# United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
**A/CONF.13/C.1/SR.36-40**

## Summary Records of the 36th to 40th 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))*

appreciable diminution in catch and a serious economic blow to the fishing industry. It might, indeed, cause shortages, impoverish variety and, perhaps, even bring higher prices. Moreover, it was painful for the United Kingdom to suggest any departure from a rule to which it had adhered for 200 years. That was why he felt bound to emphasize yet again that the proposal did not involve the abandonment by his government of the view that the three-mile principle constituted the fundamental rule of law in the absence of any applicable convention to the contrary. It did, however, involve a willingness on a conventional basis to apply a different rule provided the passage reservations could be accepted.

37. In conclusion, he again expressed his delegation's hope that the efforts of the Conference would not prove vain and that the United Kingdom proposal would be received in the spirit in which it was proffered. The opportunity to assist in promoting the peace of the world and to agree on a régime of the seas in time of peace must not be let slip.

38. Mr. AYCINENA SALAZAR (Guatemala), referring to the charts which the United Kingdom representative had mentioned, stressed that two of them were regarded by his government as wholly inadmissible because they misrepresented the position in a territory which was exclusively Guatemalan.

39. Mr. GARCIA ROBLES (Mexico) said that his delegation could not allow the Guatemalan representative's statement to pass without stating that the Mexican Government adhered to its oft-repeated views about the status of the northern part of Belize.

40. Mr. AYCINENA SALAZAR (Guatemala) replied that his government recognized no Mexican rights over the territory in question.

41. Sir Gerald FITZMAURICE (United Kingdom) wished to place on record his government's rejection of the contentions regarding the status of British Honduras advanced by the delegations of Guatemala and Mexico.

42. Mr. DEAN (United States of America) had listened to the United Kingdom representative's statement with the keenest regret. The United States delegation still believed that the three-mile limit was the most appropriate and that any departure therefrom would deal a disastrous blow to the accepted legal order.

43. In a spirit of compromise — and fully aware of the possible adverse effect of such a concession — the United States delegation had agreed to support the Canadian proposal (A/CONF.13/C.1/L.77/Rev.1), for it believed that acceptance of that formula would at least represent a step forward and ensure the success of the Conference. He wished to stress, therefore, that his delegation's endorsement of the Canadian solution was not merely a bargaining manoeuvre, and that his government firmly believed that any extension of the territorial sea to six miles would raise totally unforeseen difficulties. The full views of the United States Government on the United Kingdom proposal would be stated later, but he could say at once that his delegation would feel constrained to oppose it and would continue to support the Canadian text.

44. Mr. ZARB (World Health Organization), speaking at the invitation of the CHAIRMAN, expressed the hope that, in formulating the final text of article 66 (Contiguous zone) the Conference would bear in mind his agency's memorandum (A/CONF.13/36) and the international sanitary regulations to which many participating States had subscribed.

The meeting rose at 6.30 p.m.

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## THIRTY-SIXTH MEETING

*Thursday, 3 April 1958, at 10 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.78 to L.84, L.118, L.131 to L.141, L.144] (continued)

1. Mr. PETREN (Sweden), introducing the Swedish amendment to article 3 (A/CONF.13/C.1/L.4), recalled the statement he had made in the general debate (6th meeting). He agreed with the statement made by the United Kingdom representative at the previous meeting that differences of opinion must not be allowed to widen, and emphasized that some compromise must be found on the breadth of the territorial sea. His delegation believed that a breadth of six nautical miles would provide the best possible compromise for the time being. He would comment in detail later on the United Kingdom proposal (A/CONF.13/C.1/L.134).

2. Mr. MONACO (Italy), introducing the Italian amendment to article 3 (A/CONF.13/C.1/L.137) recalled the statement he had made in the general debate (6th meeting) in which he had pointed out that the Italian Code of Navigation of 1942 fixed the breadth of the territorial sea at six miles, but that the well-known three-mile rule of customary law could well serve as the starting point of the search for a compromise. The Italian delegation considered, therefore, that each State had the right to fix the breadth of its territorial sea, but that in no case should that breadth exceed six nautical miles.

3. A decision must be taken on the fundamental problem of the breadth of the territorial sea before other closely related problems, such as those of the contiguous zone and of exclusive fishing rights in certain zones, could be considered.

4. Mr. NIKOLAEV (Union of Soviet Socialist Republics) introducing his delegation's proposal relating to article 3 (A/CONF.13/C.1/L.80) recalled that the International Law Commission had been unable to reach agreement on a text for that article, and had contented itself with recognizing that international practice

was not uniform as regards the delimitation of the territorial sea. The Commission had considered, however, that international law did not permit an extension of the territorial sea beyond twelve miles.

5. The draft synoptical table in document A/CONF. 13/C.1/L.11 [1] showed that nineteen States had adopted the three-mile limit, that twenty-six had adopted limits ranging from three to twelve miles and that three had adopted limits exceeding twelve miles. Six governments had failed to state what breadth of territorial sea they had adopted, and eighteen had enacted no laws on the matter.

6. The new text for article 3 proposed by the delegation of the Soviet Union gave the coastal State the power to determine the breadth of its territorial waters within the limits of three to twelve miles, having regard to the various conditions and interests specified in the proposal. In addition to its own interests, the coastal State must bear in mind the interests of international navigation, which was a means of ensuring peaceful collaboration between peoples.

7. The States which had adopted the three-mile limit had endeavoured to prove, quite wrongly, that that rule was the only admissible one, and much had been said about the danger of interference with the freedom of navigation on the high seas which adoption of a twelve-mile limit would entail. Charts had even been circulated to support the contention that if the twelve-mile limit were adopted the Aegean Sea, the Malacca Straits and other straits would become territorial seas. But, in every such case, the right of innocent passage could be invoked.

8. He recalled that resolution XIII adopted by the Inter-American Council of Jurists at its third meeting at Mexico City in 1956 stated in part that " Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological and biological factors, as well as the economic needs of its population, and its security and defence." In the general debate in the present committee, many speakers had agreed with the principle according to which the coastal State itself defined the breadth of its territorial waters within limits of from three to twelve miles. The joint amendment submitted by India and Mexico (A/CONF.13/C.1/L.79) and the Yugoslav amendment (A/CONF.13/C.1/L.135) expressed the same principle. All that went to show that the principle was one which was widely recognized and firmly founded in international law. The Soviet Union proposal was based on that very principle.

9. The proposal submitted by the Soviet Union covered such amendments as those submitted by Canada (A/CONF.13/C.1/L.77/Rev.1), Poland (A/CONF.13/C.1/L.78) and the Philippines (A/CONF.13/C.1/L.13).

10. Turning to the United Kingdom proposal (A/CONF.13/C.1/L.134), he noted with satisfaction that a State which for many years had been an advocate of the three-mile limit now proposed that the limit should be increased to six miles. However, the proposal had serious shortcomings. It ignored the fact that many States had already adopted a breadth greater than six miles, and, although stating that the limit of the breadth of the territorial sea should not extend beyond six miles, provided that such extension should not affect existing rights of passage for aircraft and vessels, including warships, outside three miles. It would seem from that proposition that the coastal State would be able to exercise all its rights within a three-mile limit, but very few between three and six miles. He was therefore convinced that the Soviet Union proposal offered the best possible solution to the problem of the breadth of the territorial sea.

11. Sir Claude COREA (Ceylon), introducing his delegation's proposal relating to article 3 (A/CONF.13/C.1/L.118), recalled his statement in the general debate (10th meeting) in which he had declined to support the three-mile limit, urging that it be modified to keep abreast of changed circumstances and the needs of the present time. His delegation considered that it would be dangerous not to define the breadth of the territorial sea by law, and had therefore submitted its amendment to the effect that the territorial sea should extend to six nautical miles from the baseline drawn in the manner provided for in articles 4 and 5.

12. The Committee must reach a compromise between the two breadths which commanded the most support — namely, the three-mile limit and the six-mile limit. While his delegation admitted that there were strong arguments in favour of a twelve-mile limit, it preferred one of six miles.

13. Referring to the United Kingdom representative's statement at the previous meeting, he suggested that the supporters of the three-mile limit should seriously consider the latest United Kingdom proposal (A/CONF.13/C.1/L.134). He would comment in detail on, and suggest certain changes to, that proposal later.

14. He urged the Committee to support the six-mile limit and thus reach agreement on a rule that would be generally acceptable to the international community.

15. Mr. BARTOS (Yugoslavia) introduced his delegation's proposal relating to article 3 (A/CONF.13/C.1/L.135).

16. The draft synoptical table prepared by the Secretariat (A/CONF.13/C.1/L.11) showed that the majority of States did not observe the so-called three-mile rule. Most States claimed a territorial sea of more than three but less than twelve miles. That lack of uniformity in State practice had in no way interfered with commercial and maritime relations between States.

17. The Yugoslav proposal thus recognized existing State practice by specifying a minimum breadth of three and a maximum of twelve miles. In view of the responsibilities of the coastal State in the territorial sea — responsibilities which had been emphasized by the International Court of Justice in the Corfu Channel case [2] — it would be dangerous to permit States to reduce the breadth of their territorial sea to less than three miles. With regard to the maximum limit, a distance of twelve miles was not excessive, in view of existing practice.

18. The Yugoslav proposal acknowledged the competence of the coastal State, in accordance with prevailing

[1] This table was subsequently revised and distributed as document A/CONF.13/C.1/L.11/Rev.1.

[2] *I.C.J. Reports, 1949*, p. 4.

practice, to fix the breadth of its territorial sea. That competence flowed from a delegation of authority by the international community and not from the sovereignty of the coastal State. Hence, the provision in paragraph 3 of the Yugoslav proposal that it was the duty of the coastal State to publish the provisions relating to the determination of the breadth of the territorial sea.

19. A compromise could only be achieved on the basis of the recognition of the prerogatives which States at present enjoyed. It would be preferable to maintain the *status quo* rather than to run into an impasse, and he appealed to the Committee to accept the Yugoslav proposal in that spirit.

20. Mr. BOCOBO (Philippines) introduced the Philippines amendment to article 66, paragraph 1 (A/CONF. 13/C.1/L.13), replacing in sub-paragraph (*a*) the words " of its customs, fiscal or sanitary regulations " by the words " of its defence, customs, immigration, fiscal or sanitary arrangements ".

21. The International Law Commission had failed to provide for security in respect of the contiguous zone because it had felt that the term " security " was too vague. The Philippines delegation therefore proposed that the more specific term " defence " be employed.

22. The Philippines delegation was anxious to see a reference to immigration regulations introduced in article 66, because of the problem created by the illegal entry of numerous immigrants across the thousands of miles of coastline of the Philippine archipelago.

23. Mr. KRISPIS (Greece) introduced his delegation's amendment to article 3 (A/CONF.13/C.1/L.136).

24. The Greek delegation remained unconvinced by the arguments put forward against the three-mile rule. It still considered that that rule served the interests of the international community better than any other.

25. Mr. ANDERSEN (Iceland) introduced his delegation's amendment to article 66 (A/CONF.13/C.1/L. 131).

26. For some ten years, Iceland had been urging that it was not necessary, or even desirable, to extend the breadth of the territorial sea in order to give the coastal State the right to exercise exclusive jurisdiction over fisheries up to the necessary distance from the coast to meet local conditions. He agreed with the Canadian representative that the question of the breadth of the territorial sea and that of exclusive fishing rights in the contiguous zone were closely linked. The Canadian proposal for the recognition of exclusive fishing rights up to a distance of twelve miles from the coast would be a fair and realistic solution in nearly all cases. There were, however, exceptional circumstances in which a demonstrated need could justify a greater distance in certain areas or during certain seasons, and article 66 should make provision for such a contingency.

27. The International Law Commission, in its commentary regarding " Claims of exclusive fishing rights, on the basis of special economic circumstances ", placed immediately after its commentary to article 59, had stated that it had refrained from making any concrete proposals on that problem because it lacked the necessary competence in the fields of biology and economics. His delegation considered that the Conference could not ignore the problem of exclusive fishing rights. So far, no document had been submitted on it, and no working group had been appointed to deal with it.

28. In view of the interdependence of the provisions of articles 1, 2, 3 and 66, he suggested that only a provisional vote should be taken on those articles, with the object of preparing the ground for a subsequent final decision.

29. Mr. GASIOROWSKI (Poland) introduced his delegation's proposal concerning article 66, paragraph 1 (A/CONF.13/C.1/L.78).

30. By introducing a reference to security, the Polish proposal filled a gap in the International Law Commission's draft. He recalled that the draft regulation on the territorial sea in time of peace adopted by the Institute of International Law at its Stockholm session (1928),[3] the Harvard draft convention [4] and the draft prepared by the preparatory committee of The Hague Conference for the Codification of International Law,[5] had all given recognition to the security interests of the coastal State in the contiguous zone.

31. The objection raised on the ground of the vagueness of the term " security " was not valid. The Committee had adopted texts for article 15, paragraph 3, and for article 17 which used that term, and no objection had been raised to its use in those contexts. The Polish delegation believed that, if adequate provision for security in the contiguous zone were made, some States would refrain from extending their territorial sea to twelve miles even if allowed to do so.

32. His delegation had also re-worded paragraph 1 to eliminate repetitions.

33. Lastly, the Polish text did not limit the coastal State's rights to the prevention and punishment of infringements of regulations committed within its territory or territorial sea. The purpose was to cover such infringements committed within the contiguous zone itself.

34. Mr. KIM (Republic of Korea) introduced his delegation's amendment to article 66, paragraph 1 (A/CONF.13/C.1/L.84), inserting the word " security ", between the words " Prevent infringement of its " and the word " customs ". The purpose of the amendment was to enable the coastal State to deal with cases of interference with its security by foreign ships.

35. Mr. FATTAL (Lebanon) asked who was to be judge of the fulfilment of the conditions specified in the U.S.S.R. proposal relating to article 3 (A/CONF.13/C.1/L.80), and in particular of the question whether the coastal State had, in determining the breadth of its territorial sea, shown due regard for the interests of international navigation. In the absence of an independent body capable of deciding that question, the coastal State would appear to be judge in its own cause.

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[3] *Annuaire de l'Institut de Droit International*, Session de Stockholm, August 1928, pp. 755 to 759.

[4] *Research in International Law, Harvard Law School: Nationality, Responsibility of States, Territorial Waters (Drafts of conventions prepared in anticipation of the First Conference on the codification of International Law, The Hague, 1930)*, Cambridge, Massachusetts, 1929, p. 246.

[5] Ser. L.o.N.P., 1930 v.16, p. 179.

36. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the question raised by the Lebanese representative was one which arose in connexion with all rules of international law. Unlike national law, international law made no provision for courts having compulsory jurisdiction over all disputes. It was significant that only some thirty States had signed the declaration provided for under article 36, paragraph 2, of the Statute of the International Court of Justice recognizing the compulsory jurisdiction of that Court over certain categories of dispute.

37. Mr. DREW (Canada) wished to correct certain substantive misinterpretations of the Canadian proposal (A/CONF.13/C.1/L.77/Rev.1) which he had noted during the United Kingdom representative's statement at the preceding meeting. In the first place, Sir Reginald Manningham-Buller had contended that there was no juridical authority for the Canadian proposal. It might be pertinent to ask what juridical basis there was for the novel concept of a territorial sea which Sir Reginald himself had put forward, but in any event no objection of that kind could possibly be valid. The purpose of the Conference was to make new law and to define the rights which should form part of the law of the sea with the consent of the participating governments.

38. The purpose of the latest United Kingdom proposal (A/CONF.13/C.1/L.134) purported to be that of winning the Conference's agreement to a territorial sea of six miles. On closer scrutiny however, the purpose took on a very different appearance. In the first place, the exceptions provided for in the second sentence of paragraph 1 of article 3 would be unlikely to prove effective. The Canadian delegation could not see how exceptions of that kind could derogate from a State's absolute sovereignty over its territorial sea, or how the Conference could override decisions of air conferences which had agreed that the right of overflying by aircraft existed only outside the territorial sea. Moreover, the United Kingdom proposal might have substantial disadvantages for many States. For instance, in the event of war, neutral States would be responsible for maintaining neutrality to a distance of six miles without enjoying the corresponding benefits which might be claimed in a territorial sea.

39. Even assuming, however, that the exceptions proposed by the United Kingdom could be made effective, the proposal would clearly establish a three-mile territorial sea and a six-mile contiguous zone, measured from the baseline, in which the coastal State would enjoy the same rights as the Canadian delegation had proposed in connexion with Article 66. The United Kingdom delegation could have achieved exactly the same result if it had simply proposed an amendment to the Canadian proposal, reducing the twelve-mile contiguous zone to six miles. That would have been a simple way of doing what the United Kingdom delegation had attempted to do by a more complicated method. In the final analysis, therefore, the United Kingdom proposal was identical in principle with the Canadian proposal. No matter what words might be used, the United Kingdom was in fact asking for a three-mile territorial sea and a broader contiguous zone. He sincerely hoped that delegations would bear that fact in mind and give it due consideration.

40. Sir Gerald FITZMAURICE (United Kingdom) asked what was the significance in the Soviet Union proposal (A/CONF.13/C.1/L.80) of the words " as a rule ". They implied that a State might in certain circumstances extend its territorial sea beyond twelve miles, but it was impossible to tell what the sponsors really contemplated.

41. His delegation would reply to the points raised by the Canadian representative at a more appropriate time.

42. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that the words " as a rule " had been inserted in the Soviet Union proposal in order to allow for the possibility of making exceptions in special circumstances. He would go into greater detail later.

43. Mr. DEAN (United States of America) said that the United States proposal relating to articles 3 and 66 (A/CONF.13/C.1/L.140) was substantially the same as that submitted by Canada (A/CONF.13/C.1/L.77/Rev.1), and had been submitted primarily as an expression of support for the latter. His country had no desire to extend its own area of exclusive fishing rights, being perfectly content with a three-mile limit, and in fact the special contiguous zone of nine miles would act to its considerable detriment. But his delegation supported the Canadian solution because it believed that the most important objective was to keep the greatest possible expanse of the high seas available to all nations.

*The meeting was suspended at 12.35 p.m. and was resumed at 12.55 p.m.*

## ARTICLE 18 (DUTIES OF FOREIGN SHIPS DURING THEIR PASSAGE) (continued)

44. The CHAIRMAN invited comments on the motion submitted by the representative of Chile at the preceding meeting that the Committee should reconsider the International Law Commission's draft of article 18.

45. Mr. BHUTTO (Pakistan) said that the Chilean proposal seemed out of order, because the Committee had only rejected amendments to the Commission's draft article 18 and not the article itself. The article was therefore still before the Committee for whatever action it might deem appropriate.

46. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the Pakistani representative's argument. The only logical and correct course was to take a vote on the Commission's text immediately.

47. Sir Gerald FITZMAURICE (United Kingdom) said that the Chilean proposal might present difficulties. He therefore hoped that the Chilean representative would merely invite the Committee to resolve that it should reinstate the Commission's text as a proposal on which a vote might be taken.

48. Sir Claude COREA (Ceylon) hoped that the Committee would not abandon its practice of regarding the Commission's texts as the basic proposals. Acceptance of the view that the rejection of the Mexican (A/CONF.13/C.1/L.45) and Greek and Netherlands (A/CONF.13/C.1/L.32) amendments as a whole left the Com-

mittee without a basic text might constitute a very dangerous precedent.

49. Mr. GUTIERREZ OLIVOS (Chile), replying to the point made by the representatives of Pakistan and Ceylon, explained that he had submitted his proposal because the Chairman had ruled at the 35th meeting that if the Mexican and joint amendments were rejected when the article was put to the vote as a whole the Commission's text would no longer be before the Committee.

50. Sir Gerald FITZMAURICE (United Kingdom), without wishing to dispute the Chairman's ruling, observed that there was much force in the observations of the representative of Ceylon. Normally, if amendments were lost, the basic text still remained.

51. Mr. SHUKAIRI (Saudi Arabia) moved the closure of the debate on the Chilean motion, under rule 26 of the rules of procedure, and proposed that the Committee proceed forthwith to vote on the Commission's text for article 18, which had been discussed at great length and the amendments to which had been rejected.

52. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the motion for the closure, and believed that it would be proper for the Committee to follow the usual procedure, once all the amendments had been rejected, of voting on the original text — which in the case in point was that contained in the Commission's draft.

53. Sir Gerald FITZMAURICE (United Kingdom) opposed the motion because it begged the question at issue — namely, the Chairman's ruling.

54. Sir Claude COREA (Ceylon) emphasized that the Chairman's ruling raised an important issue of principle: there was a significant difference between the Committee's deciding to reconsider article 18 or regarding it as still open for consideration.

55. The CHAIRMAN said that he would not wish to insist on his ruling, which had given rise to difficulties, and hoped that the Committee would be able to avoid similar predicaments in the future. The rules of procedure certainly did not preclude it from deciding to vote on the Commission's text.

56. Mr. GUTIERREZ OLIVOS (Chile) withdrew his proposal, which the Chairman's observation had rendered unnecessary.

57. The CHAIRMAN put to the vote the International Law Commission's text for article 18 (A/3159).

*That text was adopted by 59 votes to none, with 3 abstentions.*

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1/L.64/Rev.1, L.132] (continued) [6]

*Additional paragraphs* (continued) [7]

58. The CHAIRMAN called for comments on the two new proposals concerning an additional paragraph to article 15. One was the revised proposal of Canada, Denmark, Italy and Yugoslavia (A/CONF.13/C.1/L.64/Rev.1) and the other a proposal of the United Kingdom (A/CONF.13/C.1/L.132).

59. Mr. SÖRENSEN (Denmark) explained that the joint proposal had been submitted before the United Kingdom proposal, moved from the floor at the 30th meeting, had been circulated in writing. The difference between the two texts was that the former added a new element to the concept of innocent passage for fishing vessels, whereas the latter, while adding nothing new to the definition, specifically provided that such vessels should observe " such laws and regulations as may be made and published by the coastal State in order to prevent them from fishing in that sea ". The authors of the joint text believed that the difference was not a significant one, and were prepared to withdraw theirs in favour of the United Kingdom proposal on condition that the last sentence were deleted, which he understood would be acceptable to the United Kingdom delegation.

60. Mr. DEAN (United States of America), observing that the United Kingdom proposal would probably give rise to considerable debate, moved that the discussion be deferred until the next meeting.

*It was so agreed.*

The meeting rose at 2.15 p.m.

[6] Resumed from the 33rd meeting.

[7] Resumed from the 29th meeting.

## THIRTY-SEVENTH MEETING

*Tuesday, 8 April 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)*

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.78 to L.81, L.82 and Corr.1, L.83, L.84, L.118, L.131 to L.141, L.144, L.145, L.149] (continued)

1. Mr. ULLOA SOTOMAYOR (Peru), introducing his delegation's proposals relating to articles 1, 3 and 66 (A/CONF.13/C.1/L.133 and L.139), said that the proposed addition to article 1 and the proposed insertion in article 66 of the words " Without prejudice to the provisions of this convention concerning the other rights vested in the coastal State " were necessary because the Conference was considering recognition of the authority of the coastal State to regulate fisheries in a sea belt adjacent to its territorial sea. In that way, if the Conference adopted, on the recommendation of the Third Committee, provisions relating to the coastal State's authority in the matter of fisheries, there would be no contradiction between those provisions and the texts of articles 1 and 66.

2. With regard to article 3, the language used in the Peruvian proposal (A/CONF.13/C.1/L.133) was drawn from the Principles of Mexico on the juridical régime of the sea adopted by the Inter-American Council of Jurists at its third meeting in 1956. The words " within reasonable limits " would ensure that the coastal State did not act arbitrarily in the exercise of its competence to fix the breadth of its territorial sea. The proposal was in keeping with the fact acknowledged by the International Law Commission in paragraph 1 of article 3 of its draft that international practice with regard to the delimitation of the territorial sea was not uniform.

3. Sir Claude COREA (Ceylon) said that his delegation withdrew its proposal relating to article 3 (A/CONF. 13/C.1/L.118) and moved in its stead an amendment (A/CONF.13/C.1/L.149) to the Canadian proposal (A/CONF.13/C.1/L.77/Rev.1) to the effect that in article 3 the words " three nautical miles " be replaced by the words " six nautical miles ". His delegation also proposed (A/CONF.13/C.1/L.149) that in article 66 the words " twelve miles " be replaced by the words " six miles ". In that way the contiguous zone would not extend beyond the maximum breadth of the territorial sea.

4. The purport of those two proposals was that, if the territorial sea were extended to six miles, there would be no need for a contiguous zone. They differed from the Canadian proposal in that they gave the coastal State exclusive fishing rights up to a limit of six, instead of twelve, miles, and sovereign rights up to six miles, instead of three.

5. Mr. CAICEDO CASTILLA (Colombia), introducing his delegation's proposals relating to articles 1, 2, 3 (A/CONF.13/C.1/L.82) and article 66 (A/CONF.13/C.1/82/Corr.1), said that they provided that articles 1, 2 and 3, which were closely interrelated, should be combined to form a single article.

6. His delegation had omitted the reference to the rules to be adopted by the Conference, because they would become part of international law and would thus be covered by the phrase " subject to the conditions prescribed by international law."

7. In substance, the Colombian delegation proposed that the breadth of the territorial sea be fixed at twelve miles, a distance which was not regarded as contrary to international law by the International Law Commission and which constituted a satisfactory compromise between the extreme limits of three and two hundred miles put forward by various States.

8. With regard to the contiguous zone, his delegation proposed that it should extend for twelve miles from the outer limit of the territorial sea and that the coastal State should have the right to regulate and control fishing within it, provided there was no discrimination between nationals and aliens and provided it respected acquired rights of at least thirty years' standing.

9. The Indian-Mexican proposal (A/CONF.13/C.1/L. 79) did not state whether the delimitation of the territorial sea by the coastal State would be binding upon other States, in particular upon States which had themselves fixed a lesser breadth for their territorial sea. If the unilateral action of the coastal State in that regard were indeed binding upon other States, the procedure proposed by India and Mexico would be tantamount to establishing the breadth of the territorial sea at twelve miles.

It would not be sufficient for the authors of the proposal to clarify that point by replying orally to his query. An interpretation of that kind must be embodied in the article itself; if that were done, the Colombian delegation would support the joint proposal.

10. The Principles of Mexico had been invoked in support of the Indian-Mexican proposal; but the Peruvian proposal (A/CONF.13/C.1/L.133), with its use of the phrase " within reasonable limits " reflected those principles more adequately. It had been stated that resolution XIII, adopted by the Inter-American Council of Jurists at its third meeting, in which those principles had been enunciated, was the expression of the juridical conscience of the American continent. That statement would not bear examination. The resolution had been adopted by fifteen votes out of a total of twenty-one American countries, and five of the countries which had voted for the resolution had entered reservations concerning the principle of the determination of the territorial sea. That principle had thus in fact only been approved by half the delegations. Furthermore, the Inter-American Council of Jurists at the same meeting had adopted resolution XIV to the effect that the Principles of Mexico, together with the minutes of the meetings at which the subject had been discussed, constituted merely a " preparatory study " for transmission to the specialized conference at Ciudad Trujillo.

11. The Soviet Union proposal (A/CONF.13/C.1/L. 80) likewise raised the question of the binding nature of the delimitation of the territorial sea by the coastal State. It also raised the question of who was to be the judge of compliance with the conditions laid down in it, especially with the proviso regarding the interests of international navigation.

12. The Colombian delegation was not adamant about its proposals, and would welcome any suggestions for their improvement.

13. Mr. GARCIA ROBLES (Mexico), replying on behalf of the Indian and Mexican delegations to the Colombian representative's query, said that the words " Every State is entitled " in the joint proposal necessarily implied that the delimitation by the coastal State was valid *erga omnes,* and therefore binding on all other States. It had not been considered necessary to make that explicit in the text of the article because the same would be true of all the articles of the future convention.

14. The joint proposal was entirely consistent with the Principles of Mexico, because in the light of the practice of the overwhelming majority of States the reasonable maximum limit for the breadth of the territorial sea at present was twelve miles.

15. Introducing his delegation's proposal relating to article 66 (A/CONF.13/C.1/L.141) — namely, that up to a limit of twelve miles the contiguous zone should be measured from the outer limit of the territorial sea — he said that it was not his delegation's intention to provide for a twenty-four-mile belt in which the coastal State would have exclusive fishing rights. The intention

was merely to enable States which might be satisfied with a territorial sea three, four, or six miles broad to claim exclusive fishing rights within a twelve-mile belt beyond the outer limit of their territorial sea.

16. Mr. GROS (France) said that the question of the binding character *vis-à-vis* other States of the delimitation of the territorial sea by the coastal State was an extremely important one which provided him with an opportunity of correcting any mistaken impression which might have been created by quotations from volume III of Professor Gidel's famous treatise *Le Droit international public de la mer*.[1] Professor Gidel had been inaccurately represented as stating first that the three-mile rule had ceased to have any validity following the failure of the 1930 Codification Conference at The Hague, and secondly, that international law consequently allowed States to determine the breadth of their own territorial sea. He had been authorized by Professor Gidel to correct that misunderstanding. Professor Gidel had referred to the three-mile rule as "a fallen idol" on page 151 of volume III of a treatise of over 1,700 pages, and it was important not to take those few words out of their context. What Professor Gidel had in fact said in his work as a whole was that, whereas an extension of its territorial sea by a State beyond three miles was not unlawful, its international validity would depend on the agreement of other States. It was thus clear that claims to a territorial sea more than three miles broad were not binding upon other States unless specifically accepted by each one of them.

17. Professor Gidel had said that the extension by a State of its territorial sea beyond three miles would, in the absence of recognition by other States, remain purely a measure of national law, and hence would constitute a mere fact in the eyes of international law; it was a matter not for the national competence of the State taking the action but for international law. Professor Gidel's views had invariably been interpreted in that sense by such writers as Charpentier, in a thesis submitted to Paris University in 1953, and Professor C. H. M. Waldock in his article entitled *International Law and the New Maritime Claims*.[2] Finally, Professor Gidel considered that the passage from the judgement of the International Court of Justice of 18 December 1951 in the fisheries case,[3] which had been frequently quoted in the debate, did not warrant any other interpretation of the principles which the French representative had just mentioned.

18. The position regarding the breadth of the territorial sea was, therefore — according to the teaching of Professor Gidel — that first, the three-mile limit was the minimum rule binding on all States; secondly, the four-mile limit had obtained historical recognition in respect of certain States; and thirdly, an extension of the territorial sea beyond three miles was not in itself unlawful, but claims in that respect were binding only on States which formatly accepted them; in fact, with the exception of the four-mile limit in Scandinavian waters and the six-mile limit accepted for certain Mediterranean States, claims to a territorial sea of more than three miles did not stand on the same juridical footing as the three-mile limit.

19. With regard to the contiguous zone, Professor Gidel had made it clear that it did not exist in the matter of fisheries.[4] Professor Gidel had also made it clear that a contiguous zone could not be established by unilateral decision of the coastal State.[5] In the absence of treaty provisions, the coastal State's claim to a contiguous zone was binding on other States only in so far as international law allowed the unilateral protection by the coastal State of certain interests beyond the territorial sea.[6] The protection of fisheries did not constitute one of those interests.

20. Professor Gidel's teaching thus went much further than was pleasant for the commentators on the "fallen idol".

21. Such being the existing rules of international law, it was necessary that the Conference should reach agreement if it was desired to replace them by new ones. In that regard, the United Kingdom delegation had made a great sacrifice in offering to abandon its traditional position and to agree to a six-mile territorial sea under certain conditions. An extension of the breadth of the territorial sea to six miles would entail very great sacrifices for the countries engaged in fishing in the high seas. In the case of France, it would mean a loss of 14% of their annual catch for the 55,000 Frenchmen engaged in such activities. It was important that other States should bear in mind the magnitude of the sacrifice thus accepted by the leading fishing Powers in the interests of international accord.

ARTICLE 15 (MEANING OF THE RIGHT OF INNOCENT PASSAGE) [A/CONF.13/C.1/L.6, L.15, L.64/Rev.1, L.132] (continued)

22. The CHAIRMAN said that the Portuguese amendment to paragraph 5 of article 15 (A/CONF.13/C.1/L.26, article 15A, para. 4) had been withdrawn in favour of the French proposal (A/CONF.13/C.1/L.6), to which it was similar in substance. The Committee had also before it proposals for two additional paragraphs: a new paragraph 6 submitted by Yugoslavia (A/CONF.13/C.1/L.15) dealing with the taking-off of flying-boats; and a new paragraph concerning fishing vessels, which was the subject of two proposals: the four-power proposal in document A/CONF.13/C.1/L.64/Rev.1 and the United Kingdom proposal in document A/CONF.13/C.1/L.132.

*Paragraph 5*

23. Mr. MUHTADI (Jordan) said that the provision relating to the right of innocent passage of submarines

[1] Gidel, *Le Droit international public de la mer*, Vol. III, *La mer territoriale et la zone contiguë*, Paris, Librairie du Recueil Sirey, 1934.

[2] *International Relations*, vol. 1, No. 5 (April 1956), The David Davies Memorial Institute of International Studies, London.

[3] *I.C.J. Reports, 1951*, p. 116.

[4] Gidel, *op. cit.*, p. 468.

[5] *Ibid.*, p. 370.

[6] *Ibid.*, p. 372.

had originally been inserted in the sub-section on warships ; if it was intended to cover the case of commercial submarines, it was desirable that that should be made explicit in the provision.

24. Mr. STABELL (Norway) said that his delegation would vote against paragraph 5 in any form because it was superfluous. Since the coastal State had the right to enact regulations governing the passage of ships through its territorial sea, it could, if it so desired, require submarines to navigate on the surface and, if need be, to show their flag. A provision along the lines of paragraph 5 would be misleading, because it could be interpreted as meaning that passage by a submerged submarine was not innocent merely by virtue of the fact that the craft was navigating under water.

25. Mr. TUNCEL (Turkey) pointed out that the International Law Commission's commentary to paragraph 5 stated that under the 1955 draft that provision had been placed in the sub-section on warships. It had been transferred to the general sub-section in order to make it equally applicable to commercial submarines should such craft be re-introduced.

26. In its comments on the provisional articles on the régime of the high seas and on the régime of the territorial sea,[7] the Turkish Government had stated, with reference to article 19 that the eventuality of the passage of non-military submarines (such as those which might be used for scientific purposes) was not covered by paragraph 3 of article 25, and had suggested that it would be preferable to remove the paragraph on the passage of submarines from article 25 and place it in article 19. The Commission had examined that proposal, and had decided to include the relevant provision in article 15.

27. Since submarines of all categories might have to pass through the territorial sea of a coastal State, paragraph 5 of article 15 should be retained.

28. Mr. SÖRENSEN (Denmark), associating himself with the Turkish representative's statement, said that the rule that submarines must navigate on the surface should remain in article 15, because the coastal State would then be entitled to refuse the right of passage to any such vessel which did not so navigate. If the provision were placed in article 18, the coastal State would have the right to take action against the submarine, but could not refuse it the right of passage.

29. Submarines might be a serious danger both to navigation and to the security of the coastal State unless they surfaced while proceeding through narrow straits. The Danish Government had always considered that the passage of a submarine was not innocent if it did not navigate on the surface while passing through territorial waters. Since it was common knowledge that, with the advent of atomic energy, commercial submarines might come into service, his delegation would prefer to see paragraph 5 retained in article 15.

30. Mr. MUHTADI (Jordan) said that it was clear from the International Law Commission's commentary on article 15 that paragraph 5 referred to commercial submarines. That fact should therefore be made explicit.

31. Mr. KRISPIS (Greece), agreeing with the representatives of Turkey and Denmark, said that he would vote for paragraph 5, as amended by the French proposal (A/CONF.13/C.1/L.6), provided the word " submarines " was understood to mean all submarines, whether commercial, scientific or of any other kind.

32. Mr. GASIOROWSKI (Poland) pointed out that the International Law Commission had transferred the paragraph on submarines from section III, sub-section D (warships) to sub-section A (general rules) in order to make the provision cover all submarines, both military and commercial.

33. Mr. LOUTFI (United Arab Republic), supporting paragraph 5, suggested that article 15 should be referred to a drafting committee after the vote.

34. Sir Gerald FITZMAURICE (United Kingdom) agreed with the Polish representative's remarks, and supported the suggestion of the representative of the United Arab Republic.

35. The CHAIRMAN put the French amendment to paragraph 5 (A/CONF.13/C.1/L.6) to the vote.

*The French amendment was adopted by 65 votes to none, with 2 abstentions.*

36. The CHAIRMAN put paragraph 5, as amended, to the vote.

*Paragraph 5, as amended, was adopted by 69 votes to 1.*

*Additional paragraphs*

37. Sir Gerald FITZMAURICE (United Kingdom) referring to the new paragraph 6 to article 15 proposed by the Yugoslav delegation (A/CONF.13/C.1/L.15), pointed out that it would be impossible for a flying-boat to take off from another State's territorial sea and fly through the airspace above it without that State's permission. He could not therefore see any point in the proposed additional paragraph.

38. Mr. KATICIC (Yugoslavia) said that the purpose of his delegation's amendment was to provide for exceptional cases, and to ensure that flying-boats complied with the regulations promulgated by coastal States.

39. Mr. KRISPIS (Greece) felt that the proposed additional paragraph, if adopted, might create difficulties ; in particular, it would be subject to the misinterpretation that aircraft had the right of innocent passage.

40. The CHAIRMAN put the Yugoslav proposal relating to a new paragraph 6 in article 15 (A/CONF.13/C.1/L.15) to the vote.

*The Yugoslav proposal was rejected by 53 votes to 1, with 13 abstentions.*

41. Mr. SÖRENSEN (Denmark) recalled that the four-power revised proposal (A/CONF.13/C.1/L.64/Rev. 1), of which he had been one of the sponsors, had been withdrawn at the 36th meeting in favour of the United Kingdom amendment (A/CONF.13/C.1/L.132), on condition that the final sentence of the latter, which was controversial, was deleted.

[7] See *Yearbook of the International Law Commission, 1956*, vol. II (A/CN.4/SER.A/1956/Add.1), pp. 74 and 75.

42. Mr. DEAN (United States of America) stated that he would be unable to support the United Kingdom amendment, even if the last sentence were deleted, because he considered it to be superfluous. He did not question the propriety of a State's protecting the exclusive fishing rights which it enjoyed in its own territorial sea in accordance with the rules of international law. But he would have to vote against the amendment because it placed no limitation whatsoever on the kind of laws and regulations which fishing vessels would have to observe, and because it failed to require the coastal State to comply with " the present rules and other rules of international law ", as required in the International Law Commission's text for article 18, which had been adopted by the Committee without dissenting voice.

43. Mr. KRISPIS (Greece) supported the United Kingdom amendment subject to the deletion of the final sentence as requested by the sponsors of the four-power amendment.

44. Sir Gerald FITZMAURICE (United Kingdom) was willing to amend his delegation's proposal in the sense desired by the United States representative by inserting the words " in conformity with the present rules and other rules of international law " in the appropriate place. The only reason why those words had been omitted from the original proposal was that under international law a coastal State had the right to prevent foreign fishing vessels from fishing in its territorial sea.

45. In deference to the wishes of the sponsors of the four-power amendment, the last sentence of the United Kingdom amendment would be deleted.

46. Mr. GARCIA ROBLES (Mexico) invoking rule 31 of the rules of procedure, re-introduced the four-power amendment (A/CONF.13/C.1/L.64/Rev.1) in the sole name of the Mexican delegation.

47. Mr. KATICIC (Yugoslavia) felt that all objections to the United Kingdom amendment had been disposed of by that delegation's acceptance of the changes suggested. The amendment could not be considered superfluous, since article 18 referred to laws and regulations in general, whilst the United Kingdom amendment dealt specifically with fishing vessels.

48. Mr. GUTIÉRREZ OLIVOS (Chile) said that the United Kingdom amendment and the amendment now sponsored by the delegation of Mexico followed very different approaches to the question of the exercise by fishing vessels of the right of innocent passage through the territorial sea. Under the latter, the passage of foreign fishing vessels which did not observe the laws and regulations enacted by the coastal State to prevent them from fishing in the territorial sea would be regarded as not innocent. But under the United Kingdom amendment, a fishing vessel which failed to observe the fishing rules and regulations of a coastal State could still be regarded as in innocent passage.

49. Mr. PORRAS (Venezuela) warmly supported the Mexican amendment.

50. Mr. DEAN (United States of America) said that he could accept the United Kingdom amendment as modified orally by the United Kingdom representative.

51. Referring to the Chilean representative's remarks, he pointed out that in any event the mere fact that a fishing vessel inadvertently failed to comply with some minor fishing rules and regulations of a coastal State would not of itself make its passage non-innocent.

52. Mr. GARCIA ROBLES (Mexico) endorsed the Chilean representative's remarks, and explained that he had decided to take up the four-power amendment, withdrawn earlier, because it protected the interests of the coastal State.

53. Mr. STABELL (Norway) could not accept the Mexican amendment. There was no need to have a particular rule regulating the innocent passage of fishing vessels. It would be quite unreasonable if a fishing vessel which contravened a minor rule of law of a coastal State should thereby become subject to the jurisdiction of that State for all purposes.

54. The United Kingdom amendment was superfluous, and might create some confusion about the right of innocent passage ; its purpose was already fully met by article 18.

55. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that it was unnecessary to refer to rules of international law in the United Kingdom amendment, since they were mentioned in article 18. He suggested that it might be advisable to put the additional words in question and the original United Kingdom amendment to the vote separately.

56. The CHAIRMAN pointed out that the United Kingdom representative had already accepted the amendments proposed to his text. Its various parts could, however, be put to the vote separately, if so desired.

57. Mr. TUNCEL (Turkey) said that there was an essential difference between article 18 as adopted and the original United Kingdom amendment : article 18 laid down that the laws and regulations should be in conformity with the present rules and other rules of international law — which would give another State the right to contest their validity — whilst the original United Kingdom amendment embodied a positive rule of international law or one of the " present rules ". The Turkish delegation had been ready to support the original United Kingdom amendment, but could not do so now that it had been amended, since in its amended form it was similar to the principle of article 18.

58. Mr. DEAN (United States of America) said that the fundamental issue was whether a coastal State could require a fishing vessel to observe certain rules in the course of innocent passage. Those who supported the United Kingdom amendment would agree that it could, provided the coastal State conformed with " the present rules and other rules of international law ".

59. The CHAIRMAN put the Mexican amendment to article 15 (A/CONF.13/C.1/L.64/Rev.1) to the vote. Its adoption would be tantamount to the rejection of the United Kingdom amendment (A/CONF.13/C.1/L.132).

*At the request of the representative of Mexico, a vote was taken by roll-call.*

*Jordan, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour*: Mexico, Peru, Philippines, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yemen, Yugoslavia, Albania, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, Colombia, Czechoslovakia, Denmark, Ecuador, Guatemala, Hungary, Iceland, India, Ireland.

*Against*: Netherlands, New Zealand, Norway, Pakistan, Portugal, Sweden, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Belgium, Bolivia, China, Cuba, Dominican Republic, France, Federal Republic of Germany, Greece, Iran, Italy, Japan.

*Abstaining*: Republic of Korea, Libya, Monaco, Poland, Romania, Saudi Arabia, Switzerland, Tunisia, Austria, Burma, Finland, Haiti, Indonesia, Israel.

*The Mexican amendment was adopted by 29 votes to 23, with 14 abstentions.*

60. Mr. KATICIC (Yugoslavia) pointed out that certain amendments which had been sent to the working group were not mere drafting amendments, and mentioned, in that connexion, the United Kingdom amendment to paragraph 4 of article 15 (A/CONF.13/C.1/L.24).

61. The CHAIRMAN said that the working group would be asked to report to the Committee on all amendments which were not of a drafting nature. He suggested that the representative of Yugoslavia might raise the question again when the working group was set up.

62. Mr. PONCE Y CARBO (Ecuador), explaining his vote, said that his delegation considered the text just adopted entirely satisfactory. It filled in the gaps which existed with regard to the right of innocent passage of fishing vessels. He reserved the right to submit an amendment to the text adopted in connexion with the right of passage of such vessels through the contiguous zone.

The meeting rose at 6.20 p.m.

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## THIRTY-EIGHTH MEETING

*Wednesday, 9 April 1958, at 10.20 a.m.*

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

### Measures for expediting the work of the Conference: Report of the General Committee (A/CONF.13/L.8)

1. The CHAIRMAN drew the Committee's attention to the recommendations contained in paragraph 3 of the report (A/CONF.13/L.8), and particularly to recommendation *a* concerning the withdrawal or combination of amendments. He observed that the number of amendments to articles remaining for consideration by the Committee was 180, so that there could be little hope of the Committee's completing its work by 19 April unless the articles remaining for consideration were submitted to the process which had reduced by two-thirds the number of amendments submitted to articles 15, 17 and 18.

*Recommendations* a, b *and* c *were adopted unanimously.*

2. The CHAIRMAN proposed the adoption of recommendation *d* concerning the limitation of the length of speeches with the reservation that the five-minute limit should not apply to speakers still wishing to introduce amendments to articles 1, 2, 3 and 66.

3. Mr. BARTOS (Yugoslavia) supported the Chairman's proposal.

4. Mr. SHUKAIRI (Saudi Arabia) proposed that exemption from the five-minute time-limit be granted not only to movers of amendments to articles 1, 2, 3 and 66 but also to those who wished to comment on the amendments in question.

*The Saudi Arabian representative's proposal was rejected by 29 votes to 12, with 22 abstentions.*

*Recommendation* d, *subject to the reservation proposed by the Chairman, was adopted.*

5. Speaking in support of recommendation *e*, Mr. BOCOBO (Philippines) urged that in the closing weeks of the Conference as much time as possible be devoted to consideration of the International Law Commission's draft articles and the amendments thereto, and that the minimum of time be wasted on procedural matters. The rules of procedure should be regarded as the creature of the Conference and not as its master.

*Recommendations* e *to* j *were adopted unanimously.*

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

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

6. Mr. GRIGOROV (Bulgaria), in explanation of the amendment to article 16 submitted jointly by the U.S.S.R. and Bulgaria (A/CONF.13/C.1/L.46), said that his delegation believed that the Convention should contain an article enumerating all the conditions determining the innocent character of the passage of foreign merchant and other ships, other than warships. His delegation had therefore proposed the addition of a new article 18 A expressly stating those conditions in the belief that the new article would clarify the concept of innocent passage. In view of the opening words of the suggested new article 18 A, the proposal to delete from paragraph 1 of article 16 the words "the coastal State must not hamper innocent passage through the territorial sea" required no explanation.

7. Mr. BARTOS (Yugoslavia) claimed that his delegation's amendment to article 16 (A/CONF.13/C.1/L.16) was substantive, and not merely formal. In considering the duties of the coastal State, the question was whether that State should play an active or a passive role

[1] Resumed from the 26th meeting.

in ensuring innocent passage through its territorial sea. According to the International Law Commission's text of article 16, it would appear that its role was merely passive. It was clear, on the other hand, from the judgement of the International Court of Justice in the Corfu Channel case [2] that a coastal State should play an active role in ensuring the safety of navigation in its territorial sea, and his delegation therefore proposed the insertion of a new paragraph to that effect in article 16.

8. The CHAIRMAN declared that discussion of article 16 and the amendments thereto was closed.

9. He put to the vote the joint proposal of Bulgaria and the U.S.S.R. (A/CONF.13/C.1/L.46).

*The proposal was rejected by 46 votes to 12, with 13 abstentions.*

10. The CHAIRMAN put to the vote the United States proposal (A/CONF.13/C.1/L.38).

*The United States proposal was adopted by 26 votes to 18, with 25 abstentions.*

11. The CHAIRMAN suggested that, after the adoption of the United States proposal, it was no longer necessary to put to the vote the United Kingdom amendment to paragraph 1 of article 16 (A/CONF.13/C.1/L.37). The United Kingdom amendment to paragraph 2 was formal rather than substantive, and might well be referred to the Drafting Committee.

*In the absence of any objection, it was so agreed.*

12. The CHAIRMAN put to the vote the Yugoslav proposal (A/CONF.13/C.1/L.16).

*The Yugoslav proposal was rejected by 17 votes to 11, with 43 abstentions.*

13. The CHAIRMAN put to the vote the International Law Commission's text of article 16, as amended.

*Article 16, as amended, was adopted by 59 votes to 1, with 10 abstentions.*

ARTICLE 19 (CHARGES TO BE LEVIED UPON FOREIGN SHIPS) [A/CONF.13/C.1/L.36, L.37, L.119] (continued) [3]

14. The CHAIRMAN observed that, since the United Kingdom proposal (A/CONF.13/C.1/L.37) was purely formal, there remained for consideration only two substantive amendments, those submitted by Spain (A/CONF.13/C.1/L.36) and Norway (A/CONF.13/C.1/L.119).

15. Mr. STABELL (Norway) said that his delegation's amendment (A/CONF.13/C.1/L.119) sought to add to paragraph 2 the words "These charges shall be levied without discrimination", in order to ensure that the right of passage through the territorial sea of a coastal State should be enjoyed by ships of all States on equal terms. The words which appeared in the amendment had been included in the corresponding article of the draft prepared by the Conference for the Codification of International Law in 1930,[4] but had been omitted from the International Law Commission's draft for reasons which his delegation found by no means convincing.

16. Mr. BARTOS (Yugoslavia) said that his delegation was in favour of the United Kingdom proposal (A/CONF.13/C.1/L.37), but believed that it was a proposal of substance and should be voted on by the Committee as a whole.

17. Mr. KRISPIS (Greece) supported the Norwegian amendment. His delegation, which attached great importance to non-discrimination in the matter, had submitted amendments in the same sense to articles 17 and 18.

18. Sir Claude COREA (Ceylon) objected to the United Kingdom amendment to paragraph 2 of article 19, as he believed that in some cases the coastal State might be entitled to recover the costs of services undertaken for the benefit of shipping generally.

19. With regard to the Norwegian proposal (A/CONF.13/C.1/L.119), his delegation, while opposed to discrimination in principle, took the view that, if the Norwegian proposal were adopted, it might detract from the right of a State to levy charges in certain special cases. That right should be preserved.

20. Mr. DE LA SERNA (Spain) said that he did not regard his delegation's proposal (A/CONF.13/C.1/L.36) as substantive, since it was concerned mainly with the rendering of the word "charge" in Spanish. He would therefore have no objection if the proposal were referred to the Drafting Committee.

21. Mr. GUTIERREZ OLIVOS (Chile), on the contrary, regarded the Spanish proposal as substantive. Whereas the International Law Commission's text referred simply to "the passage of foreign ships through the territorial sea", the Spanish proposal contained the phrase "in the exercise of the right of innocent passage". He would ask the Spanish representative if charges might be levied upon ships engaged in non-innocent passage through the territorial sea.

22. Mr. DE LA SERNA (Spain) pointed out that the question of levying charges on ships engaged in non-innocent passage through the territorial sea did not arise.

23. Mr. GARCIA ROBLES (Mexico) thought that the Spanish proposal might appropriately be referred to the Drafting Committee. He hoped that the United Kingdom delegation might find it possible to withdraw its amendments.

24. On the Norwegian proposal, he said that he was opposed to discrimination in principle, but pointed out that if the proposal were adopted, it would be in conflict with the statement in paragraph 2 of the International Law Commission's commentary to article 19 that "it is, of course, understood that special rights in this connexion may be recognized in international conventions".

25. Sir Gerald FITZMAURICE (United Kingdom) said that his delegation was prepared to withdraw both its amendments to article 19.

[2] *I.C.J. Reports, 1949*, p. 4.

[3] Resumed from the 27th meeting.

[4] Ser. L.o.N.P., 1930, v.14, p. 167, article 7.

26. The CHAIRMAN declared that consideration of article 19 and the amendments thereto was closed.

27. He suggested that the Spanish proposal (A/CONF. 13/C.1/L.36) be referred to the Drafting Committee.

*It was so agreed.*

28. The CHAIRMAN put to the vote the Norwegian proposal (A/CONF.13/C.1/L.119).

*The Norwegian proposal was adopted by 33 votes to 10, with 26 abstentions.*

29. The CHAIRMAN put to the vote the International Law Commission's text of article 19, as amended.

*Article 19, as amended, was adopted by 64 votes to 1, with 7 abstentions.*

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, L.88] (continued) [5]

*Additional paragraphs*

30. Mr. TUNCEL (Turkey) said that the object of his delegation's proposal (A/CONF.13/C.1/L.88) was to make provision for the special situation of certain countries whose penal code made certain crimes committed abroad punishable. It would cover cases of persons who had committed crimes abroad and who passed through the territorial sea on board ship. It also related to bilateral or multilateral extradition treaties, such as that recently concluded by the European countries belonging to the Council of Europe, and would apply to ships carrying persons in respect of whom an extradition order had been issued. His delegation's proposal would thus allow the coastal State, in accordance with its interests and treaty obligations, to exercise its criminal jurisdiction with respect to ships passing through its territorial sea in such a manner that due regard was paid to the interests of navigation.

*Paragraph 1*

31. Sir Gerald FITZMAURICE (United Kingdom) said that article 20, paragraph 1, accurately reflected the generally accepted view under international law as to the circumstances in which criminal jurisdiction could be exercised over passing vessels. If the Committee deleted sub-paragraph *a* in accordance with the Greek proposal (A/CONF.13/C.1/L.33), it would go well beyond the rules of existing international law and encroach upon the natural rights of the coastal State in the matter of criminal jurisdiction. He therefore appealed to the Greek representative not to press his proposal.

32. Mr. BOCOBO (Philippines) shared the United Kingdom representative's views. Sub-paragraph *a* should be retained to cover cases such as the carrying of counterfeit currency, which was not a crime that disturbed the peace of a country or the good order of the territorial sea but the consequences of which certainly extended beyond the ship.

33. Mr. KRISPIS (Greece) said that his delegation's proposal had been based on the assumption that the cases provided for in sub-paragraphs *a* and *b* overlapped to a certain extent. However, he agreed that the paragraph as a whole was an accurate statement of international law in force, and therefore withdrew his proposal.

34. Sir Gerald FITZMAURICE (United Kingdom) wondered whether the Pakistan proposal (A/CONF.13/C.1/L.53) was really necessary, since it merely stated explicitly one of the many cases that were covered by sub-paragraphs *a* and *b*.

35. Mr. TUNCEL (Turkey) said that his delegation would vote for the United States proposal (A/CONF. 13/C.1/L.41), which recognized the principle of the sovereignty of the coastal State, and at the same time stipulated certain exceptions.

36. His delegation supported whole-heartedly the Pakistan proposal which dealt with a question of prime international importance. However, he felt that the scope of the proposal should be broadened, as the question of illicit traffic in narcotic drugs was of universal concern, whereas article 20 merely dealt with passage through the territorial sea.

37. Mr. HSUEH (China) agreed, and said that his delegation would vote for the Pakistan proposal. Special reference should be made to the question, even though it was covered by sub-paragraphs *a* and *b*.

38. Mr. BARTOS (Yugoslavia), Mr. CHAKRAPANI (Thailand), Mr. ROSENNE (Israel) and Sir Claude COREA (Ceylon) said that their delegations would vote for the Pakistan proposal.

39. Mr. KRISPIS (Greece) sympathized with the Pakistan proposal, but as it related to only one of a variety of cases covered by sub-paragraphs *a* and *b* his delegation would vote against it. Its negative vote should not, however, be interpreted as a rejection of the principle involved.

40. Mr. STABELL (Norway) said that he had great sympathy for the intentions behind the Pakistan proposal. The great majority of the States represented at the Conference were bound by treaties to do their utmost to suppress illicit traffic in narcotic drugs. He doubted, however, whether a provision of the kind proposed would be an appropriate means towards that end. Article 20 dealt with crimes committed on board a ship, and it was difficult to imagine cases where crimes of the kind envisaged in the Pakistan proposal would actually have been committed on the ship during its passage. Besides, if a new rule were to be introduced for the purpose of facilitating the suppression of illicit traffic in narcotic drugs, it would not be natural to limit the new possibilities of action against ships involved in the traffic to foreign ships in the territorial sea.

41. Moreover, the inclusion of the Pakistan text in article 20 would enable the coastal State to detain and search ships on mere suspicion. That would cause delays and derogate considerably from the rights of innocent passage. A coastal State which had good reason to suspect that a ship passing through its territorial sea was being used for purposes of illicit traffic in narcotic drugs would be better advised to alert the ship's first port of call, where appropriate action could be taken.

[5] Resumed from the 28th meeting.

42. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation would oppose the United States proposal (A/CONF.13/C.1/L.41), which was too vague owing to its use of the word "generally", and would vote in favour of the clearer text of the International Law Commission.

43. The CHAIRMAN put to the vote the Pakistan proposal (A/CONF.13/C.1/L.53).

*The Pakistan proposal was adopted by 33 votes to 8, with 30 abstentions.*

44. The CHAIRMAN put to the vote the United States proposal (A/CONF.13/C.1/L.41).

*The United States proposal was adopted by 33 votes to 21, with 20 abstentions.*

45. The CHAIRMAN put to the vote point 3 of the United Kingdom amendment to article 20, paragraph 1, to substitute the words "to the coastal State" for "beyond the ship" (A/CONF.13/C.1/L.37), and explained that points 1 and 2 of the United Kingdom amendment would be referred to the Drafting Committee.

*The United Kingdom amendment was adopted by 56 votes to 4, with 13 abstentions.*

46. The CHAIRMAN put to the vote the International Law Commission's text of paragraph 1 of article 20, as amended.

*Paragraph 1 of article 20, as amended, was adopted by 64 votes to none, with 7 abstentions.*

*Paragraphs 2 and 3*

47. Mr. GROS (France) withdrew his delegation's proposal (A/CONF.13/C.1/L.6), the purpose of which had merely been to improve the drafting of paragraph 2.

48. Mr. STABELL (Norway) said that there was a certain inconsistency between the United Kingdom proposal for the addition of a new paragraph 4 (A/CONF.13/C.1/L.37), and paragraph 2 of the Commission's text. It would be advisable to bring the two texts into line.

49. Sir Gerald FITZMAURICE (United Kingdom) recognized the difficulty. He further pointed out that the principle contained in his delegation's proposed new paragraph appeared to be the same as that in the Yugoslav proposal (A/CONF.13/C.1/L.20).

50. After a brief exchange of views between Mr. BARTOS (Yugoslavia) and Sir Gerald FITZMAURICE (United Kingdom), it was decided that the United Kingdom proposal should be voted upon first and that if adopted it should be sent together with the Yugoslav proposal to the Drafting Committee, which would refer to both texts in preparing the final text.

51. The CHAIRMAN put to the vote the United Kingdom proposal for the addition of a new paragraph to be numbered paragraph 4 (A/CONF.13/C.1/L.37).

*The proposal was adopted by 50 votes to 5, with 18 abstentions.*

52. Mr. YINGLING (United States of America) said that his delegation proposed (A/CONF.13/C.1/L.41) the deletion of the words "lying in its territorial sea or" from article 20, paragraph 2, on the ground that a ship lying in the territorial sea of a coastal State was not engaged in innocent passage as defined in article 15, paragraph 4.

53. The CHAIRMAN put the United States proposal to the vote.

*The United States proposal was adopted by 21 votes to 20, with 34 abstentions.*

54. The CHAIRMAN observed that there was no need either to vote on the United Kingdom proposal relating to article 20, paragraph 2 (A/CONF.13/C.1/L.37), or to refer it to the Drafting Committee since, with the adoption of the United States proposal, the word "lying" had been deleted from the text of the article.

55. He put to the vote the International Law Commission's text of paragraph 2 of article 20 as amended.

*Paragraph 2 of article 20, as amended, was adopted by 68 votes to none, with 4 abstentions.*

56. The CHAIRMAN then put to the vote the International Law Commission's text of paragraph 3 of article 20.

*Paragraph 3 was adopted unanimously.*

*Additional proposals*

57. Mr. BARTOS (Yugoslavia) said that his delegation approved the Greek proposal (A/CONF.13/C.1/L.33) to insert a new paragraph between paragraphs 2 and 3 of article 20, and would vote in favour of it provided the following additions were made to the Greek text: First, after the words "paragraphs 1 and 2 of this article", insert the words "if the captain so requires"; secondly, at the end of the proposed paragraph, add "In cases of emergency, this notification shall be given at the time when the steps are taken."

58. He felt that the first addition was desirable in order to avoid the machinery of notification being brought into action unnecessarily, while the second addition was designed for cases where it was impossible to give prior notification of the steps to be taken.

59. Mr. KRISPIS (Greece) had no objection to modifying his amendment accordingly.

60. The CHAIRMAN put to the vote the Greek proposal (A/CONF.13/C.1/L.33), as amended orally by the representative of Yugoslavia.

*The Greek proposal, as amended, was adopted by 44 votes to 5, with 17 abstentions.*

61. Mr. TUNCEL (Turkey) observed that, as a majority of the Committee had voted in favour of the United Kingdom proposal to add a new paragraph 4, and as the principle expressed in that paragraph was in conflict with that contained in his own delegation's amendment, no useful purpose could be served by putting to the vote the additional paragraph proposed by his delegation (A/CONF.13/C.1/L.88).

62. He would, however, ask the rapporteur to include in his report a statement that the Turkish Government was opposed to the principle expressed in the United Kingdom proposal, which was contrary to Turkish criminal law. His government attached great importance to the matter, and might even enter a reservation re-

garding the paragraph in question, if it were included in the final text of the proposed convention.

63. The CHAIRMAN directed that a statement to that effect be included in the rapporteur's report.

64. Mr. QUADROS (Uruguay) said that, though he had voted in favour of paragraphs 1, 2 and 3 of article 20, he wished to enter the following reservation on behalf of his government. In a group of treaties concluded between American States in 1889, extensive jurisdiction in penal matters had been accorded to coastal States. The treaties had been revised in 1940, but the penal jurisdiction of the coastal States had not been restricted thereby. If any conflicts should arise between the proposed convention and the 1889 treaties, his country would give preference to the latter.

65. Mr. GUTIERREZ OLIVOS (Chile) asked whether a vote would be taken on the amended text of the article as a whole. He observed, for instance, that the new paragraph inserted on the proposal of the United Kingdom was at variance with the International Law Commission's statement in paragraph 4 of the commentary that "the proposed article does not attempt to solve conflicts of jurisdiction between the coastal State and the flag State in the matter of criminal law" and at the same time considerably limited the principle expressed in paragraph 2 of the article.

66. The CHAIRMAN felt that it would be most convenient to vote on the texts of articles as a whole after the report of the Drafting Committee had been received.

67. Mr. NIKOLAEV (Union of Soviet Socialist Republics) recommended that course.

*It was so agreed.*

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.49, L.51] (continued) [6]

68. Mr. YINGLING (United States of America) introduced his delegation's amendment (A/CONF.13/C.1/L.42).

The meeting rose at 1 p.m.

[6] Resumed from the 28th meeting.

## THIRTY-NINTH MEETING

*Wednesday, 9 April 1958, at 2.45 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)*

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.78 to L.81, L.82 and Corr.1, L.83, L.84, L.118, L.131 to L.141, L.144, L.149] (continued)

1. Mr. SEN (India), commenting on the joint amendment submitted by the delegations of India and Mexico to article 3 (A/CONF.13/C.1/L.79), recalled the statement by the leader of his delegation in the general debate (7th meeting), that the Indian Government could not agree that the three-mile limit for the breadth of the territorial sea was a fact of international law.

2. It was universally recognized that a coastal State was entitled to exercise sovereignty over that part of the sea adjacent to its coast, but there was no uniformity about the width of the adjacent sea claimed by a coastal State as its territorial sea. James Kent,[1] a great modern writer on international law, had stated in his commentaries on maritime law that it was difficult to draw any precise or determined conclusion about the distance to which a State could lawfully extend its exclusive dominion over the sea adjacent to its territory beyond those parts of the sea which embraced harbours, gulfs, bays and estuaries, over which its jurisdiction unquestionably extended. According to that writer, the dominion of the sovereignty of the coastal State over the contiguous sea extended as far as might be required for the purposes of sovereignty for all lawful ends. It was unnecessary to list all the eminent jurists who maintained that the fixed cannon-shot rule had never been universally accepted.

3. A glance at the synoptical table submitted by the secretariat (A/CONF.13/C.1/L.11/Rev.1) showed that the three-mile limit had been accepted by a few maritime Powers, among them the United Kingdom, the United States of America and Japan. Various factors had played their part in the acceptance of that limit, the predominant one being the eagerness of the maritime Powers to find a breadth which would best serve their navigational and fishing interests. The United Kingdom representative had already explained how the interests of his country would be affected if a twelve-mile limit were laid down for the exclusive fishing rights of the coastal State. The conflict between those States which advocated the three-mile limit and those which claimed a broader belt had not become acute until the smaller States had begun to exploit the seas adjacent to their coasts.

4. In seeking a solution to the problem of the breadth of the territorial sea, it had to be borne in mind that the vast majority of smaller nations considered a territorial sea of up to twelve miles in breadth essential to safeguard their reasonable interests. Many smaller nations had claimed breadths exceeding twelve miles; it would be a success for the Conference if it could provide that the territorial sea might not exceed that figure. The Indian delegation had associated itself with Mexico in the submission of an amendment to article 3 in an attempt to reconcile the claims of the smaller nations and the interests of the large Powers. It was obvious that the majority of the States represented at the Conference did not favour the three-mile rule. Many, among them India, had already prescribed a six-mile limit.

5. His delegation appreciated the spirit in which the

[1] *Kent's Commentary on International Law*, 2nd edition, revised in 1878, Deighton Bern and Co., Cambridge.

Canadian proposal (A/CONF.13/C.1/L.77/Rev.1) and that of the United Kingdom (A/CONF.13/C.1/L.134) had been submitted, and congratulated the two delegations on their desire to reach the compromise which was so essential to the Conference's success. The United Kingdom proposal reflected a striking departure from a traditional stand on the matter. He hoped that that spirit of compromise would spread beyond the confines of the Conference and lead to a happy solution of other international disputes and differences.

6. However, the Indian delegation could not accept either the United Kingdom or the Canadian proposal for four reasons: first, it appeared that neither would be generally acceptable to the States attending the Conference. Secondly, the Indian-Mexican proposal reflected the views of a large number of small States which felt that it was essential to adopt a flexible formula for fixing the breadth of the territorial sea. Thirdly, those States which supported the Canadian proposal opposed the United Kingdom amendment, and the United Kingdom delegation opposed the Canadian amendment. Given such a serious divergence of opinion, it was difficult for the Indian delegation to accept a situation in which it might be obliged to decide which was the better formula for the purposes of compromise. Lastly, the United Kingdom proposal contained two important reservations; the first was that there should be unrestricted right of passage for aircraft, including civil aircraft, and warships outside three miles, the second that there should be no exclusive fishing rights beyond the six-mile limit. His delegation had ascertained that the States which had fixed limits exceeding three and six miles in those respective cases would certainly not agree to the reservations.

7. The Indian delegation would have been happy had a large majority been able to accept the six-mile limit plus a special rule in respect of the adjacent sea necessary for the preservation of the interests of coastal States. Since such agreement seemed out of the question, the Indian delegation felt that the only formula likely to command general support was a flexible one similar to that in the joint amendment, which left it to the discretion of each State to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the baseline which might be applicable in conformity with articles 4 and 5.

8. The CHAIRMAN suggested that, as further amendments had been submitted to articles 1, 2, 3 and 66, and as there were no further speakers on his list, the debate on those articles should be deferred.

*It was so agreed.*

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] (continued)

9. The CHAIRMAN suggested that the amendments relating to the title of article 21, in documents A/CONF.13/C.1/L.42 and 47, should be referred to the Drafting Committee.

*It was so agreed.*

10. Mr. STABELL (Norway) said that the amendment moved by the United States delegation to paragraph 1 of article 21 (A/CONF.13/C.1/L.42) appeared at first sight to be innocuous. However, the small change suggested in the wording completely altered the meaning of the text. One of the important principles relating to innocent passage was that a ship in such passage was subject to the jurisdiction of the coastal State only for strictly limited purposes. In the Norwegian delegation's opinion, the wording proposed by the International Law Commission conformed to the generally accepted standards of international law. If the Committee blunted the sharp edge of that provision as it had done in the case of a similar passage in article 20, little would be left of the concept of innocent passage; the use of the word " generally " in the United States amendment made it perfectly clear that the rule had no absolute application. It would therefore be perfectly plain to anyone reading the amended text that the coastal State itself would decide whether its jurisdiction should be limited in a given case. Hence, if amended in the manner suggested by the United States delegation, paragraph 1 of article 21 would be nothing but a polite request to coastal States to be reasonable in the exercise of their civil jurisdiction and would give no assurance of any kind to ships interested in innocent passage or to the States whose ships were so interested.

11. Mr. ROSENNE (Israel) said that the United States amendment to the title of article 21, if accepted, would be one of substance, not of drafting.

12. Sir Gerald FITZMAURICE (United Kingdom), recalling the statement made by Mr. François at the 21st meeting, said that his delegation entirely agreed with the view that the International Law Commission could not have, and rightly had not, attempted to study in detail the question of inserting a detailed provision in draft article 21. The issue before the Committee was whether the Conference should confine itself to referring to relevant conventions, or whether it should attempt to include in any final document the principles underlying the conventions themselves. Mr. François had pointed out that at one time the Commission had considered basing article 21 on the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, but had abandoned that idea because it had considered that that convention, by favouring private creditors, would cause prejudice to maritime shipping passing through territorial seas without entering a port. It had also considered that those States which had prepared the convention had not intended that it should apply in full to all areas of the territorial sea in which a coastal State exercised jurisdiction as the convention itself required.

13. Paragraph 2 of article 21 of the International Law Commission's draft might have the effect of limiting, by comparison with the provisions of the Brussels Convention, the action which a coastal State might take in the extremely rare case of an attempt to arrest a ship passing through territorial seas without calling at a port. Paragraph 3 was completely at variance with the terms of the Brussels Convention, and article 21 as drafted failed to meet the first condition which Mr. François had rightly said should attach to any proposal to incorporate matter covered by existing conventions in such articles — namely, the avoidance of conflict between the articles and the conventions.

14. Although article 21 was the only one before the First Committee in respect of which such a difficulty arose, there were a number of others, among them articles 34, 35 and 36, which were before the Second Committee, which raised the same issue. The United Kingdom delegation felt that to accept article 21 as it stood would mean acquiescing in direct conflict between the principles of that article and those to which States parties to the Brussels Convention now, or in future, would bind themselves in their mutual relations.

15. Although the Brussels Convention had not been accepted by many States, it contained an extremely well-worked-out and well-thought-out set of provisions on the rather difficult subject covered by article 21. The United Kingdom Government therefore considered that it would be preferable for States to accept that convention rather than the terms of article 21, and had therefore proposed the deletion of the article and the substitution for it of a conference resolution in the terms set out in the United Kingdom proposal (A/CONF.13/C.1/L.37).

16. Mr. VERZIJL (Netherlands) said that, although there was much to be said for the United Kingdom proposal, his delegation considered that it would be better to add a new paragraph 4 to article 21 as proposed in the Netherlands amendment thereto (A/CONF.13/C.1/L.51).

17. Mr. GUTIERREZ OLIVOS (Chile) suggested that the voting on article 21 should be deferred until the following meeting in order to give delegations time to study the United Kingdom and Netherlands amendments.

18. Mr. NIKOLAEV (Union of Soviet Socialist Republics), supporting the Chilean representative's suggestion, said that the United Kingdom proposal was very far-reaching.

19. The CHAIRMAN suggested that, in view of the Chilean representative's suggestion, the Committee should defer consideration of all the amendments to article 21 to enable delegations to consider the alternative methods proposed for removing the inconsistencies between the Commission's text for the article and the Brussels Convention.

*It was so agreed.*

ARTICLE 22 (GOVERNMENT SHIPS OPERATED FOR COMMERCIAL PURPOSES) [A/CONF.13/C.1/L.36, L.37, L.44, L.50, L.51]; ARTICLE 23 (GOVERNMENT SHIPS OPERATED FOR NON-COMMERCIAL PURPOSES) [A/CONF.13/C.1/L.34, L.36, L.37, L.47, L.48, L.50, L.51, L.93]

20. Mr. DE LA SERNA (Spain), introducing his delegation's amendment to articles 22 and 23 (A/CONF.13/C.1/L.36), said that it envisaged the merging of articles 22 and 23, the wording of the former being retained as paragraph 1 of the new text, and article 23, as amended, becoming paragraph 2 thereof. His delegation preferred the term "government-owned ships" to "government ships".

21. Sir Gerald FITZMAURICE (United Kingdom), referring to the United Kingdom proposal that both article 22 and article 23 should be deleted (A/CONF.13/C.1/L.37), a proposal which was largely one of form, and could be dealt with by the drafting sub-committee, said that his delegation had no objection to the substance of those articles, subject to the one reservation that it considered that a definition of government ships operated for non-commercial purposes was highly desirable. The lack of such a definition had created a great many difficulties, and the United Kingdom proposal to add a new paragraph 20 A was intended to remedy that defect.

22. In order to understand the proposal that articles 22 and 23 should be deleted, it was necessary to take into account the United Kingdom proposals in document A/CONF.13/C.1/L.37 for redrafting and rearranging the headings of the several sub-sections. If those proposals were accepted, the purposes of articles 22 and 23 would be achieved thereby.

23. Mr. IOSIPESCU (Romania), introducing his delegation's amendment to article 22 (A/CONF.13/C.1/L.44), said that government ships must be immune from the civil jurisdiction of another State. After briefly reviewing the International Law Commission's commentary on article 22, and the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, he pointed out that the juridical status of ships owned by governments which had not adhered to that convention must be governed by the generally recognized rules of international law. He saw no reason why the Conference should deal with the matter in a resolution which was contrary to existing rules of law so far as government-owned ships were concerned.

24. Mr. KIM (Republic of Korea), introducing his delegation's amendments to articles 22 and 23 (A/CONF.13/C.1/L.50), said that their purpose was to enable the coastal State to make the passage through the territorial sea of government ships operated for commercial purposes subject to prior notification. In the case of other government ships, the coastal State could make their passage subject to authorization. Both procedures were necessary to enable the coastal State to protect its security.

25. Mr. VERZIJL (Netherlands) introduced his delegation's amendments to articles 22 and 23 (A/CONF.13/C.1/L.51). It was not necessary to specify that the rules contained in sub-section A applied to government ships, whether operated for commercial or for non-commercial purposes; they were by definition general rules which applied to all ships. The fact that the rules contained in sub-section B were applicable to government ships operated for commercial purposes could be conveyed by a rearrangement of the titles of the articles, as suggested by the United Kingdom delegation. Hence, articles 22 and 23, as drafted by the International Law Commission, were unnecessary.

26. Mr. TUNKIN (Union of Soviet Socialist Republics) asked the Netherlands representative to explain the meaning of the words "exercise of government functions" in his proposal concerning article 22.

27. Mr. VERZIJL (Netherlands) said that government functions subsumed all functions of a non-commercial

character. International law put government ships operated for commercial purposes on the same footing as merchant ships ; it was therefore necessary to define government ships operated for non-commercial purposes.

28. Mr. KRISPIS (Greece) introduced his delegation's proposal (A/CONF.13/C.1/L.34) that article 23 be deleted, which was consequential upon the Greek amendment to article 24, also to be found in document A/CONF.13/C.1/L.34.

29. Mr. BOAVIDA (Portugal) introduced his delegation's amendment to article 23 (A/CONF.13/C.1/L.47). It was unnecessary to state that the rules contained in sub-section A should apply to government ships operated for non-commercial purposes, because those rules were of a general character. There was, however, some purpose in stating that the rules contained in sub-section B should not apply to government ships.

30. Mr. PFEIFFER (Federal Republic of Germany) introduced his delegation's amendment to article 23 (A/CONF.13/C.1/L.48). The purpose of the reference to article 19 was to make it clear that the charges mentioned in paragraph 2 thereof could be levied upon government ships operated for non-commercial purposes. A well-established custom assimilated those ships to merchant ships in respect of payment of those dues.

31. Mr. GARCIA ROBLES (Mexico) said that the International Law Commission's texts for articles 22 and 23 made all the essential provisions on the subject of government ships. He therefore appealed to delegations to withdraw their amendments, except for those which could properly be referred to the drafting sub-committee.

32. Sir Gerald FITZMAURICE (United Kingdom) said that his delegation was prepared to leave it to the sub-committee to deal with the United Kingdom proposals concerning the deletion of articles 22 and 23 and the introduction of a definition of government ships operated for non-commercial purposes.

33. His delegation did not consider that the passage of warships could be made subject to previous notification or authorization; *a fortiori,* government ships other than warships could not be made subject to such requirements. He accordingly appealed to the delegation of the Republic of Korea to withdraw its proposals (A/CONF.13/C.1/L.50).

34. Mr. TUNCEL (Turkey) said that the definition of government ships operated for non-commercial purposes proposed by the United Kingdom delegation (A/CONF.13/C.1/L.37, new article 20 A) included fleet auxiliaries, military supply ships and troopships. Ships in those categories were, however, included among warships in such international instruments as the Convention of Montreux.

35. Mr. GUTIERREZ OLIVOS (Chile) agreed with the Turkish representative; the United Kingdom definition raised substantive issues.

36. Mr. CARMONA (Venezuela) said that his government, which owned a large merchant fleet, had no doubts about the treatment of government ships operated for commercial purposes : they must be treated in every respect as merchant ships. A State could claim immunity only in respect of its acts as a State, and not in respect of its commercial activities.

37. There was also an important practical reason for assimilating such government ships to private merchant ships. If a State claimed immunity from jurisdiction in respect of its activities in commercial navigation, there would be a general reluctance to make use of its ships.

38. Mr. BARTOS (Yugoslavia) agreed with the Chilean representative that the inclusion in the United Kingdom definition of fleet auxiliaries, military supply ships and troopships was more than a matter of mere form. Such ships were considered as warships by international treaties and by usage.

39. Mr. LOUTFI (United Arab Republic) supported the comments of the Turkish and Yugoslav representatives on the United Kingdom definition.

40. Mr. ZLITNI (Libya) proposed that the voting on articles 22 and 23 be deferred until the following meeting in order to enable delegations to seek expert advice on the issues raised by the United Kingdom definition.

41. The CHAIRMAN proposed that the vote on the Korean amendment (A/CONF.13/C.1/L.50) be deferred until the following meeting.

*It was so agreed.*

42. The CHAIRMAN proposed that the United Kingdom definition (proposed new article 20 A) should not be referred to the drafting sub-committee.

*It was so agreed.*

43. Mr. ALVAREZ AYBAR (Dominican Republic) said that the rule formulated in article 22 was based on the International Convention for the Unification of Certain Rules relating to the Immunity of state-owned Vessels, signed at Brussels in 1926. According to that convention, State immunity did not apply to government ships operated for commercial purposes.

44. Mr. OHYE (Japan) said that a definition of government ships operated for non-commercial purposes along the lines proposed by the United Kingdom delegation had been adopted by the Second Committee at its 27th meeting in the course of its discussion of article 33. Some co-ordination of the work of the two committees on the subject was clearly called for.

45. Sir Gerald FITZMAURICE (United Kingdom) said that, if a definition of such government ships had been adopted by the Second Committee the First Committee did not need to repeat the process, and he was prepared to withdraw his delegation's proposal concerning the new article 20 A (A/CONF.13/C.1/L.37).

46. The CHAIRMAN said that the secretary would look into the question of co-ordinating the Committee's work with that of the Second Committee.

47. Mr. FISER (Czechoslovakia), on behalf of his delegation, supported the Romanian amendment to article 22 (A/CONF.13/C.1/L.44).

48. The International Law Commission's draft article 22 drew a distinction between government ships operated for commercial purposes and other government ships. That distinction was not in conformity with the present rules of international law. The general principle of immunity accorded to governments in regard to their property applied to all government ships whether they were operated for commercial purposes or not. That principle had been fully confirmed in the legal practice of many countries, particularly by United States courts, which had delivered a number of judgements to that effect.

49. In its commentary on article 22, the International Law Commission explained that the rule formulated in that article was based on the Brussels Convention of 1926 concerning the immunity of government ships. That convention had only been ratified by eleven States, however, and its provisions could not therefore be held to constitute general rules of international law. On the contrary, the convention was a conventional derogation from the general rule of international law, which held that all government ships enjoyed immunity from civil jurisdiction. Instead of codifying the rule, the International Law Commission was proposing to codify the exception to the rule.

50. Mr. IOSIPESCU (Romania) pointed out that his delegation's amendment was closely linked with article 21, and should not therefore be put to the vote before that article, the vote on which had been deferred.

51. The CHAIRMAN agreed.

The meeting rose at 5.45 p.m.

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## FORTIETH MEETING

*Thursday, 10 April 1958, at 10 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.78 to L.81, L.82 and Corr.1, L.83, L.84, L.118, L.131 to L.141, L.144, L.149, L.152, L.153] (continued)

1. Mr. CARROZ (International Civil Aviation Organization), speaking at the invitation of the CHAIRMAN, observed that the Secretary-General of the International Civil Aviation Organization (ICAO) had already submitted his observations (A/CONF.13/31) on the draft articles drawn up by the International Law Commission. He himself only wished to point out that the Chicago Convention on International Civil Aviation of 1944 had established a single juridical régime for the air space above the territorial sea and for the air space above the land dominion of the coastal State.

2. Mr. VERZIJL (Netherlands) explained that the purpose of his amendment (A/CONF.13/C.1/L.83) was to rearrange articles 1 and 2 in such a way as to make it clear that the coastal State's sovereignty over the bed and subsoil of the territorial sea was subject to the same limitations as its sovereignty over the waters of that belt. It was clear from the provisions of article 17, paragraph 4, that the coastal State must not hamper navigation through international straits in any way, even by installations on the subsoil.

3. His delegation had also sought in its new wording to balance the sovereign rights of the coastal State against the right of innocent passage, but the order adopted in the prefatory sentence to article 1 had been dictated purely by drafting considerations and was not intended to give preference to the right of innocent passage.

4. Mr. GRIGOROV (Bulgaria) said that he intended to transmit to the Drafting Committee some drafting amendments to article 1 and to the title of part 1 of the draft convention.

5. The CHAIRMAN suggested that as no other sponsors of amendments were ready to speak, the general discussion on the amendments could be begun.

6. Mr. BA HAN (Burma) said that, even though the discussions on the origins of the three-mile rule were now purely academic, it was important to bear in mind the fact that the delimitation of the territorial sea was based on the principle of effective dominion. In fact, the persistent efforts of States to establish control over the waters adjacent to their coasts had almost always been prompted by security considerations and, conversely, the efforts to resist extensions of the territorial sea had mainly been influenced by military considerations. Further encroachments on the three-mile limit, of which claims over the contiguous zone and the continental shelf were the classsic examples, had been made in order to protect the commercial, fiscal, economic and political interests of States. The synoptical table prepared by the Secretariat (A/CONF.13/C.1/L.11/Rev.1) showed that the great majority of States claimed a wider territorial sea; yet the great maritime Powers were still determined partisans of the three-mile limit. Hence, the need to find a balance between the conflicting claims of exclusive control by the coastal State and the common interest.

7. The Canadian delegation had made a valiant effort to bridge divergencies of view and practice, but its proposal (A/CONF.13/C.1/L.77/Rev.1) suffered from the defect that it still maintained the three-mile limit, and appeared to treat the contiguous zone on a footing of equality with the territorial sea while denying the coastal State exclusive control for security purposes in the former.

8. It was patently obvious from the statement made by Sir Reginald Manningham-Buller at the 35th meeting in introducing the United Kingdom amendment (A/CONF.13/C.1/L.134), that that country still clung tenaciously to the three-mile rule, and the latter part of the amendment neutralized the effect of the rest. While he (Mr. Ba Han) appreciated the desire to safeguard existing rights of passage for ships and aircraft, he felt that account must nonetheless be taken of the

legitimate wish of States which had exercised exclusive jurisdiction over a territorial sea of twelve miles to retain their exclusive authority, and the champions of the three-mile limit would do well to reflect on the cautious attitude displayed by the Judicial Committee of the Privy Council in the case of the Attorney-General for British Columbia *v.* the Attorney-General for Canada in 1914, when it had stated that it was not desirable for any national tribunal to pronounce on the doctrine of territorial waters until the Powers had adequately discussed and reached agreement on its meaning in a conference.

9. The joint Indian and Mexican amendment (A/CONF.13/C.1/L.79), which he supported, offered a way out of the deadlock by recognizing the right of each State to fix the breadth of its territorial sea within a maximum of twelve miles, and the United Kingdom representative's fear that that maximum would soon become a minimum was groundless.

10. He believed that the problem would eventually be solved if it could be stipulated in the draft convention that prescriptive rights founded on free consent, whether explicit or not, should be respected. Such a provision would apply equally to the exclusive claims of coastal States and the interests of all others. The Soviet Union amendment (A/CONF.13/C.1/L.80) seemed to move far in that direction.

11. He regretted that he was unable to support the proposal of Ceylon (A/CONF.13/C.1/L.149) to reduce the width of the contiguous zone because it would nullify the effect of the proposals to extend the territorial sea.

12. Mr. BHUTTO (Pakistan) said that if the Committee could find a solution to the problems under discussion, it would have made a real contribution to the progressive development of international law, but failure would frustrate future efforts to reach a settlement even more than had the failure of The Hague Conference of 1930.

13. He found the United Kingdom amendment disappointing, and believed that its substance was far more effectively covered by the Canadian amendment (A/CONF.13/C.1/L.77/Rev.1) which his delegation had already supported upon its introduction at the eleventh session of the General Assembly.[1] He remained firmly convinced that that amendment constituted the only honourable compromise. It had clearly been put forward out of the most disinterested considerations, since Canada itself would stand to lose by its adoption. Similarly, he believed that the United States Government had supported it out of the highest principles of justice and impartiality.

14. In the absence of further speakers for the time being on articles 1, 2, 3 and 66, the CHAIRMAN proposed that the Committee take up article 21.

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] (continued)

15. Mr. BOCOBO (Philippines) supported the United Kingdom proposal (A/CONF.13/C.1/L.37) to delete article 21 because, as the International Law Commission had admitted in its commentary, the rules proposed in that article with regard to civil jurisdiction over foreign ships passing through the territorial sea differed from those laid down in the Brussels Convention of 1952 for the Unification of Certain Rules relating to the Arrest of Seagoing Ships. He favoured in the present instance the technique followed in drawing up civil codes of leaving the regulation of certain detailed matters to special legislation. Accordingly, he did not share the Commission's view that the question should not be left in abeyance, because the proposed rules would then be marred by a gap detrimental to international navigation. He considered that it would be better to omit article 21 and wait until such time as the Brussels Convention was more widely ratified than to maintain a text which was both unsuitable and inadequate.

16. Mr. GUTIERREZ OLIVOS (Chile) was unable to support the United Kingdom proposal, largely because of the wording used for paragraph 3 of the draft resolution. It would be inappropriate to endorse a convention which so far had been ratified by very few States and which others attending the present conference might not even have studied in detail.

17. Mr. STABELL (Norway) said that without entering into the complex questions covered by article 21, he still remained unconvinced by the argument of the United Kingdom and Netherlands representatives that there was a contradiction between that article and the Brussels Convention. Nor did he interpret the Commission's own comment in that sense. In his view, one was *lex generalis* and the other was *lex specialis*. There was every reason why the civil jurisdiction of the coastal State should be far more restricted in respect of foreign ships in innocent passage through its territorial sea than in respect of such ships passing through its internal waters or lying in its harbours. Acceptance of the United Kingdom draft resolution would not settle the problem of the extent of the coastal States' jurisdiction in the former case. Hence, in the absence of weighty reasons to the contrary, he continued to maintain that there would be a serious gap in the draft if the course advocated by the United Kingdom delegation were followed.

18. Mr. DEAN (United States of America) recognized that the United Kingdom proposal was inspired by the desire to preserve wider civil jurisdiction for the coastal State than was recognized in the Commission's draft of article 21, paragraph 2. The Brussels Convention listed some seventeen different categories of maritime claims, but admitted no others. It also clearly stipulated that the coastal State could institute proceedings in regard to such claims against any ship of the same line or of the parent company, even though the incident which had given rise to the claim had occurred in another place and at another time. His government agreed with the wider jurisdiction afforded by the Brussels Convention, and therefore regretted that it was unable to support the United Kingdom proprosal, but there were good reasons why many States had failed to ratify that convention, so that the appeal contained in the United Kingdom draft resolution would be impolitic. In support of that argument, he added that the United States was not a

[1] See *Official Records of the General Assembly, Eleventh Session, Sixth Commission,* 493rd meeting.

party to the Convention because it limited the civil jurisdiction of the coastal State to maritime claims only, perhaps as a result of having been drafted by admiralty lawyers for admiralty purposes; but non-maritime claims might have equal or even greater force. For that reason, his delegation had proposed (A/CONF.13/C.1/L.42) the insertion of a statement of principle in lieu of paragraph 2. That formula, while avoiding the extremes both of the original text with its severe restriction on the jurisdiction of the coastal State and that of the Brussels Convention, achieved a golden mean, preserving the merits of both.

19. Mr. KATICIC (Yugoslavia) considered that article 21 with the Netherlands amendment (A/CONF.13/C.1/L.51) was acceptable in conjunction with the United Kingdom draft resolution, because it would be useful to appeal for a wider number of ratifications to the Brussels Convention.

20. Mr. ROSENNE (Israel) shared the Norwegian representative's doubts about the United Kingdom draft resolution, which, he feared, would not be conducive to the attainment of the purposes of article 21 and would leave a serious gap in the draft. The Committee might well follow the example of the Second Committee which, when a similar problem had arisen in connexion with the articles 34, 35 and 36, had decided to state general principles, leaving detailed regulation to international treaties. He therefore favoured the Netherlands amendment.

21. He found it difficult to agree that there was a contradiction between article 21 and the Brussels Convention. He was inclined rather to regard them as complementary, the former being more restrictive as to the jurisdiction that could be exercised in regard to a ship, whereas the other was more restrictive in regard to the types of claims that could be proceeded with, so that a combination of the two might offer certain advantages.

22. Another reason for his reluctance to support the United Kingdom draft resolution was that the Brussels Convention had so far been ratified by very few States, so that a long time might elapse before it could provide a generally accepted legal régime in its particular sphere.

23. Sir Gerald FITZMAURICE (United Kingdom) said that, in deference to the comments of previous speakers and recognizing the difficulty some delegations had in supporting the recommendation in the United Kingdom draft resolution that the Brussels Convention be ratified as widely as possible, his delegation was prepared to withdraw its proposal in favour of the Netherlands amendment (A/CONF.13/C.1/L.51). He maintained the view, however, that there was an obvious contradiction between article 21 and the Brussels Convention, which was regarded by some as not going far enough, and by others as being too restrictive. Thus, in answer to the Norwegian representative, he would point out that article 21, paragraph 3, not being limited to maritime claims, went far beyond the Brussels Convention and in that respect should meet the United States point. It was, surely, intended to cover cases when a foreign ship entered the territorial sea from inland waters or had been lying in the territorial sea. His technical advisers had informed him that there had never been a case of a foreign ship being arrested during continuous passage through the territorial sea. It was precisely that incompatibility between paragraph 3 and the Brussels Convention which had prompted his delegation to propose its deletion.

24. Mr. SÖRENSEN (Denmark) supported the United States amendment to article 1, paragraph 1, because, as was clear from the French text, that provision did not deal with arrest in the judicial sense. On the other hand, he was reluctant to accept the United States amendment for the insertion of the word "generally" in that paragraph, because it was an absolute principle that the coastal State was not entitled to stop or divert ships in innocent passage for the purpose of exercising civil jurisdiction against a person on board. Paragraphs 2 and 3 fully safeguarded the interests of the coastal State and he would vote in favour of the article as a whole with the addition of paragraph 4 proposed by the Netherlands.

25. He withdrew the Danish amendment (A/CONF.13/C.1/L.49).

26. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that the Netherlands proposal appeared wholly superfluous, as no instrument which the Conference might draw up could possibly affect the rights or obligations of parties to pre-existing conventions. Moreover, a direct reference to a specific convention might only complicate matters by necessitating similar references in many other articles.

27. Mr. LOUTFI (United Arab Republic) felt that the Drafting Committee should be asked to consider whether there was any need for a general saving clause regarding the validity of the relevant special conventions. The Netherlands amendment should, however, be put to the vote in any event.

28. Mr. NIKOLAEV (Union of Soviet Socialist Republics) agreed with the representative of the Ukrainian S.S.R. that there was absolutely no need for the additional paragraph. The Brussels Convention had been signed by very few States, and their rights would in no way be prejudiced by the Conference's decisions. He also shared the view that references to all the relevant conventions would only overburden the final text with extraneous matter.

29. Mr. BOCOBO (Philippines) endorsed the opinion that the Netherlands amendment would serve no useful purpose, as special conventions would be unaffected by the new general instrument. The Committee should heed the General Committee's call for a concentration of effort.

30. Mr. FATTAL (Lebanon) said that the difficulties could have been avoided if the Committee had listened more attentively to the statement made by Mr. François, Expert to the secretariat of the Conference at the 21st meeting of the First Committee. He had expressly stressed that the Commission had never intended to interfere with any existing convention on maritime matters. A general statement of that principle should appear

in the final instrument, but only as an entirely separate provision.

31. Mr. TUNCEL (Turkey) supported the opinion that the new paragraph would add nothing. Furthermore, a reference to one specific convention might lend itself to the interpretation that any relevant instrument not expressly mentioned had been superseded. With regard to the Lebanese representative's suggestion that the final statement should contain a general saving clause covering all pre-existing special instruments, he felt that that point was already covered by the reference in article 1, paragraph 2, to " other rules of international law ".

32. The CHAIRMAN noted that there seemed to be no objection to the principle expressed in the new paragraph 4 proposed by the Netherlands (A/CONF.13/C.1/L.51), but that most delegations would apparently prefer to have it confirmed and clarified in a provision of general application. The Committee might, therefore, record an opinion to that effect, reserving its right to return to the Netherlands amendment if its sugggestion was not well received in the other Committees.

*It was so agreed.*

*Paragraph 1*

33. Mr. PETREN (Sweden) supported the Danish representative's view that the word " generally " in the United States amendment (A/CONF.13/C.1/L.42) tended to detract from the principle that a coastal State could not stop a ship for the purpose of exercising its civil jurisdiction in respect of an individual on board. That principle being absolute and permitting of no derogation, he would vote against the proposed insertion.

34. Mr. KRISPIS (Greece), reserving his delegation's position on the word " generally ", asked for the United States amendment relating to paragraph 1 to be put to the vote in two parts, the word " generally " being voted on separately.

35. Mr. NIKOLAEV (Union of Soviet Socialist Republics), endorsing the Greek representative's request for a separate vote, said that he would oppose the insertion of the restrictive word " generally ", while supporting the replacement of " arrest " by " stopping ".

36. Mr. BOCOBO (Philippines) felt that the use of the word " should ", as proposed in the first part of the United States amendment, would greatly weaken the force of the paragraph as a statement of legal principle.

*The United States proposal (A/CONF.13/C.1/L.42) for the insertion of the word " generally " was rejected by 37 votes to 8, with 21 abstentions.*

*The United States proposal (A/CONF.13/C.1/L.42) that the words " may not arrest " should be replaced by the words " should not stop " was adopted by 28 votes to 9, with 29 abstentions.*

*Paragraph 1 of article 21, as amended, was adopted by 54 votes to none, with 7 abstentions.*

*Paragraph 2*

37. Mr. GROS (France) pointed out that the French amendment (A/CONF.13/C.1/L.6) was purely one of form, which could be dealt with by the Drafting Committee.

38. Mr. STABELL (Norway) said that the United States amendment (A/CONF.13/C.1/L.42) would leave paragraph 2 devoid of all content. In contrast to the clear wording of the Commission's text, it failed to state a positive rule, and would afford no true protection from harassment to ships in passage. In practice, therefore, it would amount to total deletion of the paragraph.

*The United States amendment (A/CONF.13/C.1/L.42) was rejected by 44 votes to 5, with 12 abstentions.*

*The International Law Commission's text of paragraph 2 of article 21 was adopted without dissenting voice.*

*Paragraph 3*

39. Mr. DEAN (United States of America) withdrew the United States proposal for the deletion of the paragraph (A/CONF.13/C.1/L.42).

*The International Law Commission's text of paragraph 3 of article 21 was adopted without dissenting voice.*

ARTICLE 22 (GOVERNMENT SHIPS OPERATED FOR COMMERCIAL PURPOSES) [A/CONF.13/C.1/L.36, L.37, L.44, L.50, L.51]; ARTICLE 23 (GOVERNMENT SHIPS OPERATED FOR NON-COMMERCIAL PURPOSES) [A/CONF.13/C.1/L.34, L.36, L.37, L.47, L.48, L.50, L.93] (continued)

40. The CHAIRMAN drew attention to the action taken by the Second Committee at its 27th meeting in approving the insertion in the Commission's draft of a new article 33 A, identical to the article 20 A proposed by the United Kingdom delegation to replace articles 22 and 23 (A/CONF.13/C.1/L.37).

41. Mr. KIM (Republic of Korea) expressed his delegation's conviction that coastal States should be entitled to make the passage of government ships subject to previous authorization or, at least, notification. The term " non-commercial purposes " was particularly vague, and it was often wholly impossible to determine what the true purpose of a voyage really was. Consequently, the coastal State should be free to limit the number of foreign government vessels in its territorial waters at any one time, and to take precautionary measures against possible interference with its public order. For those reasons his delegation had submitted its amendment (A/CONF.13/C.1/L.50).

42. Mr. SÖRENSEN (Denmark) asked to what extent the Second Committee's approval of the new article 33 A restricted the First Committee's freedom of action with regard to the parallel text proposed in connexion with article 23. In his view, since the decision in the Second Committee had been reached without mature reflection and there was always the possibility of the régimes of the high seas and of the territorial sea being embodied in separate instruments, the First Committee should not consider itself bound to follow suit. In the final ana-

lysis, the expression "government ships operated for non-commercial purposes" might require a different definition in each of those two contexts; some of the craft listed in the United Kingdom proposal were often classified as warships, the passage of which through the territorial sea was subject to special rules.

43. The CHAIRMAN said that, as far as the question related to rights of passage, the First Committee was fully competent to take whatever decision it deemed proper. The fact that two different definitions might prove inconvenient raised issues not of competence but of general policy.

44. Mr. TUNCEL (Turkey) said that the difficulty owed its origin to the strange principle that a government ship could be armed without being *ipso facto* a warship. The Turkish Government had explicitly mentioned that point in its comments on earlier versions of the Commission's text, stressing that the expression "government ships operated for non-commercial purposes" should be stated to apply solely to unarmed vessels.[2] That warning had unfortunately gone unheeded, and the position was now further aggravated by the new article 20 A proposed by the United Kingdom in which even ships regarded by international law as men-of-war were assimilated to harmless merchantmen requiring neither authorization nor notification.

45. The text approved by the Second Committee — which could not be regarded as definitive even in the context of article 33 — would certainly be wholly out of place in the section dealing with passage through the territorial sea, an area subject to the absolute sovereignty of the coastal State. The inroads made on that sovereignty by some of the provisions already adopted were sufficiently serious in themselves, and the Turkish delegation, for one, would find it totally impossible to accept a text authorizing foreign military craft to enter a State's territorial waters in unlimited numbers merely at the whim of their parent government.

46. In those circumstances, as long as there was no proper definition of the various categories of government ships, the Turkish delegation would feel constrained to support the Korean proposal.

47. Mr. GUTIERREZ OLIVOS (Chile) felt that the definition of non-commercial government ships required for the purposes of article 33, and that needed for the section on innocent passage, would obviously have to be different. As long as it was only a question of immunity, all that had to be established was the ship's official character, but in the determination of the rights of government ships in transit through the territorial sea the primary consideration was the security of the coastal State.

48. Sir Gerald FITZMAURICE (United Kingdom) said that the definition of a warship had already been approved by the Second Committee at its 27th meeting, and was irrelevant to the question under discussion. The First Committee's function was merely to draw a distinction between ships operated for commercial purposes and those operated for non-commercial purposes, regardless of the fact that the latter might include certain craft which might also be classified as men-of-war. The difficulty might be resolved if the first part of the United Kingdom proposal was changed to read: "The following categories of vessels shall not be deemed to be government vessels operated for commercial purposes:".

49. He hoped that, in order to avoid a possible paradoxical situation, consideration of the Korean amendment would be deferred until the Committee had dealt with article 24.

50. Mr. KATICIC (Yugoslavia) suggested that the matter might be clarified if sub-paragraph *i* of the United Kingdom amendment began with the words "Warships and other military craft, such as yachts, etc." It would then be clear that the distinction was solely one between commercial ships and non-commercial ships, while the question of the applicable régime would be left open.

51. With regard to the question of competence, he agreed that the First Comittee was certainly free to determine the régime governing passage and the rules applicable to given categories of vessels. But the Second Committee's approval of article 33 A nevertheless raised some knotty problems, which might best be circumvented if the Second Committee were invited to reconsider its decision in the manner authorized by the rules of procedure.

52. Mr. GARCIA ROBLES (Mexico) agreed that the Second Committee's decision seemed somewhat hasty and that, regardless of the need for consistency, the First Committee could not be rigidly bound by the actions of other bodies.

53. The vessels listed in the new article 33 A were, under the terms of article 33, "assimilated" to warships for purposes of immunity. It was reasonable to infer, therefore, that non-commercial government ships also assumed the same obligations as warships, and that their passage through the territorial sea could be made subject to previous authorization or notification.

54. Lastly, he felt that articles 22 to 25 should be considered as a group, and that, after discussion, their final form should be determined by a small co-ordinating committee.

55. Mr. FATTAL (Lebanon) said that the best definitions were often implicit. As it was generally known what a "commercial" vessel was, and there was no serious doubt regarding the meaning of the term "warship", a "ship operated for a non-commercial purpose" was clearly one that did not fall into either of those categories. The Commission's text thus needed no amplification.

56. Mr. SÖRENSEN (Denmark) pointed out that the United Kingdom proposal, while purporting to be exhaustive, failed to list such craft as ferries operated by State railways, government-owned icebreakers, and others. Those omissions showed the difficulty of devising a satisfactory definition by enumeration alone.

The meeting rose at 1.15 p.m.

[2] See *Yearbook of the International Law Commission, 1956*, Vol. II (A/CN.4/SER.A/1956/Add.1, p. 75).