

# **United Nations Conference on the Law of the Sea**

Geneva, Switzerland  
24 February to 27 April 1958

Documents:  
**A/CONF.13/C.1/SR.26-30**

## **Summary Records of the 26<sup>th</sup> to 30<sup>th</sup> Meetings of the First Committee**

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))*

the articles restricting the right of passage so as to remove any uncertainty as to which articles were applicable. The purpose was to provide a definition of the right of innocent passage which, unfortunately, had seldom been done, either in theory or practice. It was regrettable, for example, that the Institute of International Law, in the resolution which it had adopted at Amsterdam in 1957, while recognizing the right of innocent passage, should have avoided defining it. The Netherlands amendment sought to establish that passage was innocent if it was in accordance with international law and was not contrary to the vital interests of the coastal State.

26. Mr. DEAN (United States of America) said that his delegation had proposed (A/CONF.13/C.1/L.28), the omission of the words "or to other rules of international law" for the same reasons as those mentioned by other speakers. It had proposed the substitution of the words "it is not" for the words "a ship does not use the territorial sea for committing any acts" because it favoured a more general formulation, and did not believe it was necessary to mention the kind of acts that rendered passage no longer innocent. The right of innocent passage was so important that the provision should be as unambiguous as possible; that was the aim of his amendment.

27. Sir Gerald FITZMAURICE (United Kingdom), confining himself for the time being to the second United Kingdom amendment (A/CONF.13/C.1/L.24) because it was related to the same point as that mentioned by previous speakers, explained that it would automatically be withdrawn if the phrase "or to other rules of international law" were suppressed.

28. Mr. IOSIPESCU (Romania) said that the purpose of his amendment (A/CONF.13/C.1/L.23) was to make the definition of innocent passage complete by mentioning one of its long-established and integral elements — namely, that it must be necessary for the "normal course of the ship". Departure from that course was regarded as sufficient reason for the coastal State to exercise its rights of control, as was expressly admitted by the Commission in its commentary on article 15. Apart from economic and security considerations there were, of course, other interests at stake; in particular, the fishing interests of the coastal States must be protected against the practice of some fishing vessels of putting down their nets illegally while traversing the territorial sea, which was an additional reason for providing a comprehensive definition of innocent passage.

#### *Additional paragraphs*

29. The CHAIRMAN invited delegations which had proposed additional paragraphs to explain their proposals.

30. Mr. KATICIC (Yugoslavia) explained that the purpose of his delegation's proposal (A/CONF.13/C.1/L.15) for a new paragraph 6 was to subject flying-boats taking off from the territorial sea to the same regulations as aircraft taking off from land. It would be noted that the rights of the latter had been severely restricted even by the Chicago Convention of 1944 on International Civil Aviation.

31. Mr. SÖRENSEN (Denmark) said that it was generally assumed that the right of innocent passage extended also to fishing vessels, and in view of the implications of article 15, paragraph 2, there was no need to state expressly that they were debarred from fishing in the territorial sea of a foreign State. The purpose of the Danish proposal (A/CONF.13/C.1/L.29) was to prevent their abusing their right of innocent passage, and a similar provision already existed in a number of bilateral conventions. Its adoption would make it unnecessary to impose other restrictions on fishing vessels making use of their right of innocent passage. The proposed text could be placed after paragraph 5, which also dealt with a special category of vessels.

32. Mr. UDINA (Italy) said that his delegation had submitted its amendment (A/CONF.13/C.1/L.30) because it was desirable to mention expressly that fishing vessels also enjoyed the right of innocent passage, it being understood that they could not fish in the territorial sea of another State and that they must observe its regulations. The proposed text might be inserted as a final paragraph in article 17; that would apparently be acceptable to the Yugoslav delegation.

The meeting rose at 12.50 p.m.

## **TWENTY-SIXTH MEETING**

*Wednesday, 26 March 1958, at 10.30 a.m.*

*Chairman: Mr. K. H. BAILEY (Australia)*

### **Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)**

#### **ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE [A/CONF.13/C.1/L.6, L.15, L.23 to L.30] (continued)**

1. The CHAIRMAN announced that the working group consisting of the authors of amendments to article 15, paragraph 3, had still not completed its work, and he therefore proposed that the Committee should continue hearing explanations of the proposals for additional paragraphs.

#### *Additional paragraphs*

2. Mr. KATICIC (Yugoslavia), introducing his proposal (A/CONF.13/C.1/L.15) for the addition of a new paragraph 7, pointed out that fishing boats presented a special problem in relation to the right of innocent passage because some were equipped with very modern gear that could be lowered and taken up rapidly, so that it might be difficult to prevent their fishing in the territorial sea of another State while ostensibly traversing it for navigational purposes only. The right of the coastal State to issue regulations in that regard was clearly established by international practice, in support of which contention he quoted provisions from the International Convention of 1882 for Regulating the Police of the North Sea Fisheries, the Convention of 1901 between Great Britain and Denmark for Regulating the Fisheries outside Territorial Waters in the

Ocean surrounding the Faroe Islands and Iceland, the Treaty of Commerce and Navigation between Portugal and Spain of 1893, the United Kingdom Sea Fisheries Act of 1883, and the Canadian legislation pertaining to the Convention of 1930 between the United States and Canada for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries of the Fraser River System. His delegation's proposal was modelled on the provisions contained in the first two conventions mentioned.

3. Mr. OZERE (Canada) said that articles 15 to 18 were clearly not designed to meet the problems raised by extending the right of innocent passage to fishing vessels. Most States did not allow foreign vessels to fish within their territorial sea and enforcement of that prohibition would be rendered extremely difficult if the articles in their present form were to be made applicable to such vessels. It would be extremely hard to prove an offence against a fishing vessel which had fished in the territorial sea of another State, unless it were caught in the act, since it would be difficult to prove that the fish on board had actually been caught within the territorial sea. Most modern fishing vessels being equipped with electronic devices could detect patrols a long way off, in time to stop fishing and stow away their gear.

4. There were not many instances when it was necessary for fishing vessels to enter the territorial sea of another State. But it might be desirable to extend the right of innocent passage to fishing vessels passing through straits connected with the open sea.

5. The Yugoslav proposal appeared to offer the most satisfactory solution and his delegation would support it with the substitution of some such wording as "in areas and under conditions prescribed by the coastal State" for the words "provided they observe the laws and regulations of the coastal State". The actual drafting could be left to the working party.

6. Mr. COMAY (Israel) asked for clarification on a point which concerned a fundamental principle. At first sight, the Yugoslav text and the Canadian amendment thereto appeared inconsistent with the right of innocent passage (which, as the Commission had made clear in paragraph 1 of its commentary, extended to fishing boats), by making it dependent on the discretion of the coastal State.

7. The CHAIRMAN observed that that point would be taken into consideration during the substantive discussion. In the meantime, he suggested that the delegations of Canada, Denmark, Italy and Yugoslavia, if they were agreeable, should work out a single text concerning the right of innocent passage for fishing vessels.

*It was so agreed.*

#### *Paragraph 3 (continued)*

8. The CHAIRMAN asked whether he had been correct in supposing that the French amendment (A/CONF.13/C.1/L.6) constituted a drafting change which did not require elaboration in full committee, and could be explained in the working group.

9. Mr. RUEDEL (France) was inclined to regard the amendment as a drafting change designed to remove a possible ambiguity in the original text which might give

the impression that acts which rendered passage no longer innocent must have been premeditated before the vessel had entered the territorial sea. If that possible ambiguity were removed by the adoption, for example, of the United States proposal (A/CONF.13/C.1/L.28), the French amendment would automatically fall.

10. Mr. CARDOSO (Portugal) observed that the text for new paragraph 7 proposed by the Yugoslav delegation and the Canadian amendment thereto might become unnecessary if paragraph 3 were redrafted in such a manner as to safeguard adequately the interests of the coastal State.

11. The guarantee of the right of innocent passage in article 15 only applied to the territorial sea, so that if article 5, paragraph 3, were adopted, provision must be made to ensure that the right also extended to passage through areas normally used for international traffic which, as the result of the establishment of a straight baseline, had become internal waters. Paragraph 1 of the new article 15 *a* proposed by his delegation (A/CONF.13/C.1/L.26) was intended to meet that eventuality. The amendment would of course be withdrawn if the provision in article 5, paragraph 3, were rejected. The Portuguese delegation would have preferred to that provision one delimiting the inner boundary of the territorial sea in such manner as would ensure that international traffic lanes did not have to pass through internal waters.

#### *Paragraph 4*

12. Sir Gerald FITZMAURICE (United Kingdom) said that his delegation had proposed (A/CONF.13/C.1/L.24) the deletion of the word "ordinary", because it was redundant.

13. Mr. CARDOSO (Portugal) supported that amendment and withdrew his own (A/CONF.13/C.1/L.26, article 15 *a*, paragraph 2).

#### *Paragraph 5*

14. Mr. CARDOSO (Portugal) explained that his amendment (A/CONF.13/C.1/L.26, article 15 *a*, paragraph 4) was necessary because, as at present drafted, paragraph 5 would require submarines of the coastal State to navigate on the surface.

15. Mr. RUEDEL (France) believed that the Portuguese amendment might be unnecessary since it was self-evident that the requirements did not apply to submarines of the coastal State. It was, on the other hand, necessary to stipulate as proposed in the French amendment (A/CONF.13/C.1/L.6) that foreign submarines should show their flag.

16. The CHAIRMAN announced that all substantive amendments to article 15 had now been explained by their authors.

#### ARTICLE 16 (DUTIES OF THE COASTAL STATE) (A/CONF.13/C.1/L.16, L.18, L.37, L.38, L.46)

#### *Paragraph 1*

17. Sir Gerald FITZMAURICE (United Kingdom) said that his delegation had proposed (A/CONF.13/

C.1/L.37) the deletion of the latter part of the second sentence because the obligation which it would impose on a coastal State was not recognized in existing international law, and the wording raised manifold problems of a political nature. Furthermore, no State could comply with such an obligation without subjecting the passage of every ship to the closest supervision, and thus hindering the freedom of navigation.

18. Mr. YINGLING (United States of America) explained that his delegation's amendment (A/CONF.13/C.1/L.38) had also been prompted by the belief that the second sentence embodied certain rules unknown to the law of nations. Compliance with those rules would impose on the coastal State a heavy economic burden, and there was no justification for introducing the notion of absolute liability. The provision was based on a statement of the International Court of Justice in the Corfu Channel Case,<sup>1</sup> but that statement had only been made *obiter*, and had never been intended to serve as the basis for a codifiable rule. Lastly, he stressed that the sentence had only been adopted in the International Law Commission by the slimmest majority imaginable.

19. Mr. NIKOLAEV (Union of Soviet Socialist Republics) pointed out that the amendment (A/CONF.13/C.1/L.46) submitted jointly by the delegations of the U.S.S.R. and Bulgaria proposed the deletion of the first sentence of paragraph 1 and the addition of a wholly new article. Since article 16 appeared in subsection A, which contained general rules, it would apply not only to commercial and other non-military vessels but also to warships. The latter, however, were subject to a special régime, as was confirmed by article 24, and the distinction between the two categories of craft should be emphasized. That could best be achieved by the removal of the first sentence of article 16 out of its present context and its reinsertion in a wholly separate provision, which would expressly state that the duty not to impose restrictions did not apply in the case of warships. Moreover, the new draft article also stressed that the coastal State must permit innocent passage without discrimination and that ships must adhere to regular channels and observe the rules laid down by the coastal State. Such a provision was wholly consistent with international law and the practice of States.

#### Paragraph 2

20. Sir Gerald FITZMAURICE (United Kingdom), explaining point 1 of his delegation's amendment to paragraph 2 (A/CONF.13/C.1/L.37) said that the word "appropriate" seemed generally more suitable, as obstructions to navigation varied greatly in severity and in some cases a warning might even be wholly unnecessary. Furthermore, no State could reasonably be required to maintain a constant survey of its waters. His delegation had also suggested the insertion, after the word "navigation", of the words "within its territorial sea", because it felt that some countries might find it impossible to give notice of every danger to navigation in the entire world.

<sup>1</sup> *The Corfu Channel Case, Judgment of April 9th, 1949: I.C.J. Reports, 1949, p. 22.*

#### Additional paragraph

21. Mr. KATICIC (Yugoslavia) explained that his delegation had proposed (A/CONF.13/C.1/L.16) the addition of a new paragraph 2, to be inserted between the two present paragraphs, because the accepted principle that each State was responsible for the safety of navigation in its territorial sea had never yet been expressly stated in an international instrument. The new paragraph should commend itself to the advocates of the three-mile limit, for an explicit confirmation of the duty to assure the safety of ships in transit ought to discourage States from demanding a greater breadth of territorial waters than they could effectively police.

The meeting rose at 12.45 p.m.

### TWENTY-SEVENTH MEETING

Thursday, 27 March 1958, at 10.45 a.m.

Chairman: Mr. K. H. BAILEY (Australia)

#### Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)

ARTICLE 17 (RIGHTS OF PROTECTION OF THE COASTAL STATE) [A/CONF.13/C.1/L.6, L.17, L.31, L.37, L.39, L.44, L.47, L.51, L.52, L.56]

#### Paragraph 1

1. Mr. KATICIC (Yugoslavia) said that his delegation had submitted its amendment (A/CONF.13/C.1/L.17) because it believed that the conditions in which the coastal State was permitted to take action should be stated in full and not merely by reference to rules of international law. The relevant principles should always be set forth explicitly.

2. Sir Gerald FITZMAURICE (United Kingdom) said that the United Kingdom amendment (A/CONF.13/C.1/L.37) had merely been consequential on its previous amendment to article 15, paragraph 3 (A/CONF.13/C.1/L.24). In view of the new United States proposal on that paragraph (A/CONF.13/C.1/L.28/Rev.1), which the United Kingdom delegation endorsed, the consequential amendment was no longer necessary and he would withdraw it.

3. Mr. DEAN (United States of America) said that the latter part of article 17, paragraph 1, seemed to be merely a definition of the type of passage that was not innocent. If the new United States proposal on article 15, paragraph 3, which defined innocent passage, was adopted, article 17, paragraph 1, could be considerably shortened. Furthermore, the words "to protect itself against" did not strictly correspond to the original French "prévenir" and implied that the coastal State could not take preventive action. For those reasons, his delegation believed that its substitute text (A/CONF.13/C.1/L.39) would be both more accurate and simpler.

4. Mr. CARDOSO (Portugal) said that he would not press his delegation's amendment (A/CONF.13/C.1/

L.47) but hoped that the United States delegation would amend its own suggestion so as to make due provision for the exceptional situations that would arise through the application of article 5.

5. Mr. VERZIJL (Netherlands) said that paragraph 4 of the article proposed by his delegation (A/CONF.13/C.1/L.51) appeared fully consistent with the new United States proposal on article 15, paragraph 3, as it expressly authorized preventive action. Since all the amendments to article 17, paragraph 1, seemed reconcilable he proposed that they should be referred to a working party composed of the sponsoring delegations.

*It was so agreed.*

#### Paragraph 3

6. Mr. KRISPIS (Greece) said that his delegation's proposal (A/CONF.13/C.1/L.31) to insert after the word "may" and before the word "suspend" the words "without discrimination" was designed to confirm a general principle of international law.

7. Sir Gerald FITZMAURICE (United Kingdom) explained that his delegation had proposed (A/CONF.13/C.1/L.37) that the word "definite" should be replaced by the word "specified" because paragraph 3 clearly implied that the coastal State would be obliged to specify the areas concerned. Point 2 of the United Kingdom amendment sought to make the condition in the first sentence more objective.

8. Mr. DEAN (United States of America) pointed out that the United States amendment (A/CONF.13/C.1/L.39) proposed the deletion of the words limiting the powers of the coastal State merely to cases where the suspension was essential for the protection of the rights referred to in paragraph 1 because, in the light of the actual wording of paragraph 1, that clause had no discernible meaning. Instead, his delegation had proposed that suspension should be permissible where it was essential for the purpose of "security", a term which covered all the military needs that would normally dictate that action. Furthermore, it should be stressed that the right of passage which could be suspended in such cases was the right of innocent passage and, as had been held by the International Court of Justice in the Corfu Channel Case, no suspension should be permissible in straits used for international navigation.<sup>1</sup>

9. Mr. IOSIPESCU (Romania) explained that his delegation had proposed (A/CONF.13/C.1/L.44) the deletion of the word "temporarily" because that adverb lacked juridical clarity. The only construction that could be placed on it was "for a specified time", while the reasons for the suspension might be such as to make the advance determination of its duration impossible. Suspension might be necessary for an indefinite term.

10. Mr. CARDOSO (Portugal) felt that the Portuguese amendment (A/CONF.13/C.1/L.47) was self-explanatory.

11. Mr. VERZIJL (Netherlands) said that his delegation's amendment, set out in paragraph 1 of the proposed article (A/CONF.13/C.1/L.51), covered exactly

the same points as the two changes suggested by the United Kingdom. It also emphasized that not only was publicity necessary but also that until it had been duly published the suspension would not become effective.

#### Paragraph 4

12. Sir Gerald FITZMAURICE (United Kingdom) believed that the additional words suggested by his delegation (A/CONF.13/C.1/L.37) should not provoke any controversy, as they were merely a logical continuation of the existing text of the article. Their object was to ensure that passage was not impeded in waters which were essential to maritime communications. The main purpose of any maritime voyage was, after all, to arrive at the port of destination.

13. Mr. DEAN (United States of America) said that, as the rule in paragraph 4 was based on the decision on the Corfu Channel Case, his delegation had felt obliged to submit a text (A/CONF.13/C.1/L.39) which was more consistent with that decision. The International Court of Justice had not used the word "suspension" but had expressly said that the coastal State must not "prohibit" innocent passage in such straits. Furthermore, the Court's judgement did not contain the word "normally".

14. Mr. CARDOSO (Portugal) explained that the purpose of his delegation's amendment (A/CONF.13/C.1/L.47) was to emphasize that all sea lanes necessary for international navigation should be open at all times.

15. Mr. VERZIJL (Netherlands) pointed out that in paragraph 3 of their proposed article (A/CONF.13/C.1/L.51) his delegation had also omitted the word "normally" and had not merely inserted the words "sea lanes", but had substituted them for the original "straits" (A/CONF.13/C.1/L.51). The latter term was purely geographical and somewhat uncertain. The Netherlands amendment also amplified the text, in order to stress that ships should always be authorized to traverse the territorial sea for the purpose of entering a port.

16. Mr. GUTIERREZ OLIVOS (Chile) said that point 1 of the Chilean amendment (A/CONF.13/C.1/L.56) referred to artificial channels. Such man-made waterways were in exactly the same position as straits and deserved special mention. Point 2 of the amendment took into account the fact that, in certain waterways, special considerations such as dangerous currents or adverse weather conditions might at times necessitate the suspension of passage as a means of ensuring the safety of shipping.

#### Additional paragraphs

17. Mr. RUEDEL (France) said that the existence of nuclear-powered ships would inevitably raise many new problems. The classical type of safety regulations governing the movement of ships carrying explosive, toxic or otherwise dangerous goods would obviously prove inadequate. Before permitting the crew to disembark or unload, and even before allowing the ship to enter the port precincts, the local authorities would have to take a whole series of special precautionary measures. They might even be obliged to direct the ship to a

<sup>1</sup> *I.C.J. Reports 1949*, p. 28.

specified port with the necessary repair and maintenance facilities. Ultimately the whole matter would doubtless be governed by a special convention, but his delegation felt that, in the meantime, the coastal State should be expressly authorized to take the measures necessary to ensure safety. It had therefore proposed (A/CONF.13/C.1/L.6) the insertion of a new paragraph in article 17.

18. Mr. VERZIIL (Netherlands) explained that the new paragraph 2 proposed by his delegation (A/CONF.13/C.1/L.51) had been prompted by a desire to ensure a proper balance between the sovereign rights of the coastal State over its territorial belt and the right of innocent passage enjoyed by others. As long as innocent passage was not prejudicial to the security of the coastal State, his delegation firmly believed that the mere provenance or destination of the ship could never be sufficient cause for impeding its voyage.

19. Mr. ITURRALDE (Bolivia) said that his delegation had submitted its amendment (A/CONF.13/C.1/L.52) in the belief that a land-locked State's right to maintain communications through the ports nearest to its frontiers was of a wholly special nature. The rights of the coastal State to take precautionary measures were not being questioned and his delegation was not suggesting that ships flying the flag of a land-locked country should enjoy special privileges, but it should be expressly stressed that, for such a country, the right to enter the ports of its neighbours and to depart therefrom was a matter of vital concern.

20. The CHAIRMAN observed that as the Bolivian proposal (A/CONF.13/C.1/L.52) had a direct bearing on the questions being considered by the Fifth Committee, he proposed to consult its Chairman as to how the discussion of the two committees on it could best be co-ordinated.

*It was so agreed.*

21. The CHAIRMAN suggested that the delegations of Chile, France, Greece, the Netherlands, Portugal, the United Kingdom, the United States and Yugoslavia should be asked to confer together with a view to establishing, if possible, a single text for paragraphs 1, 3 and 4 of article 17 as well as for the additional paragraphs, since their amendments seemed, broadly speaking, to raise the same questions of principle. He had not suggested that the Romanian delegation should take part in that consultation because its amendment (A/CONF.13/C.1/L.44) to paragraph 3 sought to establish the exact opposite to what was being proposed by other delegations.

*It was so agreed.*

ARTICLE 18 (DUTIES OF FOREIGN SHIPS DURING THEIR PASSAGE) [A/CONF.13/C.1/L.19, L.32, L.36, L.37, L.40, L.45, L.47, L.51]

22. Mr. KATICIC (Yugoslavia) said that he had already explained at the 25th meeting the reason for his proposal to delete the words "and other rules of international law" throughout the draft wherever they occurred, though admittedly the phrase had different implications in different articles. In the present instance, the purpose of the amendment (A/CONF.13/C.1/L.19) was not to remove all limitation on the jurisdiction of

the coastal State in regard to passage by foreign vessels through its territorial sea but only to avoid a general reference to other rules. If that amendment were rejected, his delegation had submitted an alternative so as to specify precisely what rules were applicable. Even though the criterion offered was a subjective one, it was preferable to the general formulation adopted by the Commission.

23. Mr. KRISPIS (Greece) said that the text proposed by his delegation (A/CONF.13/C.1/L.32) was modelled on a provision contained in the draft adopted at the Conference for the Codification of International Law held at The Hague in 1930<sup>2</sup> and re-stated the law as it stood, the reason being that paragraph (5) of the International Law Commission's comment on article 18 might give rise to conflicting interpretations. Greece as a maritime nation was anxious to prevent any discrimination between vessels of different nationalities.

24. Mr. DE LUNA (Spain) said that the Spanish proposal (A/CONF.13/C.1/L.36) had been prompted by the belief that it would be useful to reaffirm the principle of the jurisdiction of the flag State.

25. Sir Gerald FITZMAURICE (United Kingdom) explained that point 1 of the United Kingdom amendment (A/CONF.13/C.1/L.37) was largely a drafting one, but his delegation attached importance to the use of the word "published" so as to ensure that the laws and regulations of the coastal State were made known to mariners.

26. At one stage, the Commission had inserted in its draft an enumeration of the types of laws and regulations applicable but had later modified the text on the ground that it might fail to be exhaustive. His delegation considered that in fact only laws and regulations pertaining to the matters mentioned in its second amendment were really applicable, so that such a text would make for greater precision. However he must reserve his delegation's position on the amendment because it had been submitted on the assumption that article 17, paragraph 1, would be adopted substantially in the form proposed by the Commission. If, on the other hand, that paragraph to which there were a considerable number of amendments were modified, point 2 of the United Kingdom amendment to article 18 might have to be redrafted or possibly even withdrawn.

27. Mr. DEAN (United States of America) said that the reasons for the United States proposal had been stated in document A/CONF.13/C.1/L.40.

28. Mr. GARCÍA ROBLES (Mexico) said that the aim of the Mexican amendment (A/CONF.13/C.1/L.45) was to emphasize that the phrase "in conformity with the present rules and other rules of international law" applied to those ships, the duties of which were defined in article 18. Hence the proposed transposition of that phrase.

29. Mr. CARDOSO (Portugal) said that the Portuguese amendment (A/CONF.13/C.1/L.47) which was mainly one of form, was designed to remove the fears of some coastal States concerning the passage of fishing boats

<sup>2</sup> Ser. L.o.N.P. 1930 V. 14, p. 166.

through their territorial sea and to render the present draft consistent with the provisions in a number of existing international treaties.

30. Mr. VERZIJL (Netherlands) said that paragraph 1 in his proposal (A/CONF.13/C.1/L.51) had been inspired by the desire to simplify the text and to bring out the main element in the article — namely, that the laws and regulations of the coastal State applied fully to foreign ships traversing its territorial sea and that its sovereignty was in no way diminished by the right of innocent passage. He had omitted the word “transport” which appeared in the Commission’s text because its connotation might prove undesirably wide in the context; it was, after all, a matter of regulations pertaining to navigation.

31. Paragraph 2 had been inspired by the same considerations as those put forward by the Greek representative.

ARTICLE 19 (CHARGES TO BE LEVIED UPON FOREIGN SHIPS) [A/CONF.13/C.1/36; 37]

32. Mr. DE LUNA (Spain) said that the purpose of his delegation’s amendment (A/CONF.13/C.1/L.36) was to make it clear that no charges might be levied in respect of the exercise of the right of innocent passage and that charges could only be levied for services rendered.

33. Sir Gerald FITZMAURICE (United Kingdom) said that the United Kingdom amendments (A/CONF.13/C.1/L.37) had been put forward in the interests of precision.

ARTICLE 20 (ARREST ON BOARD A FOREIGN SHIP) [A/CONF.13/C.1/L.6, L.20, L.33, L.37, L.41, L.53]

#### *Paragraph 1*

34. Mr. KRISPIS (Greece) said that his delegation had suggested (A/CONF.13/C.1/L.33) the deletion of sub-paragraph *a* because its substance was already covered in sub-paragraph *b*.

35. Sir Gerald FITZMAURICE (United Kingdom) said that the United Kingdom amendments (A/CONF.13/C.1/L.37) were aimed to introduce greater clarity.

36. Mr. DEAN (United States of America) explained the reason for the submission of the United States amendment (A/CONF.13/C.1/L.41). It was the practice of most States not to arrest or conduct criminal investigations on board foreign ships passing through their territorial waters save in the instances mentioned in sub-paragraphs *a*, *b* and *c*, but the declaration in the Commission’s text that “A coastal State may not take any steps...” was a departure from the doctrine of international law that the coastal State had unlimited criminal jurisdiction within its territorial sea.

37. Mr. BHUTTO (Pakistan) said that although it might be held that the substance of his delegation’s amendment (A/CONF.13/C.1/L.53) was already covered in sub-paragraph *a* it was desirable to be quite explicit so as to remove any possible uncertainty.

The meeting rose at 12.50 p.m.

## TWENTY-EIGHTH MEETING

Thursday, 27 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

### Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)

ARTICLE 20 (ARREST ON BOARD A FOREIGN SHIP) [A/CONF. 13/C.1/L.6, L.20, L.33, L.37, L.41, L.53] (continued)

#### *Paragraph 2*

1. Mr. RUEDEL (France) said that the change proposed by his delegation in article 20, paragraph 2 (A/CONF.13/C.1/L.6), was merely a drafting amendment.

2. Mr. KATICIC (Yugoslavia), introducing his delegation’s amendment to paragraph 2 (A/CONF.13/C.1/L.20), said that it was concerned with a question which in actual practice gave rise to disputes, and which his country wished to see solved by the provisions of the article under consideration.

3. Mr. READ (United States of America), introducing his delegation’s amendment to paragraph 2 (A/CONF. 13/C.1/L.41), said that it was similar to that proposed by the French delegation. The words “lying in its territorial sea or” should be deleted, since ships lying in the territorial sea were not in innocent passage as defined in article 15, paragraph 4.

4. Sir Gerald FITZMAURICE (United Kingdom) said that the change proposed by his delegation in paragraph 2 (A/CONF.13/C.1/L.37) was merely a drafting amendment.

5. The CHAIRMAN suggested that the representatives of France, the United States and the United Kingdom might confer together with a view to drafting a joint text.

#### *Additional paragraphs*

6. Mr. KRISPIS (Greece), introducing the new paragraph 3 which his delegation proposed to add to article 20 (A/CONF.13/C.1/L.33), said that in the cases described in paragraphs 1 and 2 of that article many coastal States, before taking any steps, advised the consular authority of the ship’s flag State and facilitated contact between that authority and the ship’s crew. He felt that such action should become a rule of international law.

7. Sir Gerald FITZMAURICE (United Kingdom) said that the new paragraph 4 proposed by his delegation (A/CONF.13/C.1/L.37), followed logically upon the provisions of article 20. Under those provisions the coastal State did not take cognisance of offences committed on board a ship during its passage through the territorial sea, in cases where the offences were confined to the ship itself and did not directly affect the coastal State. If that view was accepted by the Conference, then logically provision should also be made for the possibility that a coastal State might seek to exercise jurisdiction over a ship or conduct an investigation in respect of an offence committed elsewhere than on board the

ship during its passage through the territorial sea. The object of the United Kingdom proposal was to extend the régime of article 20 in order to ensure that, in the case of an offence committed outside the territorial sea and before the ship's arrival in the territorial sea, the authorities of the coastal State would not be in a position to conduct an investigation or to arrest any person in respect of a vessel which was merely passing through the territorial sea of that State.

ARTICLE 21 (ARREST OF SHIPS FOR THE PURPOSE OF EXERCISING CIVIL JURISDICTION) [A/CONF.13/C.1/L.6, L.36, L.37, L.42, L.47, L.49, L.51]

8. Mr. YINGLING (United States of America), introducing his delegation's amendment (A/CONF.13/C.1/L.42), said that the word "stopping" was a better translation of the French word "arrêt" than "arrest".

9. The United States amendment to paragraph 1 had been submitted because a limitation of the civil jurisdiction of the coastal State, such as that provided in article 21, paragraph 1, of the International Law Commission's text, was not an established rule of international law. The amendment was designed to indicate that the coastal State's civil jurisdiction extended to the limits of its territorial sea.

10. The reasons for the United States delegation's amendment to paragraph 2 were, first, that international law did not recognize the curtailment of the coastal State's civil jurisdiction as set forth in article 21, paragraph 2; and secondly, that the proposal that such civil jurisdiction should be exercised with due regard to the interests of navigation gave recognition to the fact that the interests of international shipping must be considered.

11. His delegation suggested the deletion of paragraph 3 because that paragraph would become redundant if the United States amendment to paragraph 2 was adopted.

12. Mr. CARDOSO (Portugal) introduced his delegation's amendment to the title of article 21 (A/CONF.13/C.1/L.47).

13. Mr. RUEDEL (France) said that the French proposal regarding article 21, paragraph 2 (A/CONF.13/C.1/L.6) was merely a drafting amendment.

14. Mr. DE LUNA (Spain), referring to the new wording suggested for article 21 by his delegation (A/CONF.13/C.1/L.36), said that it would bring that article into line with article 18.

15. Sir Gerald FITZMAURICE (United Kingdom) proposed that article 21 should be deleted and replaced by the resolution set out in document (A/CONF.13/C.1/L.37). The matters covered by the International Law Commission's draft article 21 were already dealt with at great length, and more satisfactorily, in the Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, signed at Brussels on 10 May 1952. Hence it seemed undesirable that a new convention following so soon after the Brussels Convention should lay down a set of principles in three very short paragraphs which would be far less complete than the provisions of the former convention.

16. Mr. SÖRENSEN (Denmark), introducing the new paragraph 4 submitted by his delegation (A/CONF.13/C.1/L.49), said that his delegation was proposing the new paragraph with some reluctance because it realized that the new provision dealt with questions of private law which were not touched upon in the section of the draft under discussion. His delegation had thought, however, that the Committee might find the additional paragraph justified. The arrest of a merchant vessel was a very serious step which might cause very heavy losses to the owners, and the coastal State should therefore enact laws under which the owner could be compensated for losses suffered in consequence of such an arrest if judicial proceedings proved that the claim for which the arrest was made was not sustained.

17. Mr. VERZIJJ (Netherlands), introducing the new paragraph 4 proposed by his delegation (A/CONF.13/C.1/L.51), said that the relationship between existing conventions and the new rules which the Conference was considering was a very delicate matter. His delegation considered therefore that some reference to the Brussels Convention should be made in article 21.

18. He referred briefly to the amendments submitted by his delegation to articles 15, 17 and 18 (A/CONF.13/C.1/L.27, L.51), and emphasized that it wished the meaning of the right of innocent passage to be so clearly explained in the rules that no conflict would ever arise as to the extent of that right.

19. His delegation supported the United Kingdom amendments to the headings of certain provisions (A/CONF.13/C.1/L.37).

20. Sir Gerald FITZMAURICE (United Kingdom) briefly reviewed the amendments proposed by his delegation to certain headings (A/CONF.13/C.1/L.37). He drew attention to those amendments, because some of them related to articles 15, 20 and 21, which were at present being considered by the Committee.

21. Mr. DE LUNA (Spain) suggested that the Committee should resume its discussion of the amendments relating to article 15.

*It was so agreed.*

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1/L.6, L.15, L.23 to L.27, L.28/Rev.1, L.29, L.30] (continued)<sup>1</sup>

*Paragraph 3*

22. Mr. YINGLING (United States of America), introducing his delegation's revised proposal regarding paragraph 3 of article 15 (A/CONF.13/C.1/L.28/Rev.1), said that it had been approved by the working group. It was the intention of the amendment to indicate that the sole test of the innocence of a passage was whether or not it was prejudicial to the security of the coastal State. The working group felt that the text submitted gave the greatest measure of freedom of passage without in any way endangering the sovereignty of the coastal State. The group had realized that the

<sup>1</sup> Resumed from the 26th meeting.



word "security" had no exact or precise meaning but considered that it should be regarded as implying that there should be no military or other threats to the sovereignty of the coastal State. It did not regard the word "security" as relating to economic or ideological security.

23. The second sentence of the amendment was meant to indicate that a ship in innocent passage must conform to the laws and regulations of the coastal State. However, such laws and regulations could not prohibit innocent passage.

24. Mr. VERZIIL (Netherlands) supported the amendment.

25. Sir Gerald FITZMAURICE (United Kingdom) said he would have preferred paragraph 3 to begin with the words "Passage is innocent so long as it is not exercised or carried out in a manner prejudicial to the security of the coastal State", since the United Kingdom Government had always felt that the real test of innocence of passage was not the nature of the passage but the way in which that passage was carried out. However, his delegation had decided to support the revised amendment because it distinguished between the concept of innocence of passage and that of the obligation of a vessel in passage to conform to the laws and regulations of the coastal State. Those two aspects had not been clearly set out in the International Law Commission's draft.

26. Mr. KATICIC (Yugoslavia) said that the working group, after much discussion, had been unable to find a satisfactory substitute for the term "security". The Yugoslav delegation considered that the term in question covered more than merely military security.

27. Mr. SÖRENSEN (Denmark) said the revised United States proposal was unsatisfactory because it referred to passage itself as being innocent if not prejudicial to the security of the coastal State. Such a text was inconsistent with existing international law and it was not in the interests of the international community to alter the law in that respect. The proposed new formula would enable a State to claim that the actual passage of a ship was prejudicial to its security. A submission along those lines had been made in the Corfu Channel Case when it had been claimed by one of the parties to that case that the ships concerned were engaged in a mission which it considered contrary to its security; the International Court of Justice, however, had not accepted that submission, and had gone on to consider the manner in which passage was carried out in order to determine whether it was innocent.<sup>2</sup>

28. For those reasons, the Danish delegation preferred the text of paragraph 3 as drafted by the International Law Commission which meant, in effect, that passage ceased to be innocent only when acts prejudicial to the security of the coastal State were committed. His delegation favoured the drafting changes proposed by the United Kingdom delegation (A/CONF.13/C.1/L.24). It also thought that the words "or to other rules of international law" should be retained, because the rules which the Committee was discussing were not exhaustive.

29. Mr. TUNCEL (Turkey) said his delegation would propose an amendment to retain the words "or to other rules of international law" in article 15, and press it to a vote if the Yugoslav amendment to article 1, paragraph 2 (A/CONF.13/C.1/L.57) was adopted; in that event, the Turkish delegation would consider it essential that a reference to "other rules of international law" should appear in article 15.

30. Mr. GUTIERRIEZ OLIVOS (Chile) agreed with the representatives of Denmark and Turkey that the International Law Commission's text was more complete than that contained in the revised United States proposal. The latter appeared to establish a presumption of innocence and to place upon the coastal State the onus of proving that passage was not innocent.

31. The revised United States proposal, by making the security of the coastal State the sole criterion of the innocence of passage, appeared to enact a new rule of international law rather than to codify existing law. The Hague Conference and the International Law Commission had both concluded that the coastal State had rights in the territorial sea which went far beyond the mere protection of its security. That view was consistent with State practice and the opinions of writers. The coastal State had sovereign rights over the territorial sea in the same manner as over its land domain; there was no doubt that it had interests other than those of security to protect in its territorial sea.

32. Mr. BA HAN (Burma) said that the words in the revised United States proposed "passage is innocent so long as it is not prejudicial . . ." appeared to call for the proof of a negative. A positive fact was easier to prove; he therefore suggested that the beginning of paragraph 3 should be re-worded to read: "passage is innocent unless it is prejudicial . . ."

33. He agreed with the representatives of Denmark and Turkey that it would be desirable to retain the reference to other rules of international law. If the words in question were restored, and the drafting change he suggested were made, he would be prepared to support the revised United States proposal.

34. Mr. CARMONA (Venezuela) supported the revised United States proposal. It was undesirable to refer to other rules of international law because the captain of a patrolling vessel could not be expected to be an expert in international law; he had to follow a set of precise rules. Reference to the present rules was therefore sufficient.

35. Mr. COMAY (Israel) said that some of the changes proposed in the revised United States text commended themselves to his delegation, such as the distinction drawn between the innocence of the passage and the conformity with rules, and the deletion of mention of "other rules of international law". On the other hand, the International Law Commission's text was preferable on the aspect of prejudice to the security of the coastal State, since it was the actual conduct of the vessel while exercising the right of innocent passage rather than the passage itself which had to be taken into account.

36. Mr. GARCÍA ROBLES (Mexico) asked the United States representative if the working group had con-

<sup>2</sup> *I.C.J. Reports, 1949, p. 30.*

sidered the question of who was to judge whether passage was prejudicial to the security of the coastal State.

37. He also asked whether the working group had felt that the criterion of security covered also the other interests of the coastal State, such as the fiscal interests to which the International Law Commission had referred in paragraph 4 of its commentary on article 15.

38. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said he shared the misgivings expressed by several representatives regarding the revised United States proposal, which, by referring to the passage itself as not being prejudicial to the security of the coastal State, made a subjective interpretation of the rule possible. The text drafted by the International Law Commission was much more objective because it referred to a ship using the territorial sea for committing acts prejudicial to the security of the coastal State.

39. Another reason why the International Law Commission's text was preferable was that it did not separate the reference to "the present rules" from the main provision, whereas the revised United States text consisted of two separate clauses.

40. Lastly, the Soviet Union delegation considered that a reference to "other rules of international law" was essential; such rules existed, and should not be ignored.

41. His delegation was prepared to accept any drafting improvements, such as that put forward by the Burmese delegation.

42. Mr. STABELL (Norway) said his delegation preferred the article as drafted by the International Law Commission in so far as it referred to "committing any acts prejudicial to the security of the coastal State". The language used in the first sentence of the revised United States proposal would tend to leave the coastal State too much latitude in judging whether passage was innocent or not.

43. His delegation approved, however, of the division of the paragraph into two separate sentences. The paragraph dealt with two distinct questions: firstly, the conditions which had to be fulfilled by a ship in order that its passage should be innocent; and secondly, the extent of the jurisdiction of the coastal State. It was desirable to keep those two ideas separate.

44. His delegation also agreed that the words "or contrary to the present rules or to other rules of international law" which appeared in the International Law Commission's text should not be included among the conditions to be fulfilled by a ship in order that its passage should be innocent. If the proposed rules were to be of any value for the protection of the right of innocent passage, it was essential that they should be precise and definite in order to leave as little room as possible for doubt and controversy.

45. His delegation accordingly favoured a combination of the International Law Commission's text with that of the revised United States proposal. The first part of the Commission's text, down to the words "coastal State", could be retained as the first sentence of the paragraph, to be followed by the second sentence of the United States proposal.

46. Mr. YINGLING (United States) said he accepted

the drafting change proposed by the representative of Burma.

47. In reply to the first question of the representative of Mexico, he said that it was for the coastal State to determine in the first instance whether passage was prejudicial to its security. The coastal State would, of course, have to justify its decision to the flag State of the ship concerned and to the international community.

48. In reply to the second question of the Mexican representative, he said that no reference to the interests of the coastal State, as distinct from its security, had been introduced into the draft because the term "interests" was much too broad and its use would have meant that the coastal State would have absolute discretion to say whether passage was innocent or not.

49. The working group had not considered it necessary to include a reference to "other rules of international law" for it was manifestly not the purpose of the codification to set aside any rules of international law which were not inconsistent with the provisions to be adopted by the Conference. In the absence of anything to the contrary, such rules of course stood.

The meeting rose at 6 p.m.

## TWENTY-NINTH MEETING

Friday, 28 March 1958, at 3 p.m.

Chairman: Mr. K. H. BAILEY (Australia)

### Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)

#### Paragraph 3 (continued)

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1/L.6, L.23, L.28/Rev.1, L.64 to L.66, L.73, L.74] (continued)

1. Mr. SHUKAIRI (Saudi Arabia), introducing his amendment (A/CONF./13/C.1/L.66) to the United States revised proposal (A/CONF.13/C.1/L.28/Rev.1), deplored the number of amendments submitted to the International Law Commission's draft article, which he felt should be approved by the Committee. He would therefore withdraw his amendment if the United States representative would follow suit.

2. While he could agree with the first sentence of the United States proposal, he considered that the second sentence restricted the right of innocent passage. His delegation therefore wished to suggest that it should be amended to indicate that passage was not innocent when it was contrary "to the present rules or to other rules of international law".

3. Mr. SIKRI (India) said his delegation shared the doubts and misgivings expressed by certain other representatives at earlier meetings regarding the revised amendment submitted by the United States delegation and preferred the International Law Commission's text. The word "security" had different meanings in different contexts. The Supreme Court of India had held that the term "security of the State" mentioned in the Constitution of India did not include "public order", and

the Constitution had had to be amended accordingly. He had no doubt that in the context of article 15 public order would be covered by the expression "security of the State" and recalled that article 20, paragraph 1 (b) of the International Law Commission's draft used the words "the peace of the country or the good order of the territorial sea". He therefore proposed the insertion, in article 15, paragraph 3, after the words "prejudicial to" and before the words "the security", of the phrase "the peace, good order or" (A/CONF.13/C.1/L.73).

4. Mr. GARCÍA ROBLES (Mexico), speaking on behalf of the delegations of Chile, Ecuador, Haiti, Panama, Peru, Uruguay and Venezuela, suggested the insertion in the United States revised amendment of the words "or the interests" between the words "security" and "of the coastal State" (A/CONF.13/C.1/L.74), since the International Law Commission's commentary on article 15, paragraph 3, made reference to various interests.

5. Sir Gerald FITZMAURICE (United Kingdom) suggested that paragraph 3 should not be put to the vote until the amendments to articles 17 and 18 had been voted upon, in view of the close relationship between those articles and paragraph 3. Some of the fears expressed with regard to the drafting of paragraph 3 might be allayed when the Working Party's proposals concerning articles 17 and 18 were circulated.

6. He felt that there was a contradiction between the two sentences of the Saudi Arabian amendment to the United States revised proposal. The second sentence of that amendment went far beyond the concept of non-innocence of passage as it had existed traditionally for many decades and should therefore not be accepted.

7. Turning to the eight-Power amendment introduced by the representative of Mexico, he considered that any reference to the interests of the coastal State was also unacceptable, since it widened the whole concept to a degree which would make a farce of the right of innocent passage.

8. Mr. SHUKAIRI (Saudi Arabia) explained that the wording of the second sentence of the Saudi Arabian amendment had been taken from paragraph 3 of the International Law Commission's draft.

9. Mr. GARCÍA ROBLES (Mexico) pointed out that the sponsors of the eight-Power amendment had merely wished paragraph 3 of the revised United States draft to be amended in accordance with the wording used by the International Law Commission. However, if any member could suggest a more adequate expression than that proposed in the amendment, its sponsors would be willing to accept it.

10. Mr. COMAY (Israel) said that his delegation considered the first sentence of the United States revised amendment less satisfactory than the International Law Commission's text, but could support the second sentence. He therefore suggested that the two sentences be put to the vote separately. He supported the United Kingdom representative's suggestion that voting on paragraph 3 be deferred.

11. Referring to the Saudi Arabian amendment, he felt that the International Law Commission's text was preferable.

12. Sir Gerald FITZMAURICE (United Kingdom) said that paragraph 3 of article 15 of the International Law Commission's draft was not open to the same logical objection as the Saudi Arabian amendment, since it did not define non-innocent passage. He emphasized that the passage of a ship through territorial waters could be innocent even though the ship contravened certain rules of international law. For example, a ship might burn fuel which was not smokeless and might thus contravene a rule of international law, but it could not be said that its passage would constitute a threat to the peace, sovereignty, good order or security of the coastal State. Although his delegation had certain difficulties in accepting the United States revised proposal, he felt that in its two sentences the concept of what was or was not innocence of passage was kept entirely separate from the concept of what was or was not an infraction of some rule of international law.

13. He saw no objection to the insertion of the phrase suggested by the representative of India.

14. Mr. GUTIÉRREZ OLIVOS (Chile) said that the revised United States proposal had raised objections from two opposing points of view. On the one side, it had been criticized as allowing too much discretion to the coastal State in judging whether passage was innocent. On the other, it had been pointed out that the reference to the security of a coastal State was insufficient and that some provision had to be made for those interests to which the International Law Commission had referred in paragraph 3 of its commentary on article 15; it was to fill that gap that the Chilean delegation had co-sponsored the amendment expounded by the representative of Mexico.

15. Mr. SHUKAIRI (Saudi Arabia) said that his delegation was particularly anxious that the reference to other rules of international law should be retained. Freedom of navigation was not an absolute right; sovereignty itself was not absolute. Both had to be exercised in accordance with international law, and the International Law Commission had felt it necessary to make that fact clear in the fundamental articles dealing with sovereignty over the territorial sea and with the meaning of the right of innocent passage.

16. Mr. BA HAN (Burma) announced that he would submit in writing a revised text, on which he had agreed with the Saudi Arabian representative, and which he hoped would achieve a satisfactory compromise. The proposed text would state that passage was innocent unless it was prejudicial to the security of the coastal State or contrary to the present rules or to other rules of international law.<sup>1</sup>

17. The CHAIRMAN invited comments on the Romanian amendment (A/CONF.13/C.1/L.23) which had been introduced at the 25th meeting.

18. Sir Gerald FITZMAURICE (United Kingdom) said it was quite impracticable to require, as a condition of innocence, that passage should be for the purpose of the "normal" course of a ship. A ship might have no need to use the territorial sea of a State on one voyage, but on another might have to use the more sheltered

<sup>1</sup> Subsequently issued as document A/CONF.13/C.1/L.75.

waters of that sea owing to weather conditions. In some cases, the route taken by a ship often varied according to whether it was loaded or in ballast. Again, the mere presence of other ships could divert a ship out of the territorial sea or into it. His delegation therefore opposed the Romanian amendment, which was contrary to maritime practice.

19. Mr. YOKOTA (Japan) said that his delegation opposed the Romanian amendment, which would allow the coastal State to interfere unduly with the innocent passage of ships.

20. Mr. STABELL (Norway) said that it was impossible to determine the normal course for a ship. The course of a ship varied, chiefly according to weather conditions. The provision proposed in the Romanian amendment would place considerable restrictions on the right of passage and could well lead to ships having to avoid foreign territorial waters.

21. Mr. KRISPIS (Greece), Mr. CARDOSO (Portugal) and Mr. BARNES (Liberia) said that their delegations also opposed the Romanian amendment.

22. Mr. IOSIPESCU (Romania) said that the purpose of his amendment was to cover the case of hovering ships. In paragraph 4 of its commentary on article 15, the International Law Commission stated that such ships could not be regarded as engaged in innocent passage, but it considered that that was a matter of detail which could suitably be dealt with in the commentary. The Romanian delegation, on the contrary, felt that the issue was sufficiently important to be included in the definition of innocent passage.

22. The CHAIRMAN invited comments on the French amendment (A/CONF./13/C.1/L.6), introduced by its sponsor at the 26th meeting.

24. Mr. SÖRENSEN (Denmark) said that the origin of the French amendment went back to a doctrinal controversy at the time of The Hague Conference for the Codification of International Law. A Norwegian jurist had maintained at that time that, in order that passage should be held not to be innocent, the intention to commit a wrongful act had to exist before the ship entered the territorial sea. Professor Gidel, on the other hand, had maintained that the question of intention was immaterial. The latter view had since gained general acceptance and there appeared to be no need for the words proposed in the French amendment. A reference to "any acts prejudicial to the security of the coastal State" would be quite naturally construed as covering both intentional and unintentional acts. He asked whether the French representative would consider withdrawing his amendment if the Committee went on record as accepting that interpretation.

25. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that the text of paragraph 3 referred to all acts, whether intentional or otherwise. The French amendment therefore appeared superfluous.

26. Mr. STABELL (Norway) said that perhaps the difficulty was limited to the French text.

27. Mr. SHUKAIRI (Saudi Arabia) said that the English text contained a suggestion of intention, because it

referred to a ship using the territorial sea for committing acts prejudicial to the security of the coastal State. He suggested using the words "wilful or otherwise" in preference to "whether premeditated or not".

28. Mr. RUEDEL (France) said that the amendment proposed by his delegation was purely of a drafting character. It had been rendered necessary by the language used in the International Law Commission's draft, which appeared to refer to acts committed wilfully. In the light of the remarks made at the current meeting, his delegation would submit a revised text for paragraph 3.

29. Mr. LOUTFI (United Arab Republic) said that if the matter was one of drafting it could perhaps be left to the drafting committee.

#### *Additional paragraphs (continued)*

30. The CHAIRMAN invited the representative of Canada to introduce the proposal by Canada, Denmark, Italy and Yugoslavia to add a new paragraph to article 15 (A/CONF.13/C.1/L.64).

31. Mr. OZERE (Canada) said that the proposal aimed at dealing with the problem of illegal fishing pursued on the pretext of innocent passage. The coastal State should have the right to enact and enforce laws and regulations to prevent such abuse.

The meeting rose at 6 p.m.

### THIRTIETH MEETING

*Saturday, 29 March 1958, at 10.45 a.m.*

*Chairman: Mr. K. H. BAILEY (Australia)*

#### **Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)**

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1./L.6, L.23, L.28/Rev.1, L.64, L.65, L.73 to L.76] (continued)

#### *Additional paragraphs (continued)*

1. Sir Gerald FITZMAURICE (United Kingdom) said that his delegation felt no great enthusiasm for the new four-Power proposal on the rights of foreign fishing vessels (A/CONF.13/C.1/L.64). The provision that foreign fishing vessels should enjoy the right of innocent passage was unnecessary, as all ships enjoyed that right under Article 15, paragraph 1. The authors of the amendment might perhaps agree that the first sentence should read: "In the exercise of the right of innocent passage through the territorial sea, foreign fishing vessels shall observe such laws and regulations as may be issued by the coastal State."

2. The second sentence, reading "They shall, in particular, have their gear stowed away", was also not entirely satisfactory. First, as certain countries did not impose such a requirement, at least the additional words "if the coastal State so requires" should be included,

and secondly, the word "away" should be replaced by "inboard"; the process of stowing gear away completely might prove very difficult in heavy weather, which would be the normal cause of a vessel's seeking the more sheltered waters of the territorial sea.

3. Mr. DEAN (United States of America) regretted that he would have to oppose the four-Power amendment. As the United Kingdom representative had pointed out, the first sentence was already covered by article 15, paragraph 1, and the proviso was rendered superfluous by article 18. With regard to the second sentence, he fully shared Sir Gerald Fitzmaurice's views. The United States, for its part, imposed no such requirement, as it had no wish to subject foreign fishing vessels to a condition that could prove exceedingly irksome.

4. Mr. BARNES (Liberia) hoped that any prohibition of fishing by foreign vessels in the territorial sea would include a saving clause to cover cases where fishing rights were expressly recognized by treaty.

5. Mr. COMAY (Israel) said that the four-Power proposal had dispelled his earlier misgivings about the compatibility of the original amendments submitted by the sponsors individually (A/CONF./13/L.15, L.29 and L.30) with the fundamental nature of the right of innocent passage. However, he reserved his right to revert to the new wording proposed by the United Kingdom.

6. Mr. CARDOSO (Portugal) endorsed the views expressed by the United States representative about the superfluity of the four-Power proposal.

7. Mr. STABELL (Norway) said that the four-Power proposal raised two distinct issues: the conditions which a ship in transit must fulfil to maintain its "innocent" status; and the circumstances in which the coastal State could exercise either limited or absolute jurisdiction over such a ship.

8. Taking the second issue first, he said that the mere fact that the coastal State was entitled to prohibit fishing meant that it could make regulations to facilitate the enforcement of the prohibition. But a State was not bound to avail itself of the right to prohibit fishing by outsiders and several countries had in fact never done so. There was thus no direct connexion between the stipulation in the second sentence and the territorial sea as such. Indeed, if the Conference were to authorize States to extend their fishing zones, the imposition of such accessory rules would become permissible in an area outside the territorial sea. He felt, therefore, that there was no justification for including such an accessory rule in an article entitled "Meaning of the right of innocent passage", or for stipulating that a vessel failing to comply with such a local requirement would immediately become subject to the jurisdiction of the coastal State for all purposes.

9. With regard to the first issue—namely, the conditions which a ship must fulfil to maintain its "innocent" status—he felt that the paragraph as a whole wrongly implied that the requirements listed therein were the sole requirements applicable.

10. He also considered that the second sentence of the joint amendment was unduly categorical, and that it

could be construed to mean that a fishing vessel failing to stow away its gear would become subject to the absolute jurisdiction of the coastal State, even if the latter had never promulgated such a condition. The whole paragraph should be re-drafted in permissive terms and removed from article 15 to the more appropriate context of article 18 (duties of foreign ships during their passage).

11. Mr. KRISPIS (Greece) said that he would welcome the rejection of the proposed new paragraph. If it were pressed to a vote he would support the United Kingdom amendment, although the second sentence would be superfluous even if redrawn in permissive terms.

12. Mr. ZLITNI (Libya) agreed that the rights of fishing vessels were already covered by article 15. With regard to the second sentence, which would create technical difficulties, he shared the views of the United Kingdom representative.

13. Sir Edward SNELSON (Pakistan) emphasized that article 15, paragraph 1, recognized the right of ships of all States to innocent passage "subject to the provisions of the present rules". The sponsors of the new draft paragraph had therefore merely attempted to create special rules applicable to fishing vessels. He felt, however, that the first sentence would be improved if reworded as suggested by the United Kingdom representative. With regard to the second sentence, it might be possible to include a clause covering emergency situations.

ARTICLE 17 (RIGHTS OF PROTECTION OF THE COASTAL STATE [A/CONF.13/C.1/L.6, L.31, L.39, L.44, L.56, L.70 to L.72] (continued)<sup>1</sup>

*Paragraph 1*

14. Mr. VERZIIL (Netherlands), introducing the new six-Power amendment (A/CONF.13/C.1/L.72), agreed upon by the delegations which had moved earlier amendments to the paragraph individually (A/CONF.13/C.1/L.17, L.37, L.39, L.47, L.51), said that the sponsors believed that the new text was a logical consequence of the new United States amendment to article 15, paragraph 3 (A/CONF.13/C.1/L.28/Rev.1), which defined innocent passage solely in terms of its relation to security.

*Paragraph 3*

15. Mr. VERZIIL (Netherlands) said that the new four-Power proposal (A/CONF.13/C.1/L.70) replaced the amendments previously proposed by the four sponsors individually (A/CONF.13/C.1/L.37, L.39, L.47 and L.51). The word "definite" had been replaced by the word "specified", in order to show that the coastal State would indicate the areas concerned. Next, the word "innocent" had been inserted before the word "passage", thus emphasizing that the coastal State might be entitled to order temporary suspension even though the passage itself was wholly innocent. Thirdly, the words "if it should deem such suspension essential" had been replaced by the phrase "if such suspension is

<sup>1</sup> Resumed from the 27th meeting.

essential". On that point, the International Law Commission's commentary had been more accurate than the provision itself, and the sponsors had accordingly tried to render the latter more objective. Lastly, the new proposal stressed not only that there was need for due publication of the relevant regulations, but also that the binding force of the suspension would be contingent thereon.

#### Paragraph 4

16. Mr. VERZIJL (Netherlands), introducing the new three-Power proposal (A/CONF.13/C.1/L.71), which consolidated the earlier amendments proposed by them individually (A/CONF.13/C.1/L.37, L.47 and L.51), pointed out that the text now spoke of "straits or other sealanes", as "straits" alone were somewhat difficult to define. Furthermore, the new proposal emphasized that it was insufficient to declare the high seas open to traffic without also guaranteeing the right of entry into seaports. If the right of access to ports was to be assured to land-locked States, *a fortiori*, should it be guaranteed to the maritime countries.

#### Organization of the work of the Committee (continued)

##### PROCEDURE FOR PUTTING PROPOSALS TO THE VOTE (continued)<sup>2</sup>

17. The CHAIRMAN observed that the Committee could proceed to vote on article 15, paragraph 3.

18. Mr. COMAY (Israel) observed that, although the method of referring amendments to a working party composed of their authors might be useful, it had some disadvantage when the individual amendments had originally dealt with different points and the composite text finally produced might not be acceptable in its entirety, with the result that parts of it would have to be redrafted yet again. The difficulty was increased by the fact that the working groups were not representative of the whole Committee. By way of illustration, he explained that the revised United States proposal (A/CONF.13/C.1/L.28/Rev.1) involved three entirely separate issues which the Committee would have to settle separately before they could decide what attitude to adopt with regard to paragraph 3 as a whole. In the first place there was the first sentence of that proposal, which corresponded to the original text of paragraph 3. In the second place, by dividing the provision into two distinct parts an important change had been introduced because in the United States proposal the words "in conformity with the present rules" were no longer stipulated as an essential condition of innocent passage. Finally, the words "or to other rules of international law" had been dropped, although the Turkish delegation had proposed (A/CONF.13/C.1/L.65) that they should be restored. But as the context would have changed and the adoption of the amendment would not settle the original point at issue it might be necessary to revive the earlier amendments seeking the deletion of that phrase from the Commission's text.

19. Mr. KATICIC (Yugoslavia) said that articles 15, 17 and 18 formed an integral whole so that modification of one must affect all the others. He therefore proposed

that article 18 be voted on before article 17, followed by article 15.

20. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that the Committee was steering a somewhat dangerous course. In the case of article 15, paragraph 3, which could be taken as typical, some amendments had been submitted to the Commission's draft which were regarded by many delegations as broadly acceptable, and others to the United States revised amendment (A/CONF.13/C.1/L.28/Rev.1), with the result that the Committee seemed to be going round in circles, as was clear, for example, when an amendment submitted by Turkey (A/CONF.13/C.1/L.65) sought to restore a phrase which already appeared in the Commission's text. He deplored the attempt to substitute a new basic text, and urged that, in the interests of speed and simplicity, the Commission's draft be treated as the basic working document.

21. Mr. CARDOSO (Portugal) supported the Yugoslav proposal, and agreed that article 15 should be voted on as a whole.

22. Mr. GUTIÉRREZ OLIVOS (Chile) observed that some of the difficulties envisaged could be avoided if article 15, paragraph 3, were voted on first, because if the Commission's draft were adopted a series of amendments would automatically fall.

23. Mr. GARCÍA ROBLES (Mexico) had no objection to the Yugoslav proposal, but pointed out that the authors of amendments to article 18 must be given an opportunity of introducing them before that article was put to the vote. He was somewhat surprised that no working group had been established to deal with that article. He agreed with the Israeli representative that, though all the authors of amendments should obviously take part in the working groups, it would be desirable to make the latter more representative.

24. The CHAIRMAN pointed out that rule 31 of the rules of procedure permitted the withdrawal of proposals before they were put to the vote, though the consent of the authors of amendments, if any, had first to be obtained. The proposals concerning article 15, paragraph 3, articles 17 and 18 had not emanated from a working group, but were revised texts submitted by delegations jointly to replace individual amendments. It was true, as the Israeli representative had suggested, that some delegations might have preferred the original amendments, but the rules of procedure allowed them to reintroduce them. That was not a defect of the procedure adopted by the Committee, but was a consequence of the kind of difficulties which arose in discussing separately the various elements of each provision.

25. He hoped that time would be found for a working group on article 18, as requested by the Mexican representative.

26. With regard to the order of voting, he must state emphatically that the rules of procedure stipulated that amendments be put to the vote first. Hence, if the Committee wished to ascertain, before proceeding further, whether the Commission's draft were acceptable, in the hope that that would automatically eliminate a series of amendments, it would be departing from the rules of procedure which would itself require a separate decision.

<sup>2</sup> Resumed from the 25th meeting.

27. If the Yugoslav procedural motion were carried, the vote on article 15 would necessarily have to be put off for some days to give time for the discussion of revised amendments to Article 17 and for the discussion of Article 18.

28. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) asked for a ruling from the chair whether the United States revised proposal (A/CONF.13/C.1/L.28/Rev.1) was an amendment to the Commission's draft, which the Chairman rightly considered to be the basic text, or whether, as he (Mr. Koretsky) thought, it was an entirely new proposal and as such should be voted on after the Commission's text and the amendments thereto.

29. The CHAIRMAN said that the views which he had expressed at the 25th meeting concerning the procedure to be followed and which had been based on the proposals submitted by that date had but been confirmed by subsequent events. He could not concur in the Ukrainian representative's view that the revised United States proposal was not an amendment within the meaning of the rules of procedure, and accordingly ruled that it would have to be voted on before the Commission's text, as would also other amendments—such as that submitted by the delegation of India (A/CONF.13/C.1/L.73), which was equally applicable to the original article or to the revised United States proposal.

30. Mr. COMAY (Israel) explained that he had sought only to draw attention to the genuine predicament of those delegations which found acceptable some elements, but not others, of the revised amendments. If, after consultation with the United States delegation, it proved impossible to put the United States proposal to the vote in parts, he would not press the matter further.

31. Mr. SÖRENSEN (Denmark) proposed that further discussion be deferred so as to give the Committee's officers an opportunity of preparing suggestions on the voting procedure to be followed.

*It was so agreed.*

#### Address by the Secretary-General of the United Nations

32. The CHAIRMAN welcomed the Secretary-General.

33. Mr. HAMMARSKJOLD (Secretary-General of the United Nations) regretted that other duties had prevented him from attending the opening of the Conference, which had the task of drawing up a coherent set of rules establishing the legal régime of the sea to be embodied in appropriate instruments. He had followed its progress with keen interest, and had become increasingly aware of the difficulties which, however, he was sure would be overcome in a genuine spirit of constructive compromise. He wished the Conference every success in its work, which would greatly contribute towards the consolidation of peaceful relations between nations.

The meeting rose at 1 p.m.

### THIRTY-FIRST MEETING

Monday, 31 March 1958, at 10.30 a.m.

Chairman: Mr. K. H. BAILEY (Australia)

#### Consideration of the draft articles adopted by the International Law Commission at its eighth session (A/3159) (continued)

ARTICLES 1, 2, 3 AND 66 (JURIDICAL STATUS OF THE TERRITORIAL SEA; JURIDICAL STATUS OF THE AIR SPACE OVER THE TERRITORIAL SEA AND OF ITS BED AND SUBSOIL; BREADTH OF THE TERRITORIAL SEA; CONTIGUOUS ZONE) [A/CONF.13/C.1/L.4, L.6, L.13, L.54, L.55, L.57, L.63, L.77/Rev.1, L.79]

1. The CHAIRMAN recalled the decision taken by the Committee at its 23rd meeting that discussion of articles 1, 2, 3 and 66 and the amendments thereto be deferred until a date to be fixed by the Chair, but not later than Monday, 31 March 1958, and that those articles be considered as a group.

2. Mr. DREW (Canada), introducing the Canadian amendments to articles 3 and 66 (A/CONF.13/C.1/L.77/Rev.1), said that, as pointed out in the comment to the amendments, they constituted a single proposal and should be discussed and voted upon as such.

3. In seeking to reach agreement on the codification of the law of the sea, the Conference had undertaken a formidable task indeed, and his delegation had submitted its amendments in the hope that they would offer a prospect of agreement between the widely differing points of view already expressed.

4. Canada attached great importance to the Conference's success, and he would remind representatives that the situation was now very different from that which had obtained in 1930 when the Conference for the Codification of International Law had been held at The Hague. Demands for wider zones of control over the living resources of the sea were rapidly increasing, and in recent years certain States had extended their territorial claims to far beyond the three-mile, six-mile or twelve-mile limits which constituted current practice. He mentioned those facts in order to draw attention to a trend which could not be ignored. If no agreement were reached at the Conference on the breadth of the territorial sea and contiguous zone, many countries would soon take the matter into their own hands.

5. The establishment of a contiguous fishing zone twelve miles broad would admittedly result in at least a temporary reduction in the catches of some of the fleets fishing waters far from their home ports. But he would point out to the representatives of States in that position that the issue was not whether they were to continue to fish to within three miles of other nations' shores, but whether they were to fish outside a much broader zone established by international law or outside a zone whose breadth might be established by the unilateral action of any coastal State.

6. It might be argued that it would not be legal for a State to take unilateral action which would greatly extend the sea area under its control. But if the Conference failed to reach agreement on a law regulating