Article 23

Substitute the following :

“ The rules contained in sub-section B shall not apply to government ships.”

Articles 24 and 25

Replace by the following text :

“ Article 24

“ The rules contained in sub-section B shall not apply to warships.

“ Article 25

“ The innocent passage of warships is subject to the rules of sub-section A with the following provisions :

“ (a) The coastal State may make that passage subject to previous notification ;

“ (b) If any warship does not comply with the regulations of the coastal State concerning that passage and disregards any request for compliance which may be brought to her notice, the coastal State may require the warship to leave immediately the waters under its jurisdiction.”

DOCUMENT A/CONF.13/C.1/L.48**Federal Republic of Germany: proposal**

[Original text : French]
[25 March 1958]

Article 23

Insert after the words "in sub-section A" the following words: "and in article 19."

1. In the first sentence, delete the words : " authorization or ".
2. Delete the second sentence.

DOCUMENT A/CONF.13/C.1/L.49**Denmark: proposal**

[Original text : English]
[25 March 1958]

Article 21

ADDITIONAL PARAGRAPH

Add a new paragraph 4 as follows :

"Under the laws of the coastal State, the claimant shall be liable in damages if the claim for which the arrest was made is not sustained by subsequent judicial decision."

DOCUMENT A/CONF.13/C.1/L.50**Republic of Korea: proposal**

[Original text : English]
[25 March 1958]

Article 22

Add a new paragraph as follows :

"In applying the provisions of paragraph 1 of article 17 and article 18 of sub-section A to government ships operated for commercial purposes, the coastal State may make the passage of such government ships through the territorial sea subject to previous notification."

Article 23

Add a new paragraph as follows :

"In applying the provisions of paragraphs 1 and 2 of article 17 and article 18 of sub-section A to government ships operated for non-commercial purposes, the coastal State may make the passage of such government ships through the territorial sea subject to previous authorization or notification"

DOCUMENT A/CONF.13/C.1/L.51**Netherlands: proposal**

[Original text : English]
[25 March 1958]

Article 17

Replace this article by the following text :

"1 The coastal State may suspend temporarily in specified areas of its territorial sea the passage of foreign ships, if such suspension is essential for the protection of its security or such other interests as it is entitled to protect under international law. Such suspension shall only take effect after having been duly published.

"2 The passage of foreign ships, traversing the territorial sea without entering internal waters shall not be suspended for reasons based on the provenance or destination of the ship, its crew, passengers or cargo.

"3 There shall be no suspension of the innocent passage of foreign ships through sealanes which are used for international navigation between a part of the high seas and another part of the high seas or the territorial waters of a foreign State.

"4. The coastal State has the right to take in its territorial sea the necessary steps in order to prevent infringements, within its territory or territorial sea, of the laws and regulations mentioned in article 18, and to ensure the enforcement of such laws and regulations."

"5. [Same as paragraph 2 of text proposed by the International Law Commission.]"

Article 18

Replace by the following text :

"1. The laws and regulations enacted by the coastal State in conformity with the present rules and relating to navigation in the territorial sea shall apply to foreign ship exercising the right of passage.

"2. These laws and regulations and their application by the coastal State shall not discriminate between foreign ships, nor, save in matters relating to fishing and shooting, between national ships and foreign ships."

Article 21

Add a new paragraph as follows :

"4. The provisions of the foregoing paragraphs do not prejudice the application of the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Sea-going ships, as between the States parties to that convention."

Article 22

Replace by the following text :

"The right of the coastal State, defined in articles 20

and 21, shall not be exercised in respect of ships owned by a foreign State and operated by it for the sole purpose of the exercise of government functions."

Article 23

Delete this article.

Article 24

Replace by the following text :

"Save in exceptional circumstances, warships shall have the right of innocent passage through the territorial sea without previous authorization or notification. The coastal State has the right to regulate the conditions of such passage. Subject to article 17, paragraph 3, it may suspend such passage under the conditions envisaged in article 17, paragraph 1."

Article 25

Replace by the following text :

"The provisions of article 17, paragraphs 4 and 5 do not apply to foreign warships and other ships owned by a foreign State and operated by it for the sole purpose of the exercise of government functions. If such foreign ship does not comply with the regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance which may be brought to its notice, the coastal State may require it to leave the territorial sea."

DOCUMENT A/CONF.13/C.1/L.51/Corr.1

Netherlands: revised proposal

[Original text : English]
[10 April 1958]

Article 22

Substitute the following proposal for the proposal relating to article 22 (A/CONF.13/C.1/L.51) :

Replace article 22 by the following text :

"The right of the coastal State, defined in articles 20 and 21, shall not be exercised in respect of ships owned or operated by a foreign State and used only on government non-commercial service in the sense of article 33 A."

DOCUMENT A/CONF.13/C.1/L.51/Corr.2

Netherlands: revised proposal

[Original text : English]
[11 April 1958]

Article 25

Substitute the following proposal for the proposal relating to article 25 (A/CONF.13/C.1/L.51) :

In view of the definitive wording of article 17 adopted by the First Committee at its 34th meeting, amend article 25 as follows :

"If any warship or other ship owned or operated by a foreign State and used only on government non-commercial service does not comply with the regulations of the

coastal State concerning passage through the territorial sea and disregards any request for compliance which may be brought to its notice, the coastal State may require it to leave the territorial sea."

Comment

The above amendment necessitates or presupposes a change in the general arrangement and the heading of articles 15-25. (See the suggestions made by the United Kingdom delegation in document A/CONF.13/C.1/L.37.)