A/CONF.13/40

United Nations Conference on the Law of the Sea

Official records

Volume IV:

SECOND COMMITTEE

(High Seas: General Régime)

Summary records of meetings and Annexes

GENEVA

24 February — 27 April 1958

United Nations Conference on the Law of the Sea

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INTRODUCTORY NOTE

The *Official Records* of the United Nations Conference on the Law of the Sea comprise seven volumes, as follows:

Volume I, Preparatory Documents

Volume II, Plenary Meetings

Volume III, First Committee (Territorial sea and contiguous zone)

Volume IV, Second Committee (High seas: general régime)

Volume V, Third Committee (High seas: fishing: the conservation of living resources)

Volume VI, Fourth Committee (Continental shelf)

Volume VII, Fifth Committee (Question of free access to the sea of land-locked countries)

Volumes III to VII contain the summary records of the meetings and the relevant documents, which appear as annexes, including the draft articles prepared by the International Law Commission and the final texts adopted by the committees of the Conference. In addition, volume II contains:

(*a*) The list of delegations;

(*b*) The agenda of the Conference and the rules of procedure adopted by the Conference at its first and second plenary meetings;

(*c*) Certain documents of the General Committee of the Conference;

(*d*) The reports of the five Committees and the Drafting Committee of the Conference;

(*e*) The Final Act, together with the text of conventions, protocol of signature and resolutions adopted by the Conference.

Each volume includes a table of contents, which indicates the matters dealt with at each meeting, and an index listing the documents relating to that part of the Conference's work which forms the subject of the volume in question; the index shows where these documents may be found.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The Conference documents all bear the symbol A/CONF.13, followed by capital letters and figures which indicate the nature of the document concerned:

Symbol	*Nature of document*
A/CONF.13/ to 36	Preparatory documents
A/CONF.13/L.1 to L.58 A/CONF.13/SR.1 to SR.21	Plenary meetings
A/CONF.13/BUR/L.1 to L.7 A/CONF.13/BUR/SR.1 to SR.7	General Committee of the Conference
A/CONF.13/C.1/L.1 to L.168 A/CONF.13/C.1/SR.1 to SR.66	First Committee
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The summary records contained in this volume were originally distributed in mimeographed form as documents A/CONF.13/C.2/SR.1 to SR.37. They include the corrections to the provisional summary records that were requested by the delegations and such drafting and editorial modifications as were considered necessary.

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A/CONF.13/C.2/ SR.1 to SR.37	Summary record of meetings of the Second Committee (1st to 37th meetings)	See pp. 1 to 110 of this volume
A/CONF.13/L.17	Report of the Second Committee	*Official Records of the United Nations Conference on the Law of the Sea, vol. II, Annexes*
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OFFICERS OF THE SECOND COMMITTEE

Chairman
Mr. O. C. GUNDERSEN (Norway)

Vice-Chairman
Mr. J. MADEIRA RODRIGUES (Portugal)

Rapporteur
Mr. E. GLASER (Romania)

SUMMARY RECORDS OF THE SECOND COMMITTEE

FIRST MEETING

Wednesday, 26 February 1958, at 4.45 p.m.

Acting Chairman: Prince WAN WAITHAYAKON (Thailand)

Election of the Chairman

1. Sir Gerald FITZMAURICE (United Kingdom) nominated Mr. Gundersen (Norway).

2. The ACTING CHAIRMAN said that, as there was only one candidate, he felt that the Conference might wish to elect Mr. Gundersen by acclamation. Unless he received any proposal to the contrary, he would assume that that procedure was generally acceptable.

Mr. Gundersen (Norway) was elected Chairman by acclamation.

The meeting rose at 4.50 p.m.

SECOND MEETING

Friday, 28 February 1958, at 4.20 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Election of the Vice-Chairman

1. Mr. EL ERIAN (Egypt) nominated Mr. Glaser (Romania).

2. The CHAIRMAN, after recalling rules 51 and 53 of the rules of procedure, said that, as Mr. Glaser was the only candidate, he assumed the Committee would have no objection to electing him by acclamation.

Mr. Glaser (Romania) was elected Vice-Chairman by acclamation.

Election of the Rapporteur

3. Mr. GROS (France) nominated Mr. Madeira Rodrigues (Portugal).

4. The CHAIRMAN said that as there was again only one candidate, he assumed the Committee would have no objection to proceeding in the same way as for the election of the Vice-Chairman.

Mr. Madeira Rodrigues (Portugal) was elected Rapporteur by acclamation.

The meeting rose at 4.25 p.m.

THIRD MEETING

Monday, 3 March 1958, at 3 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Organization of the work of the Committee

1. The CHAIRMAN, after referring to the report of the General Committee (A/CONF.13/L.2) adopted at the 4th plenary meeting of the Conference, consulted members on the question whether the Committee should start with a brief general debate or proceed directly to a discussion seriatim of the articles assigned to it.

2. Mr. TRUJILLO (Ecuador) thought that a division of the Committee's work into two separate stages would lead to loss of time. He favoured the third method suggested in the General Committee's report — namely, a combination of a short general debate and a discussion of the articles one by one.

3. The CHAIRMAN thought that the alternatives before the Committee were either to restrict the debate to one article at a time or to extend it to cover a number of articles.

4. Mr. COMAY (Israel) pointed out that the articles assigned to the Committee fell into several distinct groups. He suggested, as a compromise between the views advanced by the representative of Ecuador and the Chairman, that the Committee should divide the articles submitted for its consideration into groups and have a first reading of the articles within each of those groups. The International Law Commission had divided part II, section I of its draft articles (A/3159, para. 33) into three sub-sections : A. Navigation ; B. Fishing ; and C. Submarine cables and pipelines. It might later be found expedient to divide those sub-sections still further, but for the present the Committee might be guided by the classification adopted by the International Law Commission.

5. Mr. SETTE CAMARA (Brazil) supported the suggestion made by the representative of Israel. The subjects before the Committee were so diversified that the only practical method of work would be to divide the articles into separate groups.

6. Mr. WYNES (Australia) agreed with the representatives of Israel and Brazil.

7. The CHAIRMAN noted that the Committee was in favour of holding a general debate on several groups of articles. The next point to be decided was how to group the articles assigned to the Committee.

8. Mr. CARBAJAL (Uruguay) thought that the Committee should first make an analytical study of the articles and hold over a discussion of individual articles until a later stage. It should be left to the discretion of representatives to establish relationships between articles where necessary.

9. The CHAIRMAN felt that the grouping of articles for purposes of discussion required further consideration and said that he would try to work out definite proposals for the next meeting.

The meeting rose at 3.30 p.m.

FOURTH MEETING

Tuesday, 4 March 1958, at 3.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Expression of sympathy in connexion with the loss of the Turkish vessel Uskudar

1. Mr. COMAY (Israel) expressed his delegation's sympathy in connexion with the loss of the Turkish vessel *Uskudar*.

2. The CHAIRMAN, speaking on behalf of the Committee, associated himself with the statement of the representative of Israel.

Organization of the work of the Committee (A/CONF.13/C.2/L.1) *(continued)*

3. The CHAIRMAN drew attention to document A/CONF.13/C.2/L.1, which had been prepared in accordance with the wishes expressed by the Committee at its previous meeting.

4. Mr. COMAY (Israel) felt that the suggested grouping of articles was satisfactory and would help to expedite the Committee's work. Adoption of the proposed procedure would not mean that a general debate would take place on each group of articles. On the contrary, it would relieve delegations of the obligation to participate in the general debate and only those wishing to do so would precede the discussion of any group of articles with a general statement or introductory observations.

5. In reply to a question by Sir Alec RANDALL (United Kingdom), the CHAIRMAN said that the proposed procedure was quite flexible and that, in the first stage of the Committee's work, delegations would be at liberty to speak on any one article, group of articles or all the articles assigned to the Committee.

The proposals contained in the note by the Chairman (A/CONF.13/C.2/L.1) were adopted.

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159)

General debate

STATEMENT BY MR. CARDOZO (PORTUGAL), MR. RIPHAGEN (NETHERLANDS) AND SIR ALEC RANDALL (UNITED KINGDOM)

6. Mr. CARDOSO (Portugal), while congratulating the International Law Commission on its draft articles, felt that the final text of the articles to be drafted by the Committee should not be accompanied by commentaries, and said that his delegation would at a later stage press for the incorporation of some of the Commission's more substantive commentaries into the text of the articles themselves so as to ensure complete clarity and avoid possible misunderstandings.

7. To do successful work, the Committee should regard itself as a body of technical advisors, eschew half measures and define its subjects to the best of its ability, even in areas where complete clarity depended on the work of other committees. Differences of opinion should be discussed openly, goodwill displayed and concessions made on all sides. National interests should not be defended obstinately but equated with those of other countries for the common good. Arguments based on the idea that a certain proposal was inadmissible simply because it was inconsistent with domestic law should not be used; efforts should instead be made to overcome any difficulties of that sort which might arise. Arguments which relied solely on the concept of sovereignty should also be discarded.

8. The articles drafted by the Committee should be as precise and specific as possible, even at the cost of sacrificing unanimity. If opinions on the text of any article were equally divided, it would be better to submit an alternative text, to which as few reservations as possible might be admitted, rather than a vague compromise draft.

9. Mr. RIPHAGEN (Netherlands) said that the principle of *mare liberum* was common to all the draft articles under consideration by the Conference. One aspect of that principle of direct interest to the Second Committee was the use of the high seas as a means of communication, a term which postulated certain freedoms, the most important being freedom of navigation.

10. A distinction must, however, be made between the two aspects of the *mare liberum* principle — namely, that of jurisdiction, which was dealt with incidentally in draft articles 27 and 30, and that of the right of use — i.e., freedom of navigation. The reason for making that distinction lay in the difference in the legal character of those two aspects. The right to use the high seas for purposes of navigation had legal consequences that went beyond the concept of the high seas in the geographical sense of the term. No purpose would be served by proclaiming freedom of navigation on the high seas if that freedom could be enjoyed only in the geographical area of the high seas to the exclusion of territorial and internal waters. The "freedom of navigation" concept should imply the right of ships of all flags to engage in international trade, because in principle it covered the right to carry goods and passengers between various ports throughout the world.

11. The geographical area of the high seas, however, had a different meaning with respect to the legal consequences of the *mare liberum* principle in the field of jurisdiction. It was that area and that area alone which could not be subjected in any way to the sovereignty of a state, and it was within that area, and not beyond it, that the jurisdiction of the flag State over its ships was exclusive.

12. The Netherlands delegation therefore considered that the articles dealing with those two distinct aspects of the *mare liberum* concept should be drafted in a slightly different way. The general articles of part II, section I, should begin with an article on the right to use the high seas which might read as follows: [1]

"The high seas are open to all nations. Freedom of the high seas comprises, *inter alia*:

[1] Subsequently issued as document A/CONF.13/C.2/L.21.

(1) Freedom of navigation ; . . ." etc.

13. Next, there should come an article defining the jurisdictional aspect of the *mare liberum* in the following terms :

" 1. No state may validly purport to subject any part of the high seas to its sovereignty.

" 2. Ships on the high seas shall be subject to the exclusive jurisdiction of the state whose flag they are entitled to fly, save in exceptional cases expressly provided for in international treaties or in the present articles."

14. Finally, there should be an article defining the geographical area of the high seas along the lines of the International Law Commission's article 26.

15. Sub-section A, entitled " Navigation ", should begin with an article on the right of navigation which should be drafted along the following general lines :

" Every States has the right to sail ships under its flag on the high seas. Ships of all flags shall have the right to take part in international trade."

16. The freedom of the high seas, as was rightly pointed out by the Commission in the first paragraph of its commentary on draft article 30, had its counterpart in the jurisdiction of the flag state. Indeed, the right to use the high seas for the purposes of navigation imposed certain responsibilities on the flag state, and the rule that ships on the high seas in general had immunity from the jurisdiction of any state other than the flag state could be justified only by the effective jurisdiction of the flag state over those ships.

17. The navigation of ships on the high seas must be subject to certain rules for which provision had been made in the draft articles. The flag state was under an obligation to issue certain regulations in conformity with internationally accepted standards, and it was required by international law to ensure that ships flying its flag complied with such regulations.

18. The responsibilities assumed by the flag state in that connexion could be discharged only if it granted the right to fly its flag under conditions which enabled it to control the operation of the ship. For that reason proof of a genuine link between the state and the ship must be required. Draft articles 34 and 35, among others, dealth with the measures and action that had to be taken by the flag state. Those measures must be enforced effectively, but that was possible only if there was in fact a sufficiently close connexion between the flag state and the ship, its crew and the ship's operators — in other words, if the flag state was in control of its ships. In the absence of that genuine link, the flag state would be unable to ascertain whether navigational regulations were being complied with or to enforce such regulations by imposing penalties or taking other measures against persons responsible for the operation of the ship. In those circumstances, there would be no guarantee of orderly navigation in accordance with internationally accepted rules, and it would be difficult to recognize the right of the ship concerned to use the high seas and enjoy immunity from foreign interference.

19. The question therefore arose as to what would in fact constitute proof of that " genuine link " and what were the minimum conditions that must be fulfilled before a state could validly entitle a ship to fly its flag. The real point in that connexion being the exercise of effective jurisdiction and control, it would appear difficult for the present conference to draw up a complete list of the factors involved. For instance, complications would arise in the case of international companies and ships operated by persons other than the owners. There was, however, no need to agree on a detailed formula at the present stage ; the important point was that the underlying principle should be accepted.

20. Draft article 29, which dealt with the legal consequences of the absence of a " genuine link ", was rather vague and lent itself to a variety of interpretations. His delegation would therefore propose that it should be amended as follows : [2]

" Each state shall fix the conditions for the grant of the right to fly its flag to ships in such a way that there exists a genuine link between the ship and the state, enabling the latter to exercise the control necessary to ensure observance of the rule and regulations concerning navigation on the high seas."

21. Sir Alec RANDALL (United Kingdom) paid a tribute to the patience, ability and care with which the International Law Commission had studied the questions under consideration and the competence it had shown in producing its draft articles on the law of the sea. He expressed particular appreciation of the outstanding services of the Special Rapporteur, Mr. François. While the United Kingdom delegation would be unable to accept some of those articles and would propose amendments to others, that in no way detracted from its gratitude to the International Law Commission.

22. All the articles before the Committee were of great importance to countries that possessed, or had any ambition to possess, a merchant fleet ; their importance to the United Kingdom, which had the largest active merchant fleet in the world, was self-evident. At the present stage the United Kingdom delegation would, however, confine its observations to the first four groups of articles set out in the note by the Chairman on the organization of the work of the Committee (A/CONF. 13/C.2/L.1).

23. The United Kingdom delegation was broadly in agreement with the terms of articles 26 and 27 (group I) although it might later propose certain drafting amendments to article 26 and certain extensions of article 27.

24. Articles 34, 35 and 36 in group II were related to matters that already formed the subject of existing international conventions or agreements as specified in the United Kingdom's comments on the articles (A/CONF. 13/5). There appeared, therefore, to be no need for the creation of new international instruments dealing with the same matters. It would be difficult, if not impossible, for states which had accepted the existing conventions and agreements to accept new obligations covering broadly the same ground but in different terms. There would be a danger of conflict where the old and the new instruments differed, as well as difficulties in subsequently developing and amending on parallel lines two sets of instruments on the same subject. The United Kingdom delegation therefore believed that the most useful task which the Committee could perform in that

[2] The text of this proposal was subsequently redrafted and issued as document A/CONF.13/C.2/L.22 and Corr.1, 2 and 3.

respect would be to commend the existing instruments to states, and not to proceed with the adoption of the articles in question.

25. Article 29, in group III, was of considerable importance to all maritime countries. It dealt with a subject on which there was great diversity of practice in domestic law. While agreeing that it was desirable to obtain international agreement on the principles which should guide states in framing rules to govern the nationality of ships and the right to fly the national flag, the United Kingdom delegation felt that problems of great technical difficulty would be involved. The International Law Commission had recognized that difficulty and had confined itself, in drafting article 29, to the expression of a broad statement of principle.

26. The United Kingdom delegation accepted article 29 as a statement of principle and a guide, and endorsed the conclusion that there should be a genuine link between the ship and the state whose flag it flew. It felt, however, that in its present form the article lacked the precision which would enable it to be incorporated in an international agreement. The concept a genuine link had been carefully considered in the United Kingdom, but a more precise definition had not yet been found.

27. The criteria for determining the existence of a genuine link between state and ship included the conditions of ownership and registration of ships ; the ability of the flag state to exercise effective jurisdiction and control over ships flying its flag in matters of general concern to states ; and the possession by the flag state of a body of law regulating commercial maritime questions and adequate provisions for the effective administration and enforcement of the law. States need not necessarily all adopt the same criteria in establishing the link, but at all events it should be one of substance rather than a mere administrative formality.

28. In view of the complexity of the issue, the United Kingdom delegation believed that the effective translation of the principle of the genuine link into practical rules required further thought and discussion. Each aspect of the problem would have to be studied separately if international differences were to be successfully reconciled. Such study must initially be the task of States working together in international organizations and conferences which had the time and expert knowledge to deal fully with the subject. The magnitude of the other tasks before the Conference and the limited time available to it would preclude it from giving full consideration to the particular problem of the genuine link. The United Kingdom Government suggested, therefore, that the Conference should endorse in general terms the principle set forth in article 29 and refer the matter for further examination to other bodies.

29. Article 33 in group IV accorded to ships owned and operated by a state the same immunity of the high seas as that given to warships. One of the difficulties arising from that concept was the fact that many vessels engaged in international trade were owned or operated by a state, so that some countries would be in a position to claim state immunity outside the territorial sea for virtually the whole of their merchant fleet. That meant, in turn, that such immunity could be claimed in the contiguous zone proposed in article 66 for the purposes of preventing and punishing infringements of customs, fiscal and sanitary regulations. The provisions of article 33 might thus defeat the purpose of article 66. The United Kingdom delegation was unable to agree to the proposed distinction as regards immunity between ships which were owned or operated by a state and those which were not, where both were engaged in international trade in the common acceptance of that term. Equally, if it accepted article 66, it could not exempt large blocks of tonnage from the application of that article.

The meeting rose at 4.20 p.m.

FIFTH MEETING

Wednesday, 5 March 1958, at 10.30 a.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. DUPONT-WILLEMIN (GUATEMALA) AND MR. BAZ (LEBANON)

1. Mr. DUPONT-WILLEMIN (Guatemala) said that the draft articles which had been referred to the Committee were generally acceptable to his government. He hoped that no changes, other than minor amendments, would be made to them.

2. One of the articles which the Committee should perhaps amend was article 29, dealing with the nationality of ships. The Committee should study very carefully the advisability of using the concept of nationality to define the link between states and the ships under their jurisdiction. He agreed with the view expressed by the representative of France at the 493rd meeting of the Sixth Committee of the General Assembly during its eleventh session — namely, that the introduction by the International Law Commission of that concept into the draft under discussion was fraught with danger, and that all mention of it should be deleted.[1] There was no mention of the " nationality " of ships in the laws of Guatemala or in those of some thirty-six other states. He also agreed with the views expressed by the French representative on the same occasion — namely, that the principles regarding nationality laid down by the International Court of Justice in its judgement of the Nottebohm case [2] did not apply to ships.

3. A clause covering merchant vessels legitimately defending themselves against attack should be added to the articles relating to piracy. He hoped that the Committee would agree to keep article 47, on the right of hot pursuit ; it was most important that that right should be enjoyed in the circumstances mentioned in the article.

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[1] *Official Records of the General Assembly, Eleventh Session, Sixth Committee,* 493rd meeting, para. 19.

[2] *I.C.J. Reports, 1955,* p. 4.

4. Mr. BAZ (Lebanon) said that his country, which had inherited the traditions of the Phoenicians — the first navigators — was very interested in problems relating to the sea.

5. He considered that the definition of the term " internal waters " in article 26 should be transferred to article 1, particularly in view of the fact that at the eleventh session of the General Assembly some delegations had expressed the view that the sovereignty of coastal states extended to zones of the sea adjacent to their internal waters as well as to zones adjacent to their coasts, a matter with which articles coming before article 26 were connected.

6. Additional clauses might be added to article 27 providing for freedom of scientific research and exploration and other kinds of freedom mentioned in the commentary of the International Law Commission.

7. His government welcomed the wording of article 35 (Penal jurisdiction in matters of collision), especially because it provided a good means of putting an end to the uncertainty caused by the decision taken by the Permanent Court of International Justice in the *Lotus* case.[3] The Commission had adopted the principle laid down in the Brussels Convention of 1952 on that subject. To prevent difficulties arising from the adoption of provisions similar in content to those of existing conventions, but differently worded, the Conference could either simply refer to such provisions in such a way as to make them an integral part of the instruments it itself drafted, or recommend states to accede to those conventions.

8. The sentence in article 29 reading " Nevertheless, for purposes of recognition of the national character of the ship by other states, there must exist a genuine link between the state and the ship " was too vague. In his opinion, these should be a genuine link between the real owner of the ship and the state, which could be demonstrated to be such a link according to both the letter and the spirit of the domestic laws of the state concerned. The problem could never be solved in a really satisfactory way unless some states modified their domestic legislation.

9. He was not in favour of the provision in article 31 that a ship sailing under the flag of two or more states might be assimilated to a ship without nationality. He thought that other sanctions should be applied.

10. The use of the terms " warships " and " government ships " in articles 32 and 33 should be reconsidered in the light of the information supplied by the International Civil Aviation Organization (ICAO) regarding similar provisions relating to aircraft.

11. As a representative of Egypt had suggested at a meeting of the Sixth Committee of the General Assembly, careful consideration should be given to the question whether the provisions of article 46 on the right of visit were in accordance with the present legal situation regarding the slave trade and piracy.

The meeting rose at 11.20 a.m.

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[3] *Publications of the Permanent Court of International Justice, Series A, No. 10.*

SIXTH MEETING

Friday, 7 March 1958, at 10.35 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. OLDENBURG (DENMARK), MR. BIERZANEK (POLAND), MR. ARREGLADO (PHILIPPINES) AND MR. SEYERSTED (NORWAY)

1. Mr. OLDENBURG (Denmark) stressed the importance his government attached to the problems with which the Committee was faced. The Danes had been seafarers for more than one thousand years of their known history, for communications between the different parts of the country and with other countries were easier by sea than by land. His country's interest in ocean shipping had steadily increased and, despite heavy losses during the two world wars, it now had a merchant navy of approximately two million tons gross, the income from which was extremely important to the national economy.

2. The fundamental basis of shipping was the freedom of the high seas, and in particular the freedom of navigation. Moreover, the right of all ships freely to use the high seas in accordance with accepted international practice was indispensable to the development of world trade, since approximately 90% of all international trade was carried on by sea. The Danish delegation therefore fully supported the principles laid down in articles 27 and 28, and considered that any encroachment upon those rules of law in the selfish interests of any state would in the long run harm both the interests of the world community and those of the state concerned.

3. Referring to articles 29 to 31, on which his delegation would have detailed comments to make at a later stage, he drew attention to the principle stated in article 29, that for purposes of recognition of the national character of a ship by other states, there must exist a genuine link between the ship and the state granting permission to fly its flag. The Danish delegation agreed that registration of a ship should never be a mere formality, and that authorization to fly a flag should entail appropriate obligations in respect of the ship concerned on the part of the country of registration. Those obligations implied complete jurisdiction and the exercise of effective control, especially with regard to internationally adopted standards of safety and social conditions of the crew. In view of the progress that had been made over the past fifty years in establishing such standards, states must have control over ships flying their flag, in order that they might give effect to the international instruments in force. A more detailed definition of the principle of the " genuine link " would be welcome, but the difficulties involved were great, given the considerable variety or registration requirements. The general principles had been largely covered by the United Kingdom representative's statement at the 4th meeting, but the matter should be studied in greater detail.

4. Turning to article 33, he said that, since the merchant navies of many countries were now largely state-owned, his delegation did not consider that ships owned by governments and used solely for commercial purposes should have a more favourable status in international law than privately-owned commercial vessels. The distinction should be made not by ownership, but by the use to which the vessel was put. The immunity granted to warships and other vessels operated on strictly governmental business should not be extended to ships operated for commercial purposes, irrespective of their ownership. In the opinion of the Danish delegation, international law did not at present in that respect assimilate state-owned commercial ships to other state-owned ships.

5. Mr. BIERZANEK (Poland) said that his country's traditional policy with regard to the principle of the freedom of the high seas went back to more than fifty years before Grotius' dissertation on the *Mare Liberum*, when the King of Poland had engineered a coalition to safeguard freedom of navigation in the Baltic, and had instructed his envoy to the King of Denmark to state that the use of the sea was common to all, in accordance with natural law, and that therefore no one could be prevented from navigating on the high seas. Since then, the principle of free access to the sea had always been closely connected with Poland's political and economic independence. It was indicative that an attempt made in 1939 to cut off Poland's access to the sea had been the primary cause of the Second World War. Great efforts were being made to increase the size of the Polish merchant navy, and production from Poland's fisheries, which was six times as great as it had been before the war, came mostly from seas other than the Baltic. Although its profits from the seas could not yet be compared with those of traditional maritime states, the disparity would steadily decrease.

6. The Polish delegation considered that the Committee's main task was to analyse the principle of the freedom of the seas, not in order to weaken it by adjusting it in the face of changing conditions, but to strengthen it by fitting it to the requirements of economic life and modern techniques. Since Grotius, it had been customary to invoke two classical arguments as the foundation of the freedom of the high seas. The first was that the principle of that freedom should, so far as possible, meet the interests of all nations. The second was that the nature of the high seas did not permit them to be subject to occupation by any one state. Technical progress had robbed the second argument of much of its value, since the possibilities of controlling the high seas were now much more real than ever before. But the first argument had lost none of its cogency ; on the contrary, it had become more pertinent in view of the growing interdependence of specific aspects of the utilization of the sea.

7. The question before the Committee was how to provide for the freedom of the high seas within the framework of the codification and progressive development of the international law of the sea. In the past, the principle had been postulated in a variety of ways ; the Committee should now concern itself with the dangers which might threaten that freedom in the future.

8. The Polish delegation did not share the pessimistic view that the imminent threat to the freedom of the high seas lay in the desire of most states to extend the breadth of the territorial sea beyond the three-mile limit. Polish legislation in that domain was reasonable, providing for a territorial sea three miles broad bordered by a contiguous zone of another three miles, but that did not prevent his country from appreciating the desire of other sovereign States to establish their maritime frontiers somewhat beyond that limit. His delegation therefore considered that the International Law Commission had been wise to propose a limit somewhere between three and twelve miles.

9. Moreover, his delegation did not agree that one of the main objects of the proposed codification was to secure the freedom of the seas against the pirates who had in the past ranged the seas for gain or vengeance. But the high seas had now to be protected from acts of violence perpetrated for other motives. There was a real danger that such acts, the effects of which would be analogous to those of piracy in the strict sense, might be committed through abuse of the laws of sea warfare, and that local conflicts might serve as the pretext for such acts.

10. It might be argued that the Conference's task was to codify the law of the sea in time of peace, not war. While that was a valid legal objection, it should be borne in mind that the purpose of all law was to solve specific problems of human life. It would be unrealistic for legislators to ignore the danger of abuses and to assert that only the law of peace was concerned. Article 27 should therefore be supplemented by more detailed provisions concerning the scope of application of the rules of law in times of peace ; in particular, the obligations assumed by states under the Charter of the United Nations with regard to the illegality of war and hostilities should be applied *ad casum maris*. It was not for the Conference to go beyond the provisions of the Charter relating to the problems of world peace, but it was its duty to insist that the obligations of states should be no less progressive under the law of the sea than under the Charter. The Polish delegation therefore reserved the right to submit appropriate amendments to article 27.

11. Another serious threat to navigation on the high seas was that of tests of nuclear weapons either on the high seas, or elsewhere, if the effects extended to the high seas. Poland's position in the matter was determined by its general attitude to the use and manufacture of nuclear weapons, which was that partial solutions should be sought until a universal solution could be found. Although the problem of the prohibition of the use of atomic weapons lay outside the Conference's terms of reference, it was both the right and the duty of delegations to consider means of protecting the freedom of the seas from the effects of atomic tests. It followed from the principle that the high seas were open to use by all nations on a basis of equality that no nation could use the high seas in a manner capable of preventing their use by other nations. That view had been clearly stated by Mr. Scelle, a member of the International Law Commission.

12. The danger zones inevitably created by nuclear tests extended over 400,000 square miles, and the seas within that area could not be used for navigation or fishing

for long periods following the test. Apart from direct damage, however, there were indirect effects which might result in considerable impoverishment of the biological resources of the sea, and radio-active fall-out might extend to areas thousands of miles from the site of the test. It was regrettable that the International Law Commission should have stopped half-way in dealing with that question. Although it was stated in paragraph 1 of the commentary on article 27 that no state could exercise its jurisdiction on any part of the high seas, and that states should therefore refrain from any acts which might adversely affect the use of the high seas by nationals of other states, paragraph 3 unfortunately went on to say that the Commission had not made an express pronouncement on freedom to undertake nuclear weapon tests on the high seas. In that connexion, Mr. Gidel, an authority on the law of the sea, had written that nuclear tests had the effect of establishing a sovereignty of the experimenting state over the area affected by the explosion ; although that sovereignty was temporary, and was not proclaimed, it was nevertheless *de facto* sovereignty, since the area concerned was determined solely by the will of the experimenting state, to the absolute exclusion of all other users of the high seas.

13. That was the legal reason why the Polish delegation could not reconcile nuclear tests with the principle of the freedom of the high seas, and considered that a more accurate definition of that freedom was required. There had been much discussion of whether and to what extent international law should be codified at the present time, and some jurists had expressed doubts about the matter. If, however, the answer to the question was in the affirmative, the responsibility for solving such an important problem could not be evaded. Accordingly, the Polish delegation considered that paragraphs 2 and 3 of article 48 were inadequate, and agreed with the views expressed by the Indian and Tunisian representatives in the Sixth Committee of the General Assembly that the International Law Commission had not gone far enough in the matter. Mr. François, the Special Rapporteur, considered that the Commission was not competent to deal with technical and political questions, but that did not apply to the Conference, which was attended by diplomatists and technical experts. The problem should once more be analysed in detail and both the legal and the humanitarian and moral aspects taken into account.

14. Mr. ARREGLADO (Philippines) said that his delegation unreservedly accepted many of the draft articles submitted by the International Law Commission, which had made a contribution of great and lasting value to the progressive development and codification of international maritime law.

15. The Philippines, whose territory formed a compact archipelago in the middle of the ocean, found it extremely difficult, however, to accept the definition of the term " the high seas " in article 26. Unqualified acceptance of that article in conjunction with the articles on the delimitation of the territorial sea and internal waters would be tantamount to subjecting to the régime of the high seas a vast portion of the internal waters of the Phillipines lying between the thousands of islands and islets of the archipelago. That would destroy its legal unity. In drafting article 26, the International Law Commission had apparently disregarded the generally recognized principles that compact, outlying archipelagos should be treated as a whole, the waters lying between and within the islands, islets and rocks of such archipelagos being considered as internal waters, and that such archipelagos should be surrounded by a single belt of territorial sea. It had also seemingly disregarded the fact that those principles were justified by the theory of historic waters, as in the case of the so called historic bays. According to his country's legislation, all the waters lying in, between and around the different islands and islets of the archipelago formed an integral part of his country's maritime domain subject to its exclusive sovereignty, irrespective of their size.

16. States consisting of archipelagos, such as the Philippines, were entitled to the same measure of treatment and justice as that accorded to states with heavily indented coastlines.

17. The *Encyclopaedia Britannica* defined an archipelago as an " island-studded sea ", and the *Dictionnaire de l'Académie Française* defined it as " une étendue de mer parsemée, entrecoupée d'îles " (a stretch of sea studded and divided up by islands). These definitions fully bore out his contention that the sea areas linking the islands and islets of the Philippine archipelago were a single legal entity and as much a part of the archipelago as the islands themselves.

18. The perimeter of the Philippines group consisted of a continuous chain of islands or islets of varying sizes, lying so closely together that straight baselines of the kind to which article 5 applied could easily be drawn between appropriate points on outer islands or islets so as to encircle them all without crossing unreasonably large expanses of water. Inside that continuous chain of islands and islets there were several seas, of which the largest was the Sulu sea. Underneath the waters surrounding the chain was a shelf forming a continuous submarine platform which was nowhere more than 100 fathoms below surface. Thus, all the sea areas within the chain were surrounded and enclosed on all sides by the land domain of the Philippines.

19. Every principle laid down by the International Court of Justice in its judgement of 18 December 1951 in the Anglo-Norwegian fisheries case [1] was applicable to the waters between the islands of the Philippine archipelago. Although no hard and fast rule could be laid down for the delimitation of the territorial waters of outlying archipelagos, there were rules which took into account the special geographical, historical and economic peculiarities of states consisting solely of archipelagos, such as the Philippines, and they should be observed.

20. It was imperative that all coastal states should be able to determine their land and sea limits in complete security. Any such state which could not do so would be at the mercy of the play of international forces. Every nation should have the right to defend its possessions. The Philippines formed a single unit. The stretches of sea between its islands were part of that unit. If those stretches of sea were controlled by other states, the unity of the Philippines would be destroyed, and his country would lose its independence.

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

21. Mr. SEYERSTED (Norway) said that his delegation agreed in principle with the articles on the general régime of the high seas, proposed by the International Law Commission.

22. Paragraph 2 of article 26 might well be transferred to the part of the International Law Commission's draft concerned with the territorial sea, because it related to waters within the baseline of the territorial sea, and as such was not really relevant to the régime of the high seas ; moreover, that part of the draft lacked a precise general definition of the inner limits of the territorial sea.

23. The fact that many of the provisions of articles 28, 34, 35 and 36 had already been laid down in international conventions created a difficulty which would have to be overcome. However, to eliminate those provisions from the draft, as proposed by the United Kingdom representative at the fourth meeting, might not be the best way of surmounting the difficulty. He would, however, say no more on the subject for the time being, inasmuch as it was closely connected with the question of whether the articles should form the subject of a resolution or of a convention.

24. His delegation was prepared to accept article 29, which laid down that there must exist a " genuine link " between a ship and the state whose flag it flew, as a fair expression of the internationally accepted standard which all the traditional maritime states observed. There was a genuine link between those countries and the ships flying their flags, even though their registration regulations might differ. But it could not truly be said that there was a genuine link when a state did not exercise effective jurisdiction and control over ships flying its flag. It would of course be desirable if the requirements for a genuine link could be defined, but it would be a very difficult task. Article 34, on the safety of navigation, in conjunction with article 30 on the status of ships, indicated some of the measures required for establishing a genuine link. The relevant legislation and regulations of the different countries must vary according to their responsibilities and the size and distribution of their merchant navies.

25. The Committee might set up a small working party to complete the International Law Commission's study of the problem of ships operated by international organizations, regarding which there was no provision in the draft articles before the Committee.

26. He was opposed to the provision in article 33 that government ships used for commercial purposes should be assimilated to warships. He considered that both on the high seas and in the territorial sea they should be assimilated to private ships. States should enjoy the right of hot pursuit in respect of commercial vessels irrespective of whether they were owned by a government or by a private company.

27. He had noted that the term " government ships " was used in articles 22 and 23, whereas article 33 referred to " ships owned or operated by a state " and that in articles 39 and 40 the term " private ship " or " vessel " was used, whereas the term " merchant ship " was used in other articles. The terminology should be consistent throughout the rules. If other terms were necessary because of differences in meaning, those differences should be explained.

28. Mr. EL ERIAN (Egypt) asked the Secretary whether he could circulate a list of existing conventions relating to the law of the sea, indicating the parties to each of those conventions.

29. Mr. LIANG (Secretary of the Committee) undertook to do so. Mr. François, Expert to the secretariat of the Conference, had been requested to make a study of international conventions on special technical subjects not dealt with by the International Law Commission. A list of such conventions had been drawn up, and was being studied jointly by Mr. François and some or the legal experts of the Secretariat. He thought that the Secretariat could provide the Committee with all the technical information it needed about those conventions by means of oral statements, and Mr. François would be able to give the Committee the benefit of his personal views. He feared, however, that the conference staff, which was not very large, would be unable to make a scientific comparative study of the conventions while the Conference was meeting.

The meeting rose at 12.10 p.m.

SEVENTH MEETING

Monday, 10 March 1958, at 3 p.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. VRTACNIK (YUGOSLAVIA), MR. URIBE HOLGUÍN (COLOMBIA), MR. TUNKIN (UNION OF SOVIET SOCIALIST REPUBLICS) AND MR. VITELLI (ITALY)

1. Mr. VRTACNIK (Yugoslavia) hoped that the Conference would put in the form of written rules the principles which had been formed over the centuries with regard to the rights and duties of states in relation to the high seas.

2. The principle that the high seas were open to all nations and that all nations had an equal right to use them was in accord with the United Nations' principle of the equality of all states. Again, the principle that ships on the high seas were subject only to the jurisdiction of the state whose flag they flew was in line with the United Nations' principle that no state should interfere in the domestic affairs of another state. The principle of peaceful international co-operation was also involved, for the resources of the high seas could only be put to their best use if all states co-operated and fully observed the rules relating to the high seas.

3. Although the present conference had no jurisdiction in disputes between individual states, he would venture to remind the Committee of the recent hold-up of the Yugoslav merchant vessel *Slovenija* on the high seas and the confiscation of part of its cargo as a provisional measure after the vessel had been escorted to Oran ; that had been a serious violation of the freedom of

navigation on the high seas, which was one of the fundamental principles of the high seas régime, and it showed how necessary it was for the Conference to codify the rules relating to the high seas so as once again to draw the attention of states to the need to respect those rules. The draft which the Committee would ultimately recommend should make it clear that no state was entitled to arrogate to itself, without the consent of the international community, any rights regarding the high seas except those laid down in rules adopted by joint agreement. The high seas should serve as a means of communication between nations and be treated as the common property of all.

4. No state should carry out nuclear tests or other dangerous experiments such as would prevent other states from using any part of the high seas.

5. Technical progress and economic development had made it necessary to set up certain institutions which had not existed when the principle of the freedom of the high seas had first been proclaimed, and a change had thereby been effected in the relationships between the flags flown on the high seas. The Committee should draw up rules regarding the freedom of the high seas suited to existing circumstances. His delegation had been glad to note that the International Law Commission had included in its text a number of provisions relating to new developments. That text provided a useful basis for the Committee's work.

6. His delegation might later submit some amendments of a technical nature and others on points of drafting to the Commission's articles on the high seas. Paragraph 2 of article 26, which dealt with internal waters, should be transferred from the section relating to the high seas to a more appropriate part of the text. Nor was his delegation satisfied with the provisions in the Commission's text regarding the flag and nationality of ships, the definition of government ships, the relationship between the Commission's text and existing international conventions — on which matter it shared the views expressed by the representative of Norway at the previous meeting — the right of hot pursuit and the legal status of the high seas or with some of the provisions regarding piracy.

7. Mr. URIBE HOLGUIN (Colombia) said that the only amendment which he would at the present stage propose to the International Law Commission's very valuable articles regarding the high seas was one affecting article 33, although some of the other articles required further clarification. He was opposed to the provision in article 33 that ships used on government service for commercial purposes should be "assimilated to... warships" and "have the same immunity as warships", although he agreed that ships used on government service for non-commercial purposes should have the same immunity as warships. He could not accept that provision without knowing the reasons why the Commission had agreed to include it in its draft. The Commission had not stated those reasons in its commentary on the article, which merely said that "there were no sufficient grounds for not granting to state ships used on commercial government service the same immunity as other state ships". One reason for opposing that provision was that it was inappropriate that the ships in question should have policing rights. A specific provision to that effect should be included in the draft. The Commission, too, had stated that it was against their exercising such rights.

8. In its comments on the draft articles,[1] the Belgian Government referred to four categories of ship: state-owned ships used on commercial government service; state-owned ships used on non-commercial government service; privately-owned ships used on non-commercial government service; and privately-owned ships used on commercial government service. A new text, covering the second and third categories, but not the first and fourth, should be adopted for article 33. He would therefore propose the following:[2]

> "Ships used exclusively on non-commercial government service owned or operated by a state shall enjoy the same immunity as warships in regard to the exercise of jurisdiction on the high seas by any state other than the flag state. Only warships may exercise policing rights."

9. Mr. TUNKIN (Union of Soviet Socialist Republics) observed that the Conference's task of codification and progressive development of the law of the sea carried with it the obligation to ensure that the resulting instruments would establish rules of international law acceptable by all states. Since the fundamental problem of contemporary international relations was that of ensuring peaceful co-existence among states, co-operation on the basis of equal rights must be secured in international law as well. There could be no doubt that the Conference's work would be evaluated according to the measure of its success in achieving that objective.

10. The Second Committee was in a more favourable position than some others because the principle of the freedom of the high seas had been for centuries reaffirmed in the effort to combat attempts by states to secure mastery over large maritime areas. The freedom of the high seas meant that they were open to all states on an equal footing, and that no state could claim sovereignty over them to the detriment of others; it was satisfactory to note that in modern times that principle had acquired a new and practical meaning for the peoples of countries which had recently won their independence.

11. The Soviet delegation was in general agreement with the provisions of article 27 of the International Law Commission's draft, and supported the statement in paragraph 1 of the commentary that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states. Members of the United Nations, bound by the Charter to promote the interests of peace and the development of international co-operation, must strive to strengthen that principle and must not allow the freedom of the high seas to be violated. In that connexion, the first question that arose was the question of the prohibition of tests of nuclear weapons on the high seas. The movement to secure the prohibition of all tests of nuclear weapons was undoubtedly spreading steadily. The Soviet Union, which had consistently striven to

[1] See *Yearbook of the International Law Commission, 1956*, Vol. II (A/CN.4/SER.A/1956/Add.1), p. 38, para. 9.

[2] Subsequently issued as document A/CONF.13/C.2/L.5 and Corr.1.

secure the unconditional prohibition of nuclear weapons, supported the view that tests of nuclear weapons must be immediately discontinued. Thousands of scientists throughout the world, including scientists in the United States of America, the United Kingdom, France and other countries, were speaking in support of these demands, which were upheld by the peoples of the whole world. International organizations such as the World Council of Peace, the World Federation of Trade Unions, the World Federation of Democratic Youth and the international women's organizations were demanding that tests of these frightful weapons should be discontinued. It should be borne in mind that the Conference was concerned, not with the prohibition of nuclear tests, but with the separate question of outlawing such tests in the open seas, because they undoubtedly constituted a violation of the principle of the freedom of the high seas. Recent tests of atomic and hydrogen weapons in the Pacific Ocean had affected vast maritime areas, rendering them unfit for navigation and fishing, and killing and injuring people more than a thousand miles away from the places where the tests were held. The states conducting the tests were therefore using the high seas as part of their internal waters. It was not surprising that some eminent jurists of the International Law Commission and many representatives at the eleventh session of the General Assembly had advocated outlawing nuclear tests on the high seas, and that the Commission as a whole had taken steps, however inadequate, to censure such tests.

12. The Soviet delegation also felt obliged to point out that certain states were violating the principle of the freedom of the high seas by taking over large areas for naval and air force manoeuvres. Thus, for some years the United States had used areas in the southern part of the Sea of Japan, including the Korean Straits, in the north-west Pacific, south and east of Japan, and in the Yellow Sea and Carribean Sea for such purposes, and, at the end of 1957, the United Kingdom had taken over for submarine manoeuvres large areas of the English Channel which were situated on international shipping routes. The freedom of the high seas was also frequently violated by military aircraft. With a view to developing friendly relations between states, it would be fitting that the Conference should adopt, on the basis of the principle of the freedom of the high seas, a decision prohibiting the establishment of military manoeuvre areas on the high seas near foreign shores and on international shipping routes, for such manoeuvre areas restricted the freedom of navigation and created a threat to the security of other states.

13. Turning to article 33, he pointed out that merchant shipping was a matter of government concern for countries whose commercial vessels were state-owned. Consequently, all measures of compulsion exercised against state merchant vessels, including measures for the purpose of securing claims advanced against the said vessels, were impermissible. The opponents of that view based their objections on the 1926 Brussels Convention, but the limited number of parties to that convention in itself implied the intention to establish an exception to the general rule, and it was obvious that the exception applied exclusively to those parties. The measures concerned could be applied to other states only in accordance with international agreements to which they had adhered. From the practical point of view, legal formulae to protect the interests of persons having claims on government merchant vessels could be worked out on the basis of a recognition of the immunity of such vessels and the consequent inapplicability to them of such measures of compulsion as arrest or detention.

14. Mr. VITELLI (Italy) said that his delegation did not believe that it would be difficult to reach general agreement on the régime of the high seas, since in that respect states acted, not on the grounds of their legal sovereignty, but in accordance with rules of international law, which conferred upon them certain freedoms and powers. Freedom of navigation required a maximum of co-operation from all states; no state could claim to subject any part of the high seas to its jurisdiction, provided it was deemed that the high seas comprised all seas beyond territorial waters.

15. The reference to internal waters in the definition of the high seas in article 26 of the International Law Commission's draft seemed to be inappropriate and the Italian delegation reserved the right to submit an amendment in that connexion.

16. Turning to the provision in article 29 whereby a genuine link between the state and the ship must exist for purposes of recognition of the national character of the ship, he observed that while it was difficult to find an infallible definition of that link, the principle involved must be clearly stated in an international convention. He recalled suggestions made by the International Labour Office at the Preparatory Technical Maritime Conference in London in 1956, by the International Transport Workers' Federation and the Organization for European Economic Co-operation, to the effect that the flag state should have such legislation and organization as would ensure effective legal control in administrative, technical and social matters and of a structure and effectiveness proportionate to the size and composition of the fleet. The provisions of article 34 on safety of navigation seemed to bear out the need for more definite provisions on the control exercised by the flag state over its shipping. Accordingly, the Italian delegation concurred in the amendment to article 29 proposed by the Netherlands representative at the Committee's fourth meeting. It was generally agreed that the main danger involved in flags of convenience was the undermining of public order on the high seas. Where there was no state sovereignty, it was obvious that such order depended on strict discipline and organization by the users. If ships sailing the high seas belonged to states which took no concern for discipline, matters of common interest such as safety and order would be jeopardized.

17. With regard to article 33, the Italian delegation considered that caution should be exercised in extending to ships owned or operated by a state the same immunity as that traditionally granted only to warships. Such immunity should not be granted to ships competing with others in free international trade, since inequitable treatment of that sort would be bound to upset the balance of trade and lead to total chaos.

18. Article 46, on the right of visit, was not likely to be open to abuse, as it was limited to the most serious cases. Article 47, on the right of hot pursuit, also seemed satisfactory, since it provided that pursuit of

a ship which had committed certain acts could be continued even when it had left the territorial seas of the pursuing state.

19. In connexion with certain provisions of the articles on safety of navigation, penal jurisdiction in matters of collision, duty to render assistance and slave trade, the Italian delegation considered that care should be taken to avoid overlapping with the provisions in existing general maritime conventions. The Conference should confine itself to a reference to those provisions. Otherwise, states might find themselves in a quandary with regard to the interpretation of varying provisions on the same subjects.

The meeting rose at 4.10 p.m.

EIGHTH MEETING

Tuesday, 11 March 1958, at 3.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. OHYE (JAPAN), MR. PFEIFFER (FEDERAL REPUBLIC OF GERMANY), MR. SIKRI (INDIA), MR. FAY (IRELAND), MR. WYNES (AUSTRALIA) AND SIR ALEC RANDALL (UNITED KINGDOM)

1. Mr. OHYE (Japan) said that the freedom of the high seas, the cardinal principle of the international law of the sea, was satisfactorily set forth in article 27 of the International Law Commission's draft. The Japanese delegation particularly welcomed the statement that no state might validly purport to subject any part of the high seas to its sovereignty.

2. He drew attention to the third sentence of paragraph 1 of the commentary on article 27 and to the first sentence of paragraph 3. It was well known that Japan opposed all nuclear tests, whether conducted on land or on the high seas, and that it was exerting every effort to achieve their prohibition. The first sentence of paragraph 3 of the commentary seemed to refer only to nuclear tests at sea, presumably on the ground that the effect of the tests was more extensive in such cases. But the Committee should be concerned with nuclear tests wherever they were conducted. The International Law Commission had passed a clear judgement on nuclear tests by stating in paragraph 1 of the commentary that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states; furthermore, according to the second sentence of paragraph 3 of the commentary, nuclear tests should not be permitted so far as they obstructed the freedom of the high seas. It was self-evident that most tests did in fact restrict such use; indeed, Japanese nationals had been victims of nuclear tests. His government was therefore in full agreement with the text of the commentary in so far as the relationship between nuclear tests and freedom of the high seas was concerned.

3. With regard to article 33, concerning the immunity of state-owned ships, he said the Japanese delegation found it difficult to agree that there were adequate grounds for assimilating the immunity of government vessels engaged in commercial activities to that of warships. Even if a vessel was state-owned, it was performing the function of a merchant vessel if it was engaged in trade. Moreover, practice varied greatly in that respect, and hence the uniformity of national legislation implied in the draft article was illusory. Since several other delegations had expressed the same view, it would seem advisable to consider the matter with special care.

4. Although the Japanese delegation understood the purport of the United Kingdom delegation's suggestion at the 4th meeting that three of the draft articles should be deleted, it was of the opinion that deletion of the articles might not necessarily be the most appropriate action. It should be borne in mind that the Conference was concerned with the entire régime of the sea. Furthermore, some states might adhere to those articles without being parties to any other multilateral treaties. It might therefore be better to simplify the articles, with a view to setting forth fundamental principles to serve as a basis for various multilateral treaties.

5. Mr. PFEIFFER (Federal Republic of Germany) observed that the basic principle set forth in article 28 of the International Law Commission's draft, that every state had the right to sail ships under its flag on the high seas, was supplemented by the new principle, laid down in article 29, that a genuine link must exist between the state and the ship for purposes of recognition of the national character of the ship. However, the draft did not draw all the logical conclusions that should follow from those two principles. In the first place, there was no provision stipulating that all ships should be not merely authorized but obliged to fly a flag and to have a nationality. Secondly, there was no obligation for states to register all ships when a genuine link existed.

6. Under the rules recommended by the Commission, therefore, ships could sail without flying a flag, without having a nationality and without being subject to the legislation of any state. That hypothetical "statelessness", which was mentioned in paragraph 1 of the commentary on article 31, was unsatisfactory to all nations which were concerned with safety at sea and the welfare of crews.

7. It was therefore in the interests of all nations that the Conference should establish the obligation for every ship to have a nationality and to be subject to the legislation of its state of nationality. But it was obviously impossible for ships to be free to choose any nationality. Most maritime nations imposed comparatively strict conditions in granting the right to fly their flag. Yet a ship which failed to fulfil these conditions had the simple alternative of applying for registration elsewhere, preferably in a state which granted convenient conditions.

8. If article 29 were adopted as drafted, it was conceivable that in many cases ships could no longer be registered by states offering convenient conditions, owing to the lack of a genuine link between the state and the ship, but would also not qualify for registration

in the state with which they had a genuine link, because of the strict conditions imposed. The regrettable result would be that the ship concerned would be condemned to statelessness by international law. The only way in which that situation could be avoided was to revise national laws relating to registration and to the grant of flags, in order to facilitate the registration of ships having a genuine link with the state. The Conference was competent to recommend the necessary modifications and to establish some general guiding principles. His delegation suggested three such principles. In the first place, all sea-going vessels should be obliged to have a nationality and to fly the flag of the state concerned; merchant ships might acquire the right to fly the flag of a state through registration in that state. Secondly, every state should be obliged to register merchant ships which were entirely owned by its nationals or by companies domiciled in its territory; a state might also register ships which regularly received their orders in its territory, provided that they were not already registered with another state. Thirdly, a state should not accept the registration of a ship if there was reason to believe that it was already registered in another state.

9. Mr. SIKRI (India) said that, with regard to article 33 of the International Law Commission's draft, concerning the immunity of government ships, the Indian delegation shared the views advanced by the United Kingdom representative at the 4th meeting. Before India had attained its independence, the status of ships owned by the East India Company and of those owned by the ruling princes had been controversial; the problem had been solved on the basis of the nature of the ships' activities, rather than on that of ownership. If the Commission's text were adopted, unjust discrimination against privately owned ships might be sanctioned. In any case, in the event of its adoption by the majority of the Conference, it would be desirable to agree on the external signs distinguishing state-owned commercial ships, so that they would not be liable to inspection by warships.

10. Although the Indian delegation supported the principle of the "genuine link" set forth in article 29, it did not consider that it was precisely enough stated and thought that the article should not be included in a convention for the time being. Further study by an expert body was desirable.

11. The Indian delegation was in general agreement with the Commission's views on the right of hot pursuit, as stated in article 47, but felt that the right should also be exercisable against ships in the contiguous zone which violated the coastal state's regulations applicable in that zone. Moreover, the principle that pursuit should be permitted in the case of an offence committed within territorial waters should, by analogy, be applicable to the contiguous zone, since otherwise the power of the coastal State to protect its interests would be largely nullified.

12. His delegation generally supported the Commission's comments on article 27, except where the legality of nuclear tests in the high seas was concerned. It had been said that the problem of nuclear tests fell within the competence of the Disarmament Commission of the United Nations Security Council. That was true, but the problem had three aspects — the disarmament aspect, the legal aspect and the humanitarian aspect — and the Conference was fully competent to deal with the latter two. Even if the great Powers agreed to permit nuclear tests, they could not determine the legality of such tests *vis-à-vis* the community of nations. The Indian delegation considered that such tests were illegal if they adversely affected the use of the high seas.

13. The Commission had rightly stated in the third sentence of paragraph 1 of the commentary on article 27 that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states. Furthermore, Mr. François (Special Rapporteur of the Commission) had said in the Sixth Committee of the General Assembly that the question of the lawfulness of specific tests should be judged in the light of the principle which the Commission had categorically laid down.[1] The Indian delegation therefore considered that some reference to that fundamental principle should be made in the article itself.

14. It was surprising that the Commission had not taken that next logical step. The reason it gave for not doing so was that it did not wish to prejudice the findings of the Scientific Committee on the Effects of Atomic Radiation. But it was hardly necessary to await those findings; there was ample evidence that all the nuclear tests hitherto conducted had adversely affected the freedom of the high seas, since navigation, shipping, the flying of aircraft and the laying of cables and pipelines had been barred absolutely in the areas concerned.

15. Sir Gerald Fitzmaurice, the United Kingdom representative to the Sixth Committee of the General Assembly, had tried to defend the legality of nuclear tests on the grounds that the experiments carried out in conditions calculated to preserve and cause the least possible damage were not inconsistent with the principle of the freedom of the high seas.[2] However, no argument had been adduced in support of that conclusion, which seemed to be that a state was entitled to cause damage and to interfere with rights, provided that it minimized the damage and interference as far as possible. If such a principle were accepted, however, it would destroy the whole fabric of international law. Furthermore, if the premise of the legality of nuclear tests was admitted, it would be necessary to consider clarifying article 48, paragraph 3, since it would be anomalous for legislators to regulate conditions under which illegal acts might be committed.

16. Turning to the humanitarian aspect of the problem, he said that no state was entitled to impose incalculable suffering on the human race by conducting experiments like nuclear explosions.

17. In conclusion, he disagreed with the suggestion made by the Netherlands representative at the 4th meeting that freedom to take part in international trade and to call at every port in the world flowed from the principle of freedom of navigation. Although the Indian delegation was in favour of that freedom and of the removal of hindrances to international trade, it considered that the subject was misplaced in a discussion of the law of the high seas.

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[1] *Official Records of the General Assembly, Eleventh Session, Sixth Committee,* 500th meeting, para. 40.

[2] *Ibid.,* 492nd meeting.

18. Mr. FAY (Ireland) said that as a maritime state, Ireland had the greatest respect for the principle of the freedom of the high seas. It recognized, however, that freedom rapidly degenerated into anarchy unless it was regulated and made the subject of law.

19. When the Committee came to discuss seriatim the articles submitted by the International Law Commission, he would urge that provisions on a number of matters mentioned in the Commission's commentary, but not in the articles themselves, should be added to them. In certain other instances, the definitions offered by the Commission should be drafted in more precise language.

20. Ireland was a party to certain international instruments relating to collisions and safety of life at sea which so effectively covered the matters to which articles 34, 35 and 36 of the Commission's text related that they should not be lightly thrust aside. The Committee should not do anything which would create a danger of a conflict between those instruments and any new general rule agreed upon at the Conference. On the other hand, it would be regrettable if, owing to the absence of any such general rule, states not parties to those instruments were not obliged to deal with those very important matters. If a fully satisfactory solution could not be found, he would support the proposal made by the United Kingdom delegation at the 4th meeting that the Conference should not proceed with the articles in question but should commend those instruments to countries which were not parties to them.

21. He fully agreed with the objects of article 29 which provided that there should be a "genuine link" between a ship and the state of nationality. He was aware, however, that a variety of standards could be applied in deciding what constituted such a link. He hoped that later the Committee would reach agreement on a more definite and useful text to achieve the objects of the article. In the meantime, his delegation accepted it merely as a statement of principle.

22. He considered article 33 unsatisfactory, because in his opinion ships owned or operated by a state and used on government service for commercial purposes should not enjoy greater advantages than were enjoyed by ordinary merchant vessels on the high seas.

23. Some of the International Law Commission's draft provisions suffered from a lack of precise definition. The word "ship" itself was not defined. The meaning of the term "private ship" in article 39 (the article defining piracy) was not clear. The Commission's commentary indicated that it might mean all ships other than warships or other government ships. But it might be significant that the right of visit which would be conferred on warships by article 46 in connexion with piracy and other matters was confined to "merchant ships". Were fishing boats covered by the term "private ship" in article 39? Were they covered by the term "pirate ship" in article 41 and by the term "merchant ship" in article 46? It would be very wrong if there were any doubt left as to the legal position of fishing boats on the high seas. Some states had taken steps to ensure the maintenance of law and order amongst fishing fleets on the high seas by making their own regulations and by subscribing to international agreements. But such international agreements were invariably of a regional character and limited in scope. He hoped that the Conference would draft precise provisions governing illegal acts of violence and depredation committed by the crew of a fishing boat of one nationality against a fishing boat of another nationality.

24. Mr. WYNES (Australia) said that the principles on which the articles referred to the Committee were based were generally acceptable to his delegation. He reserved the right, however, to submit or support amendments to some of them later, if considered necessary or desirable.

25. Australia, of course, subscribed to the fundamental principle of the freedom of the high seas, which all nations had accepted for a long time. His delegation also accepted in general the articles on the rights and obligations of states regarding navigation (articles 28 and 34 to 36). Australian law provided for everything which articles 34 and 36, if they were finally adopted, would require states to do. But the matters to which those articles and article 35 and much of article 48 related were already covered by existing international agreements, and his delegation was inclined to agree with the opinion expressed by the United Kingdom representative that there might be no need to draft new international instruments dealing with those matters in different terms.

26. The statement in article 29 that there must be a "genuine link" between ships and the state of which they flew the flag was not precise enough. But that matter could not be satisfactorily settled at the Conference. He thought the Conference should accept the principle of the article, making it clear that the last word had not been said on the matter, and that the question of criteria for deciding what constituted a genuine link should be fully considered by one or more appropriate bodies possessing the necessary technical and expert knowledge.

27. His delegation also considered that article 33 was unsatisfactory; for as it stood, it would make it possible for some states to claim immunity on the high seas for virtually the whole of their merchant fleet, and it would also defeat the purpose of article 66.

28. Sir Alec RANDALL (United Kingdom), with reference to the remarks about nuclear tests at sea made by the Soviet Union representative at the previous meeting and by the representatives of Japan and India during the current meeting, said that no government or people had shown such eagerness or made more persistent and honest efforts than the Government and people of the United Kingdom to bring about balanced and properly controlled disarmament, which would make it possible to arrest the development of weapons of mass destruction, suspend nuclear tests at sea and on land and to ban the manufacture of nuclear weapons. But the question of nuclear tests could not be separated from the question of disarmament in general. It would be wrong for the Conference to intervene in a matter which fell within the competence of the General Assembly and the Disarmament Commission.

29. The Soviet Union representative had also referred to the question of the disposal of radio-active waste in the sea and to the provision regarding that question in article 48. The United Kingdom had been compelled to

face that question. Its very stringent measures designed to ensure the greatest possible safety for all life and living resources in or on the sea were carried out in consultation with all likely to be affected and, so far as he knew, had been completely effective. It would be interesting to know the standards other countries, in particular the Soviet Union, had set up regarding the disposal of radioactive waste in the sea. The question, which was a highly technical one, was at present being studied by the United Nations Scientific Committee on the Effects of Atomic Radiation, and his delegation thought that perhaps the Conference should ask that committee to study particular aspects of the question. The International Law Commission's draft and commentary clearly indicated that it considered there was a link between the pollution of the sea by oil and the possible effects of the disposal of radio-active waste. His delegation would be happy to see that particular aspect of the matter considered by the Scientific Committee.

30. The Soviet Union representative had also mentioned other matters and when speaking on one of those matters had made a charge against the United Kingdom; he would refer to those matters at a later stage of the debate. For the moment he would merely say that it was well known that the Soviet Union navy frequently carried out naval exercises in certain areas of the high seas and purported to restrict the movements of shipping in the areas affected.

The meeting rose at 4.10 p.m.

NINTH MEETING

Thursday, 13 March 1958, at 3.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

In the absence of the Chairman, Mr. E. Glaser (Romania), Vice-Chairman, took the Chair.

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. HANIDIS (GREECE), MR. PERERA (CEYLON), MR. COLCLOUGH (UNITED STATES OF AMERICA), MR. GHELMEGEANU (ROMANIA), MR. CHIT HLAING (BURMA), MR. GARCÍA-SAYÁN (PERU) AND MR. MACHÍN (SPAIN)

1. Mr. HANIDIS (Greece) said that the safety of navigation (article 34) and the pollution of the high seas (article 48) were purely technical matters which, as such, should be left to experts and specialized agencies for detailed study.

2. The questions of the immunity of government ships, penal jurisdiction in matters of collision and the duty to render assistance (articles 33, 35 and 36 respectively) were covered by existing multilateral conventions which were working satisfactorily and which could, in case of need, be revised in the light of changing conditions. Accordingly, he did not think there was any need for a new international instrument on those subjects. The drawing up of such an instrument might, quite unnecessarily, create conflicts.

3. The fact that the International Law Commission had thought it best merely to enunciate a guiding principle in regard to the link which should exist between ships and the state of nationality (article 29), showed that the problem of the nationality of ships was serious and complicated. In view of the divergent opinions on the subject, he though it would be preferable for the Conference to refer it to other bodies for further study, as the adoption of any version of a principle regarding the link, before a detailed study had been made, would lead to controversy and misinterpretation.

4. Mr. PERERA (Ceylon) said that the articles referred to the Second Committee — particularly articles 26 and 27 — should be viewed, not in the light of traditional international law, but in relation to contemporary conditions and to the ultimate objectives of international law. He recalled the fundamental rule laid down by the International Law Association at Vienna in 1926 that all states should enjoy absolute liberty and equality in the matter of navigation, transport, communications, industry and science in and on the seas and that no state or group of states could claim any rights of sovereignty over any portion of the high seas or interfere with the free and full use of the seas. That rule was an accurate statement of the law and practice accepted by states ever since the classic judgement of Sir William Scott in the case of the *Louis* in 1817.[1]

5. However, the rule stated in those terms was an ideal rather than a correct description of reality. Unfortunately, only a limited freedom of the seas had been achieved, for there was as yet no freedom from trade war in peacetime, no general security against obstacles to trade, no assurance of safety of life and resources against scientific experiments and no guarantee against the use of the sea for warlike purposes. Indeed, some states still held the view that the power to keep international sea routes open carried with it the power to close those routes at their discretion. Moreover, the meaning of the term "high seas" itself was still unsettled, owing to lack of uniformity in the rules concerning the breadth of territorial waters.

6. The Conference had been convened to discuss the freedom of the seas in a system of general security and had the limited objective of drafting a convention. In his delegation's opinion, the convention would have the effect of restricting the power of certain states to interpret freedom at their discretion and, sometimes, on the basis of expediency. As Professor H. A. Smith had said, the chief function of law was to impose limits on the exercise of power.

7. Article 27 should be regarded in the light of those remarks. The freedoms it proclaimed constituted, by implication, a limitation of the rights of the state. Those freedoms were qualified, in addition, by the terms of article 48. His delegation construed the terms of article 48, paragraphs 2 and 3, to mean that nuclear tests on the high seas constituted a violation of international law. There could be no freedom of the high seas while maritime areas and the air space above them were

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[1] See *Dodson, Reports, Admiralty*, vol. II, p. 210.

used for experiments resulting in the destruction of life and resources. In that connexion, he drew particular attention to paragraph 1 of the commentary on article 27. The Conference should seek either to establish the freedom of the high seas within the framework of a system of general peace and security by specifying all the freedoms which would not infringe upon the rights of others, or to strengthen the statement in paragraph 1 of the commentary on article 27 that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states.

8. The Conference's function was not simply to codify but rather to pronounce upon existing law. For that purpose it should recognize — as national legislatures had done — that the law should be placed at the service of the people, and not at that of a few individuals. It was owing to incomprehension of that principle that earlier conferences on the law of the sea had failed. The success of the present conference depended upon common agreement on certain principles of international conduct which precluded the advancement of the interests of any individual state, however powerful. Those considerations should receive expression in article 26, which should be amended accordingly.

9. His delegation approved in principle of articles 28 to 47, although it might support possible amendments to those articles.

10. Mr. COLCLOUGH (United States of America) said the high seas formed a repository of vast natural resources and the world's principal international highways. The common domain of the sea was one of the major equalizing influences in the community of nations, since smaller and less wealthy states were given an opportunity to offset some of the advantages of states with extensive or more productive land areas. The principle of the freedom of the seas had, though not without difficulty, gained general acceptance in the practice of states. The United States, which had often had to defend itself against infringements of the principle, therefore attached great importance to it.

11. After careful study, his government had concluded that the articles drafted by the International Law Commission contained two elements which ensured the vitality of the principle. The first was that the high seas were open to all nations, as was stated in the commentary on article 27. The freedom could not, however, be made effective without the second element, that of restraint, which was also referred to in the commentary. The purpose of such regulation was to safeguard the exercise of the freedom in the interests of the whole international community. It was in the light of those two elements that the Committee should examine the individual articles.

12. Several representatives had referred to the conducting of nuclear tests in connexion with article 27. In the opinion of the United States delegation, the whole problem of nuclear tests was essentially bound up with the question of disarmament, which was being considered by the competent organs of the United Nations. The Conference should therefore take care not to impede that important work in any way. The United States was willing to abide by any agreement for the effective control of nuclear weapons; unfortunately, no such agreement had been reached.

13. He could not agree with the Indian representative (8th meeting) that the question of the legality of nuclear tests and the humanitarian considerations concerned fell within the scope of the Conference. If the legal aspects of such tests could be isolated, they would indeed fall generally within the law of the sea. But his delegation did not consider that such a division of the problem was feasible. Moreover, the manner in which the United States conducted nuclear tests was not contrary to international law and was sanctioned by international practice. It could not be held that the use of the high seas was invalid solely because some inconvenience would result for other users. Any use of the high seas by one state temporarily denied to other states some degree of ability to use the seas, just as the use of a road by a motor-car to some extent restricted its use by others. For example, cable-laying ships, fishing fleets and even individual ships temporarily withdrew the right to use the areas concerned from other states. The legality of all uses of the high seas must be determined by the application of the test of reasonableness. Since the United States conducted nuclear tests under rigid control to ensure a minimum degree of interference with the use of the high seas by other states, it was convinced that such use was reasonable, and consequently legal.

14. With regard to the humanitarian aspects of nuclear tests, he said that the United States fully appreciated the danger which would beset the world in the absence of effective weapons control, and had established as one of the primary purposes of its nuclear tests the development of a "clean" weapon, which localized the danger of radiation, in order that the effects of the weapon might be restricted to military targets in the event of hostilities. His government did not treat its responsibility in the matter lightly, and therefore subjected its tests to strict control, in order to ensure that the resulting radiation would not be harmful to the people of the world and their resources. The level of radio-activity in the world was raised by explosions on land as well as by those at sea, and the United States therefore paid due attention to nuclear tests conducted by other nations, to ensure that the cumulative effects did not endanger humanity. It was to be hoped that other nations conducting such tests took similar precautions. In any case, the whole question was closely interlinked with the problem of disarmament, and if the Conference were to concern itself with a relatively narrow aspect, there would be a danger of upsetting delicate negotiations on a vital subject.

15. With regard to article 29, the United States delegation agreed that the question of the "genuine link" between a ship and the state of nationality warranted exhaustive study by the appropriate bodies. However, the precise definition of the link varied from country to country, since the question of the nationality of ships was primarily one of domestic law, as was acknowledged in the text of article 29. Moreover, the International Law Commission had provided no guide for the criterion to be used by a state questioning the nationality of a ship. The representative of the Federal Republic of Germany had rightly pointed out (8th meeting) that acceptance of the Commission's draft might result in the creation of a new category of "stateless" ships;

such a serious step should not be taken without thorough consideration and expert advice.

16. His delegation agreed with the Norwegian representative (6th meeting) that the immunity of state-owned ships on the high seas should not be based on ownership, but on the purpose of their activities. He would therefore support any amendment which would ensure that state-owned ships operated for commercial purposes should not enjoy an advantage over privately-owned vessels, and that the jurisdiction exercised by the coastal state in the contiguous zone would apply to such ships.

17. The United States was prepared to endorse any reasonable action to solve the complex problem of preventing or minimizing the pollution of the high seas by oil; an appropriate solution, however, involved the balancing of many interests, including the right of coastal States to protect their shores from pollution. The technical aspects must be emphasized. Those had been studied by the United Nations Transport and Communications Division and by the Economic Commission for Europe, which had requested a study of the problem by the World Health Organization (WHO) and the Food and Agriculture Organization (FAO). It should be borne in mind that the 1954 International Convention for the Prevention of the Pollution of the Sea by Oil, which would enter into force later in 1958, was regarded as an experimental measure, to be reconsidered in three years' time in the light of experience.

18. With regard to article 48, paragraph 2, the United States considered it necessary to encourage international action concerning the disposal of radio-active waste. With the rapidly growing use of atomic power for peaceful purposes, an increasing number of countries would have to face the problem. While the disposal of such waste in the high seas created a hazard to life and natural resources, some action could be initiated for the effective control of such disposal. It was questionable, however, whether the Commission's draft would fulfil the purpose, since it called only for action by individual states, which, if not co-ordinated, might lead to dangerous confusion. In any case, the draft article did not deal with the basic problem of international agreement on what constituted pollution. As the United Kingdom representative had stated, the Scientific Committee on the Effects of Atomic Radiation was already studying the question, and was better qualified than the Conference to undertake the necessary research.

19. The draft articles dealing with the protection of submarine cables and pipelines were taken almost verbatim from the Convention for the Protection of Submarine Cables of 1884. The absence of any reference to the other provisions of that instrument might raise doubts as to the continued validity of the Convention, which represented the entire existing international law on the subject.

20. In conclusion, he said that his delegation could not understand the U.S.S.R. representative's reference to the illegality of establishing military exercise areas on the high seas. The use of the high seas for such exercises was recognized in international law, and the navies of all nations used the high seas for those purposes. In September 1957, the Soviet Union itself had conducted surface and air manoeuvres in the Kara Sea and Barents Sea, and had established a danger area of approximately 760,000 square miles, apparently the largest danger area ever recorded.

21. Mr. GHELMEGEANU (Romania) said that the Conference should concentrate on systematizing the law of the high seas, in conformity with the generally recognized principles of international law and in the light of the profound changes that had recently taken place in the fundamental problems of the law of the sea and of the fact that many peoples which had recently won their independence had secured the right to participate in the regulation of international relations.

22. The Romanian Government considered that the traditional principle of the freedom of the high seas was an essential safeguard of the legitimate interests of all states. Nevertheless, that principle could not be stated in a declaratory manner; international conduct in maritime relations should be specified clearly in terms which made it possible to determine what constituted unlawful acts infringing the freedom of the high seas. His delegation agreed with others that nuclear tests on the high seas were illegal, since they interfered with navigation and fishing, endangered human lives and caused considerable impoverishment of the living resources of the sea. Furthermore, they caused pollution of the high seas and of the superjacent air space over vast areas. Although the general question of the prohibition of nuclear tests fell within the competence of certain international bodies, the Conference should concern itself with the question in so far as it affected the high seas. The freedom of the seas could not entail the right for a state or group of states to commit acts which would obstruct equal and free access to all users, and all limitations of the freedom must apply equally to all states. The Conference therefore had not only the right but the duty to ban nuclear tests on the high seas, in the interests of the international community as a whole.

23. The establishment of areas for military exercises near the coasts of certain states and on international shipping routes was also incompatible with the principle of the freedom of the high seas. Even in traditional international law, such manoeuvres near the frontiers of a state constituted a serious act, which warranted explanation; they were therefore unjustifiable in modern times, under the régime of the United Nations Charter. The Romanian delegation would therefore support the idea of prohibiting the establishment of such zones.

24. In the light of those considerations, the Romanian delegation thought that the draft articles should be supplemented by a specific provision to the effect that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states.

25. He could not agree with the view, expressed by certain delegations, that article 33 should not provide for the immunity of state-owned commercial ships in the same way as in the case of warships. The general principle of the immunity of state ships should not vary according to the category of the waters in which they sailed, and accordingly should be extended to article 22.

26. Mr. CHIT HLAING (Burma) pointed out that while it was unlikely that the four freedoms set forth in the second sentence of article 27 would be disputed, no freedom was absolute, and the commentary on the article rightly expounded certain limitations thereto. The Burmese delegation, while in general agreement with article 27, had some reservations concerning the regulation of the freedoms declared in it.

27. The term *inter alia* in article 27 indicated that the list of four freedoms was neither restrictive nor comprehensive. The omission of any reference to the limitation of freedom of scientific research was a serious shortcoming. The statement in paragraph 1 of the commentary on article 27 that states were bound to refrain from acts which might adversely affect the use of the high seas by nationals of other states and the supporting reference in paragraph 2 were praiseworthy, but states were not bound by the commentary. A specific prohibition of the pollution of the seas through scientific tests was desirable, and should be extended to tests conducted elsewhere than on the high seas, if those seas were thereby affected. The Commission had tried to regulate that problem in paragraphs 2 and 3 of article 48, but paragraph 2 was intended to cover such indirect pollution as the dumping of radio-active waste in rivers which flowed into the sea, and paragraph 3, instead of stipulating a general prohibition of dangerous tests, merely provided that states should co-operate in drawing up regulations for preventing pollution. That, in the Burmese delegation's view, was inadequate. Besides, the Conference would be failing in its duty if it left the problem to be settled by other bodies, for it was directly concerned with the one aspect of it. That consideration could not be regarded as political, since it was logically related to the effects of certain acts on a legal freedom.

28. Mr. GARCIA-SAYAN (Peru), dealing with articles 26 and 27 of the International Law Commission's text, said that his government's attitude was inspired by the tendency, accentuated in recent years, towards a geographical extension of the rights of coastal states as a result of increasing geographical and biological knowledge of their maritime zones and of certain human activities. A number of special régimes had been instituted to take account of those facts. The Conference should therefore endeavour to draw up international rules applicable to all states, but sufficiently flexible to permit of adaptation to certain special and vital requirements.

29. The definition of the high seas in article 26 was based on terms, "the territorial sea" and "internal waters", the extent of which had not yet been fixed. He did not agree with the provision in article 27 which recognized "freedom of fishing" without restrictions. It conflicted with the proclamation and exercise by Peru and other states of rights of sovereignty over sea areas adjacent to their coasts for the purpose of conserving and utilizing their marine resources. The coastal state's right to adopt conservation measures in the high seas under articles 54 and 55 of the Commission's draft did not constitute an exception of any real value to the provision in article 27; for, even if coastal states were authorized to adopt unilateral measures, those articles themselves would make the application of such measures quite ineffective.

30. The action taken by the Peruvian Government had been motivated by the factual situation and by legal, scientific, moral and human considerations. The coastal districts of Peru were, owing to natural circumstances, extremely rich from a biological point of view. A case which was peculiar to Peru was that of the guano-producing birds living off the coast and islands of Peru; they provided approximately 90% of the national requirements of fertilizers and a source of revenue to the state, which sold the guano. The stocks of fish (anchovetas) on which those birds fed were threatened with extinction as a result of indiscriminate fishing for the production of bait and fishmeal. Guano production in Peru thus depended on conservation of the anchoveta. Its extinction and the consequent disappearance of the guano-producing birds would be a calamity for the Peruvian economy.

31. He described the rugged territory of Peru and its arid coastal regions; there was a scarcity of arable land, and the inhabitants were under-nourished. The diet of the nine million inhabitants of Peru represented a daily average of only 1,860 calories per head, whereas the figure generally recommended by nutritionists was 2,900. It was estimated that the population of Peru would increase to twenty million within twenty-three years.

32. Though there was such a food shortage on land, there was an abundance of fish in the coastal waters offering an easy source of proteins, fats, mineral salts and vitamins, which compensated for the poverty of the country's resources. During the past twenty years, there had grown up a modern fishing industry in which $20 million had been invested, and which now employed more than 60,000 persons. More than 250,000 tons of fish and other products, including those derived from whales, were obtained annually by Peru from the sea.

33. The instruments of positive law which stated Peru's position were the decree of 1 August 1947 and the pact with Chile and Ecuador, referred to as the Santiago Declaration, signed in 1952. They proclaimed that national sovereignty and jurisdiction extended to the continental shelf and its superjacent waters and to the adjacent sea to a distance of 200 nautical miles, for the purpose of conserving and utilizing all the resources in or below that area. Neither the decree nor the Santiago Declaration had affected the right of other states as regards freedom of navigation in the area in question, nor had it deprived the governments of Peru or the other countries of the right to authorize nationals of other states to fish in their respective zones subject to certain conditions. That régime of the south Pacific, to which Costa Rica had subscribed and which coincided with the position adopted by El Salvador in 1950, had been supplemented by a series of additional agreements which gave the said régime the character of a genuine regional system. Under it, several licences had been granted to nationals of other states, and sanctions had been imposed on ships that had broken the rules.

34. It was the absence of any international rules for the utilization of the sea as a source of riches that had led to the unilateral adoption of measures of self-defence.

The Secretary-General of the United Nations, in a 1949 memorandum entitled *Survey of International Law* (A/CN.4/1/Rev.1), had stated that the adoption of such measures was "unimpeachable as a matter of equity and justice".[2] If one took into consideration all the special powers exercised by various states over areas beyond the traditional limits of their territorial waters, it could be said that, as the International Court of Justice had recognized in its judgement in the Anglo-Norwegian fisheries case,[3] such unilateral measures were valid in the law of the sea.

35. The 200-mile limit was the "biological limit" of those countries that had proclaimed their rights over such a stretch of sea. Species such as tunny and barrilete were mostly caught 20 to 80 miles from the coast; the same anchovetas of the coastal waters sometimes went 60 or more miles away; and the cachalot and whales were usually to be found more than 100 miles off. There was no intention, moreover, to establish the 200-mile limit for utilization of the resources of the sea as a uniform rule applicable to all States. Different geographical factors and biological limits would make it inapplicable to other states. The relativity or geographical concepts was an element to be taken into account in the law of the sea.

36. The requests formulated by Peru met the conditions necessary for their recognition as legally binding and applicable since first, they were the expression of principles recognized by law; secondly, they had a scientific basis; and thirdly, they responded to national vital necessities.

37. The economic reasons for those proclamations by Peru and other states were based on a natural and pre-eminent right deriving from geographical contiguity. Peru's right as a coastal state was thus an inherent right, founded on its geographical position, and therefore pre-existent to its formal international claim. The International Court of Justice had agreed, in the judgement referred to above, that sovereignty over parts of the sea was derived from the land. The coastal population had depended on the sea for food long before there had been any navigation and before the modern maritime Powers had unilaterally decided that vast areas of the oceans were primarily their property and had subsequently enunciated the principle of the freedom of the seas.

38. Legal concepts such as the freedom to fish, formulated at a time when the resources of the sea were thought to be inexhaustible, were no longer valid in the face of the destructive capacity of present-day fishing methods. Those who maintained that no restriction should be placed on fishing in the high seas were shutting their eyes to reality. Modern fishing enterprises had become so vast and efficient and had so great a capacity for destruction that the concepts of the past were no longer applicable. That was why in 1954 the Peruvian authorities had detained the larger part of a foreign-owned whaling fleet consisting of a factory ship and fifteen other vessels capable of capturing 15,000 whales per season. Such fleets from other continents had no right to prejudice the coastal states, which were by nature entitled to those resources. It would be unjust and illegal if private foreign interests were allowed to convert into private wealth the riches with which nature had endowed the domain of a country. That would be a debased form of the right to hunt and fish in the high seas, which had never been part of the accepted code of freedom of navigation, and which would benefit only the powerful and technically-advanced states.

39. As to the concept of sovereignty referred to in the proclamations of Peru and other states, it had no absolute meaning and was in fact identified with the notions of jurisdiction and control mentioned in President Truman's proclamation of 1945. The notion of sovereignty referred to the exercise of certain of the powers and prerogatives that constituted the traditional concept of maritime sovereignty, as the International Law Commission itself had recognized.

40. The Commission's draft was incomplete inasmuch as it did not take sufficient account of the biological and economic aspects on which the claims of exclusive fishing rights rested.

41. In view of the need to establish a new set of international rules on fisheries and the conservation of the resources of the sea, the Peruvian delegation would submit amendments to article 27 and others of the International Law Commission's draft.

42. Mr. MACHIN (Spain) said that in view of his country's traditions with regard to international law, the Spanish delegation felt bound to defend the principle of the freedom of the high seas. In one of the laws passed by Alfonso the Wise in the thirteenth century it was stated: "The things that belong in common to all creatures which live in the world are: the air, the rain and the waters of the sea." The essential purpose of the articles referred to the Committee was to proclaim and defend the freedom of the high seas. The purpose of the provisions in those articles which appeared to limit that freedom was in fact not to limit, but to regulate it. Any freedom that was to be exercised in the interest of all who were entitled to enjoy it must be regulated.

43. Careful attention should be paid to the relationship between flags flown by ships and their nationality. Provisions should be laid down in an international instrument, as in the domestic laws of his country, to ensure not only that ships were entitled to fly their flags, but also that there was a genuine link between the ship and the state. In order to prevent abuse, it should be laid down that no ship should change its flag during a voyage unless there was actually a change in the nationality and ownership of the ship.

44. Article 39 contained provisions for the protection of ships on the high seas and of persons and property in such ships against piracy, but there was no clause to protect aircraft either above or on the high seas. Some provision should be added to that effect.

45. Like several other representatives, he was opposed to the rule in article 33 that ships owned or operated by a state and used for commercial purposes should enjoy privileges and immunity not enjoyed by other merchant vessels.

46. The Conference should not do anything likely to give rise to conflicts between existing conventions and

[2] United Nations publication, sales No.: 1948.V.1 (1), para. 72.

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

any instruments it might adopt. It should lay down general principles which would not conflict with existing international standards and would permit of future development.

The meeting rose at 5.45 p.m.

TENTH MEETING

Friday, 14 March 1958, at 3.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. RADOUILSKY (BULGARIA), MR. CARDOSO (PORTUGAL), MR. LEAVEY (CANADA), MR. LÜTEM (TURKEY), MR. BEN SALEM (TUNISIA) AND MR. WEEKS (LIBERIA)

1. Mr. RADOUILSKY (Bulgaria) said that, since the international law of the sea was aimed at promoting the development of economic and cultural exchanges on a basis of equality and mutual respect, the work of the Conference was particularly favourable to the strengthening of international relations, provided it was conducted on the basis of the United Nations Charter and decisions of the General Assembly, particularly resolution 1236 (XII) entitled "Peaceful and neighbourly relations among states", adopted at the twelfth session.

2. The International Law Commission had rightly stated, in paragraph 1 of the commentary on article 27, the important principle of international law that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states. In his delegation's view, that principle was sufficiently important to be included in the actual text of the article.

3. The above-mentioned resolution should be considered in its relationship to the principle of the freedom of the high seas, and more especially the absolute nature of the rights deriving from that principle. Any exercise of freedom prejudicial to those rights would constitute not the exercise, but the abuse of a right. Furthermore, the resolution had an effect on the binding nature and future validity of existing legal standards and on the purposes of codifying the rules relating to the use of the high seas on the basis of relations between equal and sovereign states. The existing standards had been created at various periods in history and, first and foremost, on the basis of the practice and domestic legislation of countries possessing large fleets. All those rules must be subjected to review in the light of the principles adopted by all states members of the United Nations under the resolution, which, in his delegation's opinion, was a legal as well as a political document.

4. In the light of those considerations, some articles of the International Law Commission's text required amendment or completion. In connexion with paragraph 3 of the commentary on article 27, the freedom to undertake nuclear tests on the high seas was not generally admitted and constituted an abuse of the freedom of the high seas. Some delegations had urged that the Conference had been called in order to codify already existing international law. But there was no existing written or accepted rule allowing for nuclear tests. If unwritten law were involved, there should be a long history of practice, but that was not the case. Furthermore, the provisions of The Hague Convention IV of 1907 and of the Geneva Protocol of 1925, concerning the prohibition of such destructive methods as poison gas and bacteriological warfare, led to the direct conclusion that nuclear tests should be prohibited. That prohibition was also implicit in the United Nations Charter and in the documents adopted for the protection of human rights. Again it must be remembered that by rendering vast areas of the oceans unfit for navigation, fishing, flying and human life in general, nuclear tests on the high seas not only threatened but directly prejudiced the rights of states other than those conducting the tests. Moreover, freedom to conduct nuclear tests was contrary to the provisions of General Assembly resolution 1236 (XII). It could not be said that such tests were compatible with mutual respect and benefit, while the radio-activity released was a violation of the territorial integrity of neighbouring states.

5. The Bulgarian delegation therefore considered that the Conference should draft a text specifically prohibiting nuclear tests. The argument that the over-all solution of the problem should be achieved in international bodies dealing with disarmament, while correct, did not mean that certain aspects of the question could not and should not be solved separately. The Conference could not evade its responsibility for prohibiting acts violating the right of all states to use the high seas.

6. He agreed that all states enjoyed the right to conduct military exercises on the high seas, but they must not do so to the detriment of the rights of other states. Obviously, naval manoeuvres on shipping routes in straits used by other states, or near the coasts of other states, adversely affected the use of the high seas by others, and should therefore be prohibited. Moreover, they constituted an obstacle to peaceful and neighbourly relations.

7. Certain delegations had objected to article 33, on the ground that the entire fleets of certain states might enjoy the immunity prescribed therein. His delegation, however, not only considered that article 33 should be retained, but also that article 22 on government ships operated for commercial purposes should be brought into line with article 33. The question of the ownership of a fleet was a domestic problem arising out of the individual economic, political and social development of states. It would, however, be untrue to say that ownership of a fleet depended solely on the social and economic system of a state; although in principle the merchant fleets of socialist states were state-owned, that also applied to some capitalist states — to pre-war Bulgaria, for instance. Accordingly, from the legal point of view, ships belonging to states with different systems could have the common status of government ships, the immunity of which should be assimilated to that of warships. The objection that the entire fleets of some states could thus enjoy certain advantages did not flow from

considerations of international law, but from those of domestic systems and jurisdiction on ownership. Moreover, the objection was not in conformity with resolution 1236 (XII), which referred to the principle of respect for each other's sovereignty and non-intervention in one another's internal affairs.

8. Mr. CARDOSO (Portugal) observed that the general agreement which existed on the capital importance of freedom of the seas was not surprising since freedom of communications was essential to the well-being and security of all states. It was, however, astonishing that the pre-eminence of that principle over local considerations had not yet been securely established at a time when no state was powerful enough to subsist, prosper or defend itself without the co-operation of others. Some states still believed it important to bring additional areas of the sea under their total jurisdiction, although such action was bound to affect other countries' access to the high seas. But every act motivated purely by self-interest started a chain of effects harmful to the world community as a whole.

9. For those reasons, the Portuguese delegation regarded article 27 as one of the most important in the International Law Commission's draft, and considered that it should be made as comprehensive as possible. Since every freedom was restricted by the freedom of others, the article should clearly state the limitations involved. The Portuguese delegation had therefore proposed a new text for article 27 (A/CONF.13/C.2/L.7).

10. The absence of a definition of a "merchant ship" was a serious shortcoming in the draft articles. His delegation had some suggestions on the subject. International law did not permit that international military and/or diplomatic functions should be carried out by ships not owned or operated by a state. Such ships, for the purposes of the articles, were referred to as state ships. They could, therefore, be defined as ships owned or operated by a state for the purpose of carrying out military and/or diplomatic functions and/or other functions depending on or related to them. They must always be under the command or control of an officer duly commissioned by his government and were divided into two categories, warships and government ships. Since warships were defined in article 32, paragraph 2, government ships, for the purposes of the articles, were state ships other than warships. Consequently, a merchant ship was any ship other than a state ship.

11. The Portuguese delegation considered that the principle of the "genuine link", stated in article 29, was intrinsically correct and should be accepted. It clearly implied adequate conditions of ownership and registration, effective jurisdiction and control by the state in all international matters over ships flying its flag; the existence in the legislation of the flag state of a body of rules complying with international standards, and the possibility of enforcement of the rules by the flag state wherever its ships operated. However, since the International Law Commission, after years of work, had been unable to draft those complex implications in the form of practical rules, it would seem advisable for the Conference to endorse the principle, but not to attempt to resolve it into its practical components. He therefore supported the United Kingdom representative's suggestion (4th meeting) that the problem be left to international organizations or conferences which had the necessary knowledge and time.

12. Mr. LEAVEY (Canada) said that with certain qualifications his delegation was in general agreement with the International Law Commission's draft articles.

13. It believed that before the Committee reached any decision on article 27 it should take into account the outcome of the discussion of articles 49 to 60 in the Third Committee. It might be wise to postpone a decision on article 27, paragraph 2, until it was known what limitations, if any, the Third Committee might recommend with regard to fishing in the high seas since an appropriate reference to them should be made in article 27.

14. There seemed to be some inconsistency between paragraph 3 of the International Law Commission's commentary on article 27 which stated that the Commission made no express pronouncement on the freedom to undertake nuclear tests on the high seas, and the statement in paragraph 1 of the commentary that states were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states. That broad principle was not strictly in conformity with international law, and should perhaps be qualified. If strictly applied, it would affect the freedom to conduct nuclear tests and naval exercises which had hitherto been regarded as permissible. Even if the criterion suggested in paragraph 1 were deemed acceptable, it was impossible to decide to prohibit nuclear teste until the report of the Scientific Committee on the Effects of Atomic Radiation was available. In his delegation's view it would be premature and unprofitable for the Conference to discuss the matter; moreover, the problem was related to the broader issue of disarmament, which was being dealt with in another United Nations organ.

15. Paragraph 8 of chapter II of the International Law Commission's report on the work of its eighth session stated that the Commission had left aside all those subjects which were being studied by other United Nations organs or by specialized agencies. In connexion with article 34, paragraph 1 (*b*), however, the International Labour Organisation had under consideration conventions on the accommodation of crews and on wages, hours of work and manning. In considering article 34 and other articles on which conventions already existed, it was important to ensure that the principles set forth therein would not derogate from obligations under instruments which might be wider in scope and more detailed and precise in drafting.

16. Mr. LÜTEM (Turkey) thought that the definition of "internal waters" contained in article 26 of the International Law Commission's text was out of place in the part relating to the régime of the high seas. That definition was not sufficiently clear. It failed to cover several stretches of water which were connected with the high seas by one or more straits and were surrounded by the land of a single state and which should be considered internal waters for both geographical and historical reasons.

17. He was opposed to the provision in article 33 that ships owned or operated by a state and used for commercial purposes should enjoy privileges and immunity

not enjoyed by other vessels used for commercial purposes.

18. The provisions in article 35 regarding penal jurisdiction in matters of collision and other incidents on the high seas were unsatisfactory. They were at variance with the judgement of the Permanent Court of International Justice in the *Lotus* case.[1] The Brussels Convention of 1952, from which those provisions had been taken, did not constitute part of international law, as it had not been ratified by many of the states which had signed it. The Committee should consider the establishment of some kind of international court with penal jurisdiction to deal with collisions and other incidents on the high seas, or a rule that they should be referred to an existing international authority. Perhaps a court might be set up to settle disputes regarding jurisdiction.

19. Article 65 also was unsatisfactory, since it had no legal foundation and there was no cause-and-effect relationship between the contingencies and the compensation to which it referred.

20. Mr. BEN SALEM (Tunisia) said that his country was closely concerned with the questions before the Committee because it had a long coastline, and much of its foreign trade was seaborne. It hoped soon to have a large fleet, as it had had in the previous century.

21. He regarded the high seas as a common domain which all nations were equally free to use as a means of communication and a source of wealth. No state had the right to exercise sovereignty on the high seas except in regard to ships flying its flag. No state had the right to police the high seas. No state had the right to interfere with the ships of another State on the high seas. The provisions relating to the slave trade and piracy were of purely historical interest. The provision regarding action based on a suspicion that a ship was engaged in the slave trade should not be used as a pretext for inspecting a ship when there was no warrant for such suspicion. Warships, although they had the right to determine what flag a foreign ship was flying, did not have the right to determine whether it had the right to fly that flag, or, *a fortiori,* the right to visit the ship.

22. Unfortunately, the fears he was voicing on that subject were justified by a number of acts of interference which had been committed recently. As the representative of Yugoslavia had indicated at the 7th meeting, certain states had arrogated to themselves the right to inspect and detain ships of other states on the high seas as if they owned the high seas. Such an act was an infringement of the law and a violation of the principle of the freedom of the seas. The detention of a ship on the high seas was such a serious matter that it should be laid down that the state of a ship which detained another ship on the high seas should report the reasons for that action to the second state.

23. The laws of Tunisia relating to the high seas were based on principles which had been adopted by the majority of states. But it should be pointed out that the flags flown by ships were only external signs of their nationality, except in the case of warships in peacetime; the proof of their nationality was their papers. Although a ship's papers might not be questioned while on the high seas, it would not, if its papers were not in order, call at a port without getting into trouble.

24. The people of Tunisia were very concerned at the dangers attendant on nuclear tests in, on or above the high seas. Such tests should be discontinued, and rules should be drawn up to prevent the pollution of the high seas and to protect human beings and the riches of the sea, which were the common heritage of all mankind. The carrying out of such tests was a violation of the freedom of the high seas. As the International Law Commission had stated in its commentary on article 27, any freedom that was to be exercised in the interest of all entitled to enjoy it must be regulated. There must be rules to safeguard the exercise of the freedom of the high seas in the interests of the entire international community.

25. Mr. WEEKS (Liberia) said that the articles in the International Law Commission's text formed a sound and indispensable basis for the Committee's deliberations. The fact that a very large number of states and organizations were represented at the Conference was concrete evidence of the desire of nations to come to agreement on issues which had for many years been a source of international friction and misunderstanding. The areas of disagreement were small.

26. The general debate had centred on two principal types of issue: The first related to matters on which there were genuine differences of opinion and in regard to which there were no uniform provisions in the laws and customs of states or positive principles of international law. In trying to settle those issues, it was the duty of the members of the Committee to allow themselves to be influenced by the weight of reasoning, the recognized demands of the times and the opinion of the majority. The second type consisted of issues in regard to which there seemed to be a desire to inject novel principles into the rule of law without regard to their effect on international relations. There was no genuine link between the insistence upon them and the need for the more precise formulation and systematization of rules of international law in fields where there had already been extensive state practice, precedents and doctrine. In the interests of the progressive development of international law and the promotion of better international relations, the Committee should completely dismiss those issues from its deliberations. There was no point in drawing up a draft convention containing provisions of so provocative a nature that some of the principal maritime nations would not subscribe to it. Instead of seeking to deal with new areas of friction which were not of great importance, the Conference should aim at drawing up draft international rules on points on which agreement existed.

27. Many of the points in the International Law Commission's commentary on the draft articles it had submitted should be added to the draft articles themselves.

28. His delegation accepted the principles enunciated in articles 26 and 27. The questions raised by one of the statements in the Commission's commentary on article 27, namely, "states are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states", were outside the

[1] *Publications of the Permanent Court of International Justice, Series A, No. 10.*

jurisdiction of the Conference, because the United Nations General Assembly was dealing with them and they involved highly technical and specialized matters with which the Conference was not equipped to cope.

29. His delegation considered article 28 completely satisfactory.

30. Although Liberia rigidly observed the provisions of the International Load Line Convention of 1930, the International Convention for the Safety of Life at Sea of 1948, and the Final Acts of the International Telecommunication and Radio Conferences of 1947, it was opposed to the inclusion in a new convention of articles 34, 35 and 36, and to a more limited extent, of article 61. The same remark applied to article 48 in so far as it related to the pollution of the sea by oil. All the subjects dealt with therein were covered by existing conventions and to include them in a new convention might give rise to confusion. It might even involve a country in adherence to a convention to which it did not subscribe.

31. His delegation agreed with the provisions contained in the first two sentences of paragraph 1 of article 29 but recommended the complete deletion of the third sentence, which rendered the rest of the article contradictory and ambiguous. It represented an attempt to inject into international law a novel principle which, if successful, would create confusion and misunderstanding. It would be strange, when conceding the right of each state to register ships under its flag and to fix the conditions under which it granted its nationality to ships, to suggest that other states had the right to disregard the national character and flag of a ship of that state, notwithstanding the authenticity of the ship's papers. Moreover, article 42 stated: "The retention or loss of national character is determined by the law of the state from which the national character was originally derived." Many of the states which had expressed the intention of supporting the "genuine link" concept had nevertheless admitted that the provision in article 29 lacked precision and might have dangerous consequences and that it should receive further consideration.

32. He agreed that, in order to prevent abuse and friction, it should be laid down that the granting of a state's flag should not be a mere administrative formality with no accompanying guarantees. But no state had acted as irresponsibly as that. Lloyd's register of ships showed that the merchant navy of Liberia had an excellent record. Liberia was genuinely anxious not only to build up a fine merchant navy in order to foster and enhance the growth and development of its foreign and domestic trade in the interests of national security, but also by efficient administration of its maritime laws and regulations to maintain the high standards it had set. Ships registered under the Liberian flag were required to meet and maintain acceptable standards of safety which were set out in Liberian laws and in rules and regulations made under those laws. Those laws, rules and regulations were constantly being changed to meet the requirements and standards of the times. Revised laws on the subject — which might well be copied by other states — had come into force on 1 March 1958.

33. If, then, the problem was not one relating to the safety of ships or the control exercised by states over ships registered under their laws, why had the "genuine link" clause been introduced? Was the reason fear of competition from states with very liberal registration laws? One member of the International Law Commission had stated that the introduction of detailed conditions might have some effect on the freedom of the high seas, and should therefore be avoided.

34. Several criteria had been suggested for the determination of the hypothetical "genuine link", including the country of construction, the nationality of the crew, and the nationality of the company or persons owning the ship. No relationship was bound to exist between the country of construction and the nationality of a ship. Again, states were free to dispense — and did dispense — with all legislative restrictions on the national composition of crews without impairing any legal connexion existing between themselves and the ships of their merchant navy. Ownership by nationals of the flag state or by a company of the nationality of that state were no proper criteria, except in so far as they made it possible in wartime to determine whether a ship should be treated as enemy property.

35. The fact that the domestic laws and regulations of more than one state made one or more of those things a condition for the granting of its nationality to a ship did not invest them with an imperative character or make them a rule of international law. The purpose of those requirements was not to secure compliance with the rules governing the high seas; they were based merely on those states' domestic, economic or social policies. The only true criterion for determining the nationality of a ship and for the recognition of its national character by states other than the flag state was the ship's papers. Customs regulations and naval instructions provided ample support for that thesis.

36. The acceptance of the "genuine link" concept would result in conflicts in the field of public law. It would seem to accord to a state other than the flag state the right to issue rules and regulations for a "foreign" ship when it fulfilled the conditions of nationality while having no "genuine link" with the flag state. It would moreover seem that a state might claim the right to exercise criminal jurisdiction over a foreign ship by denying the nationality shown by its flag and documentation, if there was a "genuine link" between the ship and the claimant state. It might result in stateless ships plying the high seas. It might give rise to an unexpected and undesirable extension of the right of visit in time of peace, for which article 46 provided. It would be difficult to reconcile the proposition advocated in the "genuine link" requirement with the standard provisions of existing treaties which included no such requirement. The same provision would result in conflicts in the field of international private law; it was impossible to foretell the extent to which it might adversely affect relations between individuals, the existence of rights, duties and obligations and the transfer and vesting of property. It could also have the unfortunate and surprising effect of making many legal relationships dependent upon a fortuitous place of jurisdiction.

37. In addition to the deletion of the third sentence of article 29, he would propose the substition of the words "under its laws" for the words "in its territory" in the first sentence.

38. His delegation accepted the principle enunciated in article 32.

39. He was opposed to the provision in article 33 that ships owned or operated by a state and used for commercial purposes should enjoy privileges and immunity not enjoyed by other merchant vessels. The criterion for assimilating ships owned or operated by a state to the category of warship should be use or service, rather than government ownership.

40. In conclusion, he would urge that the Conference should accept freedom as the guiding principle of its deliberations — the freedom of the high seas.

The meeting rose at 5 p.m.

ELEVENTH MEETING

Monday, 17 March 1958, at 3.20 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. SHAHA (NEPAL), MR. MATINE-DAFTARY (IRAN), MR. ZOUREK (CZECHOSLOVAKIA), MR. LIU (CHINA) AND MR. HAMEED (PAKISTAN)

1. Mr. SHAHA (Nepal) thought that, unless there were compelling and clear reasons for alternative or new proposals, it would be advisable to accept the clauses in the valuable text which the International Law Commission had drafted with great care. He would support any amendments which would, in his opinion, promote the development of international law, since that was the purpose of the Conference.

2. It had been made clear at the United Nations General Assembly that his government was most anxious for the immediate discontinuance of nuclear tests which resulted in the pollution of the high seas and the air space above them. The International Law Commission was not to blame for not inserting in its draft a clause prohibiting such tests, since it could only include in the draft recognized rules that were susceptible of codification. In its commentary on the draft, it had urged states to come to an agreement on such tests; it could not have done more.

3. The statement in article 27 that the high seas were open to all nations, and that the freedom of the high seas included, *inter alia,* freedom of navigation, was borne out by *jus gentium* and by various treaties as well as by actual state practice. But it would have no practical effect for land-locked states unless they had free access to the high seas. His government was particularly anxious that the draft should include a rule to that effect. It could be argued that, having made arrangements for the question of free access to the sea of land-locked countries to be considered at the Conference, the General Assembly was in favour of that rule. He was grateful to the United States delegation for its recognition of that right, and to the representative of Canada in the First Committee (17th meeting) for his assurance that the Canadian Government would co-operate in efforts to ensure that land-locked countries would enjoy it and be able to trade with all nations. He greatly regretted the view expressed by some representatives in the Fifth Committee that the question was one of trade and communication, and therefore not really an issue for the Conference. True, the question was connected with the general aspect of transit, but then the question of freedom of navigation on the high seas was also connected with it in the same way. The right of access to the high seas of land-locked countries derived from the freedom of the high seas. No set of rules relating to the high seas would be complete if it did not include a clause confirming the possession by land-locked countries of that right.

4. Mr. MATINE-DAFTARY (Iran) said his delegation viewed with favour the principles which the International Law Commission had taken as a basis for drafting the articles referred to the Committee.

5. The general debate had brought out the cleavage existing between east and west, maritime and non-maritime states, large and small states, and old and new states. He deplored the bitter discussions that had occurred on purely political topics not covered by the Conference's terms of reference; they had polluted, not the sea, but the atmosphere in which the Conference was being held. He was convinced that the Conference could succeed if those attending it kept within the limits set by General Assembly resolution 1105 (XI).

6. In defining the freedom of the seas, the representatives of the maritime countries had drawn certain exaggerated conclusions — for example, the notion that the breadth of the territorial sea should never exceed three miles. It was almost true to say that in practice it was those states alone which benefited from the freedom of the high seas; in fact, they were laying claim to hegemony of the high seas. The non-maritime states, which were anxious to protect their territorial integrity and in many cases to ensure supplies of fish and other sea products for their peoples, feared that the adoption as a universal rule of the three-mile concept, which had in the past corresponded to the range of cannon now replaced by much more formidable weapons, might transform the principle of *mare liberum* into one of *mare nostrum.* It was not the fault of the non-maritime states that they did not have large fleets; the reason was that they were under-developed in every way as a result of the policy of colonialism followed by the states which benefited from the freedom of the seas. But a new era had begun; colonialism had been condemned. The under-developed states of Asia and Africa, including all those which had recently become independent, were ready to co-operate in all honesty and without bitterness with the great maritime states if they showed understanding.

7. That was why it had been laid down in Article 13 of the Charter of the United Nations that the General Assembly should encourage the progressive development of international law and its codification. That was why the Conference had been convened — to examine the law of the sea in its technical, biological, economic and political aspects as well as from the legal standpoint. To argue that a number of obsolete customs and

practices, enshrined in conventions to which most of the states of Asia and Africa were not parties, should be continued was tantamount to arguing that there should be no progressive development of international law, and that the non-maritime states should be condemned to continue to suffer from the unfair situation that had existed in the past. It would be equivalent to gainsaying the purpose for which the Conference had been convened. He appealed to all present to discard extremist and over-dogmatic opinions and to try to reach a compromise in a spirit of progressive realism.

8. Mr. ZOUREK (Czechoslovakia) said that all states possessed an equal right to enjoy the advantages of the freedom of the high seas. Consequently, the establishment of international rules for the high seas was in the interest of all. The principle of the freedom of the high seas, coupled with that of the sovereign equality of states, formed the legal basis for the right of free access to the sea of land-locked states.

9. The International Law Commission's draft articles on the régime of the high seas constituted a firm foundation on which to reach general agreement and settle controversial questions.

10. After a brief survey of the claims of a few states in previous centuries to the dominion of the seas, he pointed out that since the industrial revolution at the beginning of the nineteenth century the principle of the freedom of the seas had become and still was one of the fundamental principles of international law recognized by all states. But the existence of that principle did not mean that States could use the high seas in any way they wished. The freedom of every state in that respect was limited by the freedom of other members of the international community. Any state which used the freedom of the high seas in such a way as to exclude other states or their nationals from using the high seas would be violating that freedom, and would in consequence incur international responsibility.

11. The greatest threat to the freedom of the high seas at the present time was the testing of atomic bombs and long-range weapons. Such tests had closed large areas of the high seas to international shipping, made fishing there impossible, destroyed part of the living resources of the sea and created extensive danger of exposure to atomic radiation. In its commentary on article 27, the International Law Commission had found a solution for that problem. It pointed out that states were bound to refrain from any acts which might adversely affect the use of the high seas by national of other states. That ruling applied to nuclear weapon tests on the high seas and should accordingly be expressed in appropriate language in the actual instrument which was to deal with the régime of the high seas. To avoid misunderstanding, he should explain that there was no intention of dealing with the general question of nuclear tests, but simply of stating that nuclear weapon tests on the high seas were a violation of the principle of the freedom of the high seas. His delegation believed that the question of nuclear tests on the high seas fell within the Conference's purview, and that failure to confirm the existing law on that point would cause very grave disappointment among the peoples threatened by such tests and, indeed, sound the death-knell of the freedom of the seas.

12. Turning to the question of the flag flown by ships and their nationality, he remarked that on the high seas ships were subject only to the jurisdiction of the state whose flag they flew. In the interests of good international relations, rules should be formulated which would suppress all doubts and prevent abuses likely to cause international friction. He agreed with the statement in article 29 that there must exist a genuine link between the state and the ship; that statement should be retained and, if possible, developed. In view, however, of the wide divergencies in the laws of states, it would be difficult to agree on any exact criteria on the subject. One criterion, in his opinion, was the operation of a ship by the state or its nationals. There should be added to article 29 a provision regarding the nationality of small vessels belonging to countries with laws that denied them the right to fly a flag.

13. The rule laid down in the Barcelona Declaration of 1921 that the ships of a land-locked state must be registered in one fixed place in the territory of that state had proved in practice to be entirely satisfactory to all land-locked states, and was generally recognized in international law. It should accordingly be codified as one of the rights deriving from the fundamental right of land-locked states to free access to the sea.

14. The flag flown by a ship linked that ship to the legal system of a particular state. Hence, the right to a flag was vested in states, and only in states. There could be no question of according it to international organizations. That, however, need not prevent ships chartered for such an organization from flying its flag alongside the state flag should that be considered necessary for the performance of the duties assigned to them by the chartering organization. When they did so, the purpose of the two flags would, of course, be entirely different.

15. His delegation was in agreement with the provisions of article 33, and wished to refute some of the criticisms levelled against it. The immunity of a state and its property was a direct consequence of sovereignty. Every sovereign state must respect the sovereignty of other states, and could not arrogate to itself the right to subject to its jurisdiction foreign states and their property, with the exception of immovable property situated in its territory, if not used for the purposes of a diplomatic mission. *A fortiori,* no such claim could be entertained with regard to a ship on the high seas which was not subject to the jurisdiction of any state. That rule was confirmed by Article 2 (1) of the United Nations Charter. Every sovereign state determined for itself what its government functions should be, and of what they consisted. If a state considered that shipping came within the category of state functions, that was its own affair, and other states were obliged to respect the immunity of its ships. The critics of article 33 had failed to explain on what rule of international law they based their claim to exercise jurisdiction over a foreign state's shipping on the high seas in exceptional cases where the exercise of certain powers in respect of privately owned shipping was admitted by international law. The argument that government ships should be refused immunity because privately owned ships did not enjoy it was groundless. It would be erroneous to appraise the actions and institutions of states with a different eco-

nomic and social structure in the light of those of one's own state, or to treat the principles underlying the legislation of a particular state or group of states as a yardstick by which to judge the legal institutions of another state. Such an attitude conflicted with the duty to respect the sovereign acts of foreign states, and was a source of friction in international relations.

16. Although the experience of recent years had shown that piracy was by no means a thing of the past, the Czechoslovak delegation considered that the provisions concerning piracy in the draft articles occupied a disproportionate amount of space. Moreover, the definition of piracy in article 39 did not seem to be quite in harmony with the development of international law. For example, the omission of acts of violence and depradation committed on the high seas for other than private ends meant that acts covered by the definition and committed at the order or the initiative of a state organ, if they could not be described as acts of aggression, could not be regarded as piracy. That would be tantamount to admitting the order of a superior officer as an excuse for the commission of a crime and so would be a flagrant contradiction of the principles which had been recognized in the Charter and judgement of the Nürnberg Tribunal, and which, having been unanimously approved by General Assembly resolution 95 (I), had become an integral part of international law. Furthermore, the definition did not cover acts of piracy committed on the high seas by one aircraft against another. The definition of piracy therefore required further consideration.

17. In conclusion, taken as a whole, the articles allocated to the Second Committee raised no question for the solution of which international law did not provide the necessary grounds. There was therefore reason to hope that the International Law Commission's draft could be accepted by a large majority and could form the basis for a satisfactory international agreement.

18. Mr. LIU (China) said his delegation generally approved of the International Law Commission's draft articles, which were of great interest and concern, not only to the maritime Powers, but to all peoples whose lives were affected by the use of the sea and its resources. Moreover, the orderly use of the sea was a vital factor of the peace and welfare of all mankind. Since the broad principles underlying the articles allocated to the Second Committee were indisputable, it was to be hoped that the Conference could adopt them without much difficulty.

19. His delegation subscribed to the four freedoms set forth in article 27, but considered that the fundamental principle of the high seas, being open to all nations, should be formally declared in a separate sentence. However, article 26, paragraph 2, seemed to relate to the delimitation of the territorial sea, rather than to a definition of the high seas, and might therefore be transposed to article 4.

20. The articles relating to safety of navigation, jurisdiction in collisions and duty to render assistance were so crucially important that they should be incorporated in a general convention. He could not agree with the suggestion that those matters could best be dealt with in multilateral conventions. The fact that some of the rights and duties involved were already embodied in various instruments should facilitate, rather than hinder, their acceptance in a comprehensive convention which could, moreover, help to secure uniformity of standards by eliminating discrepancies.

21. Article 35 seemed inadequate to cover responsibility for collision on the high seas. It was an established principle that a criminal offence was deemed to have been committed within the territory of a state if the overt act constituting the offence was committed within the territory of that state or if the offence produced its effects in that territory. In a collision case which involved criminal responsibility and where the harmful act produced its effect upon a vessel of a different nationality, the offence was of the same nature as a crime producing its effect on the territory of another state. That principle was expressed in Chinese criminal and maritime law and was supported by the judgement handed down by the Permanent Court of International Justice in the *Lotus* case.[1] While it might be argued that that judgement had been carried only by the casting vote of the president of the Court, it should be borne in mind that the 1952 Brussels Convention embodying the principle adopted in article 35 had been acceded to only by a small number of states. Accordingly, article 35 should be based on the principle underlying the judgement in the *Lotus* case.

22. The Chinese delegation was in full agreement with article 36, since Chinese maritime law contained similar provisions and further rendered liable to imprisonment the master of a ship failing to render assistance in case of distress or collision.

23. Although, owing to divergent national practices, a clear definition of the " genuine link " between a state and the ship flying its flag raised difficult problems, the principle was essential in order to enable the flag state to exercise effective control over the ship and to discharge its responsibility with regard to safety and other regulations. Chinese law contained detailed provisions on the subject. It provided that no ships except those of Chinese nationality should be permitted to fly the Chinese flag. Ships of Chinese nationality were those belonging to the Chinese Government, to Chinese nationals and to companies established under Chinese law and having their head offices in China. That was a practical means of ensuring the existence of a genuine link. It was to be hoped that the Committee would formulate a more precise draft. Article 30 was closely connected to the principle of the "genuine link"; the Chinese delegation specially endorsed the statement in the commentary that in adopting the second sentence of the article the Commission intended to condemn any change of flag that could not be regarded as a *bona fide* transaction.

24. The Chinese delegation agreed with paragraph 1 (vi) of the commentary on article 39, but thought that if the acts so committed involved navigating or taking command of the ship they should be regarded as acts of piracy. A new sub-paragraph to that effect might be added to article 39, paragraph 1.

25. Article 40 related only to mutiny by the crew on

[1] *Publications of the Permanent Court of International Justice, Series A, No. 10.*

a government ship or aircraft. It was equally possible, however, that the passengers of such a ship or aircraft might commit acts of a piratical nature which should be assimilated to those committed by passengers on a private ship or aircraft. The text might be amended to take that possibility into account.

26. His delegation found article 48 on the pollution of the high seas acceptable in its existing form. He did not, however, regard the prohibition of nuclear tests as falling within the competence of the Conference, since pollution was only one aspect of the general problem which was a matter for political decisions in other United Nations organs. The main objective of suspending nuclear tests should be the preservation of civilization and the human race rather than merely the freedom of the high seas. The Conference should not be deflected from its main purpose, which was to draft an international instrument giving effect to laws and customs reaffirmed by centuries of experience.

27. Mr. HAMEED (Pakistan) said that his country was particularly concerned with the principle of the freedom of the high seas, because it was geographically split into two halves and the high seas alone provided the main means of communication between its eastern and western parts. His country had high aspirations for its small but growing merchant fleet and the trade that was so vital for its economic development.

28. His delegation agreed with the definition of the high seas set forth in paragraph 1 of article 26, but considered that paragraph 2 should be dealt with by the First Committee, since it related to internal waters.

29. Article 27 could usefully be supplemented by a reference to the freedom of scientific research. In that connexion, he considered that the question of nuclear tests should be settled by the United Nations organs specifically created to deal with the problem of disarmament.

30. While his delegation welcomed the reference in article 29 to the "genuine link" between the state and ships flying its flag, it considered the wording of the article too vague and could accept it as a statement of principle only.

31. Article 39, paragraph 1, should be completed by the inclusion of a stipulation that the acts in question directed against an aircraft by a privately owned ship also constituted piracy.

32. The rule in article 47, paragraph 2, whereby the right of hot pursuit ceased as soon as the ship entered the territorial sea of its own country or of a third state would enable a foreign ship violating the laws of a coastal state to evade pursuit by slipping into the territorial sea of a neighbouring coastal state. The article should contain a reference to the appropriate remedy in such cases, which would be to secure the extradition of the offender by bilateral agreement.

33. In conclusion, he would be glad to hear the views of other delegations on articles which were already the subject of international agreements — for example, articles 34, 35, 36 and 48. There was some doubt of the desirability of drawing up a new international convention on the matters dealt with in those articles.

The meeting rose at 4.45 p.m.

TWELFTH MEETING

Tuesday, 18 March 1958, at 3.20 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (continued)

STATEMENTS BY MR. JENKS (INTERNATIONAL LABOUR ORGANISATION), MR. MINTZ (ISRAEL), MR. CAMPOS ORTIZ (MEXICO) AND MR. OZORES (PANAMA)

1. Mr. JENKS (International Labour Organisation), speaking at the invitation of the CHAIRMAN, asked permission to refer to articles 29, 34 and 35 of the International Law Commission's draft, which bore on matters that closely concerned his organization, the ILO.

2. With regard to the reference in article 29 to a "genuine link" between the flag state and the ship, the Commission had drawn special attention to the obligation of the flag state to exercise control over such matters as safety regulations and labour conditions. The ILO had devoted considerable attention to the problem, and the Preparatory Technical Maritime Conference it had held in 1956, at which twenty-one states had been represented — mainly by government, shipowners' and seafarers' delegates — had adopted a resolution urging that the country of registration should accept the full obligations implied by registration, and should exercise effective control. Among those obligations were securing the observance of internationally accepted safety standards, establishing government-controlled agencies to supervise the signing on and signing off of seafarers, ensuring that the service conditions of crews conformed with generally accepted standards, freedom of association for seafarers, proper repatriation arrangements and satisfactory arrangements for the examination of candidates for certificates of competency and for the issue of such certificates. In brief, the resolution stipulated as a minimum consequence of the registration of vessels that the country concerned should assume direct responsibility for ensuring that each vessel registered complied with safety standards, was properly manned and was navigated by competent persons. The provisions would be further considered at the forty-first session (maritime) of the International Labour Conference, to be held at the end of April 1958. While the International Law Commission's difficulties in finding a precise definition of the "genuine link" were understandable, the ILO had been trying to define, in matters falling within its competence, the responsibilities of states in relation to vessels flying their flags, with a view to ensuring safety on the high seas and the welfare of crews, irrespective of changes in world distribution of shipping arising from various factors. It was to be hoped that if the Conference on the Law of the Sea attempted to define the genuine link more precisely those factors would be taken into account.

3. In the commentary on article 34, concerning safety at sea, the Commission referred to conventions prepared under the auspices of the ILO. His organization, while appreciating the recognition of the importance of

its work, considered the wording of the article so general that it might give rise to considerable problems. Shipowners' and seafarers' representatives in the ILO had stressed the importance of joint negotiations and recent ILO conventions specifically provided that effect might be given to their provisions by collective agreement between shipowners and seafarers. Although government regulation was desirable in many matters, the instruments concerned by no means covered the whole field of reasonable labour conditions. Moreover, the internationally accepted standards for labour conditions at sea were laid down in conventions and recommendations adopted by the International Labour Conference, which were not binding upon members of the Organisation by virtue of such adoption. Members were obliged to apply such instruments only if they had accepted them by ratification. Although they were obliged to ratify them on obtaining the consent of the competent national authority, that consent was entirely at the discretion of the said authority. Furthermore, ILO conventions did not enter into force for ratifying members until certain conditions were fulfilled, such as ratification by a certain number of countries, including members having a prescribed minimum tonnage. The International Law Commission's text might therefore be open to objection. However, attention had been drawn to as essential factor of the safety of navigation, and the Conference might place on record its appreciation of the extent to which the work of the ILO was complementary to its own, since further progress in the adoption of maritime conventions was both possible and desirable.

4. The question of jurisdiction in the event of collision, dealt with in article 35, had also been considered at the 1956 Preparatory Technical Maritime Conference. The ILO's Officers' Competency Certificates Convention, 1936, provided that the duties of master or skipper, navigating officer in charge of a watch, chief engineer or engineer officer in charge of a watch, should be exercised only by persons holding a certificate of competency to perform such duties. The resolution on the subject adopted by the Preparatory Conference confirmed the principle that the authorities of the state issuing such a certificate were alone competent to suspend or cancel it, and that a state should not exercise the right to interfere with or suspend the validity of a foreign certificate within its own jurisdiction, unless the issuing state or other states entitled to suspend or cancel under reciprocal arrangements with that state had failed to inquire into the necessity of taking action in that regard. The resolution also expressed the wish that a state having jurisdiction over an incident of navigation which considered that action should be taken with regard to the use of a certificate issued by another state should notify the issuing state, so as to enable it to take any necessary steps. Those principles might be derogated from by special reciprocal arrangements for acceptance of certificates between states or groups of states. The present wording of article 35 seemed to be more appropriate to penal than to disciplinary proceedings, and the principle in the commentary that power to withdraw or suspend certificates rested with the issuing state might be more fully reflected in the article itself. The Conference might also take formal note of the action which the ILO was taking in the matter.

5. Mr. MINTZ (Israel) observed that the principle of the freedom of the high seas was the fundamental tenet of the law of the sea as a whole. The Committee must therefore consider carefully whether article 27 adequately reflected that fact. His delegation considered that the concept was unduly restricted by being confined to the régime of the high seas. The effect of article 27, paragraph 1, if read together with articles 1 and 26, was unrealistic, since it was assumed that when a ship sailed from one port to another it crossed an invisible frontier, some miles from the shore, beyond which freedom of navigation existed. In actual fact, however, a ship passing through the territorial sea enjoyed the right of innocent passage, which was independent of the sovereignty of the coastal state and which formed an integral part of freedom of navigation. The fact that passage through the territorial sea might be subject to qualifications did not alter the basic fact that innocent passage was exercised as a right, and not on sufferance; suspension of such passage within the territorial sea could not be arbitrary, even as a state could not arbitrarily interfere with freedom of navigation on the high seas. Moreover, qualifications of the right of innocent passage did not always exist, as in the case of international straits and bays and free access to ports. In that connexion, the Netherlands delegation had rightly recalled at the 4th meeting that navigation had little meaning unless it served the needs of world trade, and extended from port to port.

6. Where navigation was concerned, the territorial sea could be regarded as a kind of buffer zone, in which the concept of territorial sovereignty and that of the freedom of the seas overlapped. Innocent passage in the territorial sea should properly be placed in that context. The problems of land-locked countries provided a further argument against confining the concept of the freedom of the seas to the régime of the high seas. It was suggested in the memorandum concerning the free access to the sea of land-locked countries (A/CONF.13/29) that the doctrine of the freedom of the seas might extend its influence into the interior of continental land masses, and particularly inland along navigable rivers. The Israel delegation conceded in principle the validity of that doctrine.

7. All those aspects of the freedom of the seas were really facets of the concept of the essential unity of a maritime voyage. Accordingly, the distinction between the régime of the territorial sea and that of the high seas seemed unduly rigid. The articles should be redrafted or regrouped so as to include both innocent passage and passage on the high seas within the framework of freedom of navigation. His delegation suggested that basic concepts and definitions might be listed as the initial articles, before they were split up into their various component parts.

8. The concept of the unity of a voyage was also important in connexion with interference by one state with the shipping of another. With reference to the commentary on article 27, he pointed out that acts adversely affecting the use of the high seas might not themselves occur on those seas. For example, if a coastal state hampered innocent passage, the right of navigation of the injured party might be prejudiced by the need to divert or cancel sailings. Again, a state which was in-

volved in a political conflict with another and imposed penal sanctions was likely also to affect adversely the use of the sea by states legitimately trading with the other state. Other articles relating to freedom of navigation and fishing should also be carefully studied to guard against encroachments of that general principle. With regard to the articles on piracy, unlawful seizure and detention of vessels fishing outside territorial waters and their prompt release should be taken into account, and the possibility for the speedy settlement of such disputes should be kept in mind. Finally, the right of hot pursuit should be confined to cases where the local laws alleged to have been infringed were in conformity with international law; otherwise, a state of anarchy would prevail in which every state would enforce its own standards.

9. The basic concept of the freedom of the seas must be completed by an international system whereby states would assume responsibility for ships under their jurisdiction. Israel was a party to the International Load Line Convention of 1930, the International Convention for the Safety of Life at Sea of 1948 and the International Regulations for Preventing Collisions at Sea of 1948, and could therefore accept article 34 in principle, although it considered that that text should be redrafted to take existing treaty provisions into account. The Secretariat's note listing existing maritime instruments (A/CONF.13/C.2/L.8) was incomplete, since it gave no information on the status of ratification of those instruments and no particulars on the method of accession to them. Moreover, a number of important instruments among the eleven Brussels conventions, such as the 1926 convention on mortgages and liens and the 1957 conventions on limitation of shipowners' liability and on the treatment of stowaways, had not been included in the note because they did not relate to the draft articles. It would be advisable for the Committee to peruse those conventions and to decide whether any of them should be referred to by the Conference. It would be inappropriate for a Conference concerned with the codification of maritime law to omit consideration of such important international instruments relating to shipping.

10. With regard to the manner in which the provisions of the various conventions should be dealt with by the Conference, it had been suggested that if the results of the Conference were to be embodied in a resolution, it might be possible to include in it provisions parallel to those of existing conventions, that reference should be made to those instruments if the Conference produced a code or separable codes, or that it should recommend states not yet parties to the conventions to accede to them. In view of the great variety and complexity of the instruments concerned, a general approach to the question seemed unwise. It might be better to examine each convention individually and then to decide on the method of work. The Committee might decide to appoint a working group to consider the scope of those instruments and their relationship to the International Law Commission's draft.

11. With regard to the question of the nationality of ships and of the "genuine link" between the ship and its country of registration, he observed that the concept of nationality as applied to a ship was a convenient simile and that under many legal systems proceedings could be brought against ships as if they were juridical personalities. In connexion with article 29, however, the Committee should consider whether national laws made the ship's nationality dependent upon the right to fly a flag or upon its registration with a state. The articles under which a ship might be regarded as stateless were contrary to the basic concept that every state had exclusive jurisdiction over ships flying its flag, and was correspondingly responsible for them and for the maintenance by them of internationally recognized standards. In that respect, the Commission's draft might be reconsidered, possibly on the basis of the German representative's suggestions at the Committee's 8th meeting.

12. It would be difficult and hazardous for the Conference to reach a practical solution of the problem raised by the concept of the "genuine link" without studying the economic and social factors involved, which were not sufficiently documented. Maritime states that subjected their merchant marines to normal taxes and obligations and to strict shipping laws would no doubt be interested in the universal application of such a regulation. But it was not enough merely to enunciate the principle and to leave each state to decide what constituted a genuine link. The social factors had been studied at the ILO Preparatory Technical Maritime Conference, and would be considered further at the forty-first session (maritime) of the International Labour Conference in April 1958. Israel, which provided its seamen with the necessary social protection, was prepared to help to maintain adequate social standards for seafarers. However, the whole problem required further co-ordination and clarification and might therefore be better dealt with by a specialized agency, perhaps by the Inter-Governmental Maritime Consultative Organization, when finally established.

13. In conclusion, he considered that the arrangement with regard to special United Nations registration, dealt with in paragraph 5 of the commentary on article 29, complied with the rules governing the Organization's other activities, privileges and immunities. If the Conference recommended the principle, the details might be worked out by the General Assembly in pursuance of the competence conferred on it in article 105 (3) of the Charter.

14. Mr. CAMPOS ORTIZ (Mexico) said that the draft submitted by the International Law Commission was a useful basis for drawing up a practically complete code of the sea.

15. He agreed that the definition of "internal waters" in article 26 should not appear in the part relating to the régime of the high seas, but in that concerned with the territorial sea.

16. His delegation had submitted an amendment to article 27 (A/CONF.13/C.2/L.3), proposing an addition to the effect that the exercise of the freedom of the high seas was subject to "the conditions laid down by these articles and by the other rules of international law". Those words had been taken from article 1. He had been glad to note that the representative of Ceylon (9th meeting) had expressed agreement with that amendment and that the delegations of France and

Portugal had submitted amendments to the same effect (A/CONF.13/C.2/L.6 and A/CONF.13/C.2/L.7).

17. The second sentence in article 29 should, he thought, be revised, since in fact ships flew the flag of the country of their nationality. The flag was merely an external sign; it did not in itself confer nationality on a ship. It appeared that the Commission had recognized that to some extent in laying down the rule that there must be "a genuine link between the state and the ship". But that provision gave rise to the same problem, inasmuch as the genuine link was the ship's nationality. It should, he believed, be left to the discretion of each state to fix the conditions for granting its nationality to ships, and the right so enjoyed by each state and the conditions fixed by it accordingly should be respected by all other states. The only alternative would be to specify the conditions in an international instrument, but that would, he feared, give rise to a number of difficult problems. In article 29, the Commission had recommended the first of those alternatives, but by conceding to other states the right to decide for themselves whether there was a genuine link between the ship and the flag state, the Commission had opened the door to the creation of insoluble problems; he could imagine no situation more likely to engender disputes. His delegation was therefore opposed to the proposal that the Conference should adopt the genuine link principle and refer the problem to other bodies for detailed examination. An effort should be made to find a satisfactory solution at the Conference itself.

18. He agreed with the provision in article 33 that ships (other than warships) on the high seas owned or operated by a state and used only on government service, whether commercial or non-commercial, should be assimilated to and should have the same immunity as warships. Such ships should not, however, have policing rights.

19. Article 39 made "private ends" the essential factor in the commission of acts of piracy. But neither that article nor article 40 or 41 contained the stipulation included in paragraph 2 of the commentary on article 39 that acts of violation or depredation committed by warships during a civil war were not acts of piracy. Having regard to the statement in the last sentence of that paragraph, he would recommend that it should be stated in that article — and also in articles 40 and 41, which, unlike article 39, contained no mention of the qualification as to "private ends" — that acts committed for purely political ends would not be regarded as acts of piracy. That ruling had appeared in the draft provisions for the suppression of piracy of the League of Nations Committee of Experts for the Progressive Codification of International Law.[1]

20. The Mexican delegation had submitted an amendment to article 47 (A/CONF.13/C.2/L.4) which had a dual purpose: firstly, to give a state the right of hot pursuit within a conservation zone established unilaterally by it in accordance with article 55 as well as in its territorial sea or the contiguous zone to which article 66 related; and secondly, to confer on the coastal State the right of hot pursuit of ships which, though neither they themselves nor any of their own boats were actually within the state's territorial sea or the contiguous zone, were taking part in illicit acts for which boats other than their own were being used in the territorial sea or the contiguous zone. There had in practice been several cases of that kind. Though the Commission had decided at its third session (A/CN.4/SR.125, paras. 37 to 76) against including a clause on those lines in its draft, that did not prevent the Conference from doing so.

21. A clause should be added to paragraph 1 of article 48 to prevent the pollution of the sea with hydrocarbon. Paragraph 2 of the same article should be expanded so as to constitute a set of standardized international rules and measures regarding the disposal of radio-active waste in the sea. The regulation of that subject should not be left to the discretion of individual states. In framing any such international rules, however, account should be taken of the Statute of the International Atomic Energy Agency and the recommendations of that and other international organizations.

22. Mr. OZORES (Panama) thought that it might be advisable to amend article 26 of the International Law Commission's draft by adding a clause to the effect that the contiguous zones to which article 66 related were not part of the high seas.

23. It should either be laid down in article 29 that the "genuine link" between ships and the state in which they were registered should be determined by the domestic laws of the state of registration, or, preferably, all reference to the relationship between ships and the state in which they were registered should be deleted, since that relationship was not a concept of international law. For a long time certain maritime states, but by no means all of them, had been much concerned at the fact that for reasons of economy, and to some extent of security too, several shipping companies preferred their vessels to be registered in countries like Panama. That preference was due to the fact that the government taxes imposed by Panama on ships registered in that country were much lower than the corresponding taxes in other countries, and that Panama, being an under-developed country which needed to attract foreign capital and benefit from foreign technical experience, followed an open-door policy in regard to foreign capital and had refrained from setting up a complicated system of currency control. Moreover, at the entrance to the Panama Canal there was a large free zone where no taxes were imposed on industry or trade. It was surprising that maritime Powers which declared themselves in favour of the freedom of the high seas wanted that freedom to be limited by making it impossible for shipping companies to register their ships where they wished. The maritime Powers advocating that limitation had in fact benefited from the low rate of taxation on ships registered in Panama, because that had resulted in lower freight rates for the carriage of goods to those countries, including, for example, goods they had received under the Marshall Plan.

24. Panama supported article 34. Ships registered in Panama were required to carry safety certificates issued by one of the three companies which led the world in that connexion. It was true that there was a large number of old ships among the vessels registered in Panama,

[1] Ser. L.o.N.P., 1926.V.5.

but it was also true that there were a large number of old ships among vessels registered in countries opposed to the registration in Panama of ships owned by companies with their headquarters in other countries.

25. Panama, like Liberia, had ratified the International Convention for the Safety of Life at Sea.

26. Article 45 should be amended to make it possible for any vessel on state service, either permanently or temporarily, to make seizures on account of piracy, since some states, either because of shortage of funds or as a consequence of their peaceful attitude, possessed no warships or militairy aircraft. Article 47 also should be amended so as to make it possible for vessels in the same category to engage in hot pursuit in the circumstances mentioned in that article.

27. With reference to article 33, it should be observed that owing to the shortage of private capital for the flotation of shipping companies some countries which were not under a socialist régime had state-owned or partly state-owned merchant fleets. Those countries should not be deprived of their right to have such fleets, which were at least as useful as were fleets of warships to the human community taken as a whole.

The meeting rose at 4.45 p.m.

THIRTEENTH MEETING

Wednesday, 19 March 1958, at 10.45 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft articles adopted by the International Law Commission at its eighth session (articles 26 to 48 and 61 to 65) (A/3159) *(continued)*

General debate (concluded)

STATEMENTS BY MR. POMÉS (URUGUAY), MR. GUARELLO (CHILE), MR. EL ERIAN (UNITED ARAB REPUBLIC) AND MR. KORETSKY (UKRAINIAN SOVIET SOCIALIST REPUBLIC)

1. Mr. POMES (Uruguay) said his delegation would co-operate constructively in the preparation of provisions concerning the law of the sea which took into account geographical and economic conditions, history and scientific advances.

2. As was only to be expected, some parts of the International Law Commission's draft conflicted with existing international conventions, others constituted repetitions of clauses in such conventions, and yet others dealt with matters which were the specific concern of specialized agencies. Nevertheless, subject to these and certain other qualifications, the draft was the most comprehensive codification ever attempted of the law of the sea.

3. Referring to particular articles, he said that some (for example, articles 26 and 47) could not be dealt with independently; decisions regarding them would have to await the outcome of the proceedings in other committees.

4. In his delegation's opinion the drafting of article 29 (Nationality of ships) left something to be desired. The bare expression " genuine link " without amplification was too vague. The article was of some importance inasmuch as its provisions had a bearing on article 34, which stipulated that the crews of ships should enjoy reasonable labour conditions. If article 29 was loosely drafted, the conditions of employment of seafarers might possibly not be adequately safeguarded. His delegation was keenly interested in the question of working conditions on board ships; Uruguay had ratified a number of international labour conventions relating to the subject and its domestic labour legislation followed an enlightened policy. So far as the nationality of ships was concerned, his government had long held the view that the test of the " genuine link " was whether the state exercised effective control over the ship flying its flag. In that connexion, he hoped that the conference would succeed in removing all doubt concerning the status of " stateless " ships to which reference was made in the commentary on article 31.

5. He considered that the provisions dealing with the pollution of the sea by oil (article 48) should be strengthened, in the sense that a clause should be added concerning the harmful effects which might ensue from exploration work.

6. Lastly, he thought that some of the definitions and passages contained in the commentaries should be embodied in the articles themselves.

7. Mr. GUARELLO (Chile) said his country had been the first to proclaim, on 23 June 1947, that its sovereignty extended over the sea to a distance of 200 miles from the coast. That action had been the subject of much comment, a great deal of it unfair. The people who made such comments were doubtless ignorant of the truth of the matter. The fact that the General Assembly of the United Nations had decided to convene the present conference was proof that not all the rules relating to the sea were universal rules recognized by all states.

8. His delegation's objections to the International Law Commission's text concerned only the parts relating to fisheries.

9. Freedom which was not exercisable equally by all states was not really freedom. Provisions from which only states with large economic resources could benefit established not freedom but a privilege to be enjoyed by powerful states alone. Chile was one of the countries which lacked the means necessary for building up a fleet able to fish in any part of the world. His government was not requesting assistance to build up such a fleet; it was only demanding that ships should not come from far off to destroy the resources of the sea off its coast. His country had the means to conserve those resources and to use them in a rational manner.

10. Referring to paragraph 3 of the commentary on article 49, he said that it was by reason of the reckless destruction of the resources of the sea off the coast of Chile that his government had taken the action he had mentioned at the beginning of his statement. That action had not affected the freedom of navigation in the area concerned, nor had it made it quite impossible for nationals of other states to fish there. In taking that action it had followed the example set by President Truman's proclamation of 1945. Recent technical develop-

ments had made it necessary for all coastal states to adopt similar conservation measures.

11. Freedom to fish anywhere on the high seas was not a tradition as was the freedom of navigation on the high seas. To prevent abuses, it had become necessary to lay down international regulations regarding the freedom of navigation on the high seas ; it was even more necessary to lay down new international regulations, suited to the times, regarding fishing. The obsolete idea of limiting the breadth of the territorial sea to three miles had produced the result that practically the entire expanse of sea was treated as high seas and that a few concerns, fishing anywhere they pleased on the high seas, had by irresponsible and irrational methods of exploitation virtually exterminated certain species. In self-protection, therefore, Chile had, in concert with Peru and Ecuador, laid down regulations governing fishing and whaling in the areas of the Pacific off their coasts.

12. So long as the problem of the breadth of the territorial sea had not been settled satisfactorily, no progress could be made in the drafting of provisions concerning rights and obligations in and on the high seas. There appeared, however, to be general agreement that : (*a*) it was necessary to conserve in all parts of the sea the natural resources of the sea, which included not only the living resources of the sea but also the resources which were necessary for the existence of the living resources ; (*b*) the coastal state had a greater interest than any other state in the conservation of the resources of the sea off its coast ; (*c*) the coastal state should lay down adequate rules for the conservation of those resources and ensure that such rules were observed ; (*d*) the coastal state should have the right to benefit from those resources and to delegate that right to other states if it so wished ; (*e*) there should be adequate scientific and technical justification for all measures to conserve those resources ; and (*f*) states other than the coastal state should have the right to exploit those resources provided that they observed the conservation rules laid down by the coastal state.

13. The fact that there had been a delay in drawing up suitable international regulations regarding the conservation of the resources of the sea did not in any way affect the right of the coastal state to conserve the resources in the sea off its coast. Chile intended to exercise that right, on the basis of scientific and technical data, and in enforcing its regulations would not discriminate as between Chilean nationals and aliens.

14. Mr. EL ERIAN (United Arab Republic) said that the recognition of the principle of the freedom of the high seas was one of the most important landmarks in the history of international law. Its importance had increased with the development of shipping and the increase in the number of independent states.

15. In his opinion the question of the relationship between the rules to be prepared by the conference and existing international conventions could not be settled until it had been decided whether those rules should be laid down in one or more instruments. The question should be given very careful consideration later.

16. Referring to the question discussed in paragraph 5 of the commentary on article 29, he said that his delegation, bearing in mind the advisory opinion of the International Court of Justice of 11 April 1949,[1] supported in principle any move tending to confirm the " legal personality " of international organizations. He referred to the very sensible suggestions made by Mr. François in his supplementary report on the subject.[2] The question of criminal and civil jurisdiction over vessels flying the flag of an international organization but not the flag of any state should receive very careful consideration.

17. He did not agree with the opinion expressed by several representatives that the conference was not competent to discuss the question of nuclear tests on the high seas. The carrying out of such tests infringed the principle of the freedom of the high seas.

18. Sub-paragraph 1 (*b*) of article 46 should be deleted, for there was no justification for that clause, which would have the effect of making it permissible for warships to board ships suspected of engaging in the slave trade in the maritime zones treated as suspect in the international conventions for the abolition of that trade. There was in the General Act of Brussels of 1890 a provision to the same effect (except that it applied only to ships of less than 500 tons, whereas the Commission's text applied to all ships). That provision had perhaps been justified in the nineteenth century, but conditions had changed since then. There was no such provision in the Convention of Saint-Germain-en-Laye of 1919, the Slavery Convention of 1926, or the Supplementary Convention on the Abolition of Slavery of 1956. The clause in question was objectionable and a potential source of international disputes.

19. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) observed that the general debate had clarified the positions held by various countries and had shown that comparatively few of the articles allocated to the Second Committee were controversial. There was therefore reason to hope that agreement could be reached, particularly if the Committee based its further deliberations on the principle of the peaceful co-existence and co-operation of sovereign states.

20. In that connexion, he said that nuclear tests on the high seas were a violation of the principle of the freedom of the high seas. It was well known that the Union of Soviet Socialist Republics yielded to no other state in its insistence on the prohibition of such tests and had made practical proposals for the reduction of armaments and prohibition of nuclear weapons. The Soviet Union could not be blamed for the failure to settle the problem of disarmament. The Committee was, however, concerned not with disarmament but with the prohibition of nuclear tests on the high seas. It was the right and duty of the conference to consider such prohibition, for nuclear tests certainly violated all the four freedoms set forth in article 27. The legality of nuclear tests on the high seas had been challenged by learned jurists in the United States of America, the United Kingdom and France.

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[1] *I.C.J. Reports, 1949*, p. 179.

[2] *Yearbook of the International Law Commission, 1956, Vol. II* (A/CN.4/SER.A/1956/Add.1), document A/CN.4/103.

21. The principle of the freedom of the high seas was also violated by military exercises conducted in the vicinity of the coasts of countries other than those carrying out the exercises.

22. With regard to the definition of the freedom of the high seas in article 27, he said that special regulations governing navigation could be established in respect of some seas and straits under generally accepted international law and multilateral agreements. If a small number of states had jurisdiction over certain seas and areas of sea leading only to the coastal waters of those states, special regulations might be necessary to maintain the security of those states. Accordingly, some reference to such special provisions should be inserted in the articles.

23. His delegation considered that some of the provisions of the International Law Commission's draft articles were anachronistic. As the representative of the United Arab Republic had stated, the provision in article 46 concerning the search of ships suspected of engaging in the slave trade in " suspect " zones was unjustified. In the past, that right of search had given certain maritime states an opportunity of controlling shipping in its own interests, but even at that time the right to search commercial ships had been regarded as an exception to the principle of international law that the right could not be exercised except by warships of the state of nationality of the suspected ship.

24. The International Law Commission's draft provisions on piracy were equally anachronistic. Piracy in the strict sense of the word was hardly known in modern times ; but it had now taken the form of aggressive acts perpetrated or engineered by various states. For example, such acts had been committed in the Mediterranean against ships of the Spanish Republican Government in 1936 and 1937 ; and more recently the Chiang Kai-Shek régime had committed such acts in the Pacific. Such open acts of aggression, however, fell within the competence of the Security Council and should not be dealt with in detail in the articles before the conference. The whole matter could be dealt with adequately in a single article.

STATEMENT BY MR. FRANÇOIS
(EXPERT TO THE SECRETARIAT OF THE CONFERENCE)

25. Mr. FRANÇOIS (Expert to the secretariat of the Conference) made a statement.[1]

26. Mr. MINTZ (Israel) wished to make it clear that he had asked for a list of the Brussels conventions only, and did not suggest the perusal of the numerous other conventions mentioned by Professor François.

27. Mr. CHAO (China), speaking on a point of order, reserved his right to reply to the Ukrainian representative's reference to action which the Chinese Government had taken in self-defence.

The meeting rose at 12.55 p.m.

[1] The full text of the statement is annexed hereto.

Annex

STATEMENT BY MR. FRANÇOIS
(EXPERT TO THE SECRETARIAT OF THE CONFERENCE) [2]

1. I know that I shall be speaking for all my colleagues on the International Law Commission in expressing our profound gratitude for the praise which several speakers have been good enough to accord to the Commission's work. I was personally most touched by the kind remarks addressed to the Special Rapporteur of the Commission.

2. I have asked for the floor now that the general discussion of the articles referred to this committee for examination is completed in order to make a few remarks which may perhaps shed light on the Commission's intentions on certain points or dispel any misunderstanding that might exist as to the interpretation of certain articles of the draft.

3. In the first place, I should like to speak of the Law Commission's attitude towards existing multilateral conventions regulating certain matters relevant to the law of the sea. This point has been raised by several delegations both in the Second and in the First Committee. From the outset, the Commission had to make up its mind on the attitude it should take towards the conventions in question, which are those listed in a note issued by the secretariat (A/CONF.13/C.2/L.8). Three courses were open to the Commission : It could study afresh the matters regulated by the conventions and include the results of its study in its draft ; it could confine itself to a reference to the conventions coupled with a recommendation that states accede to them ; or it could include in its regulation the principles underlying the conventions in question without elaborating them.

4. The first course — detailed regulation of the matters in the draft — was rejected from the outset. Neither the Commission itself nor this conference could be regarded as competent to revise the results of the special conferences which produced the conventions in question.

5. The second alternative, to recommend that states accede to the existing treaties, a course since advocated by certain delegations in this committee, was, in the Commission's view, no more satisfactory than the first. It is unlikely that a recommendation of this kind could win general acceptance from the states participating in this conference, including those states which have not hitherto been prepared to accede to the conventions in point. Should this be so, it would mean that a conference for the codification of the law of the sea would leave open a whole series of questions of the utmost importance for maritime navigation and that a number of states would incur no obligations in the matter.

6. The Commission accordingly followed the third course with respect to several of the conventions under consideration — namely, that of including in its draft articles the principles underlying those conventions, leaving states the option of discharging the obligations they had assumed either by ratifying the conventions or by ensuring application of the principles in some other way, for example, by inserting detailed regulations on the subjects in their national law.

7. This course was followed for articles 22 (Government ships operated for commercial purposes), 34 (Safety of navigation), 36 (Duty to render assistance), 37 (Slave trade) and 48, paragraph 1 (Pollution of the high seas).

8. Since the articles refer solely to the principles of the relevant conventions, there is no danger of incompatibility between them and the conventions. The Commission

[2] Circulated to members of the Committee as document A/CONF.13/C.2/L.14.

therefore regards this procedure as open to no pertinent objection.

9. In the case of article 35 (Penal jurisdiction in matters of collision) the Commission followed the same course, taking as its guide the Brussels Convention of 1952. This convention applies to collisions on the high seas and, also, in the territorial sea ; the contracting parties may, however, reserve to themselves the right to take proceedings in respect of collisions occurring in their own territorial waters — i.e., the right to exclude collisions in the territorial sea from the scope of their undertaking. The Commission's draft, on the other hand, deals solely with collisions on the high seas. Hence states which accept article 35 will be in the same position as states that have made the reservation provided for in the Brussels Convention with respect to the territorial sea. There is thus no incompatibility between the articles and the Convention.

10. The only cases which might inspire some doubts are those of article 21 (Arrest of ships for the purpose of exercising civil jurisdiction) and article 46 on the right of visit in the case of vessels suspected of engaging in the slave trade. I should like to make a few remarks on the first case.

11. At its seventh session, the International Law Commission decided to base these articles on the rules adopted in the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Seagoing Ships. When governments were consulted, however, some of them opposed this proposal, taking the view that the Brussels Conference had been mainly concerned with arrest in *ports* and *internal waters* and had brought ships passing through the territorial sea within the scope of the article merely by using the phrase " in jurisdiction of any of the contracting states " without properly realizing the prejudice which, by favouring private creditors, it thereby caused to maritime shipping merely passing through the territorial sea without entering a port. Such obstacles would be aggravated were the breadth of the territorial sea to be extended.

12. The Commission, coming round to this point of view, replaced the text by that which had been proposed by The Hague Conference of 1930 for the Codification of International Law, and which the Commission had preferred in the beginning because it showed greater consideration for the interests of shipping.

13. The conference will therefore need to decide first on the substance of the question — i.e., whether it prefers the 1930 text or that of 1952. If it prefers the 1952 text, the article will naturally have to be changed.

14. Should it prefer the 1930 text, now proposed by the Commission, the question will then arise of the position of states which have already ratified the 1952 Convention. The Commission sees no great difficulty in this respect, and in paragraph 4 of the commentary on article 21 expresses the following view : " The existence of different rules on this point could hardly be regarded as a bar to the adoption of the above-mentioned provision, since the Brussels Convention would bind only the contracting parties in their mutual relations." The United Kingdom delegation, however, considers that its government could not accept two sets of international rules which in some respects impose different obligations. For this reason, the said delegation has suggested [4th meeting] that the conference confine itself to recommending accession to the Brussels Convention and, should the latter prove imperfect, that efforts be made to improve it under the procedure provided in the Convention itself. But I do not see how this procedure could be applied if in principle the conference pronounces itself in favour of the 1930 system. It would be impossible to invite a conference of over eighty states to accede to a convention which it is unable fully to accept and which has only been ratified by some ten states, in the hope that it will later prove possible to amend it. It would be better, in my opinion, to include a paragraph worded as follows : " States which are parties to the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Sea-going Ships may apply, in their mutual relations, the provisions of that convention where they differ from the rules in the preceding paragraph." If such a proviso still fails to give satisfaction, the conference could go further and word the paragraph as follows : " States which are parties to the Brussels Convention may enter a reservation to the effect that the previous paragraph shall not apply whenever its application would not be in conformity with the rules of the said convention."

15. It would be a good idea, as the Israeli delegation has proposed [12th meeting], to examine each convention separately and not to delete articles whose inclusion seems advisable.

16. It was not the intention of the Commission to interfere in any way with the special conventions already existing in maritime law as far as the mutual relations between the states parties to those conventions are concerned. Hence, the Convention regulating the régime of the Bosphorus and the Dardanelles, to which the Turkish delegation referred, is not affected by the rules of the draft. This, incidentally, has been pointed out in so many words in paragraph 5 of the commentary on article 24 : " The article does not affect the rights of states under a convention governing passage through the straits to which it refers." It might perhaps be advisable to include this general principle somewhere in the text of the articles.

17. Much the same reply may be given to a question raised by the Norwegian delegation — namely, whether states which had acceded to a convention establishing a system for the settlement of conservation problems would be denied the right to arbitration laid down in the draft. To this reply must be that, if a fishery convention between the parties prescribes a special manner of settling disputes, the dispute must be submitted to the body specified in the convention. If article 57 is not clear enough on that point, it would be wise to amend it so as to leave no shadow of doubt.

18. Some speakers, including the representative of Ireland [8th meeting], said that the meaning of the expression " merchant ships " used by the International Law Commission ought to be more precisely defined, particularly when used in the context relating to innocent passage through the territorial sea ; they are not sure whether the expression includes fishing vessels.

19. As can be seen from part I, section III of the draft articles, the International Law Commission divided ships into merchant ships, government ships other than warships, and warships. The category " merchant ships " comprises all private ships, including fishing boats. Hence, these boats likewise have the right of innocent passage provided for in article 15.

20. The Commission was criticized for not having drafted some of the articles as precisely as might be desired : such expressions as " where circumstances necessitate ", " to any appreciable extent ", " sufficiently closely linked ", " adequate grounds ", " reasonable measures ", " unjustifiable interference " and others are, it is said, out of place in a document of this kind. The Commission cannot regard these objections as fully justified. It is true that the articles ought to be drafted in the clearest possible language. Perhaps the Commission's texts, which were often drafted in haste, may still be improved in this respect. Yet, as the representative of India has pointed out, the expressions in question all occur in national legislation. In the opinion of the International Law Commission, a codification of international law can no more do without these expressions

than can national law. Any attempt to codify international law without using such expressions will prove vain. In contentious cases, the meaning will have to be decided by an impartial authority, to which disputes regarding the interpretation of these expressions in specific cases are to be submitted.

21. It is not always understood why the International Law Commission in some cases recommended the submission of disputes to the International Court of Justice or to an arbitral body, whereas in other cases it makes no recommendation at all. The Commission takes the view that, in general, it is desirable that all disputes which cannot be settled through the diplomatic channel should be submitted either to the jurisdiction of the Court or to arbitration. The Commission has, however, had to take into account the fact that the number of states prepared to accept the jurisdiction of the Court or compulsory arbitration is still small. If it had inserted in each of its proposals a compulsory jurisdiction or arbitration clause, the Commission would have rendered the proposals unacceptable to several states and would thus from the outset have jeopardized the success of its work. As a rule, therefore, the Commission has therefore inserted a clause of that kind only in cases where it is to be expected that the majority of states would not accept certain obligations (necessarily framed in vague terms) without the guarantee of compulsory jurisdiction or arbitration. The most striking example of this is the arbitration provided for in disputes concerning the protection of the resources of the sea. In other cases, the Commission had left this matter to be dealt with in accordance with the existing rules for the settlement of disputes, so as not to jeopardize the results of the work of codification. Only if the arbitration or jurisdictional clause is reserved for exceptional cases will there be any hope of overcoming the objections of states which refuse to accept such a clause as a general rule.

22. The Commission showed a preference for arbitration in cases where extremely technical matters are involved, such as the protection of the living resources of the sea. In other cases, it prefers the jurisdiction of the Court, while leaving the door open to arbitration if the parties prefer it.

23. The Chinese delegation is unable to support the idea of establishing two different systems for the two cases provided for in paragraphs 2 and 3 of article 57 on the settlement of disputes. In the opinion of that delegation, there is no logical justification for such a dual system ; every state or group of states concerned in the dispute should designate one or two members, and the composition of the arbitral commission should be enlarged.

24. I regret that I am unable to agree with the Chinese delegation, because I consider the system which it advocates unworkable. The system supported by the Chinese delegation would in no way guarantee the establishment of an impartial and objective arbitral body in cases where there are several parties to the dispute and where these parties are divided into more than two groups with divergent interests. Let us suppose there is a dispute between a coastal state and a plurality of states — say four or five — which fish in areas of the sea adjacent to the coastal state but nevertheless have divergent interests. Under the Chinese system, there would be an arbitral tribunal with, say, ten or twelve members, who would undoubtedly rule against the coastal state. In such cases, the only way — unless the parties wish to submit the dispute to the Court — is to have recourse to an impartial authority which will set up the tribunal.

25. Several speakers criticized article 33. This article, for purposes connected with the exercise of powers by other states, assimilates government ships on commercial service to warships. Some delegations may not have properly realized the implications of the article. Its only effect would be that government ships on commercial service will not be subjected on the high seas to the rights of visit and hot pursuit by ships under a foreign flag. Since the rights of visit and hot pursuit are in fact exercised against ships under a foreign flag in quite exceptional cases only, the practical importance of this article is certainly not great. The critics of the article nevertheless regard it as illogical. In their opinion, there is no valid reason for the distinction. In the opinion of the International Law Commission, there were sound reasons in favour of the article. A state exercises sovereignty in its own territory, in its ports and in its territorial waters ; and hence, under the Brussels Convention of 1926 relating to the Immunity of state-owned vessels, it is entitled to treat the ships of another state on commercial service as private ships. If the other state will not accept this point of view, it is free to keep its merchant ships away from the state in question. On the high seas, however, the situation is quite different. There, states exercise no sovereignty and if they wish to exercise on the high seas a right of visit or hot pursuit against government vessels under a foreign flag, they can be entitled to do so only by virtue of a rule of international law. The International Law Commission is not convinced that, apart from the Brussels Convention, such a general rule of international law authorizing the arrest on the high seas of state-owned vessels flying a foreign flag exists. The International Law Commission is not even sure whether, in this respect, the Brussels Convention could be regarded as repeating a rule of general or customary law. In any event, the Commission would regard such a rule as inappropriate : the right of all warships to arrest on the high seas government ships flying a foreign flag, where they are in commercial service, might be the source of international friction in no way offset by practical advantages. For these reasons, the International Law Commission did not wish to recognize such right of visit ; states which are parties to the Brussels Convention are free to apply the rule in their mutual relations, but the International Law Commission was not prepared to extend its application to all other states. In doubtful cases of this kind, the principle of the freedom of the seas must prevail.

26. Some delegations do not agree with article 29, which requires the existence of a genuine link between the ship and the state whose flag it flies. It had been urged that the freedom of the seas subsumes the sovereign rights of states to grant authority to fly their flag. The International Law Commission does not share that view. It admits that a system under which any state can grant its flag to all ships applying for it is in fact the acme of freedom. That conception of freedom is, however, incompatible with the interests of the international community. In the view of the International Law Commission — and this declaration has met with the approval of a number of delegations — every freedom must be regulated if it is desired that it be exercised in the interest of those entitled to benefit by it. The essential corollary to the freedom of the seas must be that states exercise the same jurisdiction over ships sailing the high seas under their flag as they exercise in their own territory. It is in this sense that ships are regarded as floating extensions of the flag state's territory. This régime is based on the notions that the ship must in the main belong to nationals of the flag state ; that the owners must be domiciled in that state ; that the officers and at least the major part of the crew must be nationals of that state ; that in foreign ports the consular officers of the flag state shall exercise the necessary control over such ships putting in at those ports and, where appropriate, grant them such protection as they may need ; and, finally, that the ships shall return to their home ports at regular intervals. That is what the International Law Commission understands by the link between the ship and the flag state. If that link no longer exists, the

entire system collapses, and a situation will arise on the high seas which some may regard as the ideal state of freedom, but which others — including the International Law Commission — regard as contrary to a sound conception of the freedom of the seas, and hence to the interests of the international community. The nature of this genuine link, and the consequences of its absence, will have to be specified ; and there is little likelihood that the present conference, which is already over-burdened, will be able to deal with the matter. It is important, however, that it should come out in favour of the principle, the details of which will be studied subsequently.

27. The representative of Israel [12th meeting] is not satisfied with the document in which the secretariat has set out the conventions relating to the articles being considered by the Second Committee [A/CONF.13/C.2/L.8]. He asserts that the list is incomplete because it contains no reference to conventions which, while not the subject of articles in the draft, nevertheless relate to the law of the sea. According to the representative of Israel, the inclusion of conventions of this kind would have enabled the conference to make sure that certain topics had not been overlooked. I wonder whether the representative of Israel realizes how long such a list would be. A similar list relating to fishing already exists ; it runs to forty-three pages [A/CONF.13/23]. I also wonder whether the representative of Israel is not over-estimating the usefulness of such a list. After the preparatory work by the International Law Commission, the consideration of the draft articles by Governments, and the close study given to them by representatives at the conference, to which the high level of the discussions bears witness, it does not seem very likely that a list of treaties would bring to light further important topics of which no one has, so far, thought. It would not be desirable to ask the secretariat to undertake further work that is not strictly necessary in addition to the onerous duties it is performing with such zeal and devotion.

28. It is not for me to defend the International Law Commission's draft against all the objections which have been raised during the general debate or against those which will yet be raised during the detailed discussion of the articles. However, should the Second Committee wish, during its discussions, to be informed about the International Law Commission's intentions on points which do not seem to be sufficiently clear, or about its intentions with regard to any specific point, I shall be pleased to provide all the information I have.

FOURTEENTH MEETING

Monday, 24 March 1958, at 3 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Organization of the work of the Committee (A/CONF.13/C.2/L.31) *(continued)* [1]

1. The CHAIRMAN said that the procedure outlined in his note (A/CONF.13/C.2/L.31) provided for discussion of the articles referred to the Committe in two stages. On first reading, provisional votes only would be taken, the final votes being left until the second reading.

2. Pressure of time had prompted certain delegations to suggest that the provisional voting be dispensed with ; that the Committee proceed forthwith to discuss the articles by groups, as sugggested in the first note by the Chairman (A/CONF.13/C.2/L.1), together with the relevant amendments ; and that so soon as the discussion on any group had been completed a final vote be taken on each article therein.

3. Sir Alec RANDALL (United Kingdom) agreed that the system proposed by the Chairman was ideal in theory ; but in view of the limited time available it would be better to dispense with the first, provisional, vote. He therefore proposed that the vote taken on each article be considered as final so far as the Committee was concerned ; once an article had been voted upon, it would go to the conference.

4. Mr. KEILIN (Union of Soviet Socialist Republics) said that, given the importance of the issues involved, the procedure proposed by the Chairman was preferable to that proposed by the United Kingdom representative. It was highly desirable that there should be a provisional vote on each article leaving delegations free to take their final stand at the second reading.

5. Mr. ZOUREK (Czechoslovakia) said that it would be advisable for practical reasons to adopt the procedure outlined in the Chairman's note ; the provisional vote on each article would provide a basis on which a working group could draft a revised text for the second reading and final vote.

6. Mr. COLCLOUGH (United States of America) supported the United Kingdom proposal. The Committee had had an exhaustive general debate on the articles referred to it, and could well dispense with a first reading in the interests of dispatch.

7. The CHAIRMAN put the United Kingdom proposal to the vote ; any votes cast against it would be tantamount to support for the procedure suggested in his note (A/CONF.13/C.2/L.31).

The United Kingdom proposal was adopted by 33 votes to 17.

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

PROPOSAL BY PERU TO POSTPONE DISCUSSION OF ARTICLES 26, 27 AND 47 (A/CONF.13/C.2/L.33)

8. The CHAIRMAN said that the Peruvian proposal that discussion of articles 26, 27 and 47 be deferred (A/CONF.13/C.2/L.33) would clearly have to be disposed of before the committee took up articles 26 and 27.

9. Mr. GARCIA-SAYAN (Peru), introducing his delegation's proposal, said that it was essential to defer consideration of the articles in question if the Committee was to do its work coherently. Article 26 defined the high seas by their relationship to the territorial sea and internal waters, the articles on which had been referred to the First Committee. Article 27 dealt, among other things, with the freedom of fishing, which must be construed in the light of the coastal state's rights and interests in the conservation of the living resources of the sea, specified in articles 54 and 55. Article 47, on the right of hot pursuit, was directly connected with the question of the extent of the terriorial sea, the con-

[1] Resumed from the third meeting.

tiguous zone and the conservation zone, implicitly recognized by the draft articles and clarified by the relevant proposals of Mexico (A/CONF.13/C.2/L.4) and Peru (A/CONF.13/C.2/L.35). Hence it would be desirable to await the decisions of the First and Third Committees on related matters, before embarking upon the discussion of those three articles.

10. He recalled that the First Committe, in adopting at its 23rd meeting a proposal that consideration of articles 1, 2, 3 and 66 be deferred, had limited the deferment to 31 March 1958. For his part, he would prefer not to specify a time-limit, but simply to propose that the committee take up articles 26, 27 and 47 only after it had disposed of all the other articles referred to it. By that time, the views of other committees on related issues would probably be known.

11. Mr. GIDEL (France) urged the Committee to consider the articles referred to it in the groups mentioned in the Chairman's note (A/CONF.13/C.2/L.1). It would then begin with articles 26 and 27, which formed group I. Those articles contained the fundamental provisions relating to the general régime of the high seas, and the Committee should deal with them before taking up the remaining articles referred to it.

12. Mr. LÜTEM (Turkey) said that various committees had already deferred consideration of far too many articles. He opposed the Peruvian proposal, which, if adopted, would unnecessarily complicate the Committee's discussions.

13. Mr. RADOUILSKY (Bulgaria) also opposed the Peruvian proposal. Articles 26 and 27 dealt with fundamental issues ; if the Committee put off considering them it would be difficult for it to deal with the other articles referred to it.

14. Mr. MUHTADI (Jordan) considered that the Committee should start on articles 26, 27 and 47 forthwith.

15. Mr. POMES (Uruguay), supporting the Peruvian proposal, pointed out that not all the amendments to articles 26, 27 and 47 had yet been circulated in French or Spanish.

16. Mr. CARDOSO (Portugal), associating himself with the statements of the representatives of Bulgaria, France and Turkey, said that it would be futile to defer consideration of articles 26, 27 and 47. The work of the First Committee would be facilitated if the Second Committee speedily agreed on a definition of the high seas.

17. Sir Claude COREA (Ceylon) said that, while he would like to support the Peruvian proposal, there seemed to be no reason why consideration of article 26 should be deferred, since the decisions of other committees on the articles referred to them did not depend on the definition of the high seas to be adopted by the Second Committee.

18. But he would suggest that before article 27 was put to the vote delegations should be allowed time to seek instructions from their governments on the various amendments submitted to it.

19. Mr. ZOUREK (Czechoslovakia) was unable to support the Peruvian proposal for three reasons : first, the work of the other committees did not depend on the Second Committee's decisions on the three articles concerned ; secondly, only a short time was available for discussion ; and lastly, if adopted, the proposal would hinder the work of the other committees.

20. The CHAIRMAN put the Peruvian proposal (A/CONF.13/C.2/L.33) to the vote.

The Peruvian proposal was rejected by 41 votes to 7, with 4 abstentions.

ARTICLES 26 (DEFINITION OF THE HIGH SEAS) AND 27 (FREEDOM OF THE HIGH SEAS) (A/CONF.13/C.2/L.3, L.6, L.7, L.15, L.21, L.26, L.29, L.30, L.32 to 34, L.45, L.47)

21. Mr. VRTACNIK (Yugoslavia) could support the amendments to article 26 submitted by the delegations of France (A/CONF.13/C.2/L.6) and the United Kingdom (A/CONF.13/C.2/L.47), provided paragraph 2 was reinstated in the rules as a separate article following article 5 (Straight baselines).

22. Dealing specifically with the United Kingdom amendment, he said that if the First Committee was not prepared to include a definition of internal waters in part I, section I, of the articles, the Yugoslav delegation would prefer article 26 to remain as drafted by the International Law Commission. He therefore suggested that discussion of the French and United Kingdom amendments be deferred until the First Committee had decided whether to include among the articles referred to it an article defining internal waters.

23. Mr. GIDEL (France) pointed out that the general debate had shown that many representatives felt that paragraph 2 of article 26 was misplaced ; although the French delegation had suggested that it be deleted, it would have no objection to its being placed in part I, section I, as proposed by the Yugoslav representative.

24. He had no objection in principle to the amendment submitted pointly by the Romanian and Ukrainian delegations (A/CONF.13/C.2/L.26).

25. Mr. HANIDIS (Greece) would not object to the deletion of paragraph 2 from article 26, but felt that the provision it contained should be referred to the First Committee.[1] As a number of representatives had urged, the definition of internal waters should be incorporated in part I, section I.

26. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the joint amendment to article 26 (A/CONF.13/C.2/L.26) had been submitted in order to remedy a defect to which attention had been drawn in the general debate. He emphasized that for certain seas, such as, for instance, the Black Sea, and the waters surrounding archipelagoes, a special régime of navigation should be established for historical reasons or by virtue of international agreements. In support of the amendment, he quoted the last sentence of paragraph 2 of the International Law Commission's commentary on article 26.

The meeting rose at 4.40 p.m.

[1] Proposal subsequently issued as document A/CONF.13/C.2/L.54.

FIFTEENTH MEETING

Tuesday, 25 March, at 3 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 26 (DEFINITION OF THE HIGH SEAS) AND 27 (FREEDOM OF THE HIGH SEAS) (A/CONF.13/C.2/L.3, L.6, L.7, L.15, L.21, L.26, L.29, L.30, L.32, L.34, L.45, L.47, L.54) (continued)

1. Mr. HSUEH (China) withdrew his delegation's amendment to article 26 (A/CONF.13/C.2/L.45) in favour of the Greek proposal (A/CONF.13/C.2/L.54) that paragraph 2 of article 26 should be removed from that article and referred to the First Committee.

2. Introducing the Chinese amendment to article 27 (A/CONF.13/C.2/L.45), he recalled the statement made in the general debate by the leader of his delegation at the 11th meeting, and suggested that the precise wording should be left to a drafting committee.

3. Mr. COLGLOUGH (United States of America) said that his delegation opposed the amendment submitted by the delegations of Romania and the Ukrainian Soviet Socialist Republic (A/CONF.13/C.2/L.26) and urged other delegations to do likewise.

4. Emphasizing that the whole theory of the International Law Commission's draft on the general régime of the high seas rested on one essential principle — namely, that the high seas were the property not of one nation, or of a few nations, but of the community of nations — he said that the high seas were not open to regulation or appropriation by any one nation or group of nations. The joint proposal would allow of encroachments upon the freedom of the high seas in violation of that fundamental principle.

5. International law did not recognize the idea of " closed seas ". The Soviet Union had, however, unilaterally developed such a concept and classified the following as " closed seas " : first, seas communicating with other seas through one or several narrow straits and surrounded by the territory of a limited number of States, the régime of the straits being regulated by international agreement. (In 1956, the Soviet Handbook of International Maritime Law had cited the Black Sea and even the Baltic as " closed seas " in that category.) Secondly, seas surrounded by the territory of a " limited number of States " where the straits were not regulated by international agreement ; Soviet sources cited the Sea of Japan and the Sea of Okhotsk as examples. The second category was extremely broad, and could be made to subsume a number of seas in different parts of the world.

6. The Soviet Union had taken unilateral action in the case of the Sea of Okhotsk, having informed the Government of Japan of its intention to exclude all foreign fishermen therefrom by 1959. The next step might well be a special régime making that sea an " internal sea ".

7. Although in practice the Soviet Union had found it necessary to treat the Baltic as an open sea, a Soviet publication had in 1956 cited various ancient treaties with Sweden and Denmark in which those countries, but not the other Baltic coastal states, had agreed with Russia to exclude foreign warships from the Baltic. That source, and other Soviet sources, including the authoritative Soviet State and Law (June 1950), considered the treaties in question as valid and not superseded by the Treaty of Copenhagen of 1857, by which the régime of the Baltic had since been governed and which was interpreted by other Powers as leaving the Baltic open to all foreign ships.

8. In view of the similarity between the past practices of the Soviet Union and the statement of the Ukrainian SSR representative at the previous meeting, the United States Government viewed the two-power proposal as an attempt to win recognition in international law for the doctrine of the " closed sea " — a doctrine which gravely menaced the freedom of the high seas.

9. Mr. CAMPOS ORTIZ (Mexico), introducing his delegation's amendment to article 27 (A/CONF.13/C.2/L.3), said that he had based the wording on that of paragraph 5 of the International Law Commission's commentary on the article, which was similar to that used in article 1 and various other articles of the Commission's draft.

10. With reference to the French proposal (A/CONF.13/C.2/L.6), which entailed the deletion of the four freedoms specified in article 27, he said that it would be advisable to retain the International Law Commission's enumeration, as all four were recognized by the community of nations.

11. Referring to the Yugoslav amendment (A/CONF.13/C.2/L.15) and that of the Netherlands (A/CONF.12/C.2/L.21) to article 27, he suggested that the ideas they embodied be included in article 30 (Status of ships).

12. Lastly, he proposed that a working party be set up to consider the various amendments and to draft a text for discussion before articles 26 and 27 were put to the vote, or, alternatively, that the Committee should follow the example of the Third Committee and authorize the sponsors of amendments to prepare a consolidated text in consultation with the officers of the Committee.

13. Mr. CARDOSO (Portugal), introducing his delegation's amendment to article 27 (A/CONF.13/C.3/L.7), said that, even though a coastal state might have a special interest in the waters adjacent to its coast, the right of access to the high seas was so essential that no state should have the right to exercise jurisdiction on any kind over waters which gave any other coastal state access to the high seas. In support of the amendment he pointed out that, in paragraph 7 of its commentary on article 3, the International Law Commission had noted that the right to fix the limit of the territorial sea at three miles was not disputed, but that, as regards the right to fix the limit at between three and twelve miles, international practice was far from uniform. Consequently that right, in his opinion, did not exist in international law.

14. The Commission had agreed that the contiguous zone might not extend beyond twelve miles, and in its commentary on article 66 had stated that it did not

recognize either special security rights, or any exclusive fishing rights, or the right to decree unilateral measures of conservation in that zone. It could thus be concluded that in article 66 the Commission had clearly indicated that the breadth of the territorial sea should be considerably less than twelve miles, because otherwise within such a twelve-mile breadth the Commission would have recognized rights which it had, in fact, flatly denied in its commentary.

15. In his opinion, that was also the reason why the Commission had never considered the case where the exercise of rights in its territorial sea by one state might obstruct traffic to or from a port of another state, but simply the case where obstruction would result from the exercise of rights in the contiguous zone. And even then, considering the exceptional nature of the case, the Commission had not included a formal rule on the subject. He feared, however, that a tendency for a wide extension of jurisdiction over adjacent waters would make the case in point far from exceptional and, consequently, his delegation would press for the inclusion in the law of the sea of a statement of the essential right of access to the high sea.

16. Turning to the commentary on article 27, he pointed out that the Commission had merely specified four of the main freedoms of the high seas, but was aware that there were others. The Portuguese delegation considered that the freedom to undertake research, experiments and exploration was of prime importance, and should therefore be mentioned in article 27.

17. In supporting the Mexican representative's suggestion that a working party be set up, he wished to suggest that article 27 should be expanded to mention the right of every coastal state to direct access to the sea and the fact that the freedom of the high seas comprised at least the five freedoms enumerated in the Portuguese proposal.

18. Sir Alec RANDALL (United Kingdom) withdrew his delegation's amendment to article 26 (A/CONF.13/C.2/L.47), which would have deleted paragraph 2, in favour it the Greek proposal (A/CONF.13/C.2/L.54) to refer that paragraph to the First Committee.

19. Opposing the amendment submitted jointly by the Romanian and Ukrainian delegations (A/CONF.13/C.2/L.26), he said that the sentence from the International Law Commission's commentary on article 26 quoted by the Ukrainian representative at the previous meeting had never been intended to support such a principle as that stated in the joint proposal. The International Law Commission had intended to refer to the familiar cases of seas entirely surrounded by one coastal state, the access to which was bordered in both sides by that same state. A vague reference to a " special régime of navigation " could not be included in a section of the articles relating to the general régime of the high seas, nor could reference be made in such articles to archipelagoes, which the Ukrainian representative had also mentioned at the previous meeting.

20. Mr. GLASER (Romania) said that the proposal which his delegation had submitted jointly with that of the Ukrainian S.S.R. had been opposed by certain delegations on the ground that its provisions might lend themselves to abuse. He could not agree that a rule should be discarded on that ground alone ; measures could always be devised to prevent abuse.

21. The Committee had to take into account the special navigational régimes which existed for certain seas. If no such provision were made in article 26, it might be concluded that there were no exceptions to the general régime set forth in section 1 of part II. Many examples could be cited of such special régimes. The Baltic had been subject to a special régime until the Treaty of Copenhagen of 1857, and certain Powers claimed that it was still subject to special rules. From the Treaty of Kutchuk Kainardji of 1774 until the Montreux Convention of 1936, the Black Sea had been the subject of a series of international instruments laying down rules which derogated from the general régime of the high seas. Thus, article 18 of the Montreux Convention imposed certain limitations on the size of the vessels of non Black Sea Powers entering that sea and limited their stay in its waters to twenty-one days. That example proved that a special régime was compatible with the freedom of the high seas.

22. In the last sentence of its commentary on article 26 the International Law Commission stated : " These rules may, however, be modified for historical reasons or by international arrangement." That constituted recognition by the Commission of the special régime of certain seas, and there was no doubt that it had had the Black Sea in mind when drafting that comment. It would be desirable, however, to place that recognition in the article itself rather than in the commentary.

23. The United Kingdom representative had raised the question of the proper position in the rules for a provision on special navigational régimes. In the opinion of the Romanian delegation, since the draft had no general section applicable to both the territorial sea and the high seas, the proper place was in the part relating to the high seas, to the general régime of which the special régimes were an exception. The Romanian and Ukrainian delegations proposed that the provision should be placed in article 26, in order to make it clear that article 27 (Freedom of the high seas) applied not only to the general régime of the high seas but also to the special régime for certain seas.

24. Mr. BIERZANEK (Poland) introduced his delegation's amendment to article 27 (A/CONF.13/C.2/L.29).

25. The purpose of paragraph 1 thereof was to lay down in positive terms the right of all nations to use the high seas freely. That fundamental right was mentioned only obliquely in the text proposed by the International Law Commission.

26. Paragraph 2 was similar to the first sentence of the Commission's draft article 27, but it made clear that the high seas were open to all nations " on a basis of complete equality ".

27. Paragraph 3 reproduced the third sentence of paragraph 1 of the Commission's commentary on article 27 : " States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states." That important principle had been invoked by many speakers both in the Sixth Committee of the General Assembly and in the general debate in the present committee, and it would be better to include it in the articles themselves.

28. His delegation supported the Mexican proposal to set up a working party.

29. Mr. TUNCEL (Turkey) regretted that the Romanian representative should have deemed it necessary to refer to the Black Sea and to the Montreux Convention. But since he had done so, the Turkish delegation was obliged to point out that article 28 of that convention specified that it would remain in force for twenty years but added that the principle of freedom of transit and navigation affirmed in article 1 would continue without limit of time.

30. Much had been made of the last sentence of paragraph 2 of the commentary on article 26. In fact, it was clear from the summary records of the International Law Commissions meetings that that sentence had had its origin in a remark by Mr. Krylov, a member of that Commission, concerning " certain waters such as land-locked seas " which had " special characteristics ", a remark made during the discussion of the article on the definition of the high seas. Mr. Krylov had added that he was " not proposing to amend the article, but merely to insert in the commentary a reference to the fact that certain waters had special characteristics." [1] It was therefore perfectly plain that the statement in which the sentence in the commentary had its origin referred not to the Black Sea but rather to internal waters.

31. The essential purpose of the joint amendment was to create a general exception to the freedom of the high seas.

32. Mr. GLASER (Romania) explained that he had mentioned the Black Sea merely as an example to support his argument. It was by no means a far-fetched example ; indeed, it was the obvious one, because the Black Sea was the only sea to which Romania had direct access.

33. The special régimes laid down in such instruments as the Montreux Convention in no way conflicted with the principle of the freedom of the high seas. In any event, it had never been the intention of the Romanian delegation to ignore those provisions of the Montreux Convention to which the Turkish representative had referred.

34. Mr. KAWASAKI (Japan) opposed the two-power proposal. The Japanese Government considered that it ran counter to the very principle of freedom of navigation on the high seas by introducing exceptions to the general rule. Its adoption would introduce an undesirable element of uncertainty into article 26.

35. The Japanese delegation would support the Yugoslav amendment to article 27 (A/CONF.13/C.2/L.15), provided that the words " authority or control in any way whatsoever, except in the cases provided for by these articles " were deleted from paragraph 2 (*a*), as they implied that the articles actually provided for cases in which a state could subject the high seas to its sovereignty.

36. His delegation considered that most nuclear tests, whether carried out on land or on sea, had the effect of restricting the use of the high seas. Paragraph 2 (*b*) of the Yugoslav proposal would safeguard the freedom of the high seas against that particular curtailment.

37. Lastly, his delegation warmly welcomed the idea expressed in paragraph 3 of the Yugoslav proposal that the sole purpose of regulating the exercise of the freedom of the high seas was to ensure the latter's use in the interests of the entire international community.

38. Mr. GIDEL (France), introducing his delegation's amendment to article 27 (A/CONF.13/C.2/L.6), said that paragraph 1 of the proposal was drawn from the Commission's text of article 27 and from its commentary thereon. The new text made it clear that the freedom of the high seas ruled out any claim to sovereignty by particular states.

39. Paragraph 2 was drawn from paragraph 5 of the commentary on article 27, which the French delegation considered should be incorporated in the text of the article itself in order to make it explicit that the freedom of the high seas was subject to regulation by international law.

40. An important feature of his delegation's proposal was the elimination of the enumeration of freedoms ; that enumeration, preceded as it was by the words *inter alia,* was extremely dangerous. An enumeration which was not exhaustive could not fail to introduce all manner of uncertainties.

41. Mr. LAMANI (Albania), introducing the amendment to article 27 submitted by the delegations of Albania, Bulgaria and the USSR (A/CONF.13/C.2/L.32), said that his delegation considered that article to be one of the most important in the International Law Commission's draft. The purpose of the three-power amendment was to ensure that no military zones were established on the high seas, because they not only violated the freedom of those seas but also interfered with navigation and endangered human life.

42. Mr. LEAVEY (Canada) agreed with the statement in paragraph 5 of the International Law Commission's commentary on article 27, that any freedom that was to be exercised in the interests of all entitled to enjoy it must be regulated. He therefore supported the Mexican amendment (A/CONF.13/C.2/L.3).

43. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that an objective study of the question was not greatly helped by the note of passion which some delegations had introduced into the debate on the joint amendment put forward by the Ukrainian S.S.R. and Romania (A/CONF.13/C.2/L.26). It was necessary to adopt a judicial viewpoint and not resort to journalistic methods.

44. The attitude of the Soviet Union delegation to the juridical status of the high seas was very clear. It approved article 27 of the International Law Commission's draft with the Polish delegation's amendment (A/CONF. 13/C.2/L.29). The high seas should be open to all nations on a basis of equality, and no state whatever should lay claim to sovereignty over any part of the high seas or use the freedom of the high seas to the detriment of the rights and interests of other states. That was his delegation's conception of the freedom of the high seas ; it was well known, and attempts to distort it were fruitless.

[1] *Yearbook of the International Law Commission, 1956,* Vol. I (A/CN.4/SER.A/1956), 339th meeting, paras. 7 and 14.

45. As regards article 26, the Soviet Union delegation was not opposed to paragraph 2 being referred to the First Committee for insertion in part I of the draft.

46. The amendment to article 26 submitted by the Ukrainian and Romanian delegations was perfectly clear. It dealt with the special régimes of navigation which might be required for seas bounded by a limited number of states and communicating with the high seas only by a channel skirting the shores of the coastal states. It should not be overlooked that those waters had in the past been used for aggressive purposes by states which did not border the sea in question. The importance of a special régime of navigation for those seas was due to the security requirements of the coastal states which had to be borne in mind in consequence of numerous historical circumstances or the conclusion of international agreements. He would also remind the Committee of the statement on that subject contained in paragraph 2 of the Commission's commentary on article 26, where it was pointed out that the rules defining the regime of navigation might be modified "for historical reasons or by international arrangement". The joint proposal of the Ukrainian S.S.R. and Romania was thus well founded and the Committee would be fully justified in adopting it.

47. As regards the amendment submitted jointly by the Albanian, Bulgarian and U.S.S.R. delegations (A/CONF. 13/C.2/L.32), the head of the Soviet Union delegation had drawn the attention of the Committee in the general debate (7th meeting) to the fact that certain states were violating the principle of the freedom of the high seas by establishing huge manoeuvre and training zones on the high seas for air and naval forces. In view of those facts, the Committee should take its stand on the principle of the freedom of the seas and decide to prohibit the designation of military training areas in the neighbourhood of the coasts of foreign states and on international sea routes which curtailed the freedom of navigation and menaced the security of other states. The Soviet Union delegation had no doubt that those delegations which sincerely subscribed to the principle of the freedom of the high seas would support the three-power proposal.

The meeting rose at 6 p.m.

SIXTEENTH MEETING

Wednesday, 26 March 1958, at 10.50 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 26 (DEFINITION OF THE HIGH SEAS) AND 27 (FREEDOM OF THE HIGH SEAS) (A/CONF.13/C.2/L.3, L.6, L.7, L.15, L.21, L.26, L.29, L.30, L.32, L.34, L.45, L.54, L.63 to L.68) (continued)

1. Mr. KEÏLIN (Union of Soviet Socialist Republics) suggested that the proposal submitted by Poland, U.S.S.R., Czechoslovakia and Yugoslavia (A/CONF.13/C.2/L.30) should be considered separately.

2. The CHAIRMAN said that that proposal, which dealt with a separate problem, could be examined after the Committee had concluded its consideration of articles 26 and 27. He suggested that the United Kingdom proposal (A/CONF.13/C.2/L.64) could be considered at the same time.

It was so decided.

3. Mr. GARCIA-SAYAN (Peru) said that his delegation's amendment to article 27 (A/CONF.13/C.2/L.34) had been drafted to take into account the existence of the rights of coastal states. The text of article 27 in its present form was too categorical, and stated the freedoms of the high seas as if they were unlimited. That was not the case, however, owing to the existence of generally recognized rights which implied the exercise of special competence or prerogatives based on sovereignty, which might itself be subject to certain limitations, as was clear from article 68. Similarly, it was obvious that although the rules referred to in paragraph 5 of the Commission's commentary on article 27 comprised a body of special — and to a certain extent exclusive — rights exercised by states on the high seas, none of those rights implied an unrestricted exercise of sovereignty. They were all, without exception, compatible with the fundamental principle that the high seas were open to all states. That principle, by which the Peruvian delegation stood firm, had been embodied in its proposal. The latter therefore started with the statement of that principle, but omitted over-emphatic and categorical prohibition contained in the first sentence of the article.

4. Another point to be noted was that his delegation's proposal used the word "right" instead of the word "freedom" used in the Commission's article 27, the object being to bring the wording of the article into line with that used in sub-sections A and B and in article 61.

5. Next, his delegation had tried, in paragraph 2 of its proposal, to indicate that the right to fish was not unrestricted. That would seem to be clear from articles 54 and 55 which, subject to certain requirements, recognized the right of a coastal state to adopt unilateral conservation measures "in any area of the high seas adjacent to its territorial sea". His delegation had intended to submit an amendment to those articles in the Third Committee, specifying the coastal state's inherent right to adopt measures for the conservation and utilization of the living resources in the high seas adjacent to its territorial sea. No decision had, however, been taken as yet on articles 54 and 55, and, since the Second Committee had already embarked upon its consideration of article 27, the Peruvian delegation felt that it would be better to amend paragraph 2 of its proposal to read "The right to fish, without prejudice to the rights of the coastal state under this convention".

6. That view, which was shared by a number of other Latin American delegations, was based on the 1945 proclamation of the President of the United States of America concerning the continental shelf and fisheries; in particular, the areas of jurisdiction and control to which the President had referred reflected the position of Peru and other countries on the subject. The claims and the natural and prior rights of the coastal states to adopt conservation measures in respect of the waters along their coasts must be recognized. Unfortunately,

as could be seen from the commentary on article 59 under the heading "Claims of exclusive fishing rights, on the basis of special economic circumstances", the Commission had merely noted the existence of the problem. That made it even more imperative for the Conference to examine the claims of those states, taking into account the technical, biological, economic and political aspects of the problem, in accordance with its terms of reference.

7. For those reasons, any rights specified in article 27 which were incompatible with the existence of other rights should be omitted. The article in its present form reflected obsolete standards of international law that had been adapted and modified at will by the great Powers. The Conference must ensure that the convention reflected the wishes of the smaller states as well.

8. Mr. RADOUILSKY (Bulgaria) said that his delegation supported the Polish proposal on article 27 (A/CONF.13/C.2/L.29).

9. He explained that the proposal submitted jointly by Albania, Bulgaria and U.S.S.R. (A/CONF.13/C.2/L.32) did not refer to areas of the high seas used for ordinary naval or air exercises of short duration. It was rather designed to establish international standards forbidding the designation of naval and air training areas for long periods on a unilateral basis. Such areas were designated quite frequently, and tended to close to navigation whole areas of the high seas near foreign coasts and on international sea routes. In point of fact, such unilateral action by a state or group of states subjected areas of the high seas to their sovereignty, and that was incompatible with generally accepted standards of international law. That practice was, furthermore, simply an attempt to provide a legal basis for action that was contrary to international law and the states concerned were merely trying to evade their responsibility *vis-à-vis* other states. It seemed that the purpose of designating naval and air ranges near foreign coasts and on international sea routes was to exercise pressure on other states. Such attempts should not be tolerated in time of peace since they were inconsistent with the principles of the United Nations Charter and resolution 1236 (XII) adopted by the General Assembly at its twelfth session, entitled "Peaceful and neighbourly relations among states".

10. Mr. COLCLOUGH (United States of America) said that his delegation would oppose any proposals that sought to incorporate in article 27 the sentence in paragraph 1 of the commentary on the article reading "States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other states." That wording was, in his opinion, an unacceptable version of the phrase submitted for consideration to the International Law Commission by its rapporteur, Mr. François (Netherlands), since it rejected the test of reasonableness that had since time immemorial been used to determine whether the high seas were being used legally or illegally. It must be borne in mind that any use of the high seas by the nationals of one state affected their use by nationals of other states and that action taken by one state to protect its legitimate interests on the high seas might interfere with the interests of another. The enumeration of freedoms in article 27 was by no means exhaustive, and therefore if the Conference rejected the principle of reasonableness it would simply hamper the optimum use of the high seas by all states. His delegation accordingly supported article 27 in its present form, but was prepared to accept the Mexican proposal (A/CONF.13/C.2/L.3).

11. The three-power proposal (A/CONF.13/C.2/L.32) was completely at variance with the principle of the freedom of the high seas. He pointed out that military exercises which were lawful in one area of the high seas were not unlawful simply because they were carried out in another area. In that connexion he explained that the designation of certain areas for military training purposes by the United States did not close those areas to navigation but merely served as a warning to shipping.

12. Sir Alec RANDALL (United Kingdom) agreed that the sentence which the United States representative had quoted was too sweeping and should not be incorporated in article 27, since it could unjustly limit the exercise by governments of certain legitimate rights.

13. His delegation also agreed that the test of reasonableness should be applied, and therefore would propose an addition to article 27. . . .

14. Mr. BARTOS (Yugoslavia), speaking on a point of order, suggested that the United Kingdom representative had gone beyond the limits of the discussion fixed by the Chairman at the start of the meeting, in mentioning the addition to article 27 proposed by Poland, U.S.S.R., Czechoslovakia and Yugoslavia (A/CONF.13/C.2/L.30).

15. The CHAIRMAN explained that that was a misunderstanding; he ruled that the United Kingdom representative's remarks were in order, and invited him to proceed with his statement.

16. Sir Alec RANDALL (United Kingdom) confirmed that he was referring only to the test of reasonableness. The addition to article 27 which his delegation proposed read: "These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas." (A/CONF.13/C.2/L.68)

17. His delegation opposed the three-power proposal (A/CONF.13/C.2/L.32), and he pointed out that it was the practice of the United Kingdom to indicate in its notices to mariners when and where naval exercises were to take place. Shipping was never excluded from the areas affected.

18. Mr. GLASER (Romania) said that his delegation strongly supported the three-power proposal, which would ensure that all states enjoyed the freedom of the high seas. The practice of designating areas of the high seas for combat training purposes tended to restrict that freedom and should be condemned. Certain representatives had maintained that in conducting their military exercises they did not interfere with the freedom of navigation; he failed therefore to see why they should object to the three-power proposal.

19. In his opinion, the third sentence in paragraph 1 of the Commission's commentary on article 27 was a correct statement of the law, and its validity could not be reduced simply because certain states took exception to it. Coastal states were prohibited from hampering innocent passage through the territorial sea over which they exercised sovereignty; *a fortiori,* states should be prohibited from restricting the freedom of the high seas where they did not exercise such sovereignty.

20. In conclusion, he emphasized that the purpose of the three-power proposal was not to limit the right of states to conduct military exercises on the high seas, but simply to prevent such exercises on international sea routes and near foreign coasts.

21. Mr. BREUER (Federal Republic of Germany) said that his delegation would oppose the proposal by Romania and the Ukrainian S.S.R. (A/CONF.13/C.2/L.26). It was true that there were a number of special treaties between Baltic coastal states, but their provisions were binding only on the contracting parties and did not affect the legal status of the high seas in the Baltic. The convention prepared by the International Law Commission did not exclude other international agreements between States, and he could therefore see no reason why the amendment should be adopted. If it were adopted, article 26 would be somewhat obscure in meaning, since no one would know what was meant by the term "certain seas", what types of special régimes would be permissible, or which reasons were historical reasons.

22. Mr. WYNES (Australia) would also oppose the amendment proposed by Romania and the Ukrainian S.S.R. In his view, there was no connexion between the amendment and the text of article 26. Article 26 was simply a definition of the high seas, and there was no sound reason for introducing extraneous matters into it. Even if special régimes had been established previously for historical reasons or by virtue of international agreements, no good purpose would be served by referring to them in article 26 or in any other part of the convention. He feared, moreover, that if the amendment were adopted, its provisions might be used as a basis for claiming authority over large portions of the high seas.

23. Turning to article 27, he said that his delegation approved the draft text which the United Kingdom representative had just proposed, and hoped that it would be adopted. He would, however, vote against the three-power amendment.

24. Mr. SIKRI (India) said that his delegation found the Greek amendment to article 26 (A/CONF.13/C.2/L.54) acceptable.

25. With regard to article 27, and in particular to the obligation of states to refrain from any acts which might adversely affect the use of the high seas by nationals of other states, his delegation took the view that the "reasonableness" referred to by the United Kingdom representative introduced an undesirably subjective criterion. He tended rather to favour the wording of the amendments submitted by Yugoslavia (A/CONF.13/C.2/L.15) and Poland (A/CONF.13/C.2/L.29).

26. His delegation would oppose the three-power amendment on the ground that each state was entitled to use the high seas for naval exercises, but fully supported the proposals by Mexico (A/CONF.13/C.2/L.3) and Portugal (A/CONF.13/C.2/L.7) that freedom of the high seas should be made subject to the articles of the convention and the other rules of international law.

27. With those reservations, he approved the International Law Commission's text of article 27.

28. Mr. BULHOES PEDREIRA (Brazil), in explanation of the two amendments submitted by his delegation (A/CONF.13/C.2/L.66 and L.67), observed that they introduced two new features into the text of articles 26 and 27: firstly, the reference to "waters of the high seas" rather than "the high seas"; and secondly, a new approach to the definition of the high seas. Further, his delegation believed that the matters dealt with under article 27 were too numerous to be grouped together in a single article, and therefore suggested that article 27 be replaced by three articles, one on the legal status of the waters of the high seas, one on the exercise of authority by states over the waters of the high seas, and one on the use of the waters of the high seas.

29. Explaining the phrase "waters of the high seas", he recalled that for legal purposes the sea had long been regarded only from a two-dimensional aspect. The distinction between territorial seas and high seas, for instance, was based on a horizontal concept, in which a line drawn on the map represented the frontier between an area subject to the authority of a coastal state and an area open to all states. Recent technological and economic developments had given rise to discussions about the sea-bed, the living resources of the sea and the air space above the sea. The sea was thus coming to be regarded from a three-dimensional aspect, the demarcation line of the territorial sea was losing its traditional value as the sole frontier within which a coastal state could exercise its authority, and the traditional concept of the freedom of the high seas was at the same time undergoing some modification. The former idea of the high seas as an area in which freedom was not subject to any restrictions at all was gradually being replaced by the concept of the high seas as an asset for joint exploitation by all states.

30. In those circumstances, it was unlikely that any international agreement could be achieved if the legal régime relating to safety, navigation, fisheries, exploitation of the sea-bed, air space, etc., were made dependent solely on a horizontal demarcation line on the surface of the sea. Agreement could better be reached if the general concept of the sea were divided into four separate ones — waters of the sea, living resources of the sea, the sea-bed and the air space above the sea — and if an attempt were made to legislate for each separately.

31. His delegation's purpose in introducing the words "waters of the high seas" into article 26 was to restrict the application of articles 26 to 48 and 61 so that decisions taken by the Second Committee on the régime of the high seas would not apply automatically to the continental shelf and to fisheries. The present conference had displayed some indecision in getting to grips with the various topics discussed by each committee for fear that, if the principles approved by one committee were too wide in scope, they might prejudice the decisions of other committees.

32. The new text of article 27 proposed in the amendment was an attempt to define the true legal status of the high seas, not from the negative aspect of the freedom of the high seas, but regarding them positively as an asset for joint exploitation by all states.

33. The object of the new text proposed as article 27 A of his amendment was to induce the Conference to face the necessity of recognizing and defining the several aspects of the exercise of authority by states in different areas of the high seas, areas which would certainly exist if the interests of coastal states in the continental shelf and the living resources of the sea were recognized. International relations would be improved if the powers in question were frankly acknowledged and defined in detail.

34. Mr. GARCIA-MIRANDA (Spain) whole-heartedly approved the Greek proposal concerning article 26 (A/CONF.13/C.2/L.54).

35. With regard to his own delegation's amendment to article 27 (A/CONF.13/C.2/L.65), he pointed out that the text differed little from that proposed by the International Law Commission, with the exception that the freedoms mentioned were not arranged in a list since such arrangement, in spite of the use of the words "*inter alia*", appeared to have an exclusive character.

36. He approved the Mexican proposal (15th meeting) for the establishment of a working party to consider all the amendments to article 27.

37. Mr. LEE (Republic of Korea), speaking in support of the Peruvian amendment to article 27 (A/CONF.13/C.2/L.34), observed that in most of the main fishing areas of the world fishing was subject to so many restrictions that, unless article 27 contained some reservations on the freedom to fish, it would not be in accord with present-day realities.

38. He agreed with the United States and United Kingdom representatives in opposing the three-power amendment (A/CONF.13/C.2/L.32), since every state had the right to conduct naval exercises on the high seas.

39. Mr. FAY (Ireland) said that his delegation approved the Mexican proposal (A/CONF.13/C.2/L.3) that the freedom of the high seas should be made subject to the articles of the convention and other rules of international law.

40. Mr. GUARELLO (Chile) supported the Peruvian amendment to article 27, though he felt that the amendments submitted by Poland (A/CONF.13/C.2/L.15) and Yugoslavia (A/CONF.13/C.2/L.29) would introduce great clarity into the article. His delegation believed there was a genuine need for the establishment of a working party to decide on a final draft for article 27.

41. Mr. PUSHKIN (Ukrainian Soviet Socialist Republic) speaking in support of the three-power amendment submitted, pointed out that, while all states clearly had a right to carry out naval training in the open sea, the amendment referred not to training in the open sea but to naval and other exercises conducted for long periods of time near foreign coasts or on international sea routes. Training of that nature was clearly illegal under existing international law, since the designation of training areas by a state was tantamount to subjecting a part of the high seas to its sovereignty. Article 27 should therefore contain a specific provision forbidding the designation of training areas.

42. Mr. BARTOS (Yugoslavia) noted that for the most part the amendment submitted to article 27 differed more in wording than in content. There was considerable agreement in content, for example, between the amendments submitted by Mexico (A/CONF.13/C.2/L.3), France (L.6), Yugoslavia (L.15), the Netherlands (L.21), Poland (L.29) and Peru (L.34). He suggested that the sponsors of those amendments might co-operate in an effort to produce a single text for consideration by the Committee. The Mexican proposal for a working party was sound, but the working party should only consider amendments which were similar in content and not, for instance, that submitted by Albania, Bulgaria and the U.S.S.R.

43. Mr. KEÏLIN (Union of Soviet Socialist Republics) insisted that, if any working party were established to discuss the amendments to article 27, all delegations which had submitted amendments should be represented on it. Any classification of the amendments by content was legally unsound.

44. The CHAIRMAN observed that if a working party were established to consider the amendments to article 27, it would not be competent to reach decisions on questions of substance. The various proposals submitted be voted upon in the first instance by the Committee itself.

The meeting rose at 1 p.m.

SEVENTEENTH MEETING

Wednesday, 26 March 1958, at 3 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

NEW ARTICLE, TO BE INSERTED AFTER ARTICLE 27, PROPOSED BY POLAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, CZECHOSLOVAKIA AND YUGOSLAVIA (A/CONF.13/C.2/L.30) AND DRAFT RESOLUTION PROPOSED BY THE UNITED KINGDOM (A/CONF.13/C.2/L.64)

1. Sir Alec RANDALL (United Kingdom) introduced his delegation's draft resolution (A/CONF.13/C.2/L.64). The Conference was not of a political nature, and should therefore not pronounce upon any question relating to nuclear tests, a matter which was under consideration in the General Assembly and the Disarmament Commission. That fact had also to be borne in mind by the Committee when it considered the four-power proposal (A/CONF.13/C.1/L.30).

2. The question of nuclear tests had to be viewed as a whole and not as an isolated problem; so long as there were nuclear weapons, there would be nuclear tests. The real problem was that of disarmament.

3. The question of disarmament was being actively discussed by governments, and it was to be hoped that satisfactory results would be achieved.

4. The Conference could not pronounce on one isolated aspect of the question of nuclear tests independently of the question of nuclear tests as a whole, particularly while the General Assembly was still seized of the question.

5. Mr. BARTOS (Yugoslavia) said it would be stretching the interpretation of the freedom of the high seas too far to claim that it permitted the carrying out of nuclear tests on the high seas. Those tests were quite different from gunnery exercises, which were recognized as legitimate by international law, provided that shipping was duly warned.

6. There could be no doubt that nuclear tests interfered with the freedom of the high seas and the air space above them, with the freedom of navigation and with the free utilization of the high seas for fishing; above all, they caused damage to the living resources of the sea, which belonged to all mankind.

7. The United Kingdom draft resolution raised in effect a question of competence. It was true that the question of disarmament was a matter within the competence of the General Assembly, the Security Council and the Disarmament Commission. But the question before the Committee was not the political problem of disarmament or even the general question of the legality of nuclear weapons.

8. In his opinion, the use of nuclear weapons was contrary to international law, but the issue before the Committee was the much narrower one of the compatibility of nuclear tests with the freedom of the high seas; inasmuch as nuclear tests, conducted on the high seas, interfered with the exercise of that freedom, the Committee was manifestly competent to deal with that particular question.

9. The political competence of the General Assembly and the Disarmament Commission did not preclude another organ of the United Nations or a conference convened under its auspices from discussing technical provisions on the same subject and including them in the instruments being prepared. If that were not the case, questions such as human rights could not be dealt with by any other conferences or organs of the United Nations while the General Assembly held them in abeyance. That would be an absurd situation. The convention should contain a rule corresponding to the four-power proposal.

10. Mr. KAWASAKI (Japan) said his delegation would vote against the United Kingdom draft resolution, because it considered that the question of nuclear tests on the high seas came within the competence of the Committee.

11. There could be no doubt that nuclear tests seriously affected the use of the high seas. It was sufficient to mention that a number of Japanese fishermen had been maimed or killed by radiation resulting from those tests, and that tens of thousands of tons of contaminated fish, representing precious food for the Japanese people, had had to be destroyed as a result of those tests.

12. With regard to the four-power proposal, he said that the Japanese Government opposed all nuclear tests, whether conducted on land, at sea or in the air. The four-power proposal called for the prohibition of nuclear tests on the high seas only and so tended to give the impression that only those conducted on the high seas had an adverse effect on the use of the high seas; in fact, however, all nuclear tests had that adverse effect, even if conducted in the territorial sea or on an island.

13. The Japanese Government deeply regretted that although it had made repeated protests to the Union of Soviet Socialist Republics, that power had not as yet discontinued nuclear tests on land.

14. The Japanese delegation would abstain from voting on the four-power proposal because it was not only insufficient but also misleading. It could even be misconstrued as suggesting that nuclear tests conducted elsewhere than on the high seas were permissible.

15. Mr. LEE (Republic of Korea) said that the four-power proposal raised political rather than legal issues.

16. His delegation shared the view of the United Kingdom and United States delegations that the question of nuclear tests was part of the more general question of disarmament which was being discussed by the competent United Nations bodies. The question of nuclear tests could not be effectively eximined separately from that of disarmament.

17. Any use of a part of the high seas by one state temporarily deprived other states of its use. That was true of nuclear tests no less than of other uses of the sea. It was necessary to apply in that connexion the test of reasonableness, as had been stated by the United States representative.

18. The Soviet Union had vast land areas where it could conduct nuclear tests. Prohibition of such tests would, if limited to the high seas, benefit exclusively the Union of Soviet Socialist Republics. For those reasons, his delegation opposed the four-power proposal, and supported the United Kingdom draft resolution.

19. Mr. LIU (China), speaking on a point of order, said that, in accordance with rule 30 of the rules of procedure, the United Kingdom draft resolution had to be put to the vote before the four-power proposal was discussed. The United Kingdom draft resolution called for a decision on the competence of the Conference.

20. Mr. BARTOS (Yugoslavia), speaking on a point of order, said that, in accordance with a General Assembly ruling, motions calling for a decision on competence were voted on first, but discussion on substance was not separated from discussion on competence. It was only the votes that were kept separate.

21. The CHAIRMAN ruled that rule 30 of the rules of procedure did not apply. The United Kingdom draft resolution did not raise the issue of competence—it merely invited the Committee to say that it did not wish to deal with a question which was before the General Assembly. When the discussion was concluded, however, it would be reasonable to vote on the United Kingdom draft resolution first, because if the Committee adopted it, it would not need to vote on the four-power proposal.

22. Mr. ZOUREK (Czechoslovakia) said the Committee

was undoubtedly competent to deal with the four-power proposal. The Committee was not being asked to prohibit nuclear tests on the high seas; those tests were already prohibited by existing international law. The Committee was simply being asked to include in the articles a provision setting forth that existing rule of international law.

23. Nuclear tests on the high seas rendered vast sea areas dangerous and hence inaccessible for purposes of fisheries and navigation; they constituted a threat to the life and health of human beings; they constituted a source of pollution for the living resources of the sea.

24. His delegation could not accept the doctrine of reasonableness. That doctrine implied, in effect, that a State was free to violate international law whenever it considered such violation reasonable.

25. Mr. COLCLOUGH (United States) said his delegation supported the United Kingdom draft resolution. He drew attention to the statement in paragraph 8 of the International Law Commission's report on the work of its eighth session (A/3159) that the Commission "thought it could for the time being leave aside all those subjects which were being studied by other United Nations organs or by specialized agencies". That report constituted the basic document of the Conference.

26. The International Law Commission had stated, furthermore, in paragraph 3 of the commentary on article 27, that it did not wish to prejudge the findings of the Scientific Committee on the Effects of Atomic Radiation, set up under General Assembly resolution 913 (X).

27. The United States delegation was of the opinion that the Conference should not deal with the question of nuclear tests so long as that question was under consideration in the Disarmament Commission and the Scientific Committee.

28. His delegation could not understand how the Soviet Union delegation could co-sponsor the four-power proposal while the Soviet Union Government boycotted the Disarmament Commission. The United States delegation opposed the four-power proposal because its adoption would mean giving the stamp of approval to the delaying and avoiding tactics of the Soviet Union in regard to disarmament.

29. Mr. KEILIN (Union of Soviet Socialist Republics) said that the competence of the Committee to discuss nuclear tests on the high seas was unquestionable. The Conference was dealing with the codification of all questions concerning the law of the sea; one of those questions was that of nuclear tests on the high seas.

30. The United Kingdom draft resolution could only be construed as a suggestion that it was not appropriate for the Committee to consider a problem which was being dealt with by the General Assembly. It did not appear to raise an issue of competence. The arguments advanced in support of it would seem to lead, rather, to the conclusion that the Committee should deal with the question of nuclear tests on the high seas.

31. With reference to the statement of the Japanese representative, he said that the Soviet Union had been striving for a long time to arrive at an immediate prohibition of nuclear weapons and an immediate discontinuance of all nuclear tests. The four-power proposal referred only to the high seas simply because the Conference was dealing with the law of the sea. Hence, he could not understand how anyone who wished to see nuclear tests stopped could possibly abstain from voting on that proposal.

32. Mr. SEN (India), referring to the two proposals before the Committee, said that his delegation had expressed its views unequivocally on the question of nuclear tests, both in the First Committee (7th meeting) and in the Second Committee (8th meeting). India was opposed to all forms of nuclear tests, whether on land, in the air or at sea, and regarded tests at sea as an infringement of the freedom of the high seas.

33. The Indian delegation to the General Assembly had been one of the prime movers of General Assembly resolution 1148 (XII), which was cited in the United Kingdom delegation's draft resolution. His delegation could not agree with the statement in the operative paragraph of that draft resolution that the Committee should not pronounce itself on any question relating to nuclear tests. Both in fact and in law, nuclear tests carried out on the high seas seriously interfered with the freedom of the high seas. While he felt that the Conference would be failing in its duty if it did not pronounce itself on such tests, he recognized that it might be better, for the sake of achieving more general agreement, to leave the matter to the competence of the General Assembly, as suggested in the United Kingdom draft resolution. He intended, however, to submit certain amendments to that text.[1]

34. Mr. GHELMEGEANU (Romania) said it was the Committee's duty to discuss the problem of the prohibition of nuclear tests on the high seas.

35. The effects produced by the nuclear explosions in the Pacific had proved that such tests violated the principle of the freedom of the high seas in that they interfered with the freedom of navigation and fishing and with the conservation of the living resources of the sea, and endangered human life.

36. His delegation could not agree with the statement made by the United States representative (9th meeting) that the manner in which the United States conducted nuclear tests was sanctioned by international practice.

37. Over the past twelve years, ever-increasing areas of the Pacific had been declared prohibited areas for the purpose of nuclear tests. The United States Atomic Energy Commission itself had recognized that the atomic bomb tests had had unforeseeable results, and that they had contaminated wide areas of the sea. Discussions in the United Nations Trusteeship Council in connexion with the Trust Territories of the Pacific under United States trusteeship had referred to the harmful effects of nuclear tests, and United States newspapers had also referred to their evil effects.

38. The International Law Commission had categorically stated in paragraph 1 of its commentary on article 27 that States were bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States.

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[1] At the 18th meeting, a draft resolution was proposed by India (A/CONF.13/C.2/L.71).

39. In 1952, the Australian Government had notified other States that it intended to carry out nuclear tests in certain islands adjacent to its coasts, and in 1957 the United Kingdom Government had informed other governments of its intention to create a prohibited area around Christmas Island. His delegation, considering that the Conference should adopt international rules prohibiting such tests on the high seas, would vote against the United Kingdom draft resolution.

40. Mr. GARCIA ROBLES (Mexico) said that, in view of the terms of operative paragraph 1 (*a*) of General Assembly resolution 1148 (XII), which linked the question of nuclear tests to that of disarmament, and because it considered that the Conference was not the most appropriate place for discussion of that question, with which the General Assembly would doubtless continue to deal, the Mexican delegation would be unable to support the four-power proposal.

41. Mexico's position in regard to nuclear tests was well known. Those representatives who had attended the General Assembly's twelfth session would remember that Mexico had voted in favour of resolution 1148 (XII), the first paragraph of which urged the States concerned to give priority to reaching a disarmament agreement which would provide, firstly, for "the immediate suspension of testing of nuclear weapons with prompt installation of effective international control". Mexico had also voted, in the First Committee of the General Assembly, in favour of the draft resolutions submitted by India and Japan, the aim of which had been suspension of nuclear tests. Mexico's position had not since changed.

42. He suggested various amendments to the United Kingdom draft resolution, and recommended that the proposals mentioned by the Indian representative should be given careful consideration. He added that, as drafted, the operative part of the resolution, stating that the Committee should not decide upon any question relating to nuclear tests, was of so sweeping and categorical a nature that it might prevent the Committee from reaching any decision on article 48, paragraph 3 of the International Law Commission's draft, which would be inadmissible.

The meeting rose at 5.5 p.m.

EIGHTEENTH MEETING

Thursday, 27 March 1958, at 3.20 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

NEW ARTICLE, TO BE INSERTED AFTER ARTICLE 27, PROPOSED BY POLAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, CZECHOSLOVAKIA AND YUGOSLAVIA (A/CONF.13/C.2/L.30) AND DRAFT RESOLUTIONS PROPOSED BY THE UNITED KINGDOM (A/CONF.13/C.2/L.64) AND INDIA (A/CONF.13/C.2/L.71) (continued)

1. Mr. DEMEUR (Holy See) welcomed the Indian draft resolution (A/CONF.13/C.2/L.71). The Pope was apprehensive of the repercussions of the military application of the discoveries of nuclear science. The Pope had, however, warned the world against isolated and unrealistic attempts to deal with the problem, since they would not bring a solution any closer, and had stressed that such a solution should be sought through the channels of the United Nations. To propose that the Conference should condemn nuclear tests on the high seas was merely an attempt to cause a diversion, and the representative of India had been right in pointing out that it was for the General Assembly of the United Nations to endeavour to reach a solution of the problem.

2. Mr. ZOUREK (Czechoslovakia) said that, during the discussions on article 27, some representatives had stated that the Conference was not competent to deal with the question of nuclear tests, and the United Kingdom draft resolution (A/CONF.13/C.2/L.64) was an expression of that point of view. Those who argued thus were saying, in effect, that the Committee should surrender its right to discuss a question which concerned it, for surely nuclear tests on the high seas were an infringement of the freedom of the high seas. Such tests had serious consequences. They were a threat to life and health, polluted the air space and contaminated the living resources of the sea.

3. The codification of the rules applicable to the sea should include provisions explicitly prohibiting nuclear tests on the high seas. General Assembly resolution 1148 (XII) was not concerned with the legal aspect of the problem. The object of the four-power proposal (A/CONF.13/C.2/L.30) was to lay down a rule of law applicable to nuclear tests at sea; it did not prejudge future decisions by the General Assembly concerning nuclear tests generally.

4. The United Kingdom draft resolution failed to take world opinion into account. Nor was the Indian resolution acceptable. After stating that there was apprehension that nuclear explosions on the high seas constituted an infringement of the freedom of the seas, it went on to the surprising conclusion that the whole matter should be left to the General Assembly. In other words, though recognizing that nuclear tests at sea constituted a violation of the freedom of the seas, the Indian delegation did not apparently consider that any action on the part of the Conference was called for.

5. Under its terms of reference, the Conference was to study all aspects relating to the law of the sea, including, in his opinion, the question of nuclear tests at sea. That question should not, therefore, be referred to a later session of the General Assembly.

6. The four-power proposal took world opinion into account. It was both clear and explicit, and required a decision by the Committee.

7. Sir Claude COREA (Ceylon) said that his delegation agreed with the motives behind the joint proposal, and in the general debate (9th meeting) had strongly opposed nuclear tests on the high seas. But the joint proposal as it stood went no further than General Assembly resolution 1148 (XII), and was in fact merely a partial echo of that resolution, for it related exclusively to nuclear tests on the high seas.

8. He could not support the United Kingdom draft, since he felt that there was no doubt as to the competence of the Committee to deal with the subject. His delegation did not approach the subject from the legal, but from the humane, point of view. The question was, what was expedient in present circumstances? The subject of nuclear tests was now under discussion in the United Nations, and the Committee's purpose should be to attempt to further those discussions.

9. Believing that the question of a ban on nuclear tests in general was one affecting the entire world, his delegation considered that the proper forum for discussing that question was the General Assembly, not a specialized body such as the Conference. Accordingly, he supported the Indian proposal, though he considered that it should be drafted in more specific terms. He proposed that the operative paragraph of the Indian proposal should be replaced by the words: "Decides to refer this matter to the General Assembly for appropriate action." He also proposed that the words "on the high seas" in the second preambular paragraph of the Indian proposal should be deleted, since they were redundant, and since the application of the paragraph to the seas was made clear by the reference to the "freedom of the seas".

10. Mr. SEN (India) accepted the amendments proposed by Ceylon.

11. Mr. DEAN (United States of America) said that current nuclear explosions produced a minimal radioactive fall-out, and the Scientific Committee on the Effects of Atomic Radiation, which was studying the subject, might well find that the fall-out had been greatly reduced. He said that, according to a recent statement by President Eisenhower, the United Nations would be invited to send observers to future tests conducted by the authorities of the United States; those observers would be able to verify personally the reduction in fall-out. He added that further progress in the field of nuclear research, which included explosions, would be of benefit to agriculture and industry.

12. He considered that, in any case, whether the Conference was competent or not, it would be well to refer the whole question back to the Scientific Committee. He supported the Indian proposal, as amended by Ceylon, which was a constructive proposal; at the same time, he suggested that, since all past tests had been conducted in accordance with international law and had not in fact infringed the freedom of the high seas, the second preambular paragraph should be amended to read:

> "*Recognizing* that a serious and genuine apprehension has been expressed on the part of many states that nuclear explosions may constitute a potential infringement of the freedom of the seas."

13. Mr. MORRISSEY (Ireland) said that the continuation of nuclear explosions deeply disturbed public opinion. They constituted a hazard to health, and carried with them not only the danger of immediate contamination, but also unforeseeable consequences for the future. He would therefore support any move to end the tests, and would like to see the production of nuclear material stopped.

14. He doubted, however, whether the joint proposal would have that effect. It could not make a contribution to peaceful agreements for lessening the number of tests and reducing the likelihood of war. The states possessing nuclear materials could not be compelled to stop the tests, and although public opinion had an effect, the place for the expression of such opinion was the General Assembly. It was unfortunate that the Disarmament Commission had reached a deadlock, but debate in the Conference would have little influence on the work of that Commission. He supported the Indian proposal, as amended by Ceylon, and reserved his delegation's position on further proposed amendments.

15. Mr. BARTOS (Yugoslavia) said that the United Kingdom and Indian draft resolutions did not go far enough. The Conference had been called by the United Nations, and the United Nations dealt with all matters affecting human rights. The Conference itself was dealing with such questions as the safety of life at sea and the living resources of the seas. Those questions should be fully covered in the articles adopted by the Conference.

16. He did not deny the competence of the General Assembly or the Disarmament Commission to deal with the question of nuclear tests. Yet, while those United Nations bodies dealt with matters with which they were more specifically concerned, the Conference could, and should, lay down rules which would protect the high seas from the dangers inherent in nuclear tests. It was not, therefore, sufficient merely to leave the question to the General Assembly.

17. He therefore supported the preambular paragraphs of the Indian proposal, but would abstain in the vote on the operative paragraph.

18. Sir Alec RANDALL (United Kingdom) said that the Indian draft resolution, as amended by Ceylon, was on the whole acceptable to his delegation. Whether the apprehensions referred to in the second preambular paragraph were justified was a matter of opinion. Research into the results of the tests undertaken by the United Kingdom showed that there had been no infringement of the freedom of the high seas and no interference with shipping. The question of the radioactive fall-out was still being studied by the Scientific Committee.

19. It was nevertheless a fact that apprehensions, whether justified or not, did exist, and if India would accept the drafting changes suggested by the United States representative, the United Kingdom would withdraw its own draft and support the Indian proposal.

20. Mr. LIANG (Secretary of the Committee) said that, if it were intended to send the Indian proposal to the General Assembly, it should first be adopted by the Second Committee as a draft resolution for adoption by a plenary meeting of the Conference, since it would be more appropriate that the proposal should come from the Conference as a whole, rather than from the Committee.

21. The CHAIRMAN proposed that the words "the Committee" in the Indian resolution should be replaced by the words "the Conference on the Law of the Sea".

22. Mr. SEN (India) accepted the Chairman's amendment.

23. Mr. TUNKIN (Union of Soviet Socialist Republics), speaking in support of the joint proposal, said that there was a growing movement in the world in favour of the prohibition of the testing, manufacture and use of nuclear weapons. The peoples of the world wanted nuclear inventions to be used for peaceful purposes, not for destruction. It had been argued that the Committee should pass over the question of nuclear tests on the high seas; but surely, being engaged on the drafting of a definition of the freedom of the seas, the Committee could not ignore a question directly relevant to that freedom.

24. It was remarkable that, although it had been suggested several times that nuclear tests were an infringement of the principle of the freedom of the high seas, no one had tried to demonstrate that they were compatible with that principle. The United States representative had said that such tests were beneficial to mankind; that was a paradoxial conclusion.

25. It had been said that the Committee should not encroach on subjects which were the concern of the General Assembly. But the Committee had a duty to formulate provisions banning nuclear tests, not only because of public opinion, but because of the logic of law; for the freedom of the high seas would be a hollow thing unless it were safeguarded against violations.

26. Mr. LOUTFI (United Arab Republic) said that his country had at all times opposed nuclear tests by reason of their disastrous effects. The competence of the Committee to discuss the question of nuclear tests could not be denied. The joint proposal gave the Committee a chance to express its opposition to nuclear tests in a provision which would become part of international law. He agreed in substance with the second preambular paragraph of the Indian proposal, but not with the terms of the operative paragraph, on which he would be constrained to abstain.

27. Mr. DREW (Canada) expressed support for the Indian proposal as amended by Ceylon. The Conference, though competent in many ways, was not scientifically qualified to express a judgement on the subject of nuclear tests. Hence, it would be more practical to refer the matter to the General Assembly and to its Scientific Committee.

28. Admittedly, apprehension about nuclear tests was real, but the apprehension about armaments in general was no less genuine, and yet, though conventional armaments might well affect the high seas, no one was suggesting that they should be discussed by the Conference.

29. It would be unfortunate if the apprehension which had been expressed were held to refer to the experiments of any particular state.

30. Referring to a remark made by the Soviet Union representative, he said that the United States representative had not, he believed, described nuclear explosions as beneficial, but had stated that nuclear research had led to discoveries which would benefit mankind.

31. Mr. OZORES (Panama) said that, as amended by Ceylon, the Indian proposal was open to criticism. If the phrase "on the high seas" were deleted from the second preambular paragraph, the implication would be that nuclear tests, wheresoever conducted, were an infringement of the freedom of the high seas, which was not logical. Either the phrase "on the high seas" should stand or, if it was deleted, the phrase "constitute an infringement of the freedom of the seas" should be replaced by "may constitute a serious threat to mankind".

32. Mr. TOLENTINO (Philippines) said that there was no doubt that apprehension about nuclear explosions existed, and no doubt, either, that the Committee was competent to discuss the matter, in so far as it affected the freedom of the high seas. But since the question of nuclear tests in its totality was under review by the General Assembly, the Scientific Committee and the Disarmament Commission, and since all governments represented at the Conference were also represented in the Assembly, it would not be practical for the Committee to discuss what was only one aspect of the problem.

33. He therefore supported the amended Indian proposal, but added that he agreed with the suggestion put forward by the representative of Panama.

34. Sir Alec RANDALL (United Kingdom) asked whether India accepted the amendments suggested by the delegation of the United States of America, which were intended to remove the quite unsubstantiated implication that nuclear explosions in fact constituted an infringement of the freedom of the high seas.

35. Mr. SEN (India) said that he found it difficult to accept those amendments, for there was real apprehension that such explosions in fact constituted an infringement, not that they might do so. The purpose of his delegation's proposal was to voice the apprehensions of many states, including his own, but not to imply that those apprehensions were generally accepted as fact.

36. With reference to the suggestion made by the representative of Panama, he said that not only explosions on the high seas but also those in territorial seas and on coasts would affect the freedom of the high seas. It was for that reason that he had accepted the deletion proposed by Ceylon of the words "on the high seas" in the second preambular paragraph.

37. Mr. SOLE (Union of South Africa), whilst recognizing the competence of the Committee to discuss the question, regretted that so much time was being spent on what was largely a sterile exercise in propaganda. The International Law Commission had wisely refrained from dealing with the question of nuclear tests. The Committee's debate would have no practical effect, since the problem would be resolved by the decision of a very few governments. Referring the subject back to the General Assembly was no more than a procedural device.

38. Sir Alec RANDALL (United Kingdom) said that since the Indian representative had made it clear that it had not been established that nuclear explosions were an infringement of the freedom of the seas, the United Kingdom delegation would withdraw its proposal and support that of the Indian delegation.

39. Mr. DEAN (United States of America) stated that

the Indian proposal as amended by Ceylon was quite acceptable to his delegation. However, reports of the after-effects of nuclear explosions seemed to have been exaggerated. That was shown by recent scientific data.

40. Commenting on the Panamanian representative's suggestion, he said that if there were after-effects, it made little difference whether the explosion took place on land or at sea, because in either case the high seas were ultimately affected. Therefore the deletion of the phrase "on the high seas" was correct.

The meeting was suspended at 5.10 p.m., and was resumed at 5.25 p.m.

41. Mr. LIU (China) said that the second preambular paragraph of the Indian proposal was intended to reflect an actual situation. He suggested, therefore, that that paragraph should be altered to read "a serious and genuine apprehension has been expressed on the part of some states". Furthermore, the replacement of "many" by "some" was a more accurate statement of the facts.

42. Mr. TUNKIN (Union of Soviet Socialist Republics) took issue with the statement by the representative of South Africa that the question of nuclear tests had been raised for reasons of propaganda. The purpose of the joint proposal (A/CONF.13/C.1/L.30) was to establish a principle which would lead to the banning of nuclear tests.

43. Mr. LAMANI (Albania) said that nuclear tests were a serious threat to mankind, for they destroyed the living resources of the sea and polluted areas of the high seas. The volume of protest against such tests was increasing. The Conference was fully qualified to deal with the question, and should declare such tests to be contrary to law.

44. With reference to the remarks of the United States representative concerning the minimal radio-active fall-out of nuclear explosions, he read an account of the effects on twenty-two fishermen who had been exposed to such fall-out on the high seas as a result of the Bikini tests. Those effects had been disastrous.

45. He therefore supported the joint proposal, and considered that the Committee as a whole should do the same.

46. Mr. BARTOS (Yugoslavia) took exception to the statement of the representative of the Union of South Africa that the joint proposal was intended for propaganda purposes. Yugoslavia was entirely opposed to the use of nuclear weapons. The policy of Mr. Nehru and Marshal Tito, which was based on the principle of co-existence, was well known. Nuclear tests were an infringement of the freedom of the high seas, and were an evil which should be removed. It was precisely the object of the joint proposal to remove that evil. His delegation would have supported the proposal if it had been made by the delegation of the United States of America or by any other delegation.

The meeting rose at 5.55 p.m.

NINETEENTH MEETING

Friday, 28 March 1958, at 10.45 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 28 (THE RIGHT OF NAVIGATION), 34 (SAFETY OF NAVIGATION), 35 (PENAL JURISDICTION IN MATTERS OF COLLISION) AND 36 (DUTY TO RENDER ASSISTANCE) (A/CONF.13/C..2/L.6, L.11, L.18, L.24 and Add.1, L.25, L.36, L.39, L.40, L.43, L.44, L.49, L.50, L.56, L.59 and L.60)

1. Mr. BELLAMY (United Kingdom), explaining the two United Kingdom proposals for articles 34, 35 and 36 (A/CONF.13/C.2/L.49 and 50), said that, even after hearing the extremely helpful statement made at the 13th meeting by Mr. François, expert to the secretariat of the Conference, his delegation felt that it would be preferable for the Conference to express its views on those articles in the form of a resolution. His delegation fully appreciated the fact that the Commission, recognizing the existence of relevant international conventions, had rightly not attempted to study the various matters afresh with a view to incorporating detailed provisions in the draft. The only question before the Committee, therefore, was whether the Conference should confine itself to a reference to those relevant conventions, coupled with a recommendation as to their acceptance, or attempt to include in any final document which it might produce the principles underlying them. The Commission had followed the second course, and had tried to incorporate in the articles general principles underlying the conventions and not in conflict with them.

2. With regard to articles 35 and 36, the Commission had been largely succesful, for the reason that the two articles substantially repeated, in the same words, certain provisions of the conventions. There was thus no question of conflict in terms between the existing conventions and the articles, although the actual omission of the detailed provisions of those conventions could cause difficulties. For example, article 35 failed to mention the very important idea referred to at the end of paragraph 1 of the commentary — namely, that the power to withdraw or suspend certificates of competency for ships' officers rested solely with the state which had issued them. The French amendment to article 35 (A/CONF.13/C.2/L.6) was designed to cover that point, and if the United Kingdom proposal were not carried, his delegation would consider whether it could accept an amendment along those lines. In any case, it would have to reserve its position in that event under the agreements which the United Kingdom had made with other members of the Commonwealth concerning the issue and withdrawal of certificates.

3. In attempting to set down the underlying principles of certain longer and more technical conventions, the Commission had been less successful. That was particularly true of article 34, the opening words of which required states to issue regulations governing the mat-

ters referred to in the article. It was well known, however, that many states, including the United Kingdom, which applied the very highest standards, did not in fact issue regulations covering every aspect of the matters included in paragraphs 1 (*a*), 1 (*b*) and 1 (*c*). For example, the United Kingdom did not issue regulations governing the detailed construction of all its ships. The fact that the methods applied in the United Kingdom ensured that ships would be substantially and safely built was well known, but his government, like many others, did not issue regulations on every aspect of the matter. Furthermore, the United Kingdom had no detailed statutory regulations concerning the adequacy of ships' crews, although no ships could sail under the British flag or leave a British port undermanned. Nor did the Government legislate for the reasonable labour conditions which the article required but left those matters to the joint machinery set up by the seafarers and the shipowners, a system which had worked to the satisfaction of all concerned.

4. Paragraph 2 of article 34 required the observance and enforcement of internationally accepted standards. But it was not specified what those standards were. If they were those of the Convention of 1948 for the Safety of Life at Sea, of the 1930 Load Line Convention or of the 1948 Regulations for Preventing Collisions, it would not be difficult for maritime states to accept an undertaking requiring them to comply, but practically all of them had in fact already done so. On the other hand, if the standards referred to were those laid down in the many conventions and agreements prepared by the International Labour Organisation (ILO), there was the difficulty that although those agreements enjoyed a wide acceptance, the degree thereof varied substantially from one agreement to another. States might be genuinely unable to accept certain standards laid down in individual instruments. The article thus did not fully succeed in setting down internationally accepted principles, and might impose obligations which certain states could not accept. An attempt could perhaps be made to redraft the article so as to bring it more into line with the principles actually adopted by states, but his delegation felt that there was no harder task than that of trying to compress the work of so many countries on such an important and highly technical subject into a few simple principles. It would be better to endorse the labours and achievements which had produced such excellent results over so many years.

5. He had dwelt at length on article 34 because it showed that the articles had not in fact achieved the condition laid down by Mr. François in his statement — namely, that they should state the principles underlying the relevant conventions and thus avoid conflict. That point could be further illustrated by reference to article 21, which would be considered by the First Committee. Paragraph 3 of that article appeared to remove all limitation on the action which could be taken by a coastal State in respect of a ship on innocent passage outward bound from a port or lying stationary in territorial waters. That paragraph was completely at variance with the terms of the Brussels Convention of 1952 on the Arrest of Seagoing Ships. Whether the provisions of the 1952 Convention or those of article 21, which were based on a text prepared by The Hague Codification Conference of 1930, were more acceptable was a matter of judgement, but the fact that the article conflicted with the convention was a matter of established fact. The Brussels Convention had admittedly not yet been accepted by many states, but it was still comparatively new, and its provisions could not be ignored either in any statement of international law or as a development of international practice.

6. To accept articles 34, 35 and 36 as they stood would therefore mean the acceptance of conflict between the principles of the articles and those to which many states had bound, or might bind, themselves in their relationships with each other. The existence of those articles as statements of international law might well act as a brake on future development on those subjects, especially in such rapidly developing matters as safety at sea. Even article 36, which his delegation found broadly acceptable, might prove to be not fully in accord with the more up-to-date provisions of the 1948 Convention. Moreover, even where the relevant conventions had been repeated almost verbatim, the effect might be that unless the two instruments — the convention and the article — could be developed side by side, there would be a conflict between them.

7. In those circumstances, the Conference should consider most seriously whether to accept new binding obligations or whether it would not be equally effective to announce by means of a resolution the Conference's acceptance of the instruments which should rule the relationships of states in those matters. The International Law Commission had obviously been in no position to propose such a solution, but a world-wide conference could do so very effectively.

8. Lastly, he stressed that if the United Kingdom proposals were not accepted, his delegation would feel bound either to suggest amendments to the articles or to make its acceptance conditional on the stipulation that fulfilment of the requirements of the international instruments set forth in its draft resolutions would be deemed sufficient observance of the requirements of the articles themselves.

9. Mr. VRTACNIK (Yugoslavia) opposed the United Kingdom proposal to delete articles 34, 35 and 36. In his delegation's view, the draft should be comprehensive and should embody general rules binding on all states. Though it was true that certain matters of detail had already been regulated by treaties, those treaties had not been generally ratfied. Moreover, if one of the arguments used by the United Kingdom representative were accepted, then any provision in the draft which subsequently became the subject of a separate international instrument would have to be deleted, with all the inconvenience of amending procedure which that would entail. Accordingly, his delegation favoured the retention of those articles with the modifications proposed by the delegations of Denmark (A/CONF.13/C.2/L.36), France (L.6) and the Netherlands (L.24 and Add.1, L.25).

10. On the other hand, he would support the United Kingdom draft resolutions, which represented a positive step in the right direction.

11. The purpose of the Yugoslav amendment (A/CONF.13/C.2/L.18) to article 36, sub-paragraph (*b*) was to take into account circumstances which might

prevent a ship from proceeding "with all speed" to the rescue of persons in distress. The present wording was too absolute.

12. Mr. HANIDIS (Greece) favoured the deletion of articles 35 and 36 for the reasons given by the United Kingdom representative.

13. The amendment to article 34 (A/CONF.13/C.2/L.56) proposed by his delegation had been submitted in the belief that it was only necessary to state the general principle that all states were required to issue safety regulations. The detailed matters mentioned in the Commission's version of the article were purely technical, and were regulated by existing conventions which had been widely ratified and still remained open for signature.

14. Mr. OLDENBURG (Denmark) explained that his delegation's amendment to article 36 (A/CONF.13/C.2/L.36) aimed to fill a gap by referring to the need for adequate search and rescue services, which, the grievous experience of the last war had revealed, required co-ordination at the national and international level. That fact had been emphasized again in the recommendation adopted in the International Convention for the Safety of Life at Sea. It was clearly desirable to take into account further developments in that respect since 1948, and to express in a practical way appreciation for the vital contribution made by mariners everywhere to peaceful relations between nations.

15. Mr. GIDEL (France) had reservations about the practical application of the Danish proposal, because search and rescue servies, which existed in most well-developed countries, were organized in very different ways.

16. Mr. RIPHAGEN (Netherlands), speaking of his delegation's proposal concerning article 34 (A/CONF.13/C.2/L.24 and Add.1) explained that the reason for the amendment to paragraph 1 was that the phrase "under its jurisdiction" was not altogether correct, because foreign ships traversing a territorial sea were to some extent under the jurisdiction of the coastal state; but that state should not be obliged to issue regulations for them, and was only obliged to do so for vessels entitled to fly its flag.

17. The proposal to delete paragraph 1 (*b*) and add a paragraph 3 to article 34 had been prompted by the consideration that labour conditions were sometimes regulated by state legislation, sometimes by collective agreements between employers and seafarers, and sometimes by a combination of the two.

18. He did not regard as judicious the United Kingdom delegation's proposal for article 34, inasmuch as the right to sail on the high seas imposed certain obligations on the flag state, which must take the necessary measures to control the behaviour of vessels flying its flag. Hence, any attempt at codifying the law of the sea would be incomplete without a provision ensuring that the flag state exercised effective jurisdiction over its ships in an area where no state possessed sovereign rights.

19. Mr. GIDEL (France) said that the United Kingdom proposals concerning articles 34, 35 and 36 posed an interesting problem of juridical method. He had been impressed by Mr. François's defence of the Commission's solution and the comments of the Yugoslav and Netherlands representatives.

20. Referring to the French proposal (A/CONF.13/C.2/L.6), he explained that the amendment to article 34, paragraph (*a*), was designed solely to clarify a somewhat obscure text.

21. The first French amendment to article 35 was also one of form, but the second was one of substance and designed to ensure that, in disciplinary matters, only the state which had issued a master's certificate should be able to withdraw or suspend it, even if the holder was not one of its nationals. The principle had been recognized by the Commission in its commentary, but in the French delegation's opinion it should be embodied in the text of the article itself. There was, of course, nothing to prevent states from making special reciprocal arrangements for the recognition of certificates issued by other states, but that was a matter of detail.

22. He too had been disturbed by the requirement in article 36, paragraph (*b*) that a ship must proceed "with all speed" to the rescue of another: the matter must clearly be left to the judgement of the captain. The difficulty could be overcome by the suppression of that phrase of by the adoption of the Yugoslav amendment.

23. Article 36 would best be transposed to follow article 34 immediately since it too was concerned with more general provisions than those contained in article 35.

24. Mr. BREUER (Federal Republic of Germany) said that it would be preferable to transfer the substance of article 28 to the introductory part of the draft dealing with general principles and definitions. However, it that were not done, his delegation proposed (A/CONF.13/C.2/L.39) the deletion of the words "on the high seas" in article 28, because every state had the right to sail ships under its flag on the territorial sea as well.

25. Mr. SOLE (Union of South Africa) agreed with the principle laid down in article 35, paragraph 1 that, in the circumstances envisaged in that text, proceedings should not be instituted as of right against the captain or crew in the courts of any state other than the flag state or that of which they were nationals. But no provision had been made by the Commission for cases where the state of nationality waived its jurisdiction in favour of another state, although provision was made therefor in his own country's legislation, and probably in that of many others. Account should be taken of the fact that some states might prefer their nationals to be tried in a country where the courts had more experience of the problems at issue. He therefore proposed at the end of paragraph 1 an addition which might read: "A state may, however, waive its jurisdiction, either generally or in a particular case, over its own nationals who may be involved in penal or disciplinary responsibility for collision on the high seas."

26. Mr. SRIJAYANTA (Thailand) explained that his amendment to article 35 (A/CONF.13/C.2/L.59) had been submitted because normally the flag state was the most competent to deal with the matters envisaged in

that article. Moreover, a vessel on the high seas flying its flag was considered to be part of its territory.

27. Mr. GARCIA-MIRANDA (Spain) stated that the aim of the Spanish proposal (A/CONF./13/C.2/L.60) was to offer a more logical sequence of the provisions and to bring out the requirements which derived from the principle stated in article 28.

The meeting rose at 12 noon.

TWENTIETH MEETING

Friday, 28 March 1958, at 3.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

NEW ARTICLE, TO BE INSERTED AFTER ARTICLE 27, PROPOSED BY POLAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, CZECHOSLOVAKIA AND YUGOSLAVIA (A/CONF.13/C.2/L.30) AND REVISED DRAFT RESOLUTION PROPOSED BY INDIA (A/CONF.13/C.2/L.71/Rev.1) (concluded) [1]

1. Mr. DEAN (United States of America) moved that the proposal by Poland, the Union of Soviet Socialist Republics, Czechoslovakia and Yugoslavia, for a new article to be inserted after article 27 (A/CONF.13/C.2/L.30), and the revised draft resolution submitted by India (A/CONF.13/C.2/L.71/Rev.1) should be put to the vote before articles 26 and 27.

The proposal of the United States representative was adopted by 60 votes to none, with one abstention.

2. Mr. DEAN (United States of America) then proposed that the Indian revised draft resolution should be put to the vote first.

The proposal was adopted by 53 votes to 11, with 3 abstentions.

3. Mr. BARTOS (Yugoslavia) proposed that the last paragraph of the Indian draft resolution should be voted separately.

The proposal was rejected by 46 votes to 10, with 7 abstentions.

4. Mr. BARTOS (Yugoslavia) remarked that it was extremely rare for a proposal for such a procedure to be rejected.

5. The CHAIRMAN put the revised draft resolution proposed by the Indian delegation (A/CONF.13/C.2/L.71/Rev.1) to the vote.

The draft resolution was adopted by 51 votes to one, with 14 abstentions.

6. Mr. SEN (India) moved that, since the Committee had adopted the Indian draft resolution, the four-power proposal (A/CONF.13/C.2/L.30) should not be put to the vote.

The Indian proposal that the four-power proposal should not be put to the vote was adopted by 52 votes to 8, with 3 abstentions.

7. Mr. BIERZANEK (Poland), explaining why his delegation had abstained from voting on the Indian draft resolution, said that the attitude of his government in the matter — namely, that nuclear tests should be prohibited — was generally known. The Conference should, however, establish the fact that nuclear tests were not in conformity with international law, and should not refer the problem back to the General Assembly.

8. Sir Alec RANDALL (United Kingdom) had voted for the Indian draft resolution because it was right that the problem should be left to the General Assembly and the Disarmament Commission. He had withdrawn his proposal (A/CONF.13/C.2/L.64) at the 18th meeting, on the basis of the Indian representative's clarification of paragraph 2 of his resolution, to the effect that apprehension about nuclear tests was a fact, but that it had not been established how many states had such apprehensions, or whether they were justified. The United Kingdom Government, when carrying out its tests, had not closed any part of the high seas, but had warned states of the danger. It had, moreover, chosen areas remote from normal navigation routes. Nor had research produced any evidence of after-effects or of interference with navigation. For those reasons, it would be wrong to prejudge the issue currently before the General Assembly and the Disarmament Commission.

9. Mr. CERVENKA (Czechoslovakia) said that his delegation had abstained from voting on the Indian draft resolution because, first of all, it incorrectly linked the question of nuclear tests on the high seas, which was already settled by existing international law, with the proposal for the general prohibition of nuclear tests discussed in the past by the General Assembly of the United Nations. The Czechoslovak delegation did not consider it right that a special conference, convened by the General Assembly for the purpose of codifying the rules of international law concerning the régime of the sea, should refer one part of a question concerning the violation of the freedom of the high seas back to the General Assembly. Moreover, the resolution adopted did not represent the situation correctly in the phrase: "there is a serious and genuine apprehension on the part of many states that nuclear explosions constitute an infringement of the freedom of the seas", since many governments and delegations to the Conference had clearly expressed not only assumptions or apprehensions but indeed their deepest conviction that nuclear tests on the high seas constituted an infringement of international law. Furthermore, the reference in the Indian resolution to the Disarmament Commission, which for the time being was not in session, might mislead public opinion. For all those reasons, the Czechoslovak delegation had been unable to support the Indian draft resolution, and had therefore abstained from voting on it.

10. Mr. RADOUILSKY (Bulgaria) had abstained from voting on the Indian draft resolution because the question of nuclear tests was a fundamental one, which

[1] Resumed from the 18th meeting.

admitted of no compromise. It was the responsibility of all those present at the Conference to take a decision on the matter. The Indian resolution was inadequate, and hence the four-power proposal should have been adopted.

11. Mr. LEE (Republic of Korea) said that his delegation had been in favour of the United Kingdom draft resolution (A/CONF.13/C.2/L.64), which had been withdrawn. Although the last paragraph of the Indian resolution was acceptable, the rest differed considerably on many points from the United Kingdom proposal. His delegation had accordingly abstained from voting.

12. Mr. LOUTFI (United Arab Republic) regretted the decision not to vote the Indian draft resolution paragraph by paragraph. As the Yugoslav representative had said, it was very rare for that procedure not to be allowed. He had intended to vote for the Indian proposal. His government had always agreed with the views on disarmament expressed by India at the United Nations. But he had had to abstain from the vote owing to the last paragraph in the draft resolution.

13. Mr. SEN (India) said that he had abstained from voting on the United States proposals that his delegation's draft resolution should be voted first and that the four-power proposal should be voted before article 26, because his delegation took its stand on fundamental, and not on procedural, issues. It was well known that the Indian Government and Parliament were in favour of a complete cessation of nuclear explosions, which were a crime against humanity. Nuclear energy should not be used for destruction; it should be harnessed to the provision of the necessities of life, the lack of which caused the divisions that led to war. The Indian Government had renounced the manufacture of nuclear weapons, though it would be possible for it to produce them within a few years. It was therefore difficult for him not to support the four-power proposal, with which he agreed in substance. The question, however, was that of finding the best means to remove the danger of nuclear warfare. The decisions of a few powers — not of small nations nor of the Conference — would resolve the problem. The General Assembly provided a more favourable atmosphere, considering as it did the problem in its entirety, and he was optimistic that the spirit of good, or at least the instinct of self-preservation, would lead to agreement at the United Nations.

14. Mr. GHELMEGEANU (Romania) said that his delegation had abstained from the vote on the Indian draft resolution, because it believed in a general prohibition of nuclear tests and thought that the Conference should prohibit such tests. The Indian proposal was not fully satisfactory in that respect. It failed to take account of the Conference's competence to prohibit tests. The apprehension felt by many states that nuclear tests constituted an infringement of the freedom of the high seas, which was mentioned in the Indian resolution, should find expression in a definite prohibition.

15. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the Soviet delegation had abstained from voting on the Indian resolution because it believed that the Conference should deal with the question of nuclear tests and should adopt a positive rule, arising from the principle of the freedom of the high seas, which would prohibit such tests. Mere statements were not enough, and the U.S.S.R. had always advocated taking concrete steps. The Indian proposal fell short of the required minimum, and the Conference would better serve the cause of peace if it adopted the joint proposal.

16. Mr. WYNES (Australia) had voted for the Indian proposal as a whole because its operative paragraph referred the question of nuclear tests to the General Assembly. He would, however, have preferred a less sweeping proposal, and thought that the second paragraph should have stated that there was a diversity of opinion as to the effects of nuclear explosions. Although he regretted that the Indian delegation had not been willing to modify the second paragraph, he had voted for the proposal, since it appeared that the second paragraph amounted to no more than a statement of fact that apprehensions on the part of states did exist, but neither mentioned the number of those States nor expressed an opinion as to whether their apprehensions were justified or not.

ARTICLE 26 (DEFINITION OF THE HIGH SEAS)

(A/CONF.13/C.2/L.6, L.26, L.54, L.67) (concluded) [1]

17. Mr. GLASER (Romania) said that the Romanian People's Republic which, with the Ukrainian S.S.R., had proposed an amendment to article 26 (A/CONF.13/C.2/L.26), did not insist upon that amendment being put to the vote in the Conference on the Law of the Sea.

18. Mr. PUSHKIN (Ukrainian Soviet Socialist Republic) agreed on behalf of his delegation with what had been said by the Romanian representative.

19. The CHAIRMAN put to the vote the Brazilian delegation's proposal for article 26 (A/CONF.13/C.2/L.67).

The proposal of Brazil was rejected by 27 votes to 2, with 25 abstentions.

20. On a suggestion by Mr. TUNKIN (Union of Soviet Socialist Republics), the French proposal on article 26 (A/CONF.13/C.2/L.6) was voted upon in two parts.

The French proposal to amend paragraph 1 of article 26 was rejected by 19 votes to 17, with 20 abstentions.

The French proposal to delete paragraph 2 of article 26 was adopted by 23 votes to 6, with 22 abstentions.

The Greek proposal (A/CONF.13/C.2/L.54) to refer paragraph 2 of article 26 to the First Committee was adopted by 52 votes to 1, with 9 abstentions.

The International Law Commission's draft text of article 26, as amended, was adopted by 53 votes to none, with 2 abstentions.

The meeting was suspended at 5 p.m.
and resumed at 5.20 p.m.

[1] Resumed from the 16th meeting.

ARTICLE 27 (FREEDOM OF THE HIGH SEAS) (A/CONF. 13/C.2/L.3, L.6, L.7, L.15, L.21, L.29, L.32, L.34, L.45, L.63, L.65, L.68, L.70) (continued) [1]

21. Mr. BIERZANEK (Poland) reserved his delegation's right to return to its own proposal on article 27 (A/CONF.13/C.2/L.29) after a vote had been held on Yugoslavia's proposal (A/CONF.13/C.2/L.15).

22. Mr. CAMPOS ORTIZ (Mexico) withdrew paragraph 2 of his delegation's amendment (A/CONF.13/C.2/L.70), which concerned paragraph 2 (*c*) of the Yugoslav proposal.

23. The CHAIRMAN put paragraph 1 of the Yugoslav proposal (A/CONF.13/C.2/L.15) to the vote.

Paragraph 1 of the proposal was rejected by 25 votes to 19, with 12 abstentions.

24. The CHAIRMAN put paragraph 2 (*a*) of the proposal to the vote.

Paragraph 2 (a) of the proposal was rejected by 28 votes to 12, with 11 abstentions.

The meeting rose at 6 p.m.

TWENTY-FIRST MEETING

Monday, 31 March 1958, at 10.45 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLE 27 (FREEDOM OF THE HIGH SEAS) (A/CONF. 13/C.2/L.3, L.6, L.7, L.15, L.21, L.29, L.32, L.34, L.45, L.63, L.65, L.66, L.68, L.70) (continued)

1. The CHAIRMAN invited the Committee to resume the voting on the proposal of Yugoslavia (A/CONF.13/C.2/L.15), starting with paragraph 2 (*b*) for which the Yugoslav delegation accepted the text of the Mexican amendment (A/CONF.13/C.2/L.70).

Paragraph 2 (b), as amended, was rejected by 21 votes to 16, with 13 abstentions.

Paragraph 2 (c) was rejected by 25 votes to 20, with 10 abstentions.

Paragraph 3 was rejected by 27 votes to 18, with 9 abstentions.

Paragraph 4 was rejected by 21 votes to 18, with 16 abstentions.

2. The CHAIRMAN declared that, since all the paragraphs of the Yugoslav proposal had been rejected, the proposal was rejected as a whole.

3. In the light of the voting on the Yugoslav proposal, which embodied most of the points contained in a number of other proposals, he asked the sponsors of those proposals to reconsider their position. He felt that in the altered circumstances some of them might wish to withdraw their proposals.

4. Mr. BIERZANEK (Poland) said that paragraphs 2 and 3 of the text proposed by Poland for article 27 (A/CONF.13/C.2/L.29) should be voted on separately, since they were not covered by the Yugoslav proposal, and his country attached particular importance to the principles embodied in them. Article 27 of the International Law Commission's draft was not sufficiently clear.

5. The CHAIRMAN said that the Polish proposal would be put to the vote in due course.

At the request of the Bulgarian delegation, the vote on the proposal by Albania, Bulgaria and the Union of Soviet Socialist Republics (A/CONF.13/C.2/L.32) was taken by roll-call.

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

In favour: Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Hungary, Indonesia, Poland, Romania.

Against: Sweden, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, France, Federal Republic of Germany, Greece, Guatemala, Haiti, Iceland, India, Ireland, Israel, Italy, Republic of Korea, Liberia, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Spain.

Abstaining: Switzerland, Venezuela, Yugoslavia, Austria, Burma, Finland, Japan, Mexico, Saudi Arabia.

The proposal was rejected by 43 votes to 13, with 9 abstentions.

6. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the work of the Committee would be simplified if, from that stage onwards, it took the draft of the International Law Commission as a basis for voting. Some delegations might wish to reconsider their proposed amendments in the light of the result of the votes already taken. The remaining proposals should be put to the vote in the order in which they had been submitted.

7. Mr. BULHOES PEDREIRA (Brazil) withdrew his delegation's proposal (A/CONF.13/C.2/L.66) which concerned the form, rather than the substance, of article 27. Since his delegation's proposal for a similar amendment to article 26 (A/CONF.13/C.2/L.67) had already been rejected, there was no longer any point in the amendment to article 27.

8. Sir Alec RANDALL (United Kingdom) said that his delegation had submitted its proposal (A/CONF.13/C.2/L.68) because it considered that it contained a more accurate statement of the position than the third sentence of paragraph 1 of the International Law Commission's commentary of article 27. However, the proposed amendment was not indispensable as its sense was already implicit in the International Law Commission's draft of article 27. The United Kingdom delegation would have been prepared to withdraw its amendment had the Polish delegation withdrawn its proposal

[1] Resumed from the 16th meeting.

incorporating the third sentence of paragraph 1 of the commentary, put forward as paragraph 3 of its proposal (A/CONF.13/C.2/L.29). As, however, the Polish delegation had indicated that it wished a vote on its proposal, the United Kingdom delegation would have to ask that this proposal be voted upon.

The United Kingdom proposal (A/CONF.13/C.2/L.68) was adopted by 30 votes to 18, with 9 abstentions.

9. Mr. GIDEL (France) said that his delegation had abstained from voting on the United Kingdom proposal because it did not understand what was meant by the words "and others which are recognized by the general principles of international law". His delegation had submitted for article 27 a text (A/CONF.13/C.2/L.6) from which the phrase "*inter alia*" was omitted. The inclusion of that phrase meant that the list which followed was incomplete and could thus lead to differences of interpretation.

The meeting rose at 11.50 a.m.

TWENTY-SECOND MEETING

Monday, 31 March 1958, at 3 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLE 27 (FREEDOM OF THE HIGH SEAS) (A/CONF. 13/C.2/L.3, L.6, L.7, L.21, L.29, L.34, L.45, L.63, L.65) (concluded)

1. The CHAIRMAN, inviting the Committee to continue voting on the remaining amendments to article 27, asked whether their authors wished to maintain them. The French amendment (A/CONF.13/C.2/L.6) had been withdrawn.

2. Mr. CAMPOS ORTIZ (Mexico) did not feel able to withdraw his amendment (A/CONF.13/C.2/L.3), which was almost identical with the Commission's text, because it had been supported by the delegations of Australia, Iceland, India and the United States. He asked that his amendment be put to the vote by roll-call.

3. He regretted not being able to accept the Portuguese proposal to add a fifth freedom (A/CONF.13/C.2/L.7).

4. Mr. GARCIA-SAYAN (Peru) maintained his amendment (A/CONF/13/C.2/L.34).

5. Mr. LIU (China) withdrew his amendment (A/CONF.13/C.2/L.45) because others had the same purpose.

6. Mr. GARCIA-MIRANDA (Spain) withdrew his proposal (A/CONF.13/C.2/L.65) in the interests of simplification, but proposed that as the freedoms mentioned in article 27 were not intended to be exhaustive, they should not be numbered.

7. He supported the Portuguese proposal to add the freedom of exploration.

8. In answer to a question by the CHAIRMAN, Mr. CARDOSO (Portugal) confirmed that the Portuguese proposal (A/CONF.13/C.2/L.7) had been withdrawn with the exception of the addition contained in paragraph 2 reading: "Freedom to undertake research, experiments and exploration." He had in mind, needless to say, scientific research, but that point could be referred to the Drafting Committee. He supported the Spanish proposal not to number the freedoms listed in article 27.

9. Mr. VAN PANHUYS (Netherlands) withdrew his amendment (A/CONF.13/C.2/L.21) which was largely one of form.

10. Sir Alec RANDALL (United Kingdom) withdrew the United Kingdom amendment (A/CONF.13/C.2/L.63), as the drafting point with which it was concerned could be referred to the Drafting Committee.

11. The CHAIRMAN ruled that the amendments which had been maintained should be put to the vote in the order of their submission, because it was impossible to establish which was furthest removed from the original text of the Commission.

12. Mr. GARCIA-SAYAN (Peru) challenged the Chairman's ruling because he considered that the Peruvian amendment should be put to the vote first in accordance with rule 40 of the rules of procedure. It would be noted that the words "without prejudice to the rights of the coastal State under this convention" corresponded to the general principle contained in the proposal put forward by the delegations of Burma, the Republic of Korea, Mexico and Venezuela which the Third Committee had adopted at its 19th meeting for incorporation in article 49, 51 and 52.

The Chairman's ruling was upheld by 52 votes to 5, with 8 abstentions.

The vote was taken by roll-call on the Mexican proposal (A/CONF.13/C.2/L.3).

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

In favour: Turkey, United States of America, Uruguay, Venezuela, Argentina, Australia, Brazil, Canada, China, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Iceland, India, Indonesia, Ireland, Mexico, New Zealand, Panama, Portugal, Saudi Arabia.

Against: Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, Yugoslavia, Albania, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Finland, France, Federal Republic of Germany, Hungary, Iran, Japan, Norway, Poland, Romania.

Abstaining: Tunisia, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Austria, Burma, Ceylon, Chile, Cuba, Denmark, Dominican Republic, Ghana, Greece, Holy See, Iraq, Israel, Italy, Jordan, Republic of Korea, Liberia, Libya, Monaco, Netherlands, Pakistan, Peru, Philippines, Spain.

The proposal was adopted by 24 votes to 20, with 26 abstentions.

The Portuguese proposal (A/CONF.13/C.2/L.7) was rejected by 39 votes to 13, with 8 abstentions.

13. The CHAIRMAN said that the first part of the Polish proposal (A/CONF.13/C.2/L.29) had been withdrawn, and there remained only paragraphs 2 and 3. In accordance with the Polish representative's request, paragraph 3 would be put to the vote by roll-call.

Paragraph 2 of the Polish proposal was rejected by 34 votes to 20, with 8 abstentions.

A vote was taken by roll-call on paragraph 3.

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

In favour: Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, India, Japan.

Against: Panama, Philippines, Saudi Arabia, Spain, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Argentina, Australia, Brazil, Canada, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Guatemala, Haiti, Iceland, Iran, Israel, Italy, Republic of Korea, Liberia, Netherlands, New Zealand, Norway, Pakistan.

Abstaining: Peru, Portugal, Sweden, Switzerland, Tunisia, Austria, Belgium, Chile, Ecuador, Finland, Holy See, Indonesia, Iraq, Ireland, Jordan, Libya, Mexico.

Paragraph 3 of the Polish proposal was rejected by 37 votes to 14, with 17 abstentions.

14. Mr. GARCIA-SAYAN (Peru) asked for a separate vote by roll-call on the freedoms listed in his proposal (A/CONF.13/C.2/L.34).

15. The CHAIRMAN observed that it would be preferable to vote on the proposal as a whole, since the first sentence could hardly raise any objection.

16. Mr. MATINE-DAFTARY (Iran) endorsed the Peruvian representative's request.

17. The CHAIRMAN suggested in order to simplify the procedure that a roll-call vote be taken on the principle change in the Peruvian proposal — namely, the addition to sub-paragraph 2 of the International Law Commission's text.

18. Mr. GARCIA-SAYAN (Peru) accepted that suggestion.

A vote was taken by roll-call on the Peruvian amendment (A/CONF.13/C.2/L.34) to sub-paragraph 2 of the International Law Commission's text.

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

In favour: Jordan, Republic of Korea, Libya, Mexico, Peru, Tunisia, Turkey, United Arab Republic, Uruguay, Argentina, Burma, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Holy See, Iceland, Iran, Iraq, Ireland.

Against: Italy, Japan, Liberia, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Australia, Austria, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Greece, Hungary, Indonesia.

Abstaining: Israel, Pakistan, Philippines, Saudi Arabia, Thailand, Venezuela, Yugoslavia, Brazil, Canada, China, Cuba, Dominican Republic, India.

The Peruvian amendment was rejected by 31 votes to 23, with 13 abstentions.

19. The CHAIRMAN put to the vote the Spanish proposal that the freedoms listed in article 27 should not be listed in separate numbered paragraphs.

The proposal was rejected by 43 votes to 4, with 13 abstentions.

20. The CHAIRMAN put to the vote the International Law Commission's text for article 27 as amended by the Mexican and United Kingdom proposals (A/CONF. 13/C.2/L.3 and A/CONF.13/C.2/L.68).

The International Law Commission's text for article 27, as amended, was adopted by 50 votes to 4, with 12 abstentions.

21. Mr. KEÏLIN (Union of Soviet Socialist Republics) explained that his delegation had abstained in the final vote on article 27 because the two amendments had impaired the Commission's text. They had, moreover, been adopted by only a narrow majority. The Polish delegation's proposal, which would have radically improved the text, would have been preferable.

22. Mr. OLDENBURG (Denmark) said that as the Commission's text was on the whole satisfactory and represented a high degree of common agreement, his delegation was reluctant to accept any amendments except essential ones of substance.

23. Mr. SOLE (Union of South Africa) had been unable to vote for the text of article 27 as amended for the same reasons as the Soviet Union representative; he particularly regretted the adoption of the United Kingdom amendment (A/CONF.13/C.2/L.68) which had transposed part of the Commission's interpretation from the commentary to the text of the article and had originally been put forward as a counter-proposal to another amendment.

24. Mr. MATINE-DAFTARY (Iran) said that his delegation in principle favoured the Commission's text and would only support amendments introducing a vital new element.

25. Mr. SEDKY (United Arab Republic) said that in principle he had favoured the Commission's text and had therefore voted against the Portuguese amendment because the freedoms mentioned by the Commission were well-established. On the other hand, he had voted for paragraph 2 of the Polish proposal because it enunciated the fundamental principle of equality which the Conference by virtue of its very composition should strongly endorse. He had also supported paragraph 3 of the Polish proposal because it laid down a crucial requirement.

ARTICLES 28 (THE RIGHT OF NAVIGATION), 34 (SAFETY OF NAVIGATION), 35 (PENAL JURISDICTION IN MATTERS OF COLLISION) AND 36 (DUTY TO RENDER ASSISTANCE) (A/CONF.13/C.2/L.6, L.11, L.18, L.24 and Add.1, L.25, L.36, L.39, L.40, L.43, L.44, L.49, L.50, L.56, L.59, L.60, L.73, L.74, L.82) (continued) [1]

26. Mr. COLCLOUGH (United States of America) explained that the reasons for his delegation's amendment to article 28 (A/CONF.13/C.2/L.40) were set out in the accompanying comments. In addition, he wished to emphasize the need to prevent any misapprehension about the right of every State, whether possessing a coastline or not, to grant its nationality to ships; the Commission had failed to bring out with sufficient clarity the principles covered by article 28. The long-established usage whereby the flag flown by a ship in a certain manner was recognized as a symbol of its nationality should not be discarded.

27. There was general agreement that the safety of navigation should be fostered, but differences of opinion existed as to the method to be employed, and though the United Kingdom representative's arguments indicated that some change was necessary in article 34 he was not convinced that the remedy lay in its total suppresion, for the draft convention would be incomplete without some provision on the subject. However, to diminish the possibility of conflict with existing conventions his delegation proposed (A/CONF.13/C.2/L.43) that the article should be restricted to a statement of general principle. Such a course had the added advantage of meeting the objections raised by the representative of the International Labour Organisation during the general discussion (12th meeting) to the phrase "internationally accepted standards" in relation to labour conditions.

28. Article 35, paragraph 1 set out a generally accepted and still valid principle of international law, but to avoid any possibility of paragraph 2 being construed as going beyond the scope of paragraph 1, his delegation had submitted an amendment (A/CONF.13/C.2/L.44).

29. Article 36 was wholly acceptable provided that it did not affect the force of article 11, paragraph 2 of the Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea of 1910, to which his government was a party. If he had correctly understood the statement made by Mr. François, Expert to the secretariat of the Conference, at the 13th meeting, article 36 did not conflict with existing international agreements.

30. Subject to those considerations and amendments, his delegation could accept articles 28, 34, 35 and 36.

31. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that, in considering that group of articles, the essential question was whether the Committee should, as proposed by the United Kingdom, agree to replace the explicit provisions that constituted the text of articles 34, 35 and 36 by one or more resolutions containing a list of conventions and commending their acceptance to all States which were not yet parties to them.

32. From the juridical point of view, it was obviously preferable that the instrument being prepared by the Conference should include explicit provisions on the safety of navigation, the duty to render assistance and penal jurisdiction in matters of collision.

33. There was yet another reason that militated against the United Kingdom draft resolution, that the accession of a State to any given convention depended on that State alone, and its decision was influenced by many considerations. The Soviet Union was probably a party to all the conventions listed in the United Kingdom resolution and his delegation would certainly regard with satisfaction any increase in the number of States parties to them, according to the general policy of international co-operation practised by his government; however, particularly in view of the fact that a certain number of recently-constituted States were participating in the Conference, it was not the course indicated by the United Kingdom delegation but that outlined by the International Law Commission that should be followed.

34. The U.S.S.R. delegation could not therefore accept the United Kingdom proposals (A/CONF.13/C.2/L.49 and L.50).

35. The amendment to article 35 proposed by the United States (A/CONF.13/C.2/L.44) was unacceptable, for it was far from being purely a matter of form. Under the terms of the Commission's draft, no arrest or detention of a ship could be ordered, in any place whatever, by any authorities other than those of the flag State. From the insertion of the words "on the high seas" it would necessarily be deduced, on the contrary, that in a foreign port of call a ship might be arrested or detained under pretext of the investigation of a collision that had occurred on the high seas.

36. The United States amendment to article 34 (A/CONF.13/C.2/L.43) was likewise unacceptable. The enumeration of the various matters that should be the subject of regulation was indispensable, and the deletion of sub-paragraphs (*a*), (*b*) and (*c*) would, so to speak, deprive the article of any concrete character.

37. The U.S.S.R. delegation considered that the Danish proposal concerning article 36 (A/CONF.13/C.2/L.36) was worthy of acceptance. The Soviet Union was already co-operating with several States, particularly the Scandinavian countries, for the purpose mentioned in that amendment.

38. Another proposed amendment that should encounter no objection was that of the French delegation concerning article 35 (A/CONF.13/C.2/L.6).

39. In regard to the Turkish amendment (A/CONF.13/C.2/L.73) to the United Kingdom resolution covering article 35, while appreciating the motives by which it appeared to have been inspired, he felt that the establishment of a new international body could not be fully justified.

40. As to the proposal of the Union of South Africa (A/CONF.13/C.2/L.74), it merely stated the obvious and was thus superfluous.

41. Lastly, the U.S.S.R. delegation could not accept the United States proposal for article 28 (A/CONF.13/C.2/L.40) which, far from improving the Commission's text, made it less satisfactory. Any mention in the

[1] Resumed from the 19th meeting.

article of the symbolic nature of the flag might introduce an element of uncertainty in the very conception of the flag. The comments which accompanied the proposal merely bore that out. The flag must have a precise meaning that did not lend itself to varying interpretations.

42. Mr. RADOUILSKY (Bulgaria) asked what was the true significance of the French proposal on article 34 (A/CONF.13/C.2/L.6), whereby the words "the maintenance of communications" would be changed into "and means of communication".

43. Mr. GIDEL (France) replied that, in French, the original phrase had no discernible meaning. The proposal was thus designed to clarify that the reference was to the methods whereby communications were transmitted.

44. Mr. BELLAMY (United Kingdom) said that his delegation, having carefully considered whether the existing articles 34, 35 and 36 might be amended in such a way as to enable it to withdraw the resolutions which it had proposed (A/CONF.13/C.2/L.49 and L.50), had decided that it would be prepared to accept article 36 as it stood, subject to certain possible drafting amendments. It would also support the Danish amendment on the subject of a search and rescue service (A/CONF.13/C.2/L.36).

45. With regard to article 35, dealing with penal jurisdiction in matters of collision, his delegation would be prepared to accept the existing article subject to the amendments proposed by the French delegation. The United Kingdom Government would nevertheless have to enter a reservation, as it had done for the corresponding Brussels Convention of 1952, in respect of the reciprocal arrangements which it had with certain other Commonwealth countries. Moreover, his delegation would be unable to support the amendments proposed by the delegations of Thailand (A/CONF.13/C.2/L.59) and Turkey (A/CONF.13/C.2/L.73).

46. The biggest difficulty arose in connexion with article 34. It was manifestly erroneous to refer to "internationally accepted standards", especially in such matters as the manning of ships and the working conditions of crews. The United Kingdom Government recognized and appreciated the great work done in that field by the International Labour Organisation, but most of that agency's conventions were accepted only by a limited number of States. For that reason, his delegation could not assent to the Netherlands amendment (A/CONF.13/C.2/L.24 and Add.1), which seemed to imply an undertaking to accept all of those conventions. In practice, no country had accepted them all and no one convention had been accepted by all countries.

47. On the other hand, the amendments proposed by the United States (A/CONF.13/C.2/L.43) and Greece (A/CONF.13/C.2/L.56) would tend to weaken the existing article unduly.

48. His delegation was therefore proposing a redraft of article 34 (A/CONF.13/C.2/L.82), which took into consideration the various points he had put forward on its behalf.

49. His delegation had also considered the various amendments submitted to article 28, but felt that the article was perfectly satisfactory as it stood.

50. Mr. LÜTEM (Turkey) regretted that article 35, which dealt with collisions and other incidents of navigation on the high seas, stipulated that jurisdiction in such cases could be exercised solely by the flag State — a principle borrowed from the Brussels Convention of 10 May 1952 — or by the State of which the accused person was a national. The International Law Commission had stated that the purpose of its proposal was to protect ships and their crews from the risks of penal proceedings before foreign courts, since such proceedings might constitute an intolerable interference with international navigation. Even if those views were accepted — and they seemed to be essentially the views of Powers with large merchant fleets — the Turkish delegation believed that the text proposed by the Commission failed to provide for all the difficulties that might arise.

51. The Turkish delegation's position was based on several considerations. First, the proposed text conflicted with the judgement of the Permanent Court of International Justice in the *Lotus* case,[1] to which his government had been a party. The Court's decision on that occasion clearly represented the only applicable rule of positive international law, for the 1952 Convention had only been ratified by very few States. Secondly, Turkish legislation contained provisions — the most important being article 6 of the Penal Code — which could not be reconciled with the principles contained in the article. And thirdly, collisions and similar incidents of navigation on the high seas raised other issues besides conflicts of jurisdiction. The most important consideration was in fact the speedy and just punishment of the culprits, which could only be achieved if the case was disposed of by a single authority. Article 35, however, seemed to imply that, in certain circumstances, a case might be investigated by one State and tried by another. The article thus seemed to lay undue stress on the prevention of conflicts of jurisdiction and failed to make adequate provision for the effective prosecution of justice.

52. The problem could only be resolved if it was clearly established that one body alone woud be competent. That purpose could be achieved in two ways: jurisdiction might be vested not in several States but in one State only, to be designated by some international committee; or a special international judicial organ might be set up, with full powers to deal with all proceedings arising out of collisions and similar incidents. Which of those alternatives to adopt was a matter solely for the Conference. The Turkish delegation would not insist on its amendment (A/CONF.13/C.2/L.73), but hoped that the article would be reshaped so as to provide a truer reflection of the accepted law in the matter.

53. Mr. GIDEL (France), explaining the various French proposals on articles 28, 34, 35 and 36 (A/CONF.13/C.2/L.6), said that the sole purpose of the new text of article 28 was to clarify the point that ships had to comply with a number of conditions in order to be entitled to fly the flag of the State concerned.

54. The reason for the proposed change in article 34, paragraph 1 (*a*) was, as he had already stated, that the

[1] *Publications of the Permanent Court of International Justice, Series A, No. 10.*

expression in the International Law Commission's draft was repugnant to a French ear.

55. With regard to the question whether the subject-matter covered by articles 34, 35 and 36 should be dealt with in the proposed convention or in a separate resolution, he recalled that he had already voiced his support for the views of the Commission and its Special Rapporteur, Mr. François.

56. The fears voiced by the Turkish representative regarding article 35 seemed somewhat exaggerated. The Turkish Government's view had been upheld by the Permanent Court of International Justice in the *Lotus* case, and it would accordingly be fully within its rights in formulating an express reservation to the article, stating that it would adhere to the provisions of its own penal code. That, however, was no reason why the provision should not be accepted by the Conference as a whole, especially since the principle of "passive jurisdiction" had in more recent years been the subject of much adverse comment and the signatories to the Brussels Convention of 1952 had agreed that continued adherence to that principle woud cause unreasonable interference with international shipping.

57. With regard to the French proposals for article 35, he stressed that the first was a purely terminological amendment, while the second (an additional paragraph) had been prompted by the firm belief that a State issuing certificates of competency thereby undertook a responsibility towards the entire international community and should consequently be free to revoke the document if the holder should prove himself lacking in the necessary qualities. The adoption of the additional paragraph would not, of course, prevent States from concluding special agreements regarding recognition of each other's certificates.

58. Lastly, his delegation had proposed the removal of the words "with all speed" from article 36 (*b*) because it believed that in such circumstances the matter should be left to the appreciation of the master mariner on the spot.

59. Mr. VAN PANHUYS (Netherlands) said that his delegation had introduced its amendment to article 36 (A/CONF.13/C.2/L.25) because it felt that the International Law Commission had only contemplated legislative measures of a general character. No State could be expected to assume absolute liability or required to provide for every individual occurrence or incidental detail.

60. Mr. DEMEUR (Holy See) said that, in dealing with the article on the right to a flag, the Committee should remember that the question of the national character of ships belonging to land-locked countries was at that time the subject of two proposals before the Fifth Committee (A/CONF.13/C.5/L.6 and L.7). At some stage, therefore, the texts adopted by the two committees would require co-ordination.

61. With regard to conditions for the recognition of nationality, he felt that the expression "genuine link" in article 29 was far too vague to put an end to the practices of ship-owners who maintained purely fictitious national attachments. He felt that in the determination of a ship's nationality the only truly decisive factor could be effective jurisdiction and control. The nationality of the owner and of the capital was too difficult to ascertain, as a vessel would normally be owned by a joint-stock corporation which could easily invest itself with any national characteristic desired. On the other hand, the nationality of the master and crew could also never be decisive, because certain States, especially the land-locked ones, would find it impossible to find enough experienced seafarers among their own citizens. His delegation would therefore support the Italian proposal on article 29 as offering the only satisfactory solution (A/CONF.13/C.2/L.28).

The meeting rose at 6 p.m.

TWENTY-THIRD MEETING

Tuesday, 1 April 1958, at 3.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 28 (THE RIGHT OF NAVIGATION), 34 (SAFETY OF NAVIGATION), 35 (PENAL JURISDICTION IN MATTERS OF COLLISION) AND 36 (DUTY TO RENDER ASSISTANCE) (A/CONF.13/C.2./L.6, L.11, L.18, L.24 and Add.1, L.25, L.36, L.39, L.40, L.43, L.44, L.56, L.59, L.60, L.73, L.74, L.82, L.88) (continued)

1. Mr. CERVENKA (Czechoslovakia) recalled that, at the preceding meeting, the representative of the Holy See had implied that there might be a conflict between the text the Second Committee would adopt on the subject covered by article 28 and the document on the rights of land-locked countries on which the Fifth Committee was engaged. That fear was without foundation, as the right of the land-locked States to fly a flag on the high seas was generally recognized, and the rule stated in article 28 applied to those States on a footing of equality with others. Any eventual co-ordination that might be needed should not be a serious problem.

2. The representative of the Holy See had also suggested that the land-locked States might find some difficulty in training the necessary personal to ensure compliance by their ships with the requirements of articles 34, 35 and 36. That notion was wholly erroneous. Czechoslovakia, as indeed several other land-locked countries, had enacted comprehensive legislation on such matters and encountered no difficulty in meeting the demands resulting from accession to several of the relevant international conventions.

3. Mr. MINTZ (Israel) said that the first half of the United States proposal on article 28 (A/CONF.13/C.2/L.40) was wholly logical, for if a ship had been granted a State's nationality, the right to fly that State's flag was a natural corollary. But the second phrase reading "and flying its flag as a symbol thereof" might prove confusing. His delegation had accordingly submitted a formal amendment (A/CONF.13/C.2/L.88) proposing that article 28 should consist solely of the first phrase proposed by the United States.

4. To be consistent with that wording for article 28, his delegation was also proposing a change in article 34, as there too the essential factor was not jurisdiction, but nationality. The Committee would also have to decide, however, what principles should be embodied in article 34, and how that could be done in a manner that would avoid difficulties in the interpretation and application of the various relevant conventions. In that connexion, his delegation believed that the safety measures envisaged need not necessarily involve legislation and that the reference to regulations should be deleted. The measures envisaged by the article were essentially those already adopted in any maritime country with a proper shipping inspection system, the purpose of which was to ensure that no ship left port without safety and load-line certificates issued in conformity with the applicable conventions. In practice, no ship would proceed on a voyage without such documents for fear of being refused the right to carry passengers or freight from foreign ports. The desired end could therefore often be attained without legislation, and many States would take merely administrative measures to ensure that certain standards were observed before certificates were issued. He did not, of course, wish to imply that legislation might not at times be the most satisfactory method of obtaining the desired result, but felt that in the matter of safety measures, as in questions such as the adequacy of the ship's crew or reasonable labour conditions, the State should be free to employ whatever means it considered most appropriate, such as arbitration awards, collective agreements and other appropriate forms of action. As to the clause requiring States to ensure reasonable labour conditions, he would support its inclusion, as proposed by the International Law Commission, on the assumption that any governmental regulation on the subject would be intended to secure the minimum standards, leaving it open to employees and employers to reach agreement upon conditions that were not below such standards. Moreover, a text less categorical than that proposed by the International Law Commission might make the whole principle of article 34 more generally acceptable.

5. The phrase in paragraph 2 of the article requiring observance of internationally accepted standards also raised the issue of the relationship between the proposed code and various multilateral conventions. His delegation believed that the addition of the words " taking account of relevent treaty provisions " would make the first sentence of paragraph 2 more consistent with other provisions of the draft, such as article 48, and would also emphasize that certain instruments, though not yet ratified by the majority of States, set standards that enjoyed wide acceptance.

6. With regard to article 35, he noted that the text departed from that of the 1952 Brussels Convention on penal jurisdiction in matters of collisions. His delegation believed that the distinction, clearly established in the Brussels Convention, should be maintained between criminal or disciplinary proceedings on the one hand, and, on the other hand, action in respect of certificates issued by a State or the prosecution of its own nationals for offences committed by them on board foreign ships. The question of disciplinary measures, however, should not be over-simplified. Such measures were not necessarily confined to the withdrawal or suspension of certificates of competency, and he hoped that the French delegation would take that point into account and modify its amendment (A/CONF.13/C.2/L.6) accordingly.

7. Another question to be considered in that connexion was whether there should not eventually be some provision authorizing a State to take action to prevent a foreign national charged with responsibility for a collision or other incident of navigation while serving on one of its ships from continuing to serve on ships under its flag. Such a provision would cover cases where the State concerned would be unable to withdraw or suspend the certificate of the person concerned because it had been issued by the authorities of some other country.

8. Lastly, his delegation felt that article 36 should be brought into line with the provisions of the Brussels Convention of 1910 on assistance and salvage at sea. The article already embodied some of the principles underlying that instrument, but failed to reflect others of considerable importance, such as the right of salvage operators to remuneration for their services. Furthermore, there should also be a clause similar to that which he had suggested for inclusion in article 34, stipulating that the provisions of the article would be applied subject to relevant treaty provisions.

9. Mr. BIERZANEK (Poland) expressed his delegation's approval of the method followed by the International Law Commission in incorporating in articles 34, 35 and 36 the principles underlying the main conventions on those subjects. Since the withdrawal of the United Kingdom proposals (A/CONF.13/C.2/L.49 and L.50), the desirability of that approach was now generally agreed and its adoption would in no way detract either from the importance of the conventions themselves or from the contribution made by the States primarily responsible for their conclusion. Poland was already a party to many of the most important relevant instruments and was closely considering the possibility of acceding to others. In that respect, therefore, his delegation fully endorsed the United Kingdom representative's views.

10. With regard to the amendments proposed to articles 34, 35 and 36, his delegation supported the Danish proposal (A/CONF.13/C.2/L.36) on a search and rescue service and regional arrangements for the promotion of safety at sea. It would also support the French proposal on article 34 (A/CONF.13/C.2/L.6) and the Yugoslav amendment to article 36 (A/CONF.13/C.2/L.18). The provisions of article 35 regarding penal jurisdiction in matters of collision would be acceptable in their present form.

11. Mr. FAY (Ireland) said that after the explanations given at the 13th meeting by Mr. François, Expert to the secretariat of the Conference, and the highly constructive debate in the Committee, most of the provisions contained in articles 34, 35 and 36 seemed largely acceptable to his government. His delegation hoped, however, that article 34 would be adopted in the form proposed by the United Kingdom (A/CONF.13/C.2/L.82), as otherwise it might be open to some doubt. With regard to article 35, his Government would have to

enter a reservation regarding certain recipocal arrangements it had made concerning the withdrawal of certificates of competency.

ARTICLES 29 (NATIONALITY OF SHIPS), 30 (STATUS OF SHIPS) AND 31 (SHIPS SAILING UNDER TWO FLAGS) (A/CONF.13/C.2/L.6, L.11, L.12/Rev.1, L.16, L.22, L.23, L.27, L.28, L.38/Rev.1, L.39, L.41, L.42, L.48, L.51, L.55, L.60, L.86)

12. Mr. FRANCHI (Italy), submitting his delegation's proposal on article 29 (A/CONF.13/C.2/L.28), recalled that many representatives had already stressed the need for a better definition of the link between the flag State and the ship claiming its nationality. Having been called upon to codify the law of the sea, the Conference could not disregard the juridical realities of modern life.

13. The International Law Commission had orginally hoped to embody in the text certain rules governing permission to fly a flag but had been forced to abandon its attempt at its eighth session. The Italian Government, whose legislation was fully consistent with the rules originally suggested by the Commission, would have been fully prepared to accept detailed proposals, but it realized that the practice of States was too diverse to allow of any common denominator acceptable to the entire international community. His delegation had therefore submitted its proposal largely in order to clarify the Commission's final draft by stressing that one of the most important factors in the determination of nationality should be effective jurisdiction and control, the twin components of the exercise of sovereignty. That formula would avoid the difficulties inherent in detailed rules, while giving a clear indication of what the link between the ship and the State should be. Finally, his delegation had made the additional proposal to substitute " lien substantiel " for " lien réel " in the French text.

14. Mr. BREUER (Federal Republic of Germany) agreed that the need for a genuine link between the ship and the State whose flag it flew was an accepted principle of the law of nations. A further important point, however, was that the existence of the link must not be a fiction created after registration but something to be established before the ship was ever registrable. His delegation had originally hoped that some agreement might be reached on the rules of registration, but in view of the manifold difficulties which had since come to light it felt that the most satisfactory acceptable standard might be that suggested in its own amendment to article 29 (A/CONF.13/C.2/L.39). The genuine link would thus have to exist not merely between the State and the ship but also between both of those and the ship-owner.

15. Mr. GIDEL (France) said that the absence of clear rules on the nationality of ships would strike at the very foundations of law and order on the high seas. A flag being evidence of a ship's national character and of the protection which it thereby enjoyed, the International Law Commission and its Special Rapporteur were to be commended for emphasizing the fact that the grant of a flag could not be a mere administrative formality with no accompanying guarantee that the ship possessed a " genuine link " with the flag State. In that connexion, he welcomed the Italian delegation's support for the French proposal that in the French version that expression should be changed to " lien substantiel ".

16. In stipulating the conditions governing nationality, a clear distinction had to be drawn between the criteria which a State could adopt for the grant of its nationality and the result which those criteria must guarantee. The criteria should be determined by the State at its own discretion and it was idle to contend that the stipulation requiring a " genuine link " was in itself incompatible with the recognition of such a discretionary power. The State was free to select its own criteria because — as had been proved at the 1896 session of the Institute of International Law and in the discussions of the International Law Commission itself — varying local conditions made the imposition of unified rules totally impossible. But the final result must in all cases be the same : the effective exercise of control over the ship by the flag State.

17. In those circumstances, his delegation welcomed the gist of the Italian proposal on article 29. It felt, however, that some further specification was needed and hoped that the Italian delegation would agree to add to its text the words " in administrative, technical and social matters ".[1] If that suggestion was accepted, the French proposal on article 29 (A/CONF.13/C.2/L.6) would be withdrawn.

18. Mr. FRANCHI (Italy) said that his delegation would accept the French suggestion.

19. Mr. GHELMEGEANU (Romania), speaking on article 31, emphasized that any ship carrying two or more flags and using them at its own convenience would be violating the rule that a ship must have a single nationality and be in a position to prove it. The International Law Commission had rightly pointed out the abuses to which such practices could give rise and had stated that a ship in such circumstances could not claim any of the nationalities in question and could be regarded by other States as a ship without nationality. For the sake of clarity, however, the Romanian delegation had proposed (A/CONF.13/C.2/L.27) that a ship should only be assimilated to one without nationality if it sailed under more than one flag on the same voyage.

20. Mr. COLCLOUGH (United States of America) said that the United States proposal on article 30 (A/CONF. 13/C.2/L.41) was designed solely to clarify that article. The proposed reformulation would simplify the text without any change of substance.

21. The United States amendment to article 31 (A/CONF.13/C.2/L.42) was also a matter of pure form. It followed the terminology already used in the United States proposal on article 28 (A/CONF.13/C.2/L.40) and stressed that the central question was nationality, the flag being only a symbol.

22. Mr. SEYERSTED (Norway) said that, as in the case of the first group of articles discussed by the Committee, his delegation would vote against most of the

[1] Proposal subsequently issued as document A/CONF.13/C.2/L.93.

amendments to the second group, though not disagreeing with all of them, because, as he had stated in the general discussion (6th meeting), the Commission's draft articles on the general régime of the high seas were by and large acceptable and, having been thoroughly discussed by a group of prominent lawyers over a long period, should not lightly be modified.

23. With regard to article 29, Norway attached the greatest importance to the essential need for a genuine link between a ship and the State whose flag it flew. Ships on the high seas were considered part of the flag State's territory, so that the latter had specific obligations for the performance of which a genuine link and, in particular, effective jurisdiction and control were necessary. Thus, as explained in the commentary, the Commission had in article 29 expressed a principle of existing international law.

24. Though no delegation had dissented from the principle of the genuine link, some had criticized that term as too vague, but, as Mr. François, Expert to the secretariat of the Conference, had indicated in his statement at the 13th meeting, general terms often had to be used in national legislation and could not be dispended with in international law either. For example, the term " genuine connexion " had been used by the International Court of Justice as a basis for its judgement in the Nottebohm case,[1] and the Committee itself had recently (21st meeting) adopted a United Kingdom amendment to article 27 which included the words " with reasonable regard ", a term which had first been suggested by the United States and which, although no more precise, had been found acceptable.

25. In the present instance, however, he believed greater precision could be introduced by adopting the Italian amendment, since there was general agreement that effective jurisdiction and control were an indispensable feature of the genuine link. There were others, such as the nationality or domicile of the owner, his principal place of business, the nationality of the officers and crew and the extent to which parties suing the shipowners could effectively have recourse to the courts of the flag State, but it would be difficult to single out any one of them as indispensable. It was the sum total of all those elements which mattered. Therefore, it would be futile to seek a more detailed definition. Nor would that be necessary on practical grounds, for article 29 as it stood would suffice to determine whether there was a genuine link or not, no less than other general terms employed in national legislation and international conventions.

26. A few delegations had proposed to take article 29 out of the draft. However, the task of the Conference was to codify the international law of the sea in a form which would at once be authoritative and convenient for reference purposes. Even if it were impossible to combine the whole of the Commission's draft in a single instrument, at least all the articles on the general régime of the high seas should be kept together so as to give them equal legal force. He was not sure whether a convention to be ratified by the several States would be the most suitable instrument for the latter purpose, and suggested that a code or declaration might be preferable.

27. His delegation reserved its position on all the other amendments to article 29, including the French amendment to the Italian amendment.

28. Sir Alec RANDALL (United Kingdom) said his delegation had already indicated in the general discussion (4th meeting) that article 29 was acceptable as a statement of principle and that no attempt should be made to define the genuine link in greater detail ; that was a specialized task for another body with more time and greater knowledge of the issues. It would, in any event, be extremely difficult to establish a comprehensive definition because of the great diversity of municipal legislation and regulations concerning the ownership of ships.

29. While he would not presume to comment on the substitution of " lien substantiel " for " lien réel " advocated in the French text by the representatives of France and Italy, he was glad to note that it was not proposed to change the term " genuine link " used in the International Law Commission's text of article 29.

30. Though effective jurisdiction and control were important, he rebutted the contention that nationality was specially linked to control in a particular domain such as safety regulations. For example, there must be a means of redress when such rules were ignored, but that would be impossible if the only link were a company with its head office in another country.

31. For those reasons, the only amendment to article 29, paragraph 1 which his delegation could support was that of the Italian delegation, and possibly the French amendment to it, because the former elaborated the principle contained in that paragraph in a general way.

32. The United Kingdom amendment to article 29, paragraph 2 (A/CONF.13/C.2/L.86) was designed to remove the ambiguity of the original, which did not indicate whether the documents issued by the authorities of the State were conclusive or *prima facie* evidence of the right to fly a flag, and to eliminate the grammatically clumsy expression " is evidenced ".

33. The United Kingdom amendment to article 30 (A/CONF.13/C.2/L.48) only introduced some minor changes.

34. Mr. OZORES (Panama) said that the Commission's text for article 29 was unacceptable because it was open to conflicting interpretations which would be conducive to international friction and disputes. It was a contradiction to lay down as it did that each State fixed the conditions for the grant of its nationality and then to require that for that nationality to be recognized by other States there should be a genuine link between the State and the ship. Nor could the Commission specify what should be that genuine link because like everybody else it did not know. Such lack of precision must be avoided in a text which aimed at establishing in clear terms the rights and obligations of States. Moreover, the term " genuine link " would encourage States to interfere in the internal affairs of others. If one State were to dispute the nationality of a ship granted the right to fly the flag of another, and that ship continued to sail the high seas, such chal-

[1] *I.C.J. Reports, 1955,* p. 23.

lenges would clearly be ineffective. If, on the other hand, the ship in question had to remain in port until the issue was settled, who would be responsible and pay compensation for the financial loss incurred by the shipowner?

35. He agreed, however, with the requirement that the flag State must exercise effective control and jurisdiction, and therefore supported the Liberian amendment (A/CONF.13/C.2/L.12/Rev.1), provided that mention were made in the first sentence of the right of each State to withdraw its nationality from a ship.[1]

36. In essence, the Brazilian proposal (A/CONF.13/C.2/L.11) followed the recommendation adopted at the Preparatory Technical Maritime Conference of the ILO (London, 1956), which laid down a series of requirements aimed at ensuring a closer connexion between the ship and its country of registration. Such requirements, however, would be difficult to enforce in practice.

37. Mr. RUEGGER (Switzerland) agreed with the Norwegian representative that as little change as possible should be made in the Commission's text, which was the outcome of long and arduous discussion. He strongly endorsed Mr. François' remarks (13th meeting) about the use of general terms. The representative of France was, of course, correct in observing that the expression " lien substantiel " in the French text would be stronger and more precise, but the Commission's version should be retained in the English text. His delegation supported the Italian amendment because of the importance of emphasizing the flag State's international responsibility.

38. Explaining the way in which his government had solved the legal and practical problems involved, he said that up to the second world war Switzerland had operated on the high seas with chartered ships of foreign nationality. In 1941 a Swiss marine law had been enacted, but it had been completely revised in September 1953. Where the relationship of the ship to its owner was concerned, the Swiss system was based on the principle of effective jurisdiction and full control through genuine national ownership. Thus if the owner was an individual he must be a Swiss citizen domiciled in Switzerland. If the ship was the property of a company, all its shareholders must be Swiss, the shares must be issued in the name of each individual shareholder who must be included in the shareholding register, and three-quarters of the shareholders must reside permanently in Switzerland. The money invested in the ship must be of Swiss origin, etc. Of course, such exceedingly stringent conditions could not be laid down for universal application.

39. Special provision could be made for the registration of ships serving philanthropic, humanitarian and scientific purposes ; that exception, under strict control, had been made in the interests of the International Committee of the Red Cross.

40. Thus, his country was anxious that any ship flying the Swiss flag should be genuinely Swiss owned and managed. The flag should be an absolutely unequivocal sign of real property and nationality, and the principle of the genuine link must exclude all fictitious ownership or nationality.

41. His delegation would have favoured more definite rules explaining the meaning of that principle, but as that did not appear feasible at the present conference the kind of conditions that might be proposed, purely permissively, for clarifying the definition should be embodied in an annex to the convention. In the meantime, the enunciation of the principle was a real step forward in the development of international law and it could be left to another body in the future to elaborate, if necessary, detailed rules for its application, rules which would otherwise be built up through custom and possibly arbitral decisions.

42. Mr. GARCIA-MIRANDA (Spain) withdrew his proposal for article 29 (A/CONF.13/C.2/L.60) in favour of the Italian amendment, which fulfilled the same purpose.

43. Mr. WEEKS (Liberia) said that he would make some preliminary comments reserving his right to intervene again during the general discussion on the group of articles under consideration. The purpose of his proposal (A/CONF.13/C.2/L.12/Rev.1) was to eliminate the expression " genuine link ", to which valid objections had been raised on the ground that it would lead to confusion, and to ensure that the flag State exercised effective and constant control over its ships. The proposal was also intended to eliminate the " principle of non-recognition " enunciated in the third sentence of article 29, paragraph 1 in the Commission's text, because it would lead to international friction. He wondered what nationality a ship would be deemed to have if one State refused to recognize documents authenticated by another. He also wondered whether the effect of the Commission's draft might not be to enable a country other than the original country or registration to challenge a genuine transfer of registration.

44. As for the other amendments to article 29, he considered the Brazilian text unacceptable because it sought to specify in detail what the concept of the genuine link implied. Nor could he accept the Netherlands text (A/CONF.13/C.2/L.22) for the provision in the second sentence of paragraph 1 would lead to anarchy, and even greater imprecision would be introduced by the use of the words " in particular " in the first sentence. The Italian amendment was satisfactory but would not effect the elemination of the unacceptable " principle of non-recognition " in the third sentence of the Commission's text.

45. The United Kingdom amendment to paragraph 2, which was certainly open to improvement, introduced a new principle of international law which would do more harm than good.

46. The aim in codifying the law of the sea should be to promote international harmony ; hence, he had sought to enunciate uncontroversial principles in his proposal. He accepted the amendment to it proposed by the representative of Panama.

47. Mr. HANIDIS (Greece) explained that the Greek amendment (A/CONF.13/C.2/L.55) to article 30 combined the two elements contained in the United Kingdom amendment (A/CONF.13/C.2/L.48) and would

[1] Panama subsequently submitted an amendment to the Liberian proposal, issued as document A/CONF.13/C.2/L.104.

not alter the substance of the Commission's text or conflict with municipal legislation.

48. Mr. EDELSTAM (Sweden) said that the principle of the genuine link was almost self-evident, since without it ships on the high seas would not be subject to the authority of any State. It was also obvious that the right to fly a flag was not enough and must be coupled with registration, nor could there be any question that effective control and jurisdiction were an indispensable element in that principle. Any attempt to define control and jurisdiction in more detail was unlikely to result in greater precision at the present juncture. Though there was a general consensus about what was the responsibility of ships, which had been reflected in article 34, it was difficult to go further without a risk of confusing two different things, namely, the enforcement of the observance by ships of national regulations and international conventions and the means whereby that could be done, which was a matter for national action and unsuitable for regulation in an international convention.

49. His delegation therefore supported the Commission's text for article 29, as amended by the Italian delegation, and reserved its position on all the other amendments including that of France.

50. Mr. VAN PANHUYS (Netherlands) said that, as a seafaring nation, the Netherlands attached great importance to the principle of a genuine link, but felt that article 29 could be made more precise by the addition contained in the Netherlands amendment (A/CONF.13/C.2/L.22) reading " implying in particular the exercise of effective jurisdiction and control over the ship ".

51. In answer to the Liberian representative's objection, he pointed out that the words " in particular " meant in that context "' above all ".

52. He could not subscribe to the contention that the term used by the Commission was too general and would lead to confusion. On the contrary, without the principle of the genuine link there would be a legal vacuum, since the counterpart of freedom of navigation must be the obligation of the flag State to maintain order on the high seas. Difficulty of definition in no way invalidated the force of a principle and, after all, even fundamental constitutional principles of different countries sometimes required interpretation by the courts.

53. Though he preferred his own text, he would be prepared to accept the Italian amendment which was substantially similar, but he could not express an opinion on the French amendment to the Italian amendment before seeing it in writing.

54. The purpose of the Netherlands text for paragraph 2 was to make it plain that the ship's documents only certified its right to fly its flag under the municipal law of the flag State but were not conclusive evidence of a genuine link with that State. If the United Kingdom amendment to that paragraph covered the same point he would consider withdrawing his own.

55. Mr. SOLE (Union of South Africa) suggested that the drafting committee might consider combining articles 30 and 31 because both dealt with the status of ships, the latter assimilating ships sailing under more than one flag to ships without nationality. He believed that would be more in keeping with the object of the provisions and would have the advantage of suppressing the title of article 31, which gave the unfortunate impression that it was admissible for ships to sail under two flags.

The meeting rose at 5.50 p.m.

TWENTY-FOURTH MEETING

Wednesday, 2 April 1958, at 3.20 p.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 29 (NATIONALITY OF SHIPS), 30 (STATUS OF SHIPS) AND 31 (SHIPS SAILING UNDER TWO FLAGS) (A/CONF.13/C.2/L.6, L.11, L.12/Rev.1, L.16, L.22, L.23, L.27, L.28, L.38/Rev.1, L.39, L.41, L.42, L.48, L.51, L.55, L.60, L.86, L.87, L.93) (continued)

1. Mr. CARDOSO (Portugal) said that he supported the Italian proposal relating to article 29 (A/CONF.13/C.2/L.28). The principle of the " genuine link " had been evolved by the International Law Commission, and was now widely accepted. Although it was not possible for the Conference to say exactly what form the genuine link should take, the purpose of the stipulation had been stated in the International Law Commission's commentary on article 29, and the Commission's words were echoed in the Italian amendment.

2. Mr. COLCLOUGH (United States of America) said that the possibility that one State might unilaterally refuse to recognize the nationality of another State's ships was implicit in the third sentence of article 29, paragraph 1. Admittedly, the right of a State to sail vessels on the high seas carried with it the corresponding duty to exercise control and effective jurisdiction over those vessels in the interests of order on the high seas ; but no evidence had been advanced to show that there were any cases where effective jurisdiction was not exercised by the flag State. The third sentence of article 29, paragraph 1, raised many questions. Did it merely mean that, if a particular State decided that a ship sailing under the flag of another State had no genuine link with the flag State, the first State was not required to allow the flag State to afford diplomatic protection to its ship ? Or did it mean that such a ship would become stateless, with all the attendant disadvantages ?

3. In addition to producing direct consequences in public international law, non-recognition would also produce consequences in private international law, for it would affect property rights, the validity of contracts executed under the laws of the flag State, and maritime insurance.

4. The only principle which had been advanced as the basis for the concept of non-recognition was that of the " genuine link ". But the International Law Commission itself had admitted that the genuine link was a vague criterion, and that vagueness was not removed by the addition of the words " effective jurisdiction and control ". Effective jurisdiction and control did not

constitute a criterion, but an objective, and hence did nothing to clarify the term " genuine link ".

5. In effect, it was proposed that States should be told at one and the same time that the Conference did not know what the genuine link was, but that if they found that the genuine link did not exist, in a particular case, they were free not to recognize the nationality of the ship concerned. Such a principle in international law was inherently dangerous, and he urged the Committee to reject the third sentence of article 29, paragraph 1, and any similar proposal.

6. Mr. WAITE (New Zealand) said that every State enjoyed a wide discretion in the matter of fixing the conditions governing the grant of its nationality to ships, but, in the interests of the international community as a whole, there had to be some limit to that discretion. The International Law Commission had provided such a limit in its concept of the " genuine link ".

7. Elaboration of that concept might fail to take account of differing national practices. The object was to state a guiding principle, rather than to eliminate particular conflicts of law. The principle did not necessarily aggravate the danger of disputes between States. International law must rely upon the application of guiding principles to give direction and consistency to the findings of international tribunals and to the practice of States.

8. He referred to the decision of the International Court of Justice in the Nottebohm case,[1] and stated that an analogy could be drawn from that decision. If any State purported to confer its nationality upon an individual, that action would not, in ordinary circumstances, be questioned by other States. But, in the exceptional case, other States had the right to look behind the form and to examine the substance. The principle of the " genuine link " embodied a parallel rule in regard to the nationality of ships, and the granting of a flag must not be a mere administrative formality.

9. Several national and international bodies which were working for the improvement of safety standards and working conditions at sea attached great importance to the principle of the " genuine link ". They believed that the standards envisaged in article 34 of the International Law Commission's draft could not easily be attained unless there were a sufficient bond between the ship and the State whose flag it flew. The New Zealand Government supported that view.

10. His delegation would support article 29 as drafted by the International Law Commission, but believed that the United Kingdom amendment to paragraph 2 (A/CONF.13/C.2/L.86) added clarity to the text. He would study sympathetically the Italian proposal — amplified during the previous meeting at the suggestion of Italy — but reserved his delegation's final position with regard to it.

11. Mr. VRTACNIK (Yugoslavia) said that the principle of the " genuine link " was essential for the maintenance of order on the high seas. He believed that article 29 of the International Law Commission's draft was satisfactory, but he accepted the amendments proposed by Italy and the United Kingdom.

12. He also thought that the Commission's draft of article 30 was satisfactory, but was prepared to accept the amendments of Brazil (A/CONF.13/C.2/L.11), the United States of America (A/CONF.13/C.2/L.41) and the United Kingdom (A/CONF.13/C.2/L.48).

13. His own delegation's amendment to article 31 (A/CONF.13/C.2/L.16) made it clear that that article referred to the high seas. In the territorial sea, it was the right of the coastal State to decide which of two flags it would recognize or whether a ship should be assimilated to a ship without nationality.

14. He felt that the phrase " during the same voyage " in the Romanian amendment (A/CONF.13/C.2/L.27) to article 31 was open to more than one interpretation. The proposal submitted jointly by Mexico, Norway, the United Arab Republic and Yugoslavia (A/CONF.13/C.2/L.51) would make it easier for ships to sail under the flag of the United Nations or other international organizations ; it thus gave expression to the views which certain delegations had put forward in the general debate.

15. Mr. MINTZ (Israel) said that the second sentence of article 30 raised a serious problem. It implied that a ship might change its flag during the voyage in the case of transfer of ownership or a change of registry. Many States prohibited a change of ownership of ships of their nationality without due authorization. Moreover, article 30 made it possible for a ship's nationality to be changed while it was still under the same ownership. His delegation therefore had reservations concerning the International Law Commission's draft of article 30.

16. The Brazilian amendment was, to some extent, an answer to the problem he had mentioned. That amendment might, however, be improved if the words " and in accordance with the laws of the States concerned " were inserted between the words " in fact " and " the loss of one nationality ". He left it to the Brazilian delegation to decide whether or not it wished to accept his proposed insertion.

17. He accepted paragraphs 1 and 3 of the United States proposal for article 30 (A/CONF.13/C.2/L.41), but he thought that paragraph 2 would be improved if the words " in the case of a real transfer of ownership or change of documentation " were replaced by the words " in accordance with the laws of the States concerned ".

18. He expressed support for the four-power proposal (A/CONF.13/C.2/L.51).

19. Mr. BULHOES PEDREIRA (Brazil) said that his delegation, in its amendment to articles 29 and 30 (A/CONF.13/C.2/L.11), proposed that the reference to a ship's right to fly a given flag should be replaced by a reference to the nationality of the ship, the flag being no more than an external sign of the ship's nationality.

20. His delegation's amendment to article 29 provided not only for the right of every State to lay down the conditions governing the grant of its nationality to ships, but also its right to lay down conditions governing the loss of such nationality. A ship, once having acquired a State's nationality, was under the jurisdiction of that State, and could not lose its nationality except in the cases provided for in the State's legislation or in the case of confiscation mentioned in paragraph 4 (*b*) of the Brazilian proposal for article 29.

[1] *I.C.J. Reports, 1955*, p. 4.

21. His delegation could not accept the International Law Commission's draft of article 29, since it laid down that the " genuine link " was a condition for the recognition of the nationality of one State's ships by other States. Although Brazilian law was very strict in the matter of the grant of the right to fly the Brazilian flag, he did not think that the " genuine link " should be a condition of the recognition of nationality, since such a rule would lead to disputes between States. A decision on whether a genuine link existed would require not only knowledge of the extent to which the legislation of every State conformed to international law, but also knowledge of the administrative acts applying such legislation.

22. Nevertheless, the Brazilian delegation was prepared to withdraw part of its proposal for article 29, from the words " in particular conditions regarding " in paragraph 2 to the end of paragraph 3.

23. Paragraph 5 of the Brazilian proposal for article 29 contained a new version of paragraph 2 of that article. It provided that not only merchant ships but all other ships, except warships, could prove their right to fly the flag of a State by means of documents issued by the authorities of the flag State. Moreover, the new version avoided the use of the expression " merchant ship ", which was imprecise, whereas the term " warship " was defined in article 32.

24. The Brazilian amendment to article 30 differed in three respects from the International Law Commission's draft. Firstly, the mandatory provision concerning a single nationality was transferred to article 29. Secondly, a reference was made to the nationality which a ship used for the purposes of navigation. If international law guaranteed the right of every State to lay down conditions for granting its nationality, it would not be possible to avoid cases of double nationality completely, for nationality depended on the provisions of municipal law which were not uniform. Therefore, international law should be concerned with preventing the use of more than one nationality, rather than with the existence of double nationality. Thirdly, the Brazilian amendment substituted " the loss of one nationality and the acquisition of another ", as a condition for any change of flag during the voyage, for the International Law Commission's conditions of " a real transfer of ownership or change of registry ", which did not always imply a change of nationality.

25. Mr. CHAO (China) said that the right of a ship to fly the flag of a State depended on the grant of the State's nationality to the ship and on the registration of the ship in its territory. There must be a genuine link between the ship and the State before the grant of nationality and the registration could take place. In paragraph 3 of its commentary on article 29, the International Law Commission said that in view the divergence of existing practice it had confined itself to stating the general principle of the necessity of a genuine link. His delegation thought that use of the bare term " a genuine link " might lead to a great variety of relationships between State and ship. The link should be such as to enable the State to exercise control and jurisdiction over the ship. For that reason his delegation supported the Italian amendment (A/CONF.13/C.2/L.28).

26. Mr. OLDENBURG (Denmark) said that his delegation supported article 29 of the International Law Commission's draft as amended by the Italian proposal; he emphasized that registration should not be a mere formality but that the State should assume some control over the ship.

27. He hoped that the admirable statement made by the representative of the International Labour Organisation in the general debate (12th meeting), which had touched on the question of safety measures and social conditions in ships, would be noted in the report of the Committee's proceedings.

28. The amendment of the Federal Republic of Germany (A/CONF.13/C.2/L.39) was acceptable in substance, but should be omitted in order to avoid unnecessary complication. Commenting on the United Kingdom proposal (A/CONF.13/C.2/L.86) and on the Netherlands proposal (A/CONF.13/C.2/L.22) regarding article 29, paragraph 2, he said that the Netherlands proposal was the better of the two ; his delegation was inclined to support it. His delegation was not able to support any of the other amendments to article 29.

29. His delegation was reluctant to accept any changes in articles 30 and 31. It might support the United Kingdom proposal (A/CONF.13/C.2/L.48). It did not see the necessity of the Portuguese proposal (A/CONF.13/C.2/L.38/Rev.1) and in any case the classification of ships was more properly a matter for the First Committee.

30. His delegation would support the four-power proposal (A/CONF.13/C.2/L.51), but the Danish Government reserved its position on the substance of the problem of ships employed by inter-governmental organizations.

31. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that his delegation would vote in favour of the Romanian amendment to article 31 (A/CONF.13/C.2/L.27), which it considered an essential addition in that it made the text more precise.

32. His delegation could not, however, accept the United Kingdom amendment to article 29 (A/CONF./13/C.2/L.86) ; were it adopted, the result would be that a ship's documents would lose their authentic value and, in violation of the essential rules of international law, documents issued by the competent authorities of the flag State, certifying a ship's right to fly its flag, could be subjected to verification in foreign ports. That was in fact the meaning of the Latin term *prima facie,* which the United Kingdom proposed inserting in the text. There were perhaps two categories of evidence in England, *prima facie* evidence and conclusive evidence, the difference being that the former could be refuted by any other kind of evidence while the latter was irrefutable. If the validity of the documents certifying a ship's right to fly its flag could be challenged in foreign ports, many difficulties and complications would obviously ensue in international commercial navigation. Unnecessary conflicts might arise between the governmental organs of various countries over the validity or irregularity of the documents issued.

33. The United States amendment to article 30 (A/CONF.13/C.2/L.41) was unsatisfactory from a juridical point of view, for paragraph 2 implied that a ship

changed its nationality and flag whenever it changed its papers. The change of a ship's papers was, however, a consequence of the change of registry. Therefore the International Law Commission's text seemed preferable from the juridical point of view.

34. The new article on the classification of ships proposed by the Portuguese delegation (A/CONF.13/C.2/L.38/Rev.1) was contrary to the laws of logic, which required any classification to be based on fixed criteria. In the proposed classification, the criterion of ownership was applied in the first category of ships and that of purpose (whether or not the ship was engaged in commercial transport) in the second. It was not difficult to surmise the reasons for that amendment. As it was impossible, without infringing the principles of international law, to deny immunity to state-owned merchant ships, the authors of the amendment had had the idea of considering state-owned merchant ships as not being State ships. Any such attempt to deny immunity to state-owned merchant ships was a distortion of the very rules of logic. The U.S.S.R. delegation would therefore vote against the Portuguese proposal.

35. Mr. BREUER (Federal Republic of Germany) emphasized that his delegation was in favour of an exact definition of the genuine link between the ship and the State of nationality. Rules should be drawn up concerning the registration of ships, for it was registration which established the link between State and ship. In the law of almost all maritime States, that link was formed by the nationality and residence of the owner. For that reason his delegation had made its proposal (A/CONF.13/C.2/L.39), which referred to the owner. Moreover, adequate control over the ship must be ensured, and his delegation would therefore support the Italian proposal (A/CONF.13/C.2/L.28).

36. Mr. VAN PANHUYS (Netherlands) said that his delegation maintained its proposal (A/CONF.13/C.2/L.22) regarding article 29, paragraph 2. In principle, his delegation supported the United Kingdom proposal (A/CONF.13/C.2/L.86), since article 29, paragraph 2, of the International Law Commission draft gave the impression that the documents issued by the flag State were conclusive evidence. However, to say that they were *prima facie* evidence, as the United Kingdom proposal did, might lead to difficulties, because the law on evidence varied from country to country. His delegation wished to replace the words " evidencing this right " in paragraph 2 of its proposal by the words " to that effect ". He asked if the United Kingdom delegation would reconsider the Netherlands proposal on that basis.

37. Mr. BELLAMY (United Kingdom) said that his delegation supported the French amendment (A/CONF.13/C.2/L.93). It also supported the Netherlands amendment to article 29, as just revised orally by the Netherlands representative, and withdrew its own proposal (A/CONF.13/C.2/L.86).

38. Commenting on the statement of the United States representative at the beginning of the meeting, he said that article 29 did not introduce a new element into international law, but formally established a recognized principle.

39. His delegation supported the four-power proposal, but suggested that the words " consideration of " should be inserted after the word " prejudice ".

40. Mr. SEYERSTED (Norway) said, with reference to the four-power proposal for a new article 31 A, that it would have been natural to treat the subject of ships employed by intergovernmental organizations in the articles under discussion, but that it was not possible to examine the problem in substance at the present Conference. The purpose of the proposal was merely to make sure that the provisions of articles 28 to 31, which referred only to state flags, did not prejudice the question of ships flying the flag of intergovernmental organizations.

41. His delegation would support the International Law Commission's draft article 29, with the Italian amendment (A/CONF.13/C.2/L.28) and the French amendment (A/CONF.13/C.2/L.93).

42. In reply to the statement of the Liberian representative that all delegations agreed that the phrase " a genuine link " was too vague, he said that the Norwegian delegation did not agree. The Committee had adopted an equally vague phrase — " reasonable regard " — in article 27.

43. His delegation supported the Netherlands proposal for article 29, paragraph 2, as amended orally.

44. Referring to the Portuguese proposal (A/CONF.13/C.2/L.38/Rev.1), he agreed that the terms used in the classification of ships should be defined and used consistently, but it was wrong to do that before the substance had been decided. The problem should be taken up at the end of the discussion, in consultation with the First Committee.

45. Mr. CAMPOS ORTIZ (Mexico) said that the reasons behind the four-power proposal for the insertion of a new article after article 31 (A/CONF.13/C.2/L.51) were made clear by the secretariat note on the " Use of the United Nations flag on vessels " (A/CONF.13/C.2/L.87). The proposal had been deliberately drafted in general terms which allowed each particular case to be judged on its merits.

ARTICLES 32 (IMMUNITY OF WARSHIPS) AND 33 (IMMUNITY OF OTHER GOVERNMENT SHIPS) (A/CONF.13/C.2/L.5, L.17, L.37, L.76, L.83, L.85)

46. Mr. VASQUEZ ROCHA (Colombia) said that the effect of his delegation's amendment to article 33 (A/CONF.13/C.2/L.5) would be to exclude commercial government ships from the immunity provided for in that article. He believed that the proposed provisions expressed the general legal principle under which the State was assimilated to a person in private law and subject to ordinary jurisdiction in cases in which it engaged in activities which could be carried out by private persons. That principle had been recognized by the Brussels Convention of 1926, the Buenos Aires Conference of 1936 and the Eighth International Conference of American States (Lima, 1938). In addition, article 22 of the International Law Commission's draft concerning government ships operated for commercial purposes was in contradiction to article 33.

47. Some delegations opposed the Colombian amendment because the majority of their ships were either

state property or belonged to companies in which the State had a substantial interest; those delegations naturally wished those ships to enjoy every possible privilege and immunity. However, there was a general mistrust of state-owned ships, since it was realized that any claims against such ships would have to be prosecuted against States. Such mistrust had an adverse influence on trade.

48. He welcomed the amendments to article 33 proposed by the United States (A/CONF.13/C.2/L.76) and the Federal Republic of Germany (A/CONF.13/C.2/L.85), which broadly corresponded to the Colombian amendment. He could not accept the Yugoslav amendment (A/CONF.13/C.2/L.17), which provided for the immunity of ships on commercial government service except in special zones, which it did not specify, and in cases of hot pursuit. The Portuguese amendment (A/CONF.13/C.2/L.37) was also unacceptable to his delegation, because the single article which it proposed in lieu of articles 32 and 33 of the International Law Commission's draft reproduced the substance of articles 32 and 33 of the rule embodied in article 33 of the draft.

The meeting rose at 5.5 p.m.

TWENTY-FIFTH MEETING

Thursday, 3 April 1958, at 10.30 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 32 (IMMUNITY OF WARSHIPS) AND 33 (IMMUNITY OF OTHER GOVERNMENT SHIPS) (A/CONF.13/C.2/L.5, L.17, L.37, L.76, L.83, L.85) (continued)

1. Mr. BELLAMY (United Kingdom) said that his delegation had proposed its amendment to article 33 (A/CONF.13/C.2/L.83) because it was firmly opposed to state vessels used for commercial purposes being assimilated to warships, especially since such assimilation would presumably confer immunity not only from interference on account of suspected activities of the kind mentioned in article 46, but also from action to prevent and punish infringements of regulations in the contiguous zone (article 66). In those cases, there should be no distinction between state ships used for commercial purposes and other ships used for commercial purposes.

2. A definition of the expression "government ships operated for non-commercial purposes" was contained in his delegation's proposal to the First Committee for a new article 20 A (A/CONF.13/C.2/L.37).

3. His delegation was attracted by the suggestion in the commentary attached to the proposal of the Federal Republic of Germany regarding article 32 (A/CONF.13/C.2/L.85) that there might be a general defining clause at the very beginning of the convention. That suggestion should be placed before the Drafting Committee. On the other hand, since the First Committee had a heavy agenda, he was opposed to the idea that article 32, paragraph 2 should be referred to that committee as proposed by the Federal Republic of Germany; the Second Committee should vote on the substance of that paragraph.

4. He did not think that the definitions of the terms "state ship" and "merchant ship" proposed by the Portuguese delegation (A/CONF.13/C.2/L.38/Rev.1) were satisfactory.

5. His delegation was in general in favour of the provision in article 47, paragraph 4 that the right of hot pursuit might be exercised "by warships or military aircraft, or other ships or aircraft on government service". It therefore opposed both the Yugoslav proposal (A/CONF.13/C.2/L.17), and the Colombian proposal (A/CONF.13/C.2/L.5) to the effect that only warships might exercise policing rights.

6. He was prepared to withdraw his delegation's proposal regarding article 33 in favour of the United States proposal (A/CONF.13/C.2/L.76), since the two proposals were similar in substance, and since the wording of the latter proposal was, he thought, preferable.

7. Mr. FRANCHI (Italy) said that the International Law Commission's draft article 33 seemed to be more concerned with preventing international friction than with principles of international law. Since the Commission's text would, nonetheless, cause friction in practice if it were adopted, and since it was unfair to lay down that private merchant ships should not enjoy privileges accorded to state-owned or state-operated merchant ships, he would vote for proposals which excluded state ships operated for commercial purposes from the immunity for which article 33 provided.

8. Mr. COLCLOUGH (United States of America) said he strongly supported article 32 as drafted by the International Law Commission, because it confirmed an established rule of international law and, in addition, contained a good and entirely acceptable definition of the term "warship".

9. His delegation could not, however, support the Commission's draft article 33. In the first place, the words "For all purposes connected with the exercise of powers on the high seas" might be taken to mean that state ships other than warships should have policing rights. His delegation was not opposed to the last sentence of the Colombian proposal but considered its own text, which would have the same effect, more explicit and hence preferable. Secondly, for the cogent reasons explained by other representatives, his delegation opposed the idea that state ships used for commercial purposes should enjoy the benefit of the immunity for which article 33 provided. The criterion for assimilating ships owned or operated by a State to the category of warships for the purposes of immunity, should be use or service rather than government ownership. Those were the considerations underlying the United States proposal regarding article 33.

10. Mr. CAMPOS ORTIZ (Mexico) said that state ships used for commercial purposes should, in his delegation's opinion, enjoy the immunity for which article 33 provided. The International Law Commission had agreed

that they should do so, even though fully aware of the provision in the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Sea-going Ships to the effect that state ships used for commercial purposes should be assimilated to private merchant vessels. The Commission had decided that that provision was not a general rule of international law. States were, of course, free to apply that provision in their mutual relations, but it would be wrong to include a provision of that kind in the draft under discussion. The adoption of the proposal that state ships used for commercial purposes should be assimilated to other merchant vessels would give rise in practice to many serious difficulties; firstly, in its relations with other states, a state — because it could not waive its sovereign rights — could not divide its personality, as it could where domestic affairs were concerned; secondly, state ships might be used simultaneously both for commercial purposes and on government service; and thirdly, it was wrong to treat ships which were not operated for gainful purposes in exactly the same way as ships which were so operated. For those reasons, the criterion for assimilating ships owned or operated by a State to the category of warships, for the purposes of immunity, should be government ownership rather than use. He would vote for the text submitted by the International Law Commission.

11. Mr. SEYERSTED (Norway) said that while the grant of the immunity provided for in article 33 to state ships used for commercial purposes was not likely to have much practical effect so far as the articles relating to piracy, the slave trade and cases of ships not flying the flag of their nationality were concerned, it would have an important and regrettable effect in practice on the application of the article on the contiguous zone, especially if, as proposed by Canada to the First Committee (A/CONF.13/C.1/L.77/Rev.1), that article was extended to cover fishing. He did not think that state ships used for commercial purposes could be immune from hot pursuit. For those reasons, he was in favour of the text of article 33 proposed by the United States delegation. He took it that the word "commercial" in that text covered fishing vessels. He would vote against the Colombian delegation's proposal that it should be laid down that "only warships may exercise policing rights", which, as the United Kingdom representative had said, was inconsistent with the provisions of article 47.

12. Mr. VRTACNIK (Yugoslavia) withdrew his delegation's proposal (A/CONF.13/C.2/L.17).

13. Mr. BOOTH (Canada) said that since, for the reasons explained by the United States and other representatives, it did not consider that state ships used for commercial purposes should enjoy the immunity provided for in the International Law Commission's article 33, his delegation would vote for the United States proposal.

14. Mr. BREUER (Federal Republic of Germany), referring to his delegation's proposal regarding article 32 (A/CONF.13/C.2/L.85), said that, in view of the United Kingdom representative's remarks, he was prepared to discuss the definition of the term "warship" at meetings of the Second Committee, but considered it most desirable that the definition should form part of a general defining clause at the very beginning of the draft convention.

15. He might withdraw his delegation's proposal regarding article 33 in favour of the United States proposal. The only part of the Colombian proposal with which he did not agree was the clause to the effect that only warships should have policing rights. His government was party to a number of agreements containing clauses to the effect that state ships other than warships should have such rights.

16. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that, in considering the fourth group of articles, his delegation felt it particularly necessary to stress the fact that the immunity of government ships, including those operated for commercial purposes, was one of the oldest-established principles of international law. It was based on the generally accepted respect for the sovereignty of foreign States, in virtue of which no State was entitled to exercise jurisdiction over another State; the time-honoured principle was expressed in the maxim: *par in parem non habet imperium.*

17. The immunity of government ships, including those operated for commercial purposes, was admitted in the legal practice of many States, among them States whose representatives in the Committee were opposed to that principle. There was an obvious contradiction between the statements of their representatives and the position adopted by certain States which, when their own interests were directly affected, pleaded the immunity in question.

18. Almost 150 years previously, the immunity of government ships had been recognized by the United States Supreme Court in the famous judgement delivered in 1812 in the case of the schooner *Exchange*. The same principle of conceding immunity to government ships engaged in the commercial carriage of passengers and cargo had formed the basis of a judgement of the English Court of Appeal in 1880 in the case of a collision off Dover between the Belgian government ship *Parlement belge* and a British tugboat. That decision had established a precedent, followed in a number of subsequent decisions of English courts in such cases as those of the vessels *Jassy, Esposende, Quilmark, Gagara* and *Porto-Alexandre,* among others.

19. In 1938, the principle of the immunity of government ships operating for commercial purposes had been discussed and reaffirmed by the House of Lords in the case of the vessel *Cristina.* That decision had stated two universally accepted principles as a basis for subsequent decisions in cases affecting foreign government ships. Firstly, the courts should not countenance legal proceedings involving a sovereign foreign State against its will, irrespective of whether the proceedings were instituted directly against that State or with the purpose of depriving it of property or obtaining any monetary compensation from it. Secondly, whether or not the sovereign foreign State was a party to the proceedings, the courts should not arrest or detain property belonging to or under the control of a sovereign foreign State.

20. The Judicial Committee of the Privy Council, deciding a case in 1954 in which the Indonesian Government had claimed immunity, had failed to recognize immunity, but only on the grounds that the Indonesian Government's ownership of the vessel had not been proven.

21. In the United States of America, the immunity of government ships, including those operated for commercial purposes, had also been conceded in a series of judgements. In the case of the Chilean Government ship *Maipo,* a United States court had ruled that, if the government of any State regarded transport of cargo as one of its functions, that was for the State concerned to decide, and the courts could not require that a foreign State was subject to their jurisdiction on the same basis as a private ship-owner.

22. In the well-known judgement of the United States Supreme Court in the case of the Italian government commercial vessel *Pesaro,* it had been conceded that the principles of immunity applied equally to all ships owned and employed by any government for public purposes and that ships acquired, equipped and operated by a government for commercial transport in order to develop trade or increase the national income must be regarded as government ships in the same sense as warships. The Supreme Court had also stated in its judgement that it was unaware of any international rule under which the maintenance and development of a nation's prosperity in time of peace could be considered a less important social cause than the maintenance of naval forces.

23. In the *Navemar* case, the Supreme Court had ruled that ships belonging to a friendly foreign State, owned and used by it, should be considered to be government ships even if engaged in the carriage of merchandise.

24. Similarly, in 1943 in the case of a Peruvian government ship carrying sugar from Peru to New York, which had claimed immunity, a United States court had ruled that the judicial seizure of a ship belonging to a friendly foreign State would constitute a grave derogation of that State's dignity, and was likely to jeopardize friendly relations.

25. In France, a judgement of the *Cour de cassation* in 1849 had established the principle that a foreign State was beyond the jurisdiction of the French courts.

26. The Brussels Convention of 1926 had suffered an unenviable fate: it had been ratified by only a small number of States, despite the fact that over thirty years had elapsed since it had been concluded. Neither the United States of America nor Great Britain had ratified it. The fact that it had been concluded by a very limited number of States proved only that it represented an exception to the general rule. But it was evident that such an exception could affect only the ships of those States which were parties to the convention, and that its provisions could not be applicable to other ships.

27. In recent years, the United States of America had been trying to introduce a restrictive interpretation of immunity by differentiating between the functions exercised by a State in public and in private international law. But the protagonist of such an interpretation could not show any grounds for it. Indeed, it would be an inadmissible interference in the domestic affairs of a foreign State for any judicial organ to lay down which functions of the foreign State were exercised in public law and which in private law. It would surely be a violation of international law if national courts were to try to distinguish between the sovereign and non-sovereign acts of a foreign State, particularly since in some countries commercial vessels were state-owned and the operation of commercial navigation constituted a function of the State.

28. The immunity of government ships operated for commercial purposes was generally recognized as a principle of international law, and no deviation from that principle was possible without the agreement of the State concerned. That was borne out by the inclusion in a number of trade agreements between the United States and other countries of provisions waiving immunity. The Swiss jurist Lalive, in a lecture at the Academy of International Law in 1953, had referred to agreements of that nature concluded between the United States of America and Italy, Colombia, Denmark, Greece, Ireland, Israel and Uruguay.[1]

29. The reasons for that attempt to restrict the immunity of government ships operated for commercial purposes were not difficult to surmise. On the one hand, there was a completely unfounded fear that to concede such immunity might place privately owned ships at a disadvantage in international trade by comparison with government ships. On the other hand, the question was being confused, possibly deliberately. The conception of immunity was being replaced by one of irresponsibility, although the immunity of government commercial ships in no wise implied any irresponsibility. There had never been a case in which any valid claims in respect of Soviet Union ships had not been settled. Certain questions concerning suits brought against U.S.S.R. government commercial ships, and suits brought by such ships against foreign ships, had been and were being considered, to the satisfaction of the parties in dispute, by the Maritime Arbitration Commission of the Soviet Union, established some thirty years previously.

30. Established institutions of international law, such as the immunity of government ships, including those operated for commercial purposes, should be respected. The observance of that immunity did not encroach upon the interests of privately owned ships. For those reasons, the Soviet Union delegation objected to any restriction of the immunity of government ships, a restriction which ran counter to international law, and would vote for the adoption of article 33 of the International Law Commission's draft.

The meeting rose at 11.50 a.m.

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[1] *Académie de droit international, Recueil des cours,* 1953-III, pp. 209 *et seq.*

TWENTY-SIXTH MEETING

Tuesday, 8 April 1958, at 3.20 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 32 (IMMUNITY OF WARSHIPS) AND 33 (IMMUNITY OF OTHER GOVERNMENT SHIPS) (A/CONF.13/C.2/L.5, L.37, L.76, L.83, L.85, L.113) (continued)

1. Mr. GLASER (Romania) said he would confine his statement to clarifying the scope of the Brussels Convention of 1926, of which Romania was a signatory, and which had been the subject of comments. The convention did not, as had been averred, lay down a new rule superseding the old rule of the immunity of government ships without any distinction. On the contrary, it was an exception to the traditional law which still governed relations among non-signatories of the convention on the one hand, and between signatories and non-signatories on the other hand. It followed from the terms of article 6 of the convention that its provisions were applicable solely to the contracting parties, and it was further stipulated that non-contracting parties should not benefit by it or should benefit by it only on condition of reciprocity. Accordingly, non-signatories were subject to other rules — namely, the rules of law which had existed prior to, and had not been changed by, the convention. Those were the traditional principles of the immunity of government ships without any discrimination. Besides, inasmuch as the signatory States were not very numerous, the immunity of government ships remained the rule for the majority of States. While it was, of course, open to a State to waive its immunity voluntarily by treaty, a non-signatory State could not be prevented from enjoying immunity in respect of its government ships.

2. The Romanian delegation therefore considered that the International Law Commission had correctly stated the traditional principle of immunity in article 33. That view was supported by Mr. François, Expert to the secretariat of the Conference, in his statement to the Committee at its 13th meeting.

3. If it was admitted that the Brussels Convention of 1926 had not resulted in any change of the principles of international law in the matter, those principles should be specified. The legal status of government ships was governed by the principle of equal sovereignty of States, and the immunity of the State and its property from foreign jurisdiction was a corollary of that generally accepted principle. In any event, immunity of government property was justified by the exigencies of international practice, for if the property of a State were liable to seizure, that State would have no guarantee in the conduct of its activities abroad, would not be able to maintain normal international relations and could not admit the activities of other States in its territory. Government ships were state property and, as such, must enjoy immunity on the same basis as all other state property.

4. An attempt had been made to introduce an artificial distinction between different types of government property, on the basis of the criterion of use instead of that of ownership. According to that theory, state property used for commercial purposes and not for government purposes should not enjoy immunity, on the grounds that to accord immunity to such property would cause discrimination between States and private individuals. That argument was fallacious, however, since the principle involved was that of the sovereign equality of States, which would be violated if government ships used for commercial purposes were denied immunity. In that connexion, Sir Gerald Fitzmaurice had written that a sovereign State did not cease to be sovereign because it performed acts which a private citizen might perform, and that any attempt to make it answerable for its actions before foreign courts was inconsistent with its sovereignty.[1]

5. Finally, from the practical point of view, a State could not be placed on the same footing as a private trader, against whom certain measures of security and even of constraint might have to be taken at any time. The State represented a permanent guarantee of the performance of contractual commitments. A clause providing for the immunity of government ships could never be meant or construed as a means of evading the satisfaction of debts; rather, such a provision would simply respect the general and recognized principle of the equal sovereignty of States.

6. Mr. COLCLOUGH (United States of America) said he could not agree with the U.S.S.R. representative's statement made at the previous meeting that delegations which opposed the International Law Commission's draft of article 33 had assumed an inconsistent position and that their States recognized the principle of complete immunity of all state-owned vessels. In support of his contention, the U.S.S.R. representative had cited decisions of the United States Supreme Court, but had ignored the issue before the Committee, which was whether the Conference should adopt as a principle of international law the granting of complete immunity to state-owned vessels used for commercial purposes.

7. There was no more complete immunity in the law of nations than that possessed by warships, to which it was proposed to assimilate all other state-owned vessels. But it was not that type of immunity to which the U.S.S.R. representative had referred. The cases he had cited reflected the state of domestic law as it had existed at the time of the judicial decisions in question. The development of international law should, however, be taken into account.

8. A study of the law of sovereign immunity revealed the development of two conflicting concepts, that of the classical theory of absolute immunity and the modern or restricted theory, under which immunity was recognized with regard to sovereign or public acts of the State (*jus imperii*), but not with regard to private acts (*jus gestionis*). Before the twentieth century, it would have been virtually impossible to find any act of a sovereign State which was not the exercise of *jus imperii*, and hence immune from the jurisdiction of any other State. The advent of new political philosophies, however, had resulted in increasing inroads by the State

[1] *The British Year Book of International Law*, 1933, p. 121.

into the private and commercial field; those inroads had been most marked in the case of the Soviet Union and other countries. International law had recognized the challenge of such new situations, and the creation of new States was contributing to that trend in international law. Thus, with regard to the case of the *Pesaro,* Justice Frankfurter of the United States Supreme Court had stated that the implications of that decision should be reconsidered in the light of subsequent events.

9. The U.S.S.R. representative had referred to the case of the schooner *Exchange* as a basis for the application of the concept of the absolute immunity of government ships. But the *Exchange* had been a warship, and such vessels by general consent enjoyed absolute immunity. The United States continued to recognize the principle of immunity in the case of warships, but owing to the increase of the conduct of commercial affairs by sovereign States, the courts had begun to qualify such absolute rights for state-owned ships engaged in commercial trade.

10. In 1952, the Department of State of the United States had decided that the granting of immunity to state-owned commercial ships in United States courts was inconsistent with the Government's long-established policy of not claiming immunity in foreign jurisdictions for its own merchant vessels. The State Department had concluded that the increasing practice of governments of engaging in commercial activities made it necessary to enable persons doing business with them to have their rights determined in the courts and that its policy would henceforth follow the restrictive theory of sovereign immunity. Consequently, the courts would be guided by the policies of the government department in charge of the conduct of foreign relations. According to Chief Justice Stone in the *Republic v. Hoffman* case, it was not for the courts to deny an immunity which the Government had seen fit to allow, or to allow an immunity on new grounds which the Government had not seen fit to recognize.

11. In keeping with the development of the law, the United States Congress had enacted legislation in 1920 under which the State could be sued by private parties for injuries suffered through the acts of government vessels.

12. Since the present attitude of the United States Government was completely different from the classical and absolute theory of sovereign immunity, it could not be seriously contended that the United States proposal (A/CONF.13/C.2/L.76) was inconsistent with its law and policy. If the law of nations was to remain responsive to the requirements of international relations, definite principles should be agreed upon and should be designed to safeguard and promote private commercial transactions, rather than to jeopardize and retard them by providing an unlimited advantage for state ownership.

13. Mr. VAN PANHUYS (Netherlands) said that his government saw no reason to grant immunity to state ships operated exclusively for commercial purposes, for such ships should not have an advantage over privately owned vessels. His delegation, which had also expressed that view in 1955, had been struck by the fact that no differentiation was made between the immunity of ships in the territorial sea and that of ships on the high seas. Since other delegations had referred to immunity in territorial waters, he would also make some remarks on the subject.

14. The Netherlands Government had drawn attention in its comments on the provision now contained in article 33 [1] to the general modern trend to limit the immunity of ships and had referred in that connexion to the Convention and Statute respecting the international régime for Maritime Ports of 1923, to the Brussels Convention of 1926, to the convention drafted by The Hague Codification Conference of 1930 and to the article which had become 22 of the International Law Commission's draft. The same trend was apparent in state practice, as was evident from the statement published in 1952 by the Department of State of the United States of America. [2] All instruments and treaties concluded with a view to restricting immunity should be regarded as symptoms of a general practice. It was erroneous to limit the argument to the jurisprudence of the United States and the United Kingdom, as the U.S.S.R. representative had done; the Netherlands attached due importance to the case-law of Anglo-Saxon countries, but could not regard it as an exclusive authority. The general modern trend towards restrictive immunity should be taken into account. In that connexion, he referred to the careful and impartial analysis of state practice and case-law contained in the remarkable lecture given by Mr. Lalive at the Academy of International Law in 1953. [3]

15. He pointed out that the debate had been more or less confined to questions of private law, whereas the powers from which immunity should derive protection fell within the sphere of public law also. Thus, while the Brussels Convention of 1926 accorded immunity to government ships properly so called, it could not be assumed that it also provided protection for acts prejudicial to the interests of the coastal State. It was self-evident that States should take the necessary measures for securing their interests in such matters as the transport of weapons and measures provided for in the articles concerning hot pursuit and powers exercisable in the contiguous zone.

16. Finally, the Committee was not concerned only with the codification of international law; it was also in duty bound to try to draft the best possible international law for the future. There was therefore no reason to give an extra advantage to state-owned ships engaged in purely private trade.

17. Mr. CARDOSO (Portugal) said that his delegation, after having listened to the debate on the immunity of government ships, had come to the conclusion that its proposal for a new article headed "Classification of ships" (A/CONF.13/C.2/L.38/Rev.1) should be revised, since the term "state ships" might give rise to confusion, especially when translated into French. The revised proposal would divide ships into three cate-

[1] *Yearbook of the International Law Commission,* 1956, Vol. II (A/CN.4/SER.A/1956/Add.1), pp. 63 and 64 (*ad* article 8).

[2] *The Department of State Bulletin,* Vol. XXVI, No. 678, 23 June 1952, p. 984.

[3] *Académie de droit international, Recueil des cours,* 1953-III, pp. 209 *et seq.*

gories: warships, government ships and merchant ships. [1]

18. Firstly, ships would be classified according to function rather than according to ownership. "Government ships" would include ships owned and operated by a government for the sole purpose of carrying out what were known as "government functions". Inside the areas subject to the jurisdiction of a State — i.e., not only in the territorial waters but also in the contiguous zone — only that State should be competent to rule whether or not a ship was carrying out government functions and was entitled to immunity. As to the criteria for recognizing "government functions", he considered that the United Kingdom delegation had suggested a satisfactory definition in its proposal for an additional article 20 A (A/CONF.13/C.1/L.37) submitted to the First Committee.

19. Secondly, the revised Portuguese proposal would reflect paragraph 2 of the International Law Commission's commentary on article 33.

20. Apart from those two points of substance, the Portuguese proposal would present some advantages from the point of view of drafting; for instance, cumbersome expressions such as "for non-commercial purposes" would disappear, and fishing vessels would be included in the broad category of merchant ships.

21. There was no valid argument against the theory that, within the territorial waters and contiguous zone, the immunity of a foreign ship must depend on its functions. The situation was different on the high seas: As the International Law Commission had considered, if a ship on the high seas came under the exclusive jurisdiction of the flag State, it should automatically enjoy immunity whatever its functions. Article 30, however, provided for exceptions to the rule of the exclusive jurisdiction of the flag State over ships on the high seas. Such exceptions could occur under articles 43, 46 and 47. Those articles would become inoperative in the case of States which declared that all their ships were government ships or warships. Consequently, and for the sake of uniformity and clarity, government ships should be clearly defined, as proposed by Portugal, and their immunity should be governed by the same rules whether they were on the high seas or in territorial waters.

22. He requested that the new article proposed by his delegation should be voted on at the end of the Committee's work, since it was a matter of nomenclature that could only then be settled definitely.

23. Mr. KEÏLIN (Union of Soviet Socialist Republics), referring to the statements of certain representatives, wished to make some brief observations.

24. A careful study of the judicial practice of Great Britain and the United States of America fully supported the assertions of the Soviet Union delegation that the judicial decisions of those countries continued to uphold the immunity of government ships operated for commercial purposes. Those assertions were also confirmed in the literature of jurisprudence, particularly in the yearbook *Annuaire de l'Institut de droit international* devoted to the session of the Institute held at Siena in 1952.

25. In that connexion, a judgement of the House of Lords pronounced in November 1957 was not without interest, although it was not directly concerned with merchant vessels, being of wider purport; in it, one of the peers had stated that the principle of sovereign immunity was not founded on any technical rules of law, but on broad considerations of public policy, international law and comity. [2]

26. It was obvious that the problem of the immunity of foreign States was far from simple. It was under consideration by the Institute of International Law, which had discussed it at the two sessions at Siena and later at the session at Aix-en-Provence. It had also been considered at the session of the International Law Association at Lucerne.

27. As to the distinction between acts *jure gestionis* and acts *jure imperii* to which he had referred at the previous meeting, the literature of jurisprudence showed that distinction to be unfounded. He would mention only the conclusion reached by Lauterpacht, published in the *Year Book of International Law*, [3] that the solution of the problem could not be found in the distinction between acts *jure gestionis* and acts *jure imperii*.

28. In view of all that had been said, the question arose as to whether it was advisable for the Committee to discuss or take any decisions at all on the subject of immunity; the differences of opinion which had been revealed showed that such a course might only complicate the Committee's work and lead to difficulties in drawing up the document of international law which was the common goal. The question of the immunity of government ships was not indissolubly linked to the régime of the high seas, which was the immediate subject of the Committee's deliberations; it would therefore be quite appropriate to put aside the question of immunity without taking any decisions on it.

29. Sir Alec RANDALL (United Kingdom) said that at the previous meeting, in supporting the text of article 33 as drafted by the International Law Commission, the representative of the Union of Soviet Socialist Republics had cited cases decided in the courts of the United States of America and England in the nineteenth century. It should be noted that most of those cases had been decided long before States had begun to engage in commerce. It was true that the judgements in question were still followed in the English courts; as a result, the domestic law of his country conferred a greater immunity on foreign ships than was required by international law. It even permitted ships of other States to engage in cabotage along the coasts of the United Kingdom. Surely the representative of the Union of Soviet Socialist Republics would not argue that, consequently, every State would have the right to engage in cabotage along the coasts of all other States?

30. For those reasons, his delegation continued to support the United States proposal (A/CONF.13/C.2/L.76), and the definition of the term "government ships operated for non-commercial purposes" proposed by

[1] This revised version of the Portuguese proposal was subsequently issued as document A/CONF.13/C.2/L.38/Rev.2.

[2] *The All-England Law Reports*, 1957, Vol. 3, part 8, p. 452.

[3] *The British Year Book of International Law*, 1951, p. 222.

his delegation to the First Committee (A/CONF.13/C.1/L.37, article 20 A) still stood.

31. Mr. FRANCHI (Italy) said that the statement of the United States representative had made it unnecessary for him to comment further on the *Pesaro* case. He would merely point out that the case was not strictly relevant to the debate on article 33, for it had involved a request made in 1926 by a private person that a seizure be carried out in a United States port, whereas article 33 related to the high seas. In any event, since 1926 Italy had waived any right it might have had to immunity for Italian state ships used for commercial purposes. In 1926, moreover, a law had been enacted empowering the Italian authorities to seize property belonging to another State, including ships.

32. Mr. MINTZ (Israel) said that he was in favour of the suggestion made by the delegation of the Federal Republic of Germany (A/CONF.13/C.2/L.85) to the effect that a general definitions clause should be inserted at the beginning of the draft convention. The suggestion might be referred to the Drafting Committee.

33. Mr. RADOUILSKY (Bulgaria) considered that the International Law Commission's draft of article 33 stated an existing principle of international law. He referred to the statement in Oppenheim's *International Law*,[1] concerning the increasing practice of governments of owning or controlling merchant ships, either for purposes connected with public services such as the carriage of the mails or the management of railways, or simply for the purpose of trade. It appeared that the United Kingdom and the United States still maintained the practice of granting immunity to government ships engaged in trade, but that a number of States had ratified the Brussels Convention of 1926, which derogated from that privilege so far as the contracting powers were concerned. It followed that the principle of the immunity of state-owned merchant ships existed in international law and that the Brussels Convention derogated from that privilege in respect of the signatory Powers only. The convention had certainly not introduced a general rule; it was a contractual instrument binding solely on the signatories. The general principle was that of the immunity of government ships and its validity was not affected by the Brussels Convention.

34. It had been recognized by so distinguished an authority as Professor Hyde that the status of a ship as a government ship was not affected by the fact that the ship was carrying out functions similar to those usually performed by privately owned ships. It was true that Hyde had gone on to say that when a large number of ships were engaged in commercial operations, such as foreign trade under government control, there were grounds for denying them immunity, but he had offered no evidence in support of that thesis.[2]

35. The aversion shown by some delegations to state-owned commercial ships was purely subjective. From an objective point of view, it was in the interests of many new States to set up their merchant fleets on the basis of government ownership only, and many land-locked countries would establish and develop their fleets on the same basis. To assimilate the legal status of government commercial ships to that of private vessels would hamper the development of the merchant fleets of many States. Furthermore, it should be borne in mind that the State, as owner of merchant ships, provided the most stable guarantee of the performance of the obligations imposed upon ship-owners by international law.

36. In the light of those considerations, the Bulgarian delegation would vote for the International Law Commission's text of article 33.

ARTICLE 28 (THE RIGHT OF NAVIGATION) (A/CONF.13/C.2/L.6, L.11, L.39, L.40, L.60, L.88) (concluded) [3]

37. The CHAIRMAN announced that the Spanish proposal regarding article 28 (A/CONF.13/C.2/L.60) had been withdrawn.

38. Mr. BREUER (Federal Republic of Germany) requested that paragraph 1 of the text for article 28 proposed by Brazil (A/CONF.13/C.2/L.11) be put to the vote separately.

The paragraph was rejected by 35 votes to 4, with 13 abstentions.

Paragraphs 2 and 3 of the same text were rejected by 40 votes to 3, with 10 abstentions.

The United States proposal (A/CONF.13/C.2/L.40) was rejected by 28 votes to 14, with 13 abstentions.

39. Mr. GIDEL (France) withdrew his delegation's proposal regarding article 28 (A/CONF.13/C.2/L.6).

The Israel proposal (A/CONF.13/C.2/L.88) was rejected by 44 votes to 5, with 6 abstentions.

The proposal of the Federal Republic of Germany (A/CONF.13/C.2/L.39) was rejected by 41 votes to 5, with 11 abstentions.

The text of article 28 as submitted by the International Law Commission was adopted unanimously.

ARTICLE 29 (NATIONALITY OF SHIPS) (A/CONF.13/C.2/L.11/Rev.1, L.12/Rev.1, L.22, L.28, L.38/Rev.1, L.39, L.93, L.104) (concluded) [4]

40. The CHAIRMAN said that, as the representative of Portugal had suggested, the Portuguese proposal for an additional article (A/CONF.13/C.2/L.38/Rev.1) would be considered at the end of the Committee's work.

41. Mr. BREUER (Federal Republic of Germany) requested that paragraph 2 of the text for article 29 proposed by Brazil (A/CONF.13/C.2/L.11/Rev.1) be put to the vote separately.

The paragraph was rejected by 39 votes to 2, with 16 abstentions.

Paragraphs 1, 3 and 4 of the same text were rejected by 39 votes to 1, with 15 abstentions.

42. Mr. VAN PANHUYS (Netherlands) withdrew paragraph 1 of the text proposed by his delegation for article 29 (A/CONF.13/C.2/L.22). He recalled that

[1] Eighth ed. (Lauterpacht), 1955, Vol. I, p. 856.

[2] Hyde, *International Law, chiefly as interpreted and applied by the United States*, Vol. I (1922), paras. 256 and 257.

[3] Resumed from the 23rd meeting.

[4] Resumed from the 24th meeting.

paragraph 2 of that text had been amended at the 24th meeting, the words " to that effect " having been substituted for the words " evidencing this right ".

The text proposed by the Netherlands as paragraph 2 of article 29 was adopted by 21 votes to 10, with 23 abstentions.

43. Mr. OZORES (Panama) asked for a vote to be taken by roll-call on the amendment proposed by his delegation (A/CONF.13/C.2/L.104) to the Liberian proposal (A/CONF.13/C.2/L.12/Rev.1).

A vote was taken by roll-call.

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

In favour : Honduras, Liberia, Panama, Colombia, Cuba, Ecuador, Ghana.

Against : Hungary, Iceland, India, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Uruguay, Yugoslavia, Australia, Austria, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany.

Abstaining : Israel, Republic of Korea, Mexico, Philippines, United States of America, Venezuela, Argentina, Brazil, China, Costa Rica, Dominican Republic, Greece, Guatemala.

The amendment of Panama to the Liberian proposal was rejected by 41 votes to 7, with 13 abstentions.

The Liberian proposal (A/CONF.13/C.2/L.12/Rev.1) was rejected by 36 votes to 16, with 6 abstentions.

The proposal of the Federal Republic of Germany (A/CONF.13/C.2/L.39) was rejected by 43 votes to 2, with 10 abstentions.

The French amendment (A/CONF.13/C.2/L.93) to the Italian proposal was adopted by 24 votes to 16, with 14 abstentions.

The Italian proposal (A/CONF.13/C.2/L.28), as amended, was adopted by 34 votes to 4, with 17 abstentions.

44. Mr. WEEKS (Liberia) requested that the words in article 29, paragraph 1 as submitted by the International Law Commission " for purposes of recognition of the national character of the ship by other States " be put to the vote separately.

The words in question were adopted by 39 votes to 13, with 6 abstentions.

The whole of the text of article 29 submitted by the International Law Commission, as amended, was adopted by 40 votes to 7, with 11 abstentions.

ARTICLE 30 (STATUS OF SHIPS) (A/CONF.13/C.2/L.11/Rev.1, L.23, L.41, L.48, L.55, L.60) (concluded) [1]

45. The CHAIRMAN announced that the Spanish proposal regarding article 30 (A/CONF.13/C.2/L.60) had been withdrawn.

46. Mr. VAN PANHUYS (Netherlands) said that he woud be content if that part of his delegation's proposal (A/CONF.13/C.2/L.23) which constituted a suggestion that articles 30 and 31 be combined were left to be dealt with by the Drafting Committee.

47. He proposed that the last sentence of article 30 be deleted.

The Netherlands proposal that the last sentence of article 30 be deleted was rejected by 29 votes to 2, with 15 abstentions.

The United States proposal (A/CONF.13/C.2/L.41) was rejected by 28 votes to 10, with 18 abstentions.

The Brazilian proposal regarding article 30 (A/CONF.13/C.2/L.11/Rev.1) was rejected by 27 votes to 11, with 13 abstentions.

48. Mr. CARDOSO (Portugal) requested that the part of the United Kingdom proposal (A/CONF.13/C.2/L.48) which consisted of the substitution of the word " authority " for the word " jurisdiction " be put to the vote separately, and that the part of that proposal which consisted of the deletion of the words " during a voyage or while in a port of call " be likewise put to the vote separately.

49. Mr. LEAVEY (Canada) objected to the request.

50. The CHAIRMAN put the request to the vote.

The request was not accepted, 17 votes being cast in favour and 17 against, with 18 abstentions.

The United Kingdom proposal (A/CONF.13/C.2/L.48) was rejected by 34 votes to 12, with 8 abstentions.

The Greek proposal (A/CONF.13/C.2/L.55) was rejected by 37 votes to 5, with 12 abstentions.

The text of article 30 as submitted by the International Law Commission was adopted unanimously.

ARTICLE 31 (SHIPS SAILING UNDER TWO FLAGS) (A/CONF.13/C.2/L.16, L.23, L.27, L.42) (concluded)

51. Mr. COLCLOUGH (United States of America) withdrew his delegation's proposal (A/CONF.13/C.2/L.42) in favour of the text submitted by the International Law Commission.

52. Mr. VAN PANHUYS (Netherlands) withdrew his delegation's remaining proposal regarding article 31 (the second sentence of the text in document (A/CONF.13/C.2/L.23)), on the understanding that it would be referred to the Drafting Committee.

The Yugoslav proposal (A/CONF.13/C.2/L.16) was not adopted, only one vote being cast in favour.

The Romanian proposal (A/CONF.13/C.2/L.27) was rejected by 40 votes to 7, with 7 abstentions.

The text of article 31 as submitted by the International Law Commission was adopted unanimously.

The meeting rose at 6.40 p.m.

[1] Resumed from the 24th meeting.

TWENTY-SEVENTH MEETING

Wednesday, 9 April 1958, at 10.15 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ADDITIONAL ARTICLE 31 A (A/CONF.13/C.2/L.51) (concluded)

1. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the proposal for an additional article 31 A submitted by Mexico, Norway, the United Arab Republic and Yugoslavia (A/CONF.13/C.2/L.51) was not at all clear. It was stated in that text that the provisions of the preceding articles did not prejudice the question of ships in the service of intergovernmental organizations. But that question had not previously been mentioned, and in the view of the Soviet Union delegation the proposed article was devoid of substance. It was immaterial whether it was adopted or not, and for that reason its adoption would be meaningless.

2. He added that it would be possible to raise many matters which were not germane to the work of the Committee, but to do so would merely complicate the work and hinder agreement.

The additional article 31 A proposed by Mexico, Norway, the United Arab Republic and Yugoslavia was adopted by 24 votes to 12, with 14 abstentions.

ARTICLE 32 (IMMUNITY OF WARSHIPS) (A/CONF.13/C.2/L.37, L.85) (concluded)

3. Mr. CARDOSO (Portugal) withdrew his country's proposal (A/CONF.13/C.2/L.37).

4. Mr. BREUER (Federal Republic of Germany) withdrew the amendment proposed by his delegation to article 32 (A/CONF.13/C.2/L.85).

The text of article 32 as submitted by the International Law Commission was adopted by 56 votes to none.

ARTICLE 33 (IMMUNITY OF OTHER GOVERNMENT SHIPS) (A/CONF.13/C.2/L.5, L.76, L.85) (concluded)

5. Mr. GLASER (Romania) felt that article 33 should not be voted on in the Second Committee but should be considered by the First Committee in conjunction with article 22, which dealt with the right of passage enjoyed by government ships operated for commercial purposes. The connexion between the two articles was self-evident, and unless they were voted on by the same committee the results might be very embarrassing. For example, the Romanian delegation had submitted an amendment to article 22 (A/CONF.13/C.1/L.44) proposing that government ships on commercial ventures should enjoy immunity from civil jurisdiction in territorial waters, while other delegations had proposed amendments to article 33 which would deny such immunity in certain circumstances, even on the high seas. If both those proposals happened to be approved, the situation would clearly be paradoxical.

6. Furthermore, the close link between the two texts was confirmed by the United Kingdom delegation's proposal for an additional article 33 A (A/CONF.13/C.2/L.113). Not only did the United Kingdom text purport to define non-commercial government ships, and hence *a contrario* commercial vessels as well, but the note thereto clearly stated that a definition in identical terms had also been submitted to the First Committee (A/CONF.13/C.1/L.37).

7. Lastly, he stressed that every case concerning the immunity of a government ship other than a warship ever decided by the courts had arisen out of an incident occurring within territorial waters or in port.

8. He therefore formally proposed, on his delegation's behalf, that article 33 be referred to the First Committee.

9. Sir Alec RANDALL (United Kingdom) said that article 33 had been discussed in great detail and urged that it be put to the vote without further prevarication.

10. Mr. COLCLOUGH (United States of America) also opposed the Romanian proposal. Much time having already been devoted to article 33 and the issues involved being perfectly clear, it would be most unfortunate to disregard the recommendations approved by the General Committee at its 3rd meeting (A/CONF. 13/L.8) calling for despatch, and to cause further delay.

11. Mr. KEÏLIN (Union of Soviet Socialist Republics) felt that the Romanian proposal was both rational and consistent with the General Committee's recommendations. If article 33 was referred to the First Committee, the question of the immunity of government ships would de dealt with as a single whole, in its logical context, and would thus stand a better chance of solution.

The Romanian proposal to refer article 33 to the First Committee was rejected by 41 votes to 11, with 2 abstentions.

12. Mr. VASQUEZ ROCHA (Colombia) and Mr. BREUER (Federal Republic of Germany) withdrew the proposals made by their delegations for article 33 (A/CONF.13/C.2/L.5 and A/CONF.13/C.2/L.85) in favour of the proposal of the United States of America (A/CONF.13/C.2/L.76).

The text of article 33 proposed by the United States of America (A/CONF.13/C.2/L.76) was adopted by 46 votes to 9, with 2 abstentions.

ADDITIONAL ARTICLE 33 A (A/CONF.13/C.2/L.113)

13. Mr. KEÏLIN (Union of Soviet Socialist Republics) pointed out that the additional article 33 A proposed by the United Kingdom (A/CONF.13/C.2/L.113) could not be put to the vote as it had been submitted at the last minute and had not been discussed in the Committee. It was surprising that those delegations which had just stressed the importance of expediting the work in accordance with the recommendations of the General Committee should now submit a new article which required most careful consideration.

The additional article 33 A proposed by the United Kingdom was adopted by 24 votes to 14, with 21 abstentions.

14. Mr. SOLE (Union of South Africa) said that he had opposed article 33 A because it was altogether contrary to any rules of procedure to vote on an article containing definitions after a decision had been taken on the substantive article to which those definitions related. Had the proper order been observed, he would have supported article 33 A.

ARTICLE 34 (SAFETY OF NAVIGATION) (A/CONF.13/C.2/L.6, L.43, L.56, L.88, L.114) (concluded) [1]

15. The CHAIRMAN said that he had admitted the new proposal submitted by the delegations of the Netherlands and the United Kingdom (A/CONF.13/C.2/L.114) because it would simplify the proceedings by eliminating the amendments previously proposed by those delegations individually (A/CONF.13/C.2/L.24 and Add.1, and A/CONF.13/C.2/L.82).

16. Mr. GLASER (Romania) asked why the new draft amendment referred only to "labour conditions" and not, as the International Law Commission's text did, of "reasonable labour conditions". He asked whether it was the intention of the sponsors that only the best possible conditions should be permissible.

17. Sir Alec RANDALL (United Kingdom) replied that, in the opinion of the sponsors, the word "reasonable" was excessively vague and the welfare of crews would be better safeguarded by the reference to the "applicable international labour instruments" in paragraph 1 (*b*) and to "accepted international standards" in paragraph 2.

18. Mr. HANIDIS (Greece) and Mr. MINTZ (Israel) withdrew the amendments to article 34 submitted by their delegations (A/CONF.13/C.2/L.56 and A/CONF.13/C.2/L.88).

19. Mr. GIDEL (France) withdrew his country's amendment to article 34 (A/CONF.13/C.2/L.6), but hoped that the French version of the term "maintenance of communications" in sub-paragraph (*a*) would be amended to read "l'entretien des communications."

20. The CHAIRMAN replied that such matters would be dealt with by the Drafting Committee.

The text of article 34 proposed by the Netherlands and the United Kingdom (A/CONF.13/C.2/L.114) was adopted by 26 votes to 7, with 22 abstentions.

21. Mr. KEÏLIN (Union of Soviet Socialist Republics) explained that he had abstained from voting on the joint proposal because the International Law Commission's text seemed both clearer and more accurate.

22. The CHAIRMAN said that, since the Committee had adopted a text for article 34, no decision was required on the United States proposal (A/CONF.13/C.2/L.43), which concerned the text submitted by the International Law Commission.

ARTICLE 35 (PENAL JURISDICTION IN MATTERS OF COLLISION) (A/CONF.13/C.2/L.6, L.44, L.59, L.74, L.88) (concluded) [1]

23. Mr. SOLE (Union of South Africa) said that his delegation would withdraw its amendment to article 35 (A/CONF.13/C.2/L.74), but only on the express understanding that his government retained its right to waive jurisdiction over its nationals whenever it wished to do so. Several States had indeed made express statutory provision for such cases.

24. Sir Alec RANDALL (United Kingdom) said that his government would be unable to accede to any instrument containing a provision along the lines of article 35 without entering a reservation similar to that which it had made to article 1 of the Brussels Convention of 10 May 1952 for the Unification of Certain Rules relating to Penal Jurisdiction in matters of Collisions.

25. Mr. WYNES (Australia) associated himself with the statements of the South African and United Kingdom representatives.

The French proposal that the words "accused person" in paragraph 1 of article 35 should be changed to "incriminated person" (A/CONF.13/C.2/L.6) was adopted by 24 votes to 8, with 17 abstentions.

The additional paragraph proposed by France (A/CONF.13/C.2/L.6) was adopted by 30 votes to 2, with 19 abstentions.

26. Mr. SRIJAYANTA (Thailand) withdrew his delegation's amendment (A/CONF.13/C.2/L.59).

The United States amendment (A/CONF.13/C.2/L.44) was adopted by 22 votes to 17, with 18 abstentions.

27. Mr. MINTZ (Israel) withdrew his delegation's amendment (A/CONF.13/C.2/L.88), but reserved his government's position on the final text of the article.

The text of article 35 submitted by the International Law Commission, as amended, was adopted by 39 votes to 1, with 16 abstentions.

28. Mr. LÜTEM (Turkey) explained that he had voted against article 35 because it was contrary to a well-known judgement of the Permanent Court of International Justice (which he had mentioned at the 22nd meeting) and to the municipal legislation of his own country, and would adversely affect the exercise of penal jurisdiction. His government earnestly hoped that the United Nations would establish a single international organ to setlle disputes about competence in regard to cases arising from collisions or other incidents of navigation on the high seas.

ARTICLE 36 (DUTY TO RENDER ASSISTANCE) (A/CONF.13/C.2/L.6, L.18, L.25, L.36, L.88) (concluded) [1]

29. The CHAIRMAN put to the vote the amendments to article 36.

The Netherlands amendment (A/CONF.13/C.2/L.25) was rejected by 22 votes to 7, with 25 abstentions.

The French amendment (A/CONF.13/C.2/L.6) was rejected by 23 votes to 18, with 13 abstentions.

The Yugoslav amendment (A/CONF.13/C.2/L.18) was adopted by 39 votes to 3, with 12 abstentions.

[1] Resumed from the 23rd meeting.

The Danish amendment (A/CONF.13/C.2/L.36) was adopted by 33 votes to none, with 20 abstentions.

The Israeli amendment (A/CONF.13/C.2/L.88) was rejected by 30 votes to 4, with 19 abstentions.

The text of article 36 submitted by the International Law Commission, as amended, was adopted by 55 votes to none.

30. Mr. COLCLOUGH (United States of America) explained that he had supported article 35 as a whole but had abstained from voting on the Danish amendment because although, as the representative of a country with one of the most efficient search and rescue organizations in the world, he fully sympathized with its purpose, he considered that the words "shall promote" should have been replaced by the words "undertakes to ensure" in order to bring the amendment into line with chapter V, regulation 15 of the 1948 Convention for the Safety of Life at Sea. He assumed that the regional arrangements referred to in the Danish amendment were not intended to conflict with or supplant other intergovernmental arrangements on a broader basis such as those pursuant to the provisions of annex 12 to the Convention on International Civil Aviation, article 29, paragraph (*c*) of the Convention on the Inter-Governmental Maritime Consultative Organization and regulation 15 of the 1948 Convention for the Safety of Life at Sea.

ARTICLES 37 (SLAVE TRADE) AND 38 TO 45 (PIRACY) (A/CONF.13/C.2/L.10, L.13, L.19, L.45, L.46, L.52/Rev.1, L.57, L.62, L.77, L.78, L.80, L.81, L.83, L.84)

31. Mr. DE CASTRO (Philippines) explained that the purpose of his delegation's amendment (A/CONF.13/C.2/L.13) was to bring article 37 into line with the Convention concerning the Abolition of Forced Labour, adopted by the International Labour Organisation and signed by eighty-one countries, most of which were represented at the present conference. His delegation had been prompted by the consideration that the slave trade was almost a thing of the past, but that there was a very real danger at the present time of forced or compulsory labour.

2. Mr. POMES (Uruguay) said that his delegation had proposed (A/CONF.13/C.2/L.78) the deletion *in toto* of articles 38 to 45 because piracy no longer constituted a general problem, and its suppression was already the subject of numerous international treaties with which the Commission's articles might conflict.

33. Mr. CERVENKA (Czechoslovakia), introducing the joint Albanian and Czechoslovak amendment (A/CONF.13/C.2/L.46), pointed out that the definition of piracy in article 39 of the Commission's draft did not accord with existing rules of international law and failed to enumerate all the categories of acts which in theory and practice were encompassed by that concept. Furthermore, the definition erroneously included acts committed on *terra nullius*, and was equally mistaken in excluding attacks made in the territorial sea or on the mainland by vessels coming from the high seas and afterwards escaping thither. Finally, the most serious omission was the failure to mention piracy for political reasons. In fact, the notion of piracy put forward in articles 39 to 42 was an obsolete one, and no attempt had been made to legislate for the dangerous forms which it could take at the present time. Though it would have been desirable to elaborate a new definition, his delegation realized that that would be impossible in the time available; hence, the joint amendment had been drafted in such a manner as to cover all acts of piracy that were liable to prosecution under the municipal legislation of all States. The text also laid down the generally recognized principle that it was the duty of States to co-operate in suppressing piracy, a principle which should be supplemented by the maintenance of articles 44 and 45 in the Commission's draft.

34. A final argument in support of the joint amendment was that it would be out of all proportion for the present draft to contain eight articles dealing with an eighteenth century concept.

35. Mr. BELLAMY (United Kingdom) said that the United Kingdom amendments (A/CONF.13/C.2/L.83) were designed to clarify rather than alter the substance of the Commission's text. His delegation could not support the Uruguayan amendment because any comprehensive convention on the law of the sea must deal with the important issue of piracy and should be explicit; it followed that the joint amendment was not acceptable either.

36. The purpose of the United Kingdom amendment to article 38 was to distinguish between the definition of piracy in municipal and international law and to make it plain that the articles only covered the latter.

37. The amendments to article 39 were partly consequential to the amendment to article 38 and partly designed to render the attempt to commit an act of piracy unlawful as well as the act itself, in accordance with the decision of the Judicial Committee of the Privy Council in the case *In re Piracy jure gentium* of 1934 which, as far as he was aware, had never been challenged. On the other hand, the provision contained in article 39, paragraph 3 was imprecise and would unacceptably widen the definition; his delegation had accordingly proposed its deletion.

38. It had proposed an amendment to article 41 because the concept of intention to commit an act of piracy was too indefinite.

39. His delegation supported the United States amendment (A/CONF.13/C.2/L.77) and the Thailand amendment (A/CONF.13/C.2/L.10) but would need an explanation of the Italian amendment (A/CONF.13/C.2/L.80) and the Chinese amendment (A/CONF.13/C.2/L.45) before deciding whether they were acceptable.

40. Mr. CARROZ (International Civil Aviation Organization) suggested that the Drafting Committee's attention might be drawn to the fact that the 1944 Convention on International Civil Aviation referred only to civil and state aircraft, defining the latter as aircraft used for military, customs and police services.

41. He asked whether article 45 was intended to stipulate that seizure could only be carried out by military aircraft.

42. Mr. GHELMEGEANU (Romania) considered that the International Law Commission had been mistaken

in devoting so many articles to piracy, which was no longer a very real problem. He had, therefore, been impressed by the Uruguyan representative's argument. States could be relied upon to take the necessary steps for protecting navigation on the high seas and he would accordingly support the joint Albanian and Czechoslovak amendment.

43. Mr. FRANCHI (Italy) explained that the purpose of the Italian amendment (A/CONF.13/C.2/L.80) to article 39 was to fill a gap in the Commission's text by extending the definition in sub-paragraphs (*a*) and (*b*) to acts committed against aircraft.

44. The Italian amendment to article 41 (A/CONF.13/C.2/L.81) had been submitted in the interests of greater precision.

45. Mr. CARDOSO (Portugal) said that the first Portuguese amendment (A/CONF.13/C.2/L.52/Rev.1) dealt with a drafting point which would have to be taken up in connexion with the definitions at a later stage. The second amendment was also of a drafting character and had already been mentioned by the representative of ICAO. No further action need therefore be taken by the Committee on those amendments at the moment.

46. Mr. KEÏLIN (Union of Soviet Socialist Republics), supporting the Uruguayan and the joint Albanian-Czechoslovak amendments, observed that the virtual absence of discussion in the Committee on those amendments testified to the fact that a majority of the Committee members were in favour of excluding rules dealing with piracy from the draft convention. His delegation shared that point of view.

47. Mr. VRTACNIK (Yugoslavia) explained that the purpose of the Yugoslav amendment to article 40 (A/CONF.13/C.2/L.19) was to make the provision more comprehensive and to distinguish between government ships and warships; that would be consistent with both theory and practice.

48. He opposed both the amendment proposed by Uruguay and that submitted jointly by Albania and Czechoslovakia. Nor could he support the Thailand amendment because he agreed with the International Law Commission that only warships were entitled to carry out seizures on account of piracy. Moreover, under the provisions of article 47, a distinction must be made between the right of visit on the high seas and the right of hot pursuit for an act committed in the territorial sea. The Philippine amendment was unacceptable because the new paragraph proposed for inclusion in article 37 was not a rule of existing international law.

49. After a short discussion in which Mr. FAY (Ireland), Mr. CARDOSO (Portugal) and Mr. COLCLOUGH (United States of America) took part, the CHAIRMAN put to the vote a motion that articles 46 and 47, and if possible article 48, should be considered at the following meeting.

The motion was carried by 36 votes to none, with 14 abstentions.

The meeting rose at 12.30 p.m.

TWENTY-EIGHTH MEETING

Wednesday, 9 April 1958, at 8.15 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

In the absence of the Chairman, Mr. Glaser (Romania), Vice-Chairman, took the Chair.

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

ARTICLES 46 (RIGHTS OF VISIT) AND 47 (RIGHT OF HOT PURSUIT) (A/CONF.13/C.2/L.4, L.20/Rev.1 and L.61/Rev.1, L.35, L.53, L.69, L.89, L.94, L.95, L.96/Rev.1, L.98, L.99, L.105, L.115, L.116, L.117)

1. Mr. GRANT (United Kingdom) said that he supported the International Law Commission's text for article 46.

2. He could not, however, vote for the whole of the Commission's text for article 47, because his delegation was of the opinion that it should be possible to commence hot pursuit only when the foreign ship was within the internal waters or the territorial sea of the pursuing State, and that it should not be possible to do so when the foreign ship was in the contiguous zone for which article 66 provided or in any other part of the sea over which the State did not have full sovereignty. The last sentence of paragraph 1 of article 47, which read: "If the foreign ship is within a contiguous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established", was not consistent with the second sentence of that paragraph, which read: "Such pursuit must be commenced when the foreign ship is within the internal waters or the territorial sea of the pursuing State..." He would draw attention to the sentence in paragraph 2 (*a*) of the Commission's commentary on the article reading: "Acts committed in the contiguous zone cannot confer upon the coastal State a right of hot pursuit." For those reasons, his delegation had proposed the deletion of the last sentence of paragraph 1 of article 47 (A/CONF.13/C.2/L.96/Rev.1). But in view of the opinions expressed on the subject, his delegation had decided to withdraw that proposal in favour of the text proposed by the Netherlands delegation (A/CONF.13/C.2/L.98), which was much more explicit than the Commission's text.

3. There were a number of proposals before the Committee to the effect that the Commission's text should be amended to make it possible for hot pursuit to be commenced if it were established by radar or other electronic means that the foreign ship or one of its boats was within the limits of the territorial sea. He was opposed to those proposals because such devices were not completely reliable, especially when operated on small craft in rough weather.

4. The reasons why his delegation had proposed the addition of a new paragraph 7 (A/CONF.13/C.2/L.96/Rev.1) were obvious. A clause providing for the payment of compensation for loss or damage sustained in circumstances which did not justify the exercise of the right of hot pursuit was just as necessary in article 47 as in article 46.

5. Mr. OLDENBURG (Denmark) said the Danish proposal relating to article 47 (A/CONF.13/C.2/L.99) consisted of three parts. The texts proposed had been drafted in the light of the need to prevent abuses.

6. The purpose of the first proposed addition was to make it possible for a State to engage at any moment in hot pursuit of a ship on account of offences committed by that ship at any time during the preceding two years. That was a matter which the Commission had left in doubt.

7. The purpose of the second addition was to make it possible to resume pursuit of a ship which sought refuge in the territorial sea of a State other than the pursuing State if it remained there within sight of the pursuer for less than six hours without anchoring or mooring and then quit that sea.

8. He withdrew the third part of the Danish proposal in favour of the United States proposal (A/CONF.13/C.2/L.105).

9. Mr. VAN PANHUYS (Netherlands) said that his delegation's proposal relating to article 47 (A/CONF.13/C.2/L.98) was mainly of a drafting nature. The structure of the text submitted by the Commission made it difficult to understand; to remedy that defect, it was necessary to recast the text completely. In addition, his delegation had incorporated the substance of the Commission's comment that "acts committed in the contiguous zone cannot confer upon the coastal State a right of hot pursuit".

10. The CHAIRMAN suggested that it would be best to leave to the drafting committee, which it was expected would be set up, that part of the Netherlands proposal which concerned only drafting.

11. Mr. RADOUILSKY (Bulgaria) said that his delegation had proposed the addition of a new paragraph to article 46 reading "The provisions of paragraphs 1 to 3 of this article shall not apply to government ships operated for commercial purposes" (A/CONF.13/C.2/L.117) after the Committee had decided (27th meeting) to exclude from article 33 the provision that state ships used for commercial purposes should enjoy immunity on the high seas. He agreed with the statement made by Mr. François at the 13th meeting that the immunity for which the Commission's text for article 33 provided consisted solely of immunity from visit and from hot pursuit, and was still firmly of the opinion that such ships should enjoy both kinds of immunity; but, the Committee having decided otherwise, he hoped that it would at least agree to their being granted immunity from hot pursuit.

12. Mr. HAMEED (Pakistan) said that his delegation had proposed the addition at the end of paragraph 2 of article 47 of the words "but where possible, the extradition of the offender may be secured through bilateral treaties" (A/CONF.13/C.2/L.94), because neither the Commission's text for article 47 nor its commentary thereto suggested any way of solving the problems which would arise when a ship unsuccessfully engaged in hot pursuit. If article 57 provided for the settlement of disputes regarding fishing rights and article 73 for the settlement of disputes regarding continental shelves, the article under discussion should provide for the settlement of disputes arising out of cases of unsuccessful hot pursuit. International recognition of a wrong suffered by a State was virtually futile unless sanctions were provided for redressing that wrong. The reparation of wrongs on account of which a State engaged in hot pursuit should not be dependent solely on timely action being taken or on fortuitous geographical circumstances.

13. Mr. COLCLOUGH (United States of America) said that his delegation supported the Commission's text for article 46. It had, however, proposed (A/CONF.13/C.2/L.105) that article 47 be amended to make it possible to begin hot pursuit where it was established by means of radar, loran, decca or some similar device that the offending ship was in the territorial sea or the contiguous zone, as the case might be. He did not agree with what the United Kingdom representative had said on that point; seafarers could prove that such modern devices had made it easier for small craft to fix their position.

14. He disagreed with the statement in paragraph 2 (*a*) of the Commission's commentary that "acts committed in the contiguous zone cannot confer upon the coastal State a right of hot pursuit". He would vote for the joint proposal of Poland and Yugoslavia (A/CONF.13/C.2/L.20/Rev.1 and L.61/Rev.1) which, if adopted, would nullify that statement.

15. Mr. SAFWAT (United Arab Republic) said that his delegation had proposed (A/CONF.13/C.2/L.69) the deletion of sub-paragraph 1 (*b*) of article 46 because there was no justification for that provision, which would allow warships to board ships suspected of engaging in the slave trade in the maritime zones treated as suspect in the international conventions relating to the abolition of that trade. The General Act of Brussels of 1890 contained a provision to the same effect, except that it applied only to ships of less than 500 tons, whereas the Commission's text applied to all ships. That had perhaps been justified in the nineteenth century, but conditions had since changed. There was no such provision in the Convention of Saint-Germain-en-Laye of 1919, in the Slavery Convention of 1926 or in the Supplementary Slavery Convention of 1956. At the diplomatic conferences at which those several conventions had been drawn up, a proposal to include a provision similar to that of sub-paragraph 1 (*b*) of article 46 had been heavily defeated. The clause in question would be susceptible to abuse, and it was therefore a potential source of international disputes.

16. Mr. KNACKSTEDT (Federal Republic of Germany) said that his delegation had felt it necessary to propose (A/CONF.13/C.2/L.115) the insertion of the words "or one of its boats" in the second sentence of paragraph 1 of article 47, because that sentence was not consistent with the first sentence of paragraph 3, which read: "Hot pursuit is not deemed to have begun unless... the ship pursued or one of its boats is within the limits of the territorial sea...." That inconsistency could be eliminated either by deleting the phrase "or one of its boats" in paragraph 3 or by inserting it in paragraph 1, as his delegation suggested. The phrase was necessary in paragraph 1 in order to make it clear that the right of hot pursuit would also exist in a case

where the ship itself remained outside the territorial sea while one of its boats was committing an illegal act within the territorial sea. The result of the alternative solution — to exclude the phrase from both paragraphs — would be that, if a foreign ship remaining beyond the territorial sea sent one of its boats inside the territorial sea to commit an illegal act, neither the ship nor the boat, after it had regained its mother ship, could be pursued.

17. His delegation did not think it necessary to specify the means by which a pursuing ship should satisfy itself that the ship pursued or one of its boats was within the limits of the territorial sea; it therefore proposed that the words "bearings, sextant angles or other like means" in paragraph 3 be replaced by the words "appropriate means". But it would consider withdrawing that proposal in favour of the United States proposal.

18. Mr. VRTACNIK (Yugoslavia) said that the joint Polish-Yugoslav proposal (A/CONF.13/C.2/L.20/Rev.1 and L.61/Rev.1) that the words "or the contiguous zone" be inserted in four places in article 47 was intended to empower coastal States to preserve their rights in the contiguous zone by engaging therein in hot pursuit of foreign ships violating those rights.

19. He supported the proposal of the United Arab Republic (A/CONF.13/C.2/L.69) for reasons similar to those given by the representative of that country.

20. Mr. CAMPOS ORTIZ (Mexico) said that the purpose of the first part of his delegation's proposal concerning article 47 (A/CONF.13/C.2/L.4) was to give States the right of hot pursuit within conservation zones established unilaterally by them in accordance with the terms or article 55, as well as in their territorial sea and its contiguous zone.

21. When drafting its text for article 47, the Commission had been in agreement that a ship was liable for the actions of its boats. But it had left a gap in its text by failing to include a clause conferring on the coastal State the right of hot pursuit in respect of ships which, though not themselves actually within the State's territorial sea or contiguous zone, or sending any of their boats into those areas, were none the less engaging in illicit acts therein for which boats other than their own were being used. The second part of his delegation's proposal provided a suitable means of filling the gap.

22. Mr. OLAFSSON (Iceland) said that the main purpose of that part of his delegation's proposal (A/CONF.13/C.2/L.89) which related to paragraphs 1 and 3 of article 47 was to make it possible to commence hot pursuit of an offending ship at a time when it was not within the territorial sea. It should be remembered that the right of hot pursuit had been recognized for the purpose of enabling the pursuing State to deal with violations of its laws in its territorial sea. His country's courts had always considered the question of whether the pursued ship was in the territorial sea when pursuit began to be immaterial.

23. His delegation had proposed its additions to sub-paragraph 5 (*b*) of article 47 because it considered that either an aircraft or a ship should be entitled to take over pursuit begun by an aircraft.

24. The new sub-paragraph 5 (*c*) had been proposed because his delegation was of the opinion that it should be possible, in cases where pursuit was initiated by an aircraft, to arrest an offending ship even though the pursuit had been interrupted.

25. Those changes were rendered necessary by technical progress.

26. Mr. LEE (Korea) supported the Commission's recommendation that ships should be allowed to engage in hot pursuit to protect their rights in their territorial sea and contiguous zone. He would vote for the Mexican and Peruvian proposals (A/CONF.13/C.2/L.4 and A/CONF.13/C.2/L.35). If coastal States were granted the rights specified in article 66 in respect of the contiguous zone, and fisheries conservation rights in a conservation zone off their coasts, they should be given the necessary power to enforce those rights, including that of hot pursuit of vessels which violated them. It would be illogical to grant coastal States conservation rights without allowing them to exercise the jurisdiction and control necessary to safeguard them.

27. Mr. SEYERSTED (Norway), pointing out that there was no mention in article 46 of the right of visit which would be conferred on States by article 47, or of the right of visit which would be conferred on them by article 66, said that article 46 would be misleading unless that deficiency was made good. The matter might, however, be left to the drafting committee which it was expected would be set up.

28. In the compensation clause in article 44, relating to piracy, the words "without adequate grounds" were used, whereas in the corresponding clause in article 46 the words "if the suspicions prove to be unfounded" were used; moreover, article 44 provided for compensation to be paid "to the State", whereas article 46 provided for "the ship" to "be compensated". The International Law Commission had, therefore, at its eighth session, decided to bring those two articles into line,[1] but had forgotten to do so. That was what his delegation had proposed in its amendment to article 44 (A/CONF.13/C.2/L.84). Even if that proposal was adopted, it would still be necessary to replace the words "it shall be compensated" in article 46 by the words "compensation shall be paid". That matter also might be left to the drafting committee.

29. Mr. PUSHKIN (Ukrainian Soviet Socialist Republic) supported the Bulgarian proposal (A/CONF.13/C.2/L.117) because it provided a practical method of avoiding the visiting of government commercial ships on the high seas.

30. His delegation had already pointed out that article 37 on the slave trade was anachronistic. The same applied to paragraph 1 (*b*) of article 46. There had formerly been a need for special provisions to suppress slave trading, and there had been grounds for admitting the right of warships to visit suspect ships, although the warships of some countries had abused that right to control certain seaways in their own interests, contrary to international law. It had since been acknowledged, however, in the Slavery Convention of 1926 and the

[1] *Yearbook of the International Law Commission, 1956*, Vol. I (A/CN.4/SER.A/1956), 343rd meeting, para. 66.

Supplementary Convention on Slavery of 1956, that the grant of such rights to warships was no longer essential. Accordingly, the Ukranian delegation would vote for the proposal of the United Arab Republic.

31. Mr. MINTZ (Israel), introducing the Israeli proposal concerning article 47 (A/CONF.13/C.2/L.116), said that the right of pursuit, imposing a limitation on the freedom of navigation on the high seas, should be exercised subject to judicial safeguards. That was the aim of the amendments proposed by his delegation.

32. As to the amendment to paragraph 1, he said that, although the principle that the laws and regulations concerned should be in conformity with international law was implicitly recognized in article 47, his delegation considered that it should be stated explicitly in the text.

33. The purpose of the first amendment to paragraph 3 was to show that the question of assessing whether hot pursuit had been begun legitimately would arise only if and after the issue became controversial and that it accordingly could not be left to the pursuing ship, but must be left to the appropriate tribunal. The second amendment to paragraph 3 was self-explanatory from the text.

34. Lastly, Israel proposed the inclusion in article 47 of the principle stated in paragraph 3 of article 46, providing for payment of compensation in the event of unjustified detention of the ship in case of visit; the application of that principle was justified on similar grounds in the case of hot pursuit.

35. Mr. BIERZANEK (Poland), introducing the amendment submitted jointly by the Polish and Yugoslav delegations (A/CONF.13/C.2/L.20/Rev.1 and 61/Rev.1), said that its purpose was to provide a definite solution to the question whether the coastal State's right to begin hot pursuit was confined to the territorial sea or extended also to the contiguous zone. The Polish delegation considered that the nature of the right was complementary to and consequential upon the rights of coastal States over adjacent zones. The theory that hot pursuit must begin in the territorial sea dated back to a time when no contiguous zone had been admitted; now that that doctrine had evolved, it should be acknowledged that hot pursuit could begin in the contiguous zone. If the rights of the coastal State were limited to initiating hot pursuit in the territorial sea, it would be difficult for States to enforce customs regulations, to protect which the contiguous zone had been established. In support of his argument, he cited opinions expressed at The Hague Codification Conference of 1930, article 9 of the Helsingfors Treaty, concluded in 1925 between certain Baltic States, and various decisions of United States courts; he also recalled that the United States Government had rejected the Canadian Government's argument that pursuit should begin in the territorial sea. While it might be concluded from the International Law Commission's text that hot pursuit could begin in the contiguous zone, the principle was vitiated by paragraph 2 (*a*) of the commentary. The Polish and Yugoslav delegations had therefore thought it wise to make appropriate provision in the article itself.

36. Mr. JHIRAD (India), introducing his delegation's proposal (A/CONF.13/C.2/L.95), observed that an analysis of paragraph 1 of article 47 showed that the conditions under which hot pursuit might be undertaken were: first, in cases of the violation of laws and regulations in matters unconnected with the contiguous zone; and secondly, if the foreign ship had reached the contiguous zone, only in cases of violation of the rights for which that zone had been established. But according to paragraph 2 (*a*) of the International Law Commission's commentary, offences giving rise to hot pursuit must always have been committed in internal waters or in the territorial sea. Accordingly, while the article did not embody the latter principle, it was obvious that it could be interpreted in the sense of the commentary. Furthermore, although the foreign ship did not necessarily have to be in territorial waters at the time when the order to stop was given, no such provision was made concerning the position of the pursuing ship in the contiguous zone.

37. There seemed to be no point in establishing a contiguous zone if the rights for which it had been established could not be enforced by pursuit. A foreign ship might hover outside the territorial sea in the contiguous zone and engage in smuggling *via* other craft. The only action that the coastal State could take in such a case would be to "prevent smuggling" in accordance with article 66. Furthermore, with regard to the position of the pursuing vessel when beginning pursuit, there should be no differentiation between the territorial sea and the contiguous zone.

38. The Indian proposal for paragraph 1 of article 47 was intended not only to remedy that situation, but also to extend the strict rules laid down in that connexion. It provided that pursuit could be begun in the contiguous zone even if the offence had been committed in the territorial sea if the foreign ship had entered the contiguous zone after committing the offence. In the cases of countries such as India, which had long coastlines and broad territorial seas and contiguous zones for customs purposes, it was impossible to maintain two separate categories of patrol ships, and the principle of the freedom of the high seas placed the pursuing ship at a great disadvantage. The doctrine of hot pursuit, under which the high seas became a sanctuary, was not always right; the time had come to modify the existing rules, which had been formulated at a time when contiguous zones had not been widely recognized. For example, if a collision involving criminal responsibility took place on the boundary of the territorial sea and the pursued ship was outside that boundary when the order to stop was given, it would be unfair to expect the pursuing ship to look on helplessly while it escaped. Finally, the importance of keeping the territorial sea as narrow as possible, to prevent encroachment upon the high seas, should be taken into account; and if the right of hot pursuit were denied in the contiguous zone, certain countries would be compelled to extend their territorial seas.

39. The purpose of the Indian amendment to paragraph 3 was to allow all practical methods to be used for ascertaining the position of the ship pursued. Bearings, sextant angles and other means were not always adequate in broad territorial seas.

40. Mr. KEÏLIN (Union of Soviet Socialist Republics) said he unreservedly supported the proposal of the

United Arab Republic that paragraph 1 (*b*) of article 6 be deleted, and would vote for it. That deletion was necessary for various reasons. In the first place, would it not be discriminatory automatically to regard certain maritime zones as suspect in the matter of the slave trade? It was well known which countries had warships cruising in those neighbourhoods and had interests which would be served by the right of visit thus established. Secondly, it was inadmissible and unjustified to presume that ships in the " suspect " zones were engaged in the slave trade; such a suspicion would probably only be a pretext for controlling maritime trade in violation of the principle of the freedom of the high seas. Thirdly, the sub-paragraph was in no way necessary for effectively combating the slave trade, and it seemed that the International Law Commission had allowed itself to be influenced by happenings in a former age in an entirely different set of circumstances, of which the memory lay sleeping in the dust of archives. Finally, the provision ran counter to the Supplementary Convention on Slavery of 1956, article 3 of which laid down that the transport or attempted transport of slaves from one country to another was a penal offence and that persons found guilty of such offences were liable to severe penalties. The suppression of such offences could and should be undertaken by the States of which the flag was flown by the ships attempting to engage in the transport of slaves.

41. He also supported the Bulgarian proposal to add a new paragraph to article 46. The arguments put forward by the Bulgarian representative required no comment.

42. The many amendments to article 47 might be divided into groups, according to the issues raised in them.

43. One of those groups concerned the question whether the right of hot pursuit arose when ships were outside the limits of territorial sea. The joint proposal of Poland and Yugoslavia and the Indian proposal aimed at extending the right of hot pursuit to the contiguous zone defined in article 66. It should be recalled that that solution was already provided for in the International Law Commission's draft, but only partially, namely, in cases in which there had been an infringement of the rights which the establishment of the contiguous zone was intended to protect. Basing itself on its general concept of the question, his delegation would not raise any objection to those delegations, amendments. That was, however, not the case with regard to the amendments of delegations which wished to go still further and recognize a right of hot pursuit arising even when the foreign ship was in the zone to which article 55 referred. Quite apart from what his delegation thought about those zones in general, it could not consent to such an extension of the right of hot pursuit, which would allow that right to arise within those zones and would permit pursuit beyond them.

44. A further group of amendments would have the effect of weakening the notion of the right of hot pursuit. That group included the proposals of the United States (A/CONF.13/C.2/L.105) and other delegations which all, far from rendering the International Law Commission's text more precise, introduced a regrettable uncertainty. The United States proposed to amend paragraph 3 of the more or less precise text of the International Law Commission by substituting for it a formula of which the meaning was completely vague — namely, " an accepted method of piloting or navigation ". The same could be said of the Danish proposal to introduce a two-year period and a six-hour time-limit (A/CONF.13/C.2/L.99). The adoption of those amendments might in practice cause useless complications.

45. The Soviet Union considered it preferable to keep the wording of article 47 as it appeared in the International Law Commission's draft, merely making the additions resulting from the joint amendment of Poland and Yugoslavia, and from the Indian amendment.

46. Mr. ASANTE (Ghana) said that his delegation, which felt strongly about the slave trade for historical reasons, would have been prepared to propose that warships should have the right to board ships suspected of slaving wherever they might be. It had, however, found some difficulty in drafting a suitable amendment and, since it considered paragraph 1 (*b*) of article 46 to be discriminatory, would abstain from voting on the proposal of the United Arab Republic.

The meeting rose at 10.30 p.m.

TWENTY-NINTH MEETING

Thursday, 10 April 1958, at 3 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ARTICLE 37 (SLAVE TRADE) (A/CONF.13/C.2/L.13, A/CONF.13/C.2/L.77) (concluded) [1]

1. Mr. COLCLOUGH (United States of America) said that he would be satisfied if his delegation's amendment to article 37 (A/CONF.13/C.2/L.77) were referred to the drafting committee.

The Philippine proposal (A/CONF.13/C.2/L.13) was rejected by 18 votes to 1, with 32 abstentions.

The text of article 37 as submitted by the International Law Commission was adopted unanimously.

ARTICLES 38 TO 45 (PIRACY) (A/CONF.13/C.2/L.10, L.19, L.45, L.46, L.57, L.62, L.77, L.78, L.80, L.81, L.83, L.84) (continued) [1]

2. Mr. KRISPIS (Greece) withdrew his delegation's proposal for article 41 (A/CONF.13/C.2/L.57) in favour of the United Kingdom proposal (A/CONF.13/C.2/L.83).

3. He would also be prepared to withdraw the Greek proposal to delete the word " illegal " from article 39 (A/CONF.13/C.2/L.62) if the United Kingdom would agree to accept the same change in its own amendment. Illegality must be qualified by some system of law; in the absence of international regulations on the subject,

[1] Resumed from the 27th meeting.

there would be no other interpretation of illegality than that covered by national law, and the legal confusion that would arise might make it impossible to punish a ship which had engaged in piracy.

4. Mr. GRANT (United Kingdom) regretted that his delegation could not accept the Greek proposal.

The Uruguayan proposal to delete articles 38 to 45 (A/CONF.13/C.2/L.78) was rejected by 33 votes to 12, with 3 abstentions.

The Albanian-Czechoslovak joint proposal (A/CONF. 13/C.2/L.46) was rejected by 37 votes to 11, with 1 abstention.

Article 38

The United Kingdom proposal (A/CONF.13/C.2/ L.83) was rejected by 15 votes to 14, with 19 abstentions.

The text of article 38 as submitted by the International Law Commission was adopted by 51 votes to none, with 2 abstentions.

Article 39

5. Mr. CHAO (China) withdrew his delegation's amendment (A/CONF.13/C.2/L.45).

The Greek proposal to delete the word "illegal" in paragraph 1 (A/CONF.13/C.2/L.62) was rejected by 30 votes to 4, with 16 abstentions.

The Italian proposal (A/CONF.13/C.2/L.80) was adopted by 18 votes to 16, with 19 abstentions.

The United Kingdom proposal for the opening phrase and paragraph 1 (A/CONF.13/C.2/L.83) was rejected by 22 votes to 13, with 17 abstentions.

The United Kingdom proposal to delete paragraph 3 was rejected by 36 votes to 3, with 13 abstentions.

The text of article 39 submitted by the International Law Commission, as amended, was adopted by 45 votes to 7, with 3 abstentions.

Article 40

The text of article 40 proposed by Yugoslavia (A/ CONF.13/C.2/L.19) was adopted by 23 votes to 11, with 15 abstentions.

Article 41

The United Kingdom proposal (A/CONF.13/C.2/ L.83) was rejected by 29 votes to 7, with 17 abstentions.

The Italian proposal (A/CONF.13/C.2/L.81) was rejected by 29 votes to 15, with 10 abstentions.

The text of article 41 submitted by the International Law Commission was adopted by 45 votes to 7, with 5 abstentions.

Article 42

The text of article 42 submitted by the International Law Commission was adopted by 41 votes to 8, with 1 abstention.

Article 43

The text of article 43 submitted by the International Law Commission was adopted by 46 votes to 7, with 1 abstention.

Article 44

The Norwegian proposal (A/CONF.13/C.2/L.84) was rejected by 19 votes to 13, with 20 abstentions.

The text of article 44 submitted by the International Law Commission was adopted by 41 votes to 7, with 5 abstentions.

Article 45

The Thai proposal (A/CONF.13/C.2/L.10) was adopted by 26 votes to 15, with 17 abstentions.

The text of article 45 submitted by the International Law Commission, as amended, was adopted by 47 votes to 8.

ARTICLE 48 (POLLUTION OF THE HIGH SEAS) (A/CONF. 13/C.2/L.6, L.79, L.96/Rev.1, L.103, L.106, L.107, L.115, L.118, L.119)

6. Mr. POMÉS (Uruguay) said that the purpose of his delegation's amendment (A/CONF.13/C.2/L.79) was to rectify an omission in the International Law Commission's draft of article 48. Exploration, which necessarily preceded exploitation, could also cause harmful pollution.

7. Mr. VRTACNIK (Yugoslavia) said that his delegation was opposed to the United Kingdom and United States proposal (A/CONF.13/C.2/L.96/Rev.1, L.106, L.107) to replace the various paragraphs of article 48 by resolutions. In the first place, the basic regulations on the law of the sea should mention all relevant questions, even though part of the subject-matter was already dealt with in the 1954 International Convention for the Prevention of Pollution of the Sea by Oil. Secondly, they should give rise to conventions and other agreements dealing with the relevant subjects in greater detail. Thirdly, not all States had signed, ratified or acceded to the 1954 Convention, whereas the regulations on the law of the sea should be binding upon all States.

8. His delegation would also vote against the Italian amendment (A/CONF.13/C.2/L.103), because it unduly compressed the article, and because technical developments made it necessary to retain paragraphs 2 and 3 of the original draft. It would support the International Law Commission's text and the French and Uruguayan amendments thereto (A/CONF.13/C.2/ L.6 and A/CONF.13/C.2/L.79). Should, however, the United Kingdom and United States proposals be adopted, the Yugoslav delegation would move its own amendment (A/CONF.13/C.2/L.119) to the United Kingdom draft resolution (A/CONF.13/C.2/L.96/Rev.1).

9. Mr. COLCLOUGH (United States of America) observed that international action to prevent or minimize pollution of the high seas by oil was a vast and technical subject and had been dealt with only experimentally in the 1954 Convention. It was noteworthy that, although the 1954 Conference had recommended a further conference within three years, no such conference had been called because of lack of sufficient experience. The United States had been a leading proponent of

anti-pollution programmes for over thirty years and had evolved measures which were taken in the coastal waters of the United States and Europe where the problem was most acute. Nevertheless, his delegation agreed with the International Law Commission that it would be unwise to consider subjects already under study by the United Nations and specialized agencies and subjects of a technical nature ; oil pollution was being examined by the Transport and Communications Commission of the United Nations and the Economic Commission for Europe, which had called for studies by the World Health Organization and the Food and Agriculture Organization.

10. With regard to paragraphs 2 and 3 of article 48, it was well known that too great a concentration of radio-isotopes in the body and in air and water had harmful results. Accordingly, the benefits of the increased use of atomic energy for peaceful purposes entailed a responsibility for the disposal of dangerous materials. Traditional practice in the dumping of unwanted materials might suggest that radio-active wastes could be disposed of in the high seas. But world knowledge of the subject was insufficient to warrant a decision on such disposal, particularly with regard to long-lived radio-active wastes ; much research would be required before a solution could be found.

11. The United States delegation considered that the three principles to be followed in the matter were : first, that there should be no interference with the work of technically competent agencies studying all aspects of atomic energy ; second, that there must be international co-operation in the study of the effects of the release or disposal of radio-active materials ; and third, that as a result of the progress made through international co-operation and study, States must exercise adequate control over the release of radio-active materials into the sea. The International Atomic Energy Agency was actively concerned with the matter, and might be expected to reach a workable solution. The United States and United Kingdom delegations had therefore proposed a resolution (A/CONF.12/C.2/L.107) encouraging the Atomic Energy Agency to continue its studies, since they believed that the Commission's draft of paragraphs 2 and 3, which called for efforts by individual States, might lead to lack of co-ordination, duplication of effort and delay in finding a solution.

12. Mr. GIDEL (France) said that his delegation was in general agreement with the International Law Commission's text, but had submitted its amendment (A/CONF.13/C.2/L.6) for the sake of clarity. Having ratified the 1954 International Convention for the Prevention of Pollution of the Sea by Oil, France endorsed paragraph 1, but considered that the statement in paragraph 3 of the commentary, that pollution of the sea by the dumping of radio-active waste " should be put on the same footing as pollution by oil ", was mistaken ; there could be no doubt that pollution by radio-active substances was much more serious than pollution by oil. The French delegation had therefore tried to strengthen the article by replacing the words " the dumping of radio-active waste " by " contamination by radio-active substances ".

13. Otherwise, the Commission's text provided a satisfactory general framework for subsequent national and international regulations which would take into account the work of various technical bodies, especially the United Nations Scientific Committee on the Effect of Atomic Radiation.

14. Mr. RADOUILSKY (Bulgaria) observed that the problem of the pollution of the sea had reached a stage at which it could be solved only by international measures. As long ago as 1926, an international conference of experts on the problem had been convened at Washington, but the London Convention had not been signed until 1954 and would enter into force on 26 July 1958. Paragraph 1 of the International Law Commission's draft was based on the principles of that convention and was acceptable. The Uruguayan proposal was a useful addition.

15. However, the question of the pollution of the sea and the superjacent air space by radio-active waste was far more important, since the danger to life and health was greater than in the case of oil. Indeed, radio-active pollution should be prohibited categorically and immediately. To adopt the United Kingdom-United States proposal (A/CONF.13/C.2/L.107) might mean delaying a solution for years.

16. The question of pollution by radio-active wastes was closely connected with that of the prohibition of nuclear tests in the high seas. The Bulgarian Government fully endorsed the Decree of the Supreme Soviet of the U.S.S.R. of 31 March 1958 concerning the unilateral cessation of nuclear tests, and appealed to other States to take similar action. Although Bulgaria was in favour of any other practical measures which might limit nuclear tests and the resulting pollution, its vote for such measures would not mean that it condoned nuclear tests in principle.

17. In conclusion, he would vote for the Czechoslovak proposal (A/CONF.13/C.2/L.118) which reflected the steps needed to combat pollution better than the International Law Commission's text did.

18. Mr. VITELLI (Italy) said his delegation supported the principles on which the Commission's text for article 48 was based, but it thought it unnecessary to mention specifically in the article different types of pollution. It had therefore proposed a text worded in more general terms (A/CONF.13/C.2/L.103). The words " any persistent pollution whatsoever " in that text should be taken to mean every type of serious and persistent pollution, including pollution with oil. If the text proposed by his delegation were adopted, all States would remain free to enter into international agreements regarding any type of serious and persistent pollution of the high seas or the superjacent air space.

19. He thought the Committee should adopt the draft resolution proposed jointly by the United States and United Kingdom delegations, as well as his delegation's text for the article.

20. Mr. CERVENKA (Czechoslovakia) felt that the wording of the Comission's text for article 48 was unsatisfactory in so far as it related to the problem of pollution of the seas by radio-active materials and waste. It was obvious from that text and from the commentary on it that the Commission had failed to take full account of the rapid development of the use of atomic energy for peaceful purposes. The pernicious effects

on human health of polluting the seas with radio-active materials and waste could not be compared with the damage caused by pollution of the seas with oil. Pollution of the seas with radio-active materials had restricted the use which could be made of the high seas, and it was tantamount to a violation of the freedom of the high seas. Despite the fact that that had been known at the time the Commission drafted its text for the article, the Commission had put pollution of the seas by oil on the same footing as pollution of the seas by radio-active waste. But the latter problem was by far the more important. Paragraph 3 of article 48 was very vague ; if it were adopted, the taking of action to ensure effective international co-operation would remain entitrely optional. His delegation had proposed a text for paragraphs 2 and 3 of the article (A/CONF.13/C.2/L.118) which laid upon States the duty of taking definite action to prevent pollution of the seas with radio-active materials and waste.

21. Some representatives, among them the United States representative, had stated that their governments were able to ensure that effective steps would be taken to prevent pollution of the seas with radio-active waste. If they were able to do so, they should corroborate their statements by agreeing to accept the definite obligation advocated by his delegation. The acceptance of that obligation by States would certainly contribute more to the solution of the problem than simply referring the problem to other bodies, as the United States and United Kingdom delegations had, in effect, proposed in putting forward their draft resolution.

22. Mr. SOLE (Union of South Africa) said that at the most recent meeting of the Board of Governors of the International Atomic Energy Agency (IAEA) held in March, there had been some discussion on article 48, and the fear had been expressed that at the current conference there would be adopted articles which would prejudge and prejudice the work which the Agency intended to carry out on problems under consideration by it, in particular the problem of the disposal of radio-active waste. At the first General Conference of the Agency, which had been attended by representatives of sixty-one governments, that problem, which would obviously become more complicated and serious, had been given high priority. It would be most regrettable if the current conference adopted articles which would prejudge and prejudice the Agency's work on it and which might not be in accordance with the latest results of scientific research. It seemed that the Commission had not given the problem all the attention it deserved. As he was anxious that the question should be referred to IAEA, which was the organization primarily responsible for dealing with atomic energy problems, and as all States should adopt common standards for the disposal of radio-active waste, he would vote for the United States and United Kingdom joint proposal.

23. Mr. GHELMEGEANU (Romania) said that he would vote against the United States and United Kingdom joint proposal, since its adoption would completely nullify the main recommendation, made by the Commission after long and careful study, to the effect that States should enter into a legal obligation to carry out concerted measures to prevent pollution of the seas with radio-active materials. There was no valid reason why that recommendation should not be followed and a request at the same time made to IAEA for appropriate action. He would vote for the proposals of the Uruguayan and Czechoslovak delegations, since they were in accordance with that Commission's recommendation, and their adoption would improve its text.

24. Mr. DUPONT-WILLEMIN (Guatemala) said that he would vote for the draft resolution submitted jointly by the United States and the United Kingdom. In his capacity as adviser to the Guatemalan Government, he had attended the most recent meeting of the Board of Governors of the International Atomic Energy Agency, and could therefore confirm the statement made at the current meeting by the representative of the Union of South Africa.

25. Mr. KEÏLIN (Union of Soviet Socialist Republics) considered that the Czechoslovak proposal (A/CONF. 13/C.2/L.118) relating to article 48 was of great value. The amendment to paragraph 2 would make the text more concise and categorical. It was essential to impose on the State the obligation to prohibit the dumping of radio-active elements and waste in the sea. Further, the change introduced in paragraph 3 would delete from the International Law Commission's text the reference to experiments or activities with radio-active materials. That deletion was necessary if it were really desired that the sea and the air space above it should cease to be a source of destruction of living resources and of the spreading of terrible diseases.

26. Other amendments to article 48 could be made to concord with that of Czechoslovakia : for instance, the amendment of Uruguay (A/CONF.13/C.2/L.79), which related to paragraph 1, and that of France (A/CONF. 13/C.2/L.6), which was merely one of form.

27. Some attention should be given to the consideration of the United States and United Kingdom proposals (A/CONF.13/C.2/L.96/Rev.1, L.106, L.107). The delegations of those two countries proposed to replace the explicit clauses of the International Law Commission's draft by resolutions couched in vague terms. In the case of paragraphs 2 and 3, they were submitting a joint draft, whereas in the case of paragraph 1, they were proposing different texts. Those draft resolutions served an entirely different purpose from that of the International Law Commission's text, and, to an even greater extent, from that of the Czechoslovak amendment. They were not aimed at preventing the dumping of radio-active materials, nor at avoiding pollution of the sea ; on the contrary, they would recognize the right to dump radio-active materials in the sea and to pollute it. That appeared to be the only possible interpertation of the joint resolution of the United Kingdom and the United States (A/CONF.13/C.2/L.107), which openly envisaged the adoption or regulations, standards and measures governing the dumping of radio-active materials in the sea. The United States resolution (A/CONF.13/ C.2/L.106), which merely vaguely advocated the establishment of " national programmes " designed to minimize the possibility of pollution of the sea, must be placed in the same category.

28. Those draft resolutions could in no way promote the interests of international shipping ; his delegation would therefore vote against their adoption.

29. Sir Alec RANDALL (United Kingdom) adhered to the view that his delegation's proposals afforded the best way of dealing with the problem. He was, needless to say, in favour of the principles on which paragraph 1 of the Commission's article was based, since the United Kingdom was playing a leading part in the action being taken to prevent pollution of the sea with oil. If, however, the majority of States were opposed to the United Kingdom proposal for paragraph 1 (A/CONF.13/C.2/L.96/Rev.1), his delegation would consider withdrawing it and voting for paragraph 1 of the Commission's text.

30. Referring to the United Kingdom and United States joint proposal (A/CONF.13/C.2/L.107), he observed that his country already had much experience of discharging or releasing radio-active materials in the sea. For many countries it would be quite impractical to prohibit, as the Czechoslovak delegation had proposed, the disposal of radio-active waste in the sea, since they could dispose of it nowhere else. He was convinced of the need for international consultation as to the best means of disposing of such waste, and he was equally convinced that such consultation could best be arranged by IAEA. The statements just made by representatives who had attended the most recent meeting of the Board of Governors of IAEA had strengthened him in that conviction.

31. Mr. BIERZANEK (Poland) did not propose to repeat what he had said regarding article 48 during the general debate (6th meeting). The Committee had already decided to devote one-third of the text it was adopting to the subject of piracy, which for a long time had not been a real problem, and not to include in the draft articles a provision which would help to solve the important problem of nuclear tests on the high seas ; if it also failed to include in the draft articles any provisions relating to the presing problems of pollution of the sea by oil and by the disposal of radio-active waste, the results of its work would not be of historical interest. It was true that those problems were both difficult and delicate, but that was no reason why action on them should be postponed indefinitely. He would point out that more countries were represented at the current conference than at meetings of the bodies to which the United States and United Kingdom delegations were urging the Committee to refer the problems.

32. Mr. PUSHKIN (Ukrainian Soviet Socialist Republic) said that the problem to which paragraph 3 of article 48 related — namely, the problem caused by the testing of nuclear weapon on the high seas — would be completely solved only if all such tests were prohibited. Those tests constituted a dreadful menace to mankind. The International Law Commission, which had recognized, in principle, the need to put an end to such tests, had, by recommending that all States should co-operate in drawing up regulations to prevent pollution of the seas or the air space above as a result of experiments or activities with radio-active materials, gone a little way towards meeting the demand of the public throughout the world that such tests should cease ; but it had not gone as far as it should have done. The Committee should include in article 48 a clause prohibiting such tests. If it failed to do so, the freedom which should exist on the high seas would be incomplete. The inclusion of such a clause was a prerequisite for ensuring that IAEA and other technical organizations would do the work required of them where that problem was concerned. He would vote against the United Kingdom and United States joint proposal, since its adoption would nullify what was useful in paragraph 3. He would vote for the part of the Czechoslovak proposal relating to paragraph 3.

33. He agreed with what the French representative had said about paragraph 3 of the commentary on article 48, which expressed the Commission's view that the problem caused by the dumping of radio-active waste in the sea should be put on the same footing as pollution of the sea by oil. The former problem was much more serious, since the dumping of radio-active waste seriously affected the living resources of the sea and any human beings who consumed the resources of the sea so affected. There should be no dumping of radio-active waste in the sea. Paragraph 2 of article 48 was not sufficiently explicit. It might be held to mean that such dumping would be permissible provided safety measures were taken ; but such measures could not in themselves prevent pollution of the sea by waste. He would therefore vote for the part of the Czechoslovak proposal relating to that paragraph.

The meeting rose at 5.15 p.m.

THIRTIETH MEETING

Friday, 11 April 1958, at 10.20 a.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

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

ADDITIONAL ARTICLE PROPOSED BY DENMARK (A/CONF.13/C.2/L.100)

1. Mr. RIEMANN (Denmark) said that the text of his proposal could be found in the comments by the Danish Government on the International Law Commission's draft article 66 (A/CONF.13/5, section 6) ; the matter had also been raised by the Danish delegation in the Sixth Committee of the General Assembly at its eleventh session,[1] and had received favourable comment from Mr. François, the Special Rapporteur of the International Law Commission.[2] He was submitting the proposal to the Second Committee rather than to the First, because it was not connected with the territorial sea or the contiguous zone. Its purpose was to safeguard unhampered passage on the high seas.

2. The waters around the Danish coast were comparatively shallow, containing many shoals and reefs which

[1] See *Official Reports of the General Assembly, Eleventh Session, Sixth Committee*, 496th meeting, para. 50.

[2] *Ibid.*, 500th meeting, para. 38.

constituted a danger to navigation. The Danish Government, partly by virtue of long-established practice and partly in pursuance of article II of the Treaty for the Redemption of the Sound Dues of 14 March 1857, had assumed responsibility for marking the fairways in those waters by light vessels, buoys, beacons, etc. In order to meet that responsibility, the Danish authorities had to be in a position to ensure that the relevant regulations could be enforced against anyone navigating those waters. Those regulations included the prohibition of jettisoning rubbish and destroying or damaging established markings ; other rules concerned the placing of pound net stakes where they might constitute a danger to navigation, and the removal and salvaging of wrecks ; in the latter case, rules were needed in order to ensure that salvage contractors paid due attention to the safety of navigation and provided the necessary depth of water over any remaining wreckage. Experience had shown the need for supervision and regulation of salvaging of wrecks by foreign contractors in those parts of the high seas where Denmark had assumed responsibility for buoying the fairways. Under the general rules of international law, such relations could be enforced against Danish nationals even outside the Danish territorial sea, but the efficiency of the regulations would be materially impaired if objections were raised to their enforcement against foreign nationals.

3. He did not think that the problem should be solved by an extension of the sovereign rights of the coastal State which, in many cases, would go far beyond the territorial sea and the contiguous zone. The Danish proposal was merely aimed at granting a very limited authority to States which had assumed the responsibility for marking fairways in the high seas for the sole purpose of enabling those States to carry out their responsibilities efficiently in the interests of all seafarers.

4. Mr. GIDEL (France), while fully appreciating the practice usefulness of the Danish proposal and the juridical considerations underlying it, remarked that it concerned a very special case and would require thorough consideration ; any immediate decision would perforce be in the nature of an improvization.

5. Mr. KEÏLIN (Union of Soviet Socialist Republics) agreed with the representative of France. The International Law Commission had been right to omit the point raised in the Danish proposal from its draft ; there was no need to include the question in the document which the Conference was preparing. Furthermore, if it was considered at all, the matter fell within the competence of the First Committee, since it dealt with circumstances directly connected with the territorial sea although, on occasion, going beyond it.

6. Mr. GLASER (Romania) remarked that, in effect, the Danish proposal sought to establish a contiguous zone for certain specialized purposes. Accordingly, it was not within the competence of the Second Committee, but of the First Committee. Before the Committee proceeded to discuss it, the question of competence should be decided by a vote.

7. Mr. COLCLOUGH (United States) proposed that, in order to give delegations sufficient time to study the Danish proposal, consideration of it should be deferred until the Committee had completed its discussions on the articles referred to it.

It was so decided.

Articles 38 to 45 (Piracy) (A/CONF.13/C.2/L.19) (concluded)

8. Mr. KNACKSTEDT (Federal Republic of Germany) stated that, during the voting on article 40 at the preceding meeting, he had voted against the Yugoslav proposal (A/CONF.13/C.2/L.19) for three reasons. First, it was impossible, in practice, to determine from a distance whether or not the crew of a ship had mutinied ; and under international law a warship could not be stopped in order to verify the situation. Secondly, a warship was generally armed. An attempt to stop it in the case of a suspected mutiny might lead to very serious consequences, particularly if the suspicion was unfounded. Finally, in peace time, the crew of a warship was extremely unlikely to munity for the purpose of engaging in piracy ; the risk of such a situation was disproportionately small compared with that of armed conflict resulting from an attempt to interfere with the passage of a warship.

Articles 61 to 65 (Submarine cables and pipelines) (A/CONF.13/C.2/L.58, L.83, L.97/Rev.1, L.101, L.102, L.108 to L.112)

9. Mr. VAN PANHUYS (Netherlands) introduced his proposal (A/CONF.13/C.2/L.97/Rev.1) to insert in article 62, between the words " the breaking or injury " and the words " of a submarine cable ", the phrase " by a ship flying its flag or by a person subject to its jurisdiction ". He remarked that article 62 raised questions of international penal law. It was clearly not the intention of the article to enable any State to take legislative measures against nationals of another State causing injury to a submarine cable. The International Law Commission's commentary spoke of legislative measures taken by States to ensure that their nationals complied with the regulations. In his view, based on article 8 of the Convention of 14 March 1884, the scope of the article should be extended to include ships flying the flag of the State concerned. Furthermore, the phrase " person subject to its jurisdiction " was preferable to the term " national ", because it made it clear that the matter was governed by the general principles of penal jurisdiction.

10. Mr. COLCLOUGH (United States) said that his proposal on article 61 (A/CONF.13/C.2/L.108), which was similar to the Italian proposal (A/CONF.13/C.2/L.102), was intended merely to bring the text of the article more closely into conformity with those of articles 27 and 70.

11. Articles 62 to 65, which the United States delegation sought to delete (A/CONF.13/C.2/L.109, L.110, L.111, L.112), differed from article 61 in that they reproduced some of the implementing provisions of the 1884 Convention rather than its basic principle. That principle, embodied in paragraph 1 of article 61, had,

unquestionably, to be restricted to a certain extent by reason of intervening technological developments. The United States delegation would support such a restriction, but only in so far as it was necessary. Paragraph 2 of article 61 was entirely adequate in that respect; moreover, it corresponded to the text of article 70 adopted by the Fourth Committee.

12. Articles 62 to 65, on the other hand, were not necessary or even desirable. The inclusion of some, but not all, of the technical implementing provisions of the 1884 Convention might be interpreted to mean that its other provisions had been rejected. Yet, to include all the provisions of the Convention would be tantamount to re-enacting it, which was hardly necessary.

13. Article 64, in particular, was fraught with danger. The London Conference of 1913 had adopted a resolution for the guidance of the trawling industry without suggesting that States should set up compulsory standards of trawling equipment. If any regulation to that effect was needed at all — which was doubtful — the standard adopted should be a uniform one decided upon by a specialized technical conference. States should not be required to set up standards which were likely to vary widely, causing confusion and friction.

14. Commenting on the Venezuelan proposal (A/CONF.13/C.2/L.58), he pointed out that the Commission's text of article 61, paragraph 2, which provided for " reasonable measures ", was broader and more flexible than the Venezuelan proposal which would limit those measures exclusively to the routing of cables of pipelines. In some circumstances, the use of buoys and marking of cables might be a more reasonable measure than the control of routing.

15. Mr. GLASER (Romania) was not convinced by the arguments advanced by the United States representative in favour of the deletion of articles 62 to 65. Similar proposals for the deletion of articles 34, 35 and 36 had failed to receive the Committee's support. It was casuistry to suggest that the fact that certain provisions of the 1884 Convention were not reproduced in the articles implied their repudiation. The International Law Commission had extracted certain main principles from the Convention in order to re-affirm them, and not in order to diminish the force of those it did not reproduce. The 1884 Convention had been signed by only thirty-five States, whereas the present conference was attended by eighty-seven States. The States which had not signed the Convention could not be asked to endorse it in its entirety, but only to accept its most general and fundamental principles. For those reasons, the Romanian delegation would vote against the United States proposals (A/CONF.13/C.2/L.109, L.110, L.111, L.112).

16. Mr. GIDEL (France) suggested that, in paragraph 1 of article 61, it might be more appropriate to speak of telecommunication cables instead of telephone and telegraph cables, and of power cables instead of high-voltage power cables, since it was impossible to foresee what voltage would be used for power transmission in the future. He also drew attention to article 70, which referred only to submarine cables and not to pipelines; pipelines were only mentioned in a very tentative manner in paragraph 2 of the International Law Commission's commentary on that article.

17. Mr. VRTACNIK (Yugoslavia) opposed the deletion of articles 61 to 65 proposed by the United States representative. International law could only be enforced if domestic legislations contained adequate provisions for the punishment of its violators. That was the object of the articles in question.

18. Mr. VITELLI (Italy) said that with respect to articles 61 and 62, his delegation's proposal (A/CONF. 13/C.2/L.102) sought to replace a specific enumeration of different types of submarine cables by a more general wording, thus allowing for possible technical developments in the future. The proposal relating to article 63 was motivated by the consideration that the regular functioning of a telegraph or telephone cable might be impaired if another high-tension cable was placed in its proximity without actually breaking or injuring it. The purpose of the proposal regarding article 64 was to facilitate the implementation of the article by reducing the danger of fouling to a minimum.

19. Sir Alec RANDALL (United Kingdom) did not agree with the United States representative that the adoption of some of the provisions of the 1884 Convention would detract from the validity of its other provisions. However, in order to obviate any such risk, he would submit to the Committee a proposal (A/CONF. 13/C.2/L.120) for a new article to be inserted after article 65, worded as follows:

" The foregoing articles 61 to 65 shall not affect the provisions of the existing relevant conventions in the relations of the parties to them."

20. Mr. RIEMANN (Denmark) introduced his proposals (A/CONF.13/C.2/L.101) relating to articles 61 and 63. The purpose of that part of the proposal which related to article 61 was self-evident; that relating to article 63 was intended to make it clear that persons causing a break or injury to a cable or pipeline should be liable to pay for its repair only, and not for any loss of profits incurred as a result. Moreover, the liability mentioned in article 63 would operate only in cases of fault and negligence and not in the case of accidents; that interpretation was borne out by article 4 of the 1884 Convention.

21. Mr. KEÏLIN (Union of Soviet Socialist Republics) considered that articles 61 to 65 should be adopted as they stood in the International Law Commission's draft. His delegation could not agree with the proposal to delete articles 62 to 65, for which there seemed to be no justification. The purpose of those articles was to ensure that each State would take the necessary legislative measures to protect submarine cables and pipelines against damage and to provide for the payment of compensation for loss and for the cost of repairs. In the opinion of his delegation, satisfactory provision was made in articles 62 to 65 for the protection of submarine cables, and the articles were similar to the principal measures contained in the 1884 Convention.

22. Mr. ROJAS (Venezuela) said that the amendment to article 61 proposed by his delegation (A/CONF.13/C.2/L.58) derived from the commentary to article 70 in the International Law Commission's draft, which stated that the coastal State might impose conditions

concerning the route to be followed by submarine cables. It was clear that the coastal State and other States which laid cables or pipelines had a great interest in seeing that they were laid in such a manner that they did not affect the performance of those already installed or the exploration and exploitation of the continental shelf. High-voltage power cables and pipelines, if injured or broken, caused extensive damage to the living resources of the sea over a wide area, and their laying should thus be carefully regulated.

23. The Venezuelan amendment recognized that States wishing to install new cables or pipelines must respect the routing of those which had already been installed. In addition, the amendment recognized the coastal State's obligation not to impede the laying or maintenance of cables and pipelines on the continental shelf. Articles 62 to 65 of the International Law Commission's draft obliged the coastal State to legislate on such matters as the breaking and injury of submarine cables, their repair, the construction and use of fishing gear and compensation for loss of such gear. It was, therefore, entitled to be consulted on the proposed route of all submarine cables and pipelines. That, he stressed, was a provision which went no further than what had been stated by the International Law Commission itself in paragraph 1 of its commentary to article 70.

24. Mr. HEKMAT (Iran) agreed with the arguments advanced against the proposed United States amendments to articles 62 to 65. The International Law Commission, in whose proceedings he had taken part, had not forgotten the existence of the 1884 Convention when it drew up articles 62 to 65. It had nevertheless felt that the provisions embodied in those articles were more in line with twentieth-century conditions. The group of Afro-Asian States now numbered more than thirty, whereas in 1884 there had not been more than five or six independent States in that part of the world. In the days of the 1884 Convention, international law had been largely a matter of concern to western countries. It was important that it should now be applicable and accepted on a world-wide basis. His delegation would, therefore, vote for the International Law Commission's draft of articles 62 to 65 as they stood.

25. Mr. COLCLOUGH (United States of America) said that, as there seemed to be general agreement that the provisions of the 1884 Convention would not be regarded as repealed by the International Law Commission's draft articles 62 to 65, and in view of the new proposal of which the United Kingdom delegation had given notice, he was prepared to withdraw his delegation's amendments to articles 62, 63 and 65.

26. The provisions of the draft article 64, however, did not come under the 1884 Convention, but under resolution I of the 1913 London Conference. He felt it to be essential that a uniform standard be adopted for trawling equipment and thus wished to make it clear that he did not withdraw the United States amendment to article 64 (A/CONF.13/C.2/L.111).

The meeting rose at 11.35 a.m.

THIRTY-FIRST MEETING

Friday, 11 April 1958, at 8.35 p.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

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

ARTICLE 46 (RIGHT OF VISIT) (A/CONF.13/C.2/L.69, A/CONF.13/C.2/L.117) (concluded) [1]

1. The CHAIRMAN put to the vote the amendments to article 46.

The proposal of the United Arab Republic (A/CONF. 13/C.2/L.69) to delete sub-paragraph (b) of paragraph 1 was rejected by 22 votes to 16, with 11 abstentions.

The Bulgarian proposal (A/CONF.13/C.2/L.117) was rejected by 36 votes to 11, with 4 abstentions.

2. The CHAIRMAN, in reply to Mr. Grant (United Kingdom), suggested that any redrafting of article 46 necessary as a result of the amendment to article 45, adopted at the 29th meeting, could be left to the drafting committee.

The text of article 46 as submitted by the International Law Commission was adopted by 39 votes to 4, with 9 abstentions.

ARTICLE 47 (RIGHT OF HOT PURSUIT) (A/CONF.13/C. 2/L.4, L.20/Rev.1 and L.61/Rev.1, L.35, L.53, L.89, L.94, L.95, L.96/Rev.1, L.98, L.99, L.105, L.115, L.116) (concluded) [1]

3. The CHAIRMAN made the following suggestions for the organization of voting on the proposals relating to article 47. The only logical arrangement appeared to be to break up the proposals into two or more parts according to the separate amendments contained therein, and to group together the amendments to the same paragraph of the International Law Commission's draft. The Netherlands proposal (A/CONF.13/C.2/L.98) — being of a different nature from the other proposals — would, however, be put to the vote as a whole.

4. Mr. KNACKSTEDT (Federal Republic of Germany) proposed that the vote on article 47 be postponed until the First Committee had agreed upon the text of article 66, since it was necessary to know the extent of the contiguous zone and the rights which the coastal State would exercise within it. There would be no reason for a right of hot pursuit in the contiguous zone if the First Committee adopted article 66 of the International Law Commission's draft.

5. The CHAIRMAN said that this point should have been submitted during debate ; nevertheless, he would put it to the vote.

The German proposal to postpone the voting on article 47 was rejected by 25 votes to 5, with 14 abstentions.

[1] Resumed from the 28th meeting.

6. Mr. GRANT (United Kingdom) requested that paragraph 2 of the Netherlands proposal (A/CONF.13/C.2/L.98) might be voted upon separately.

7. Mr. GHELMEGEANU (Romania) opposed the United Kingdom representative's suggestion; if one part of the Netherlands proposal were accepted and the rest rejected, the essential purpose of the proposal would be frustrated.

8. The CHAIRMAN ruled that the Netherlands proposal must be taken as a whole.

The Netherlands proposal (A/CONF.13/C.2/L.98) was rejected by 36 votes to 13, with 7 abstentions.

Paragraph 1

9. The CHAIRMAN invited the Committee to vote next on proposals referring to paragraph 1 of article 47.

The Indian proposal (A/CONF.13/C.2/L.95) was rejected by 24 votes to 18, with 11 abstentions.

10. Mr. GARCÍA-SAYÁN (Peru) withdrew his delegation's amendment (A/CONF.13/C.2/L.35) since it was dependent on action which might be taken in the Third Committee.

The Mexican proposal (A/CONF.13/C.2/L.4) was rejected by 25 votes to 24, with 8 abstentions.

The Israel proposal (A/CONF.13/C.2/L.116) was rejected by 23 votes to 18, with 14 abstentions.

The proposal of Poland and Yugoslavia (A/CONF.13/C.2/L.20/Rev.1 and L.61/Rev.1) was adopted by 33 votes to 9, with 16 abstentions.

The proposal of the Federal Republic of Germany (A/CONF.13/C.2/L.115) was adopted by 48 votes to 8, with 5 abstentions.

The proposal of Iceland (A/CONF.13/C.2/L.89) was rejected by 34 votes to 7, with 12 abstentions.

11. The CHAIRMAN announced that that part of the proposal of Denmark (A/CONF.13/C.2/L.99) which related to paragraph 1 had been withdrawn.

Paragraph 1 of article 47 of the International Law Commission's draft, as amended, was adopted by 50 votes to 3, with 9 abstentions.

Paragraph 2

12. The CHAIRMAN invited the Committee to vote on proposals dealing with paragraph 2 of article 47.

The proposal by Pakistan (A/CONF.13/C.2/L.94) was rejected by 18 votes to 12, with 30 abstentions.

13. Mr. RIEMANN (Denmark) withdrew his delegation's proposal for paragraph 2 (A/CONF.13/C.2/L.99).

Paragraph 2 of article 47 of the International Law Commission's draft was adopted by 60 votes to 1, with 1 abstention.

Paragraph 3

14. The CHAIRMAN put to the vote proposals relating to paragraph 3 of article 47.

15. Mr. GARCÍA-SAYÁN (Peru) withdrew his delegation's proposal with reference to that paragraph (A/CONF.13/C.2/L.35).

16. Mr. CAMPOS ORTIZ (Mexico) withdrew his delegation's first amendment to paragraph 3 and asked for a roll-call vote on the second amendment.

A vote was taken by roll-call on the second amendment by Mexico to paragraph 3 (A/CONF.13/C.2/L.4).

The Byelorussian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, Colombia, Czechoslovakia, Ecuador, Guatemala, Hungary, Iceland, India, Indonesia, Iran, Ireland, Republic of Korea, Mexico, Nicaragua, Panama, Paraguay, Peru, Philippines, Portugal, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Argentina, Brazil, Bulgaria, Burma.

Against: Denmark, Finland, Federal Republic of Germany, Greece, Italy, Japan, Netherlands, New Zealand, Norway, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Belgium.

Abstaining: China, Dominican Republic, France, Ghana, Holy See, Israel, Liberia, Pakistan, Poland, Spain, Switzerland, Thailand, Turkey, Union of South Africa, Australia, Austria.

The amendment was adopted by 35 votes to 13, with 16 abstentions.

17. The CHAIRMAN suggested that, as the third Mexican amendment to paragraph 3 seemed to be purely a drafting question, it might be left to the Secretariat.

It was so agreed.

The amendment proposed by Iceland (A/CONF.13/C.2/L.89) was rejected by 33 votes to 3, with 18 abstentions.

The Indian proposal (A/CONF.13/C.2/L.95) was adopted by 20 votes to 15, with 22 abstentions.

18. The CHAIRMAN announced that the proposals of the United States of America (A/CONF.13/C.2/L.105) and the Federal Republic of Germany (A/CONF.13/C.2/L.115) had been withdrawn.

The first amendment by Israel to paragraph 3 (A/CONF.13/C.2/L.116) was rejected by 37 votes to 11, with 8 abstentions.

The second amendment by Israel was rejected by 37 votes to 6, with 11 abstentions.

Paragraph 3 of article 47 of the International Law Commission's draft, as amended, was adopted by 47 votes to 2, with 11 abstentions.

Paragraph 4

Paragraph 4 of article 47 of the International Law Commission's draft was adopted by 62 votes to none.

Paragraph 5

19. The CHAIRMAN requested the Committee to vote on proposals referring to paragraph 5 of article 47.

The proposal by Iceland referring to paragraph 5 (b) (A/CONF.13/C.2/L.89) was adopted by 25 votes to 11, with 22 abstentions.

The proposal by Iceland to add a sub-paragraph (c) to paragraph 5 was rejected by 37 votes to 10, with 11 abstentions.

Paragraph 5 of article 47 of the International Law Commission's draft, as amended, was adopted by 59 votes to 1, with 5 abstentions.

Paragraph 6

Paragraph 6 of article 47 of the International Law Commission's draft was adopted by 62 votes to none.

Additional paragraphs

20. The CHAIRMAN invited the Committee to vote on proposals to add a paragraph 7 to article 47.

Paragraph 7 proposed by the United Kingdom (A/CONF.13/C.2/L.96/Rev.1) was adopted by 30 votes to 6, with 20 abstentions.

21. Mr. MINTZ (Israel) withdrew his delegation's proposal (A/CONF.13/C.2/L.116), as it was to the same effect as that just adopted.

22. Mr. CARDOSO (Portugal) said that his delegation's proposal (A/CONF.13/C.2/L.53) could be left to the drafting committee.

The text of article 47 submitted by the International Law Commission, as amended, was adopted by 58 votes to 2, with 3 abstentions.

ARTICLE 48 (POLLUTION OF THE HIGH SEAS) (A/CONF. 13/C.2/L.6, L.79, L.96/Rev.1, L.103, L.106, L.107, L.115, L.118, L.119) (concluded) [1]

Paragraph 1

23. Mr. COLCLOUGH (United States of America) withdrew his delegation's proposal (A/CONF.13/C.2/L.106), with the understanding that it was not the intention of paragraph one of article 48 to interfere with the work being done or to be done on the subject by interested intergovernmental organizations and groups with competency in the field. The United States believed that it was the intention of that paragraph that each government should take immediate steps to minimize the evil of oil pollution and should adopt or promote definite and effective programmes to that end.

24. Mr. GRANT (United Kingdom) withdrew his delegation's proposal (A/CONF.13/C.2/L.96/Rev.1) and said he would support the International Law Commission's draft.

25. The CHAIRMAN pointed out that, in that case, the proposal by Yugoslavia (A/CONF.13/C.2/L.119) need no longer be voted on since its purpose was to add a paragraph at the end of the draft resolution proposed by the United Kingdom.

The proposal by Italy (A/CONF.13/C.1/L.103) was rejected by 32 votes to 6, with 17 abstentions.

The proposal by the Federal Republic of Germany (A/CONF.13/C.2/L.115) was rejected by 25 votes to 10, with 19 abstentions.

The proposal by Uruguay (A/CONF.13/C.2/L.79) was adopted by 51 votes to none, with 8 abstentions.

Paragraph 1 of article 48 of the International Law Commission's draft, as amended, was adopted by 61 votes to none, with 1 abstention.

Paragraphs 2 and 3

26. The CHAIRMAN invited the Committee to vote on the draft resolution proposed by the United States of America and the United Kingdom (A/CONF.13/C.2/L.107).

27. Mr. SOLE (Union of South Africa) asked for a vote by roll-call. His request was based on the fact that a number of statements made concerning the competence of the International Atomic Energy Agency in that matter seemed to him to be at variance with the attitude of the same government's representatives in the governing board of that agency.

28. Mr. KANAKARATNE (Ceylon), on a point of order, drew attention to the fact that the resolution proposed to delete paragraphs 2 and 3 of the International Law Commission's draft article 48 and did not suggest anything in their place. He proposed that separate votes should be taken, first on the deletion of paragraphs 2 and 3, and secondly on the draft resolution itself.

29. Mr. COLCLOUGH (United States of America) objected to the proposal of the representative of Ceylon, since the draft resolution formed a whole and its intention was to delete paragraphs 2 and 3 and to substitute the resolution.

30. Mr. KEÏLIN (Union of Soviet Socialist Republics) supported the representative of Ceylon.

31. Mr. CERVENKA (Czechoslovakia) requested a vote by roll-call on the proposal by the representative of Ceylon.

A vote was taken by roll-call.

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

In favour: Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Czechoslovakia, France, Hungary, India, Indonesia, Mexico, Peru, Poland, Romania, Sweden, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Argentina.

Opposing: Australia, Brazil, Canada, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Federal Republic of Germany, Greece, Guatemala, Iceland, Israel, Italy, Republic of Korea, Liberia, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Portugal, Spain, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

Abstentions: Austria, Finland, Ghana, Holy See, Iran, Ireland, Japan, Netherlands, Saudi Arabia, Switzerland, Union of South Africa, Venezuela.

The proposal by the representative of Ceylon was rejected by 31 votes to 22, with 12 abstentions.

[1] Resumed from the 29th meeting.

A vote was taken by roll-call on the draft resolution of the United States of America and the United Kingdom (A/CONF.13/C.2/L.107).

The Federal Republic of Germany, having been drawn by lot by the Chairman, was called upon to vote first.

In favour : Federal Republic of Germany, Greece, Guatemala, Iceland, Ireland, Israel, Italy, Republic of Korea, Liberiae New Zealand, Nicaragua, Pakistan, Panama, Paraguay, Philippines, Portugal, Spain, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Canada, China, Colombia, Cuba, Dominican Republic, Ecuador.

Opposing : Ghana, Hungary, India, Indonesia, Iran, Japan, Netherlands, Norway, Peru, Poland, Romania, Saudi Arabia, Sweden, Tunisia, Ukranian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Argentina, Belgium, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Czechoslovakia, Denmark, Finland, France.

Abstentions : Holy See, Mexico, Switzerland, Venezuela, Austria, Brazil.

The resolution was adopted by 30 votes to 29, with 6 abstentions.

32. The CHAIRMAN indicated that, in consequence of the deletion of paragraphs 2 and 3, no vote was possible on the proposals by Czechoslovakia (A/CONF. 13/C.2/L.118) and France (A/CONF.13/C.2/L.6).

33. Mr. CERVENKA (Czechoslovakia), explaining his vote, said that efforts to avoid the most important questions were not unknown in the Committee. The situation was similar to that when the question of tests with nuclear weapons was being discussed. The Conference had been denied competence to express itself in favour of the adoption of an obligation to prevent pollution of the seas by radio-active waste ; but the sponsors of the resolution must be aware of the fact that tests with nuclear weapons were the main source of such contamination. Clearly, the acceptance of an obligation prohibiting the dumping of radio-active elements in the sea would render such tests very difficult. His country co-operated with the International Atomic Energy Agency, but he failed to see why that agency should have to solve the legal aspects of the pollution of the seas, when it was the purpose of the present conference to codify the law of the sea. The resolution was a most retrograde step. His delegation felt it to be necessary to declare that pollution of the seas by radio-active waste was a violation of the principle of the freedom of the high seas.

34. Mr. WYNES (Australia) said that, in voting for the resolution, his delegation had particularly in mind the reference in the operative paragraph of the resolution to " consultation with existing groups and established organs having acknowledged competence in the field of radiological protection ". It appeared to his delegation that the United Nations Scientific Committee to study the effects of atomic radiation might be consulted upon the matters involved which still required a great deal of scientific investigation before adequate standards could be established.

35. Mr. KANAKARATNE (Ceylon) said that his delegation had been unable to see in what way paragraphs 2 and 3 of article 48 of the International Law Commission's text were inconsistent with the resolution. His delegation would have voted both for paragraphs 2 and 3 and for the draft resolution. He regretted the deletion of paragraphs 2 and 3 ; but for that, he would have voted for the resolution.

36. Mr. JHIRAD (India) said that he had voted against the resolution because it embodied a clear attempt to shirk the responsibility which the International Law Commission — an impartial body — had specifically included in their draft. The pollution of the high seas by the dumping of radio-active waste was in any case contrary to international law.

37. Mr. KEÏLIN (Union of Soviet Socialist Republics) explained that he had voted against the joint draft resolution because he believed that even if the International Atomic Energy Agency drew up regulations to prevent the pollution of the seas with radio-active substances and wastes, that would in no way relieve States of their obligation to refrain from taking any action capable of causing such pollution. States were obliged to issue appropriate rules forbidding the pollution of the waters of the sea through the dumping of radio-active materials or wastes, and were under the further obligation to co-operate with one another in drafting such rules. Those important principles had been recognized by the International Law Commission, and the attempt to depart from them was undoubtedly a backward step much to be regretted.

38. Mr. BARROS FRANCO (Chile) explained that he had voted against the proposal by the United States of America and the United Kingdom because he considered it useful to maintain paragraphs 2 and 3 of article 48 and he quoted paragraph 3 of the commentary by the International Law Commission on that article. He could not understand how the deletion of those paragraphs could find any support ; it semed that some States were not ready to co-operate in the regulations contained in those paragraphs for the prevention of pollution of the sea. It was not a political matter : All members of the international community were under legal obligation to prevent such contamination.

39. Mr. BELTRAMINO (Argentina) had also voted against the resolution because he thought that paragraphs 2 and 3 should be retained. He hoped that that decision could be reconsidered later. The question of nuclear tests was entirely separate.

40. Mr. ASANTE (Ghana) had felt obliged to vote against the resolution in accordance with the policy of his government to consider all questions on their merits ; the International Law Commission's draft was simple and to the point.

The meeting rose at 10.55 p.m.

THIRTY-SECOND MEETING

Saturday, 12 April 1958, at 10.25 a.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

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

ARTICLES 61 TO 65 (SUBMARINE CABLES AND PIPELINES) (A/CONF.13/C.2/L.58, L.97/Rev.1, L.101, L.102, L.108, L.111, L.120) (concluded) [1]

1. Mr. JHIRAD (India) understood the new article proposed by the United Kingdom (A/CONF.13/C.2/L.120) to be prompted by a desire to allay the apprehensions expressed by the representative of the United States and others lest articles 61 to 65, if adopted, should have the effect of abrogating existing conventions, particularly the Convention of 14 March 1884. He did not think those apprehensions well-founded; a new convention could not be construed as abrogating the provisions of existing conventions unless it did so expressly or by necessary implication; that was not so in the case of the articles under consideration. Anxiety had also been expressed as to the possibility that the inclusion of an express provision of that sort referring only to articles 61 to 65 might lead to the conclusion that other articles did have the effect of abrogating previous conventions. In order to meet that difficulty, he proposed an amendment to replace the words "the foregoing articles 61 to 65" in the United Kingdom proposal by a more general statement mentioning the articles within the purview of the Second Committee. The actual wording might be left to the Drafting Committee.

2. Sir Alec RANDALL (United Kingdom) was prepared to accept the Indian amendment. He drew attention, however, to a decision adopted without dissension by the First Committee at its 40th meeting to the effect that any instrument resulting from the Conference should contain a clause of general application affirming the principle that the provisions of the articles in general did not override those of special conventions already in force. He wondered whether the Committee would accept an analogous motion in preference to the United Kingdom proposal.

3. Mr. GLASER (Romania) said that a text adopted by a conference dealing with general rules of international law could not derogate from special rules established by virtue of international conventions. If that was the meaning of the First Committee's decision he would have no difficulty in subscribing to it. He would support the United Kingdom proposal only if it incorporated the Indian amendment which removed any doubt regarding the underlying intention.

4. Mr. KEÏLIN (Union of Soviet Socialist Republics) accepted the Indian amendment in principle, but felt that the best course would be to adopt a decision similar to that adopted by the First Committee.

5. The CHAIRMAN invited the Committee to vote on the principle that the articles under consideration did not override conventions already in force.

That principle was adopted without opposition.

6. Sir Alec RANDALL (United Kingdom) withdrew his proposal (A/CONF.13/C.2/L.120).

7. Mr. FRANCOIS (Expert to the secretariat of the Conference), commenting on the Italian proposal on article 64 (A/CONF.13/C.2/L.102), stated that the International Law Commission had considered but had rejected the possibility of inserting a similar text. It had felt that a number of States would object to being placed under the obligation in question since it might put them at a serious disadvantage in the event of war. A refusal to indicate the position of submarine cables or pipelines meant, of course, that no one could be held responsible for causing damage to them; but States could not, in the International Law Commission's view, be obliged to record their position.

8. Mr. VITELLI (Italy), having regard to Mr. François' remarks, withdrew his proposal on article 64.

9. Sir Alec RANDALL (United Kingdom) agreed with the observations concerning article 64 made by the United States representative at the 30th meeting. The text of the article was far from clear. One possible interpretation was that States would be required to regulate the actual operation of trawlers or, in effect, to prohibit trawling in areas of the high seas where there were submarine cables or pipelines. Given the extensive network of cables beneath the high seas, such a provision would be impracticable, and the International Law Commission could hardly have intended article 64 to have that meaning. The other possible interpretation — though it did not clearly emerge from the text of the article — was that States would be required to regulate the construction and maintenance of fishing gear. That was a highly technical problem with which the Committee was not in a position to deal. Everyone agreed that it would be desirable to reduce the danger of fouling submarine cables or pipelines; but that cause would not be advanced by the adoption of an article which appeared to place an affirmative duty upon States without giving any clear indication as to how they could discharge it.

The Italian proposal on paragraph 1 of article 61 (A/CONF.13/C.2/L.102) was rejected by 28 votes to 8, with 17 abstentions.

The United States proposal on paragraph 1 of article 61 (A/CONF.13/C.2/L.108) was adopted by 36 votes to 6, with 9 abstentions.

The Venezuelan proposal on paragraph 2 of article 61 (A/CONF.13/C.2/L.58) was rejected by 21 votes to 11, with 16 abstentions.

The Danish proposal to add a new paragraph 3 to article 61 (A/CONF.13/C.2/L.101) was adopted by 26 votes to 7, with 20 abstentions.

The text of article 61 submitted by the International Law Commission, as amended, was adopted by 44 votes to none, with 7 abstentions.

The Italian proposal on article 62 (A/CONF.13/C.2/L.102) was rejected by 21 votes to 19, with 13 abstentions.

[1] Resumed from the 30th meeting.

The Netherlands proposal on article 62 (A/CONF. 13/C.2/L.97/Rev.1) was adopted by 40 votes to 3, with 12 abstentions.

The text of article 62 submitted by the International Law Commission, as amended, was adopted by 54 votes to none, with 3 abstentions.

The Italian proposal on article 63 (A/CONF.13/C.2/ L.102) was rejected by 24 votes to 11, with 20 abstentions.

The Danish proposal on article 63 (A/CONF.13/ C.2/L.101) was adopted by 30 votes to 3, with 20 abstentions.

The text of article 63 submitted by the International Law Commission, as amended, was adopted by 53 votes to none, with 2 abstentions.

The United States proposal to delete article 64 (A/CONF.13/C.2/L.111) was adopted by 24 votes to 19, with 11 abstentions.

The text of article 65 as submitted by the International Law Commission was adopted by 49 votes to one, with 2 abstentions.

Additional article proposed by Denmark (A/CONF.13/C.2/L.100) (concluded) [1]

10. Mr. RIEMANN (Denmark) amended his proposal (A/CONF.13/C.2/L.100) by deleting the words "and to enforce them against anybody, irrespective of nationality, who navigates in these waters".

11. Mr. KEÏLIN (Union of Soviet Socialist Republics) remarked that the proposal spoke of responsibilities assumed by international agreement or custom; the special rights deriving from those responsibilities could likewise be regulated, as far as necessary, by custom and agreement. He did not think that the amendment indicated by the representative of Denmark altered the substance of the proposal; the remaining text implied the provision which had been deleted. If the regulations for the issuance of which the proposal sought to obtain authority were necessary, agreement could doubtless be reached with regard to them. A general provision in international law was not required.

12. Mr. GIDEL (France) reiterated the remarks he had made at the 30th meeting. He urged the Committee not to adopt any decision capable of having far-reaching consequences on a matter which, by its special nature, required thorough consideration.

The Danish proposal, as amended (A/CONF.13/ C.2/L.100), was rejected by 22 votes to 6, with 23 abstentions.

Additional article proposed by Colombia (A/CONF.13/C.2/L.75)

13. Mr. VASQUEZ ROCHA (Colombia), introducing his delegation's proposal (A/CONF.13/C.2/L.75), said that it should be considered in relation to a similar proposal by Colombia in the First Committee (A/ CONF.13/C.1/L.148), and to article 73 which had been adopted by the Fourth Committee and for which Colombia had voted. It had been his country's policy to support the inclusion of such a clause in all international conventions. That was not a mere theoretical principle; Colombia had submitted many international disputes to international arbitration and had accepted the decisions of the International Court or of arbitration tribunals. He referred to the International Law Commission's view, expressed in paragraph 4 of the commentary to article 73, that such a provision was essential in relation to the articles on the continental shelf. It was fully in accord with Article 33 of the United Nations Charter. His delegation considered that article 73 should apply to all the articles of the proposed convention on the law of the sea, with the exception of articles 52 to 56 which were governed by the special provision contained in article 57; the Colombian proposal was therefore intended to apply to all the articles, and he referred to the note by the Secretariat containing examples of final clauses, A/CONF.13/L.7, which set forth a model of a final clause relating to the settlement of disputes. It was appropriate, however, that each committee should consider the question in relation to the articles allotted to it, as the Fourth Committee had done in the case of article 73. It would be for the Drafting Committee of the Conference to reconcile any differences between the articles on the settlement of disputes adopted by the different committees.

14. Mr. CERVENKA (Czechoslovakia) said that the codification of international law and the peaceful settlement of disputes were two separate problems. The peaceful settlement of disputes had been referred to in many bilateral and multilateral agreements between States, but it would be an unnecessary complication to introduce that question into a convention codifying international law. Moreover, the Colombian proposal in practice restricted the peaceful settlement of international disputes to proceedings before the International Court of Justice. The notion that that was the only method of solving disputes relating to the law of the sea did not represent the view of the majority of States. It was far too narrow and would be contradictory to the interests of States and the realities of the world situation. In accordance with the principle of the sovereignty of States, any country could accept the optional clause relating to compulsory jurisdiction under article 36 of the Statute of the International Court of Justice. That covered disputes of all kinds, including those relating to the law of the sea. He therefore proposed that the Colombian proposal should not be discussed, and that the question of such a final clause should be left to the Drafting Committee of the Conference.

15. Mr. SOLE (Union of South Africa) said that, although he sympathized with the aims of the Colombian proposal, he believed it should necessarily be considered in the light of what the Second Committee decided with regard to the form in which the results of its work were to be embodied. The terms of reference of the Conference did not restrict that form; and the South African delegation believed that the conclusions of the Second Committee might better be embodied in a declaration than in a convention, since the Committee was in fact dealing with the codification of rules and practices in international law of which many were of long standing. His delegation had supported in the Fourth

[1] Resumed from the 30th meeting.

Committee a similar proposal to that of Colombia for article 73 where the continental shelf was concerned, because that was a relatively new concept in international law, and it was therefore desirable that the relevant articles should appear in a convention. If the Second Committee decided that its work should take the form of a declaration it would not be possible to include such a clause as that proposed by Colombia, and he would therefore have to vote against it.

16. He did not think it necessary to take a decision at the present meeting on the Czechoslovak proposal, which could be considered when the final draft of the articles and the form of the instrument in which they were to be embodied were being decided.

17. Mr. RADOUILSKY (Bulgaria) said that the notion of compulsory jurisdiction by the International Court in the Colombian proposal resembled the provisions contained in articles 57 and 73 and that his delegation had objected to that idea in the Sixth Committee of the General Assembly.[1]

18. The proposal had no basis in existing international law, whereby no government was obliged to accept the compulsory jurisdiction of the International Court with regard to the law of the sea. Such a proposal would not contribute to the progressive development of international law because it was contrary to the principles upon which relations between States were based. Many governments did not accept the idea of compulsory jurisdiction by the Court, since they held that it conflicted with the principle of the sovereignty of States. If the Colombian proposal was considered in relation to articles 57 and 73, it was clear that the Court, by its decisions and interpretations, would be creating new rules, and thus taking on a function that had not been conferred on it. Articles 57 and 73 dealt with disputes of a special nature, relating to fishing and the continental shelf, which might need to be settled quickly, but that did not apply to disputes relating to the régime of the high seas. The disputes arising in relation to the high seas had no special character that would differentiate them from any other type of international dispute, and could more suitably be dealt with under Article 33 of the United Nations Charter and the Statute of the International Court. A provision such as that proposed was unlikely to be accepted by some governments and might therefore be an obstacle to ratification of the convention. He would accordingly vote against the proposal.

19. Mr. KEÏLIN (Union of Soviet Socialist Republics) saw no need for the Colombian proposal, which conflicted with the established procedure for the settlement of disputes. He agreed with the Bulgarian representative that the proposal went beyond the scope of the Committee's work, and thought that it should not be considered until the final stages were reached. Since the proposal referred only to articles 26-48 and 61-65, it appeared to be based upon the belief that each committee should establish whatever procedure for the settlement of disputes it considered suitable. The proposal was unacceptable to his delegation, and he would vote against it.

20. Mr. FRÖLICH (Switzerland) said that the matters raised in the Colombian proposal were of concern to all States and to all five committees of the Conference. His delegation had therefore submitted a proposal (A/CONF.13/BUR/L.3) to the President of the Conference that a decision on that question should be reached at the top level of the Conference rather than in individual committees.

21. Mr. VAN PANHUYS (Netherlands) welcomed the Colombian proposal. His country had always supported the extension of international arbitration and jurisdiction. He was disappointed that so many delegations considered that the trend to settle international disputes by international arbitration did not contribute to the progressive development of international law. In his view, multilateral treaties should lay down procedures for the settlement of disputes arising out of them, and the fact that many such treaties did so proved that the question was not as difficult and complicated as some speakers had maintained. The Colombian proposal was in line with clauses included in previous treaties and also with the proposal in the Secretariat's note (A/CONF.13/L.7), and he felt that the principle it embodied should be adopted by the Conference.

22. The Czechoslovak representative had said that under article 36 of the Court's Statute it was for governments to decide whether or not to accept compulsory jurisdiction of the Court. That was true under paragraph 2 of that article, but under paragraph 1, the jurisdiction of the Court could be accepted in treaties and conventions. It had also been said that it should be left to the States concerned te decide how the dispute was to be settled, but in the Colombian proposal, as in article 73, all other peaceful means of settlement were, in point of fact, left open to States.

23. The Bulgarian representative had referred to Article 33 of the Charter, but that article related to disputes likely to endanger international peace, whereas not all the questions arising under the convention under consideration were likely to be of that nature. Nor did he believe that the proposal conflicted with the principle of the sovereignty of States, since in many treaties States had, in the exercise of their sovereignty, accepted the jurisdiction of the Court. The fact that article 73 had been adopted made it clear that such a provision was within the Conference's mandate.

24. He agreed with the Swiss representative that the question should be studied from the point of view of the Conference as a whole, in a plenary meeting or in some special committee or other body of the Conference. That would not preclude the Second Committee from expressing the view that the disputes arising within the articles submitted to it were suitable for submission to the International Court of Justice.

25. If, as the representative of the Union of South Africa had suggested, the articles relating to the régime of the high seas were embodied in a declaration rather than a convention, it would still be open to the States at the Conference to sign a simple convention accepting the jurisdiction of the Court for the rules embodied in the declaration, since they would constitute rules of international law, and there was no reason for limiting the jurisdiction of the Court to rules laid down in treaties.

[1] See *Official Records of the General Assembly, Eleventh Session, Sixth Committee*, 490th meeting, para. 40.

26. His delegation would therefore vote for the Colombian proposal on the understanding that subsequent consideration would be given to the question of including a more general provision in whatever instrument was adopted by the Conference.

27. Mr. GLASER (Romania) referred to the views expressed by his delegation in the Sixth Committee of the General Assembly.[1] The Netherlands representative appeared to consider that the proposal was in conformity with the progressive development of international law, but such an eminent authority as Professor Waldock, Chief Editor of *The British Year Book of International Law,* had expressed the opinion in an article entitled " Decline of the Optional Clause " [2] that fewer countries were accepting the jurisdiction of the International Court of Justice than in previous years, and that countries such as the United States, the Union of South Africa and the United Kingdom, although in theory they accepted the compulsory jurisdiction of the Court, had left themselves free to withdraw that acceptance if it suited them.

28. The Second Committee was dealing with general law — not special law — and previous votes had shown that decisions in the Committee had been made very largely on political grounds. All countries accepted the principle of the freedom of the high seas, but its application was a question of interpretation rather than legislation. Some representatives had expressed the view at the 31st meeting that that freedom entitled them to pollute the sea with radio-active waste or carry out tests that interfered with navigation and might even kill human beings. Others took the view that the freedom of the high seas should rule out such activities. It could not be seriously suggested that on such questions the International Court of Justice would be able to hand down decisions that would be accepted by the States concerned. In those cases, interpretation by the Court would amount to legislation. Such issues might easily lead to disputes that might threaten international peace and should accordingly be governed by Article 33 of the United Nations Charter.

29. Not even the International Law Commission, although it had included — as he thought, without sound reasons — references to arbitration and compulsory jurisdiction in other sections of the draft articles, had considered any such references appropriate in relation to the régime of the high seas. His delegation would therefore vote against the Colombian proposal.

30. Mr. LÜTEM (Turkey) congratulated the Colombian representative on his proposal, and said that his country was ready to accept the jurisdiction of the International Court of Justice. He would therefore vote for the proposal. He agreed with the Netherlands representative that the Second Committee should express its views on that important matter, and he asked for a vote by roll-call on the Colombian proposal.

31. Mr. VAN PANHUYS (Netherlands) understood that the views of Professor Waldock, quoted by the Romanian representative, related to paragraph 2 of article 36 of the Court's Statute rather than to paragraph 1; the *Yearbook* of the International Court showed that there were each year a number of bilateral or multilateral treaties that included clauses on compulsory jurisdiction. Even if Professor Waldock held the view that acceptance of compulsory jurisdiction was on the decline, that was no reason why the present conference should encourage such a trend. Article 33 of the Charter did not exclude settlement of disputes by reference to the Court, to which many disputes on less important matters might well be submitted.

32. Mr. GLASER (Romania) said that it might be a very delicate matter to decide which disputes were likely to endanger international peace and which were not. The difference between paragraphs 1 and 2 of article 36 of the Statute of the International Court was reflected in the difference between the Colombian proposal, on the one hand, and the procedure suggested by the representative of Switzerland, on the other.

33. Mr. CERVENKA (Czechoslovakia) said that against the arguments adduced by the Netherlands representative could be set the fact that even the International Law Commission had intentionally avoided the introduction into its draft of any proposal concerning the settlement of disputes. It had only departed from that attitude in two special cases: over fisheries (article 57) and over the continental shelf (article 73). In neither case were the specific conditions comparable with the rules governing the régime of the high seas. Moreover, even in those special cases, the International Law Commission had only proposed the jurisdiction of the International Court of Justice in article 73, which dealt with the continental shelf. In article 57, where the settlement of disputes arising from fisheries was concerned, it had recommended an arbitral procedure.

34. Mr. MINTZ (Israel), emphasizing the gravity of the subject under discussion, moved that voting be postponed to give time for further consideration.

35. The CHAIRMAN put to the vote the proposal by the representative of Israel that voting on the Colombian proposal (A/CONF.13/C.2/L.75) be postponed until the next meeting.

The proposal was adopted by 23 votes to 18, with 15 abstentions.

ADDITIONAL ARTICLE PROPOSED BY PORTUGAL (A/CONF.13/C.2/L.38/Rev.2) (continued) [3]

36. Mr. CARDOSO (Portugal) said that his delegation's proposal involved a definition at present under discussion in the First Committee, and he therefore proposed that voting on it be postponed.

ADDITIONAL ARTICLE 33 A (A/CONF.13/C.2/L.113) (continued) [4]

37. Mr. GRANT (United Kingdom) referred to his delegation's proposal for a new article 33 A (A/CONF. 13/C.2/L.113) adopted by the Second Committee at its 27th meeting. A difficulty had now arisen in the

[1] *Ibid., 497th meeting, para. 20.*

[2] *The British Year Book of International Law, 1955-6,* p. 244.

[3] Resumed from the 26th meeting.

[4] Resumed from the 27th meeting.

First Committee at its 39th meeting in relation to a similar proposal for an article 20 A (A/CONF.13/C.1/L.37). His delegation's proposal for article 33 A had been submitted late and, unlike article 33 itself, had not been discussed. The United Kingdom had therefore asked for the voting to be postponed so as to ensure uniformity between the First and Second Committee, but that request had not been accepted.

38. The United Kingdom now wished to withdraw its proposal for article 33 A, and he accordingly proposed that, under rules 32 and 53 of the rules of procedure, article 33 A should be reconsidered by the Committee. He still believed that an article containing the necessary definitions should appear somewhere in the Convention and, while thanking those representatives who had voted for his delegation's proposal for article 33 A, he hoped that the Committee would agree that in the circumstances reconsideration was the best course.

39. The CHAIRMAN ruled that rules 32 and 53 did not apply to the reconsideration of decisions.

40. Mr. GRANT (United Kingdom), supported by the representatives of Mexico and the Union of Soviet Socialist Republics, appealed against the Chairman's ruling.

41. The CHAIRMAN then put to the vote the proposal that the decision to reconsider the adoption of article 33 A should be taken by a simply majority.

The proposal was adopted by 32 votes to 9, with 7 abstentions.

42. The CHAIRMAN put to the vote the proposal by the United Kingdom to reconsider the adoption of article 33 A.

The proposal was adopted by 43 votes to none, with 11 abstentions.

The meeting rose at 1.0 p.m.

THIRTY-THIRD MEETING

Monday, 14 April 1958, at 10.30 a.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ADDITIONAL ARTICLE PROPOSED BY COLOMBIA (A/CONF.13/C.2/L.75) (concluded)

1. Mr. COLCLOUGH (United States of America) said that his government was willing, on its part, to accept the further obligation to submit itself to the jurisdiction of the International Court of Justice. He felt, however, that the applicability of the Colombian proposal (A/CONF.13/C.2/L.75) would depend on the nature of the instrument eventually adopted to embody the conclusions reached by the Second Committee. The wording of the Colombian proposal would thus have to be left for consideration by the Drafting Committee after a decision had been reached on the question of the instrument. With that proviso, his delegation was prepared to support the Colombian proposal.

2. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the Colombian proposal could not be put to the vote for the following reasons. Firstly, it must await a decision as to the kind of instrument of international law required to embody the results of the Committee's work concerning the régime of the high seas. Secondly, consideration must be given to the proposal made by the Swiss delegation in its letter of 9 April to the President of the Conference (A/CONF.13/BUR/L.3) on the same question as had been raised by the Colombian delegation — namely, the interpretation of the decisions taken by the Conference and arrangements for the settlement of disputes. The Committee should refrain from taking any decision on the matter, and leave it to the plenary conference.

3. Naturally, the Soviet Union delegation found the Colombian proposal unacceptable from a substantive as well as a procedural point of view.

4. Mr. VASQUEZ ROCHA (Colombia) said that his delegation's proposal affected all the articles before the Conference. In view of the fact that some representatives had suggested that it should not be voted on by the Second Committee, but by the General Committee, and in view of the further fact that the Swiss letter on the question of judicial settlement coincided on many points with the Colombian proposal and had still to be studied by the General Committee, he moved that his delegation's proposal be voted on later in plenary session.

5. He thanked the representatives of the Netherlands and Turkey for their support of the Colombian proposal.

6. Mr. SOLE (Union of South Africa) moved an amendment to the Colombian representative's motion to the effect that the Committee should defer voting on the Colombian proposal until it had decided what form of instrument it would recommend to the Conference for the incorporation of the Committee's conclusions. The Colombian proposal should, he felt, be considered in the light of whatever instrument was adopted. That was not purely a drafting question, and it would save the time of the Conference if the Second Committee were to take a decision on the Colombian proposal at the end of its discussions.

7. With the agreement of the Colombian representative, the CHAIRMAN put to the vote the South African representative's motion.

The motion was carried by 46 votes to none, with 2 abstentions.

ADDITIONAL ARTICLE 33 A (A/CONF.13/C.2/L.113) (concluded)

8. The CHAIRMAN said that, in accordance with the decision taken at the previous meeting, the Committee would reconsider the additional article 33 A which it had adopted at the 27th meeting.

9. Mr. KEÏLIN (Union of Soviet Socialist Republics) drew attention to the circumstances surrounding the submission of the United Kingdom's proposal for

article 33A (A/CONF.13/C.2/L.113) and the additional article proposed by Portugal (A/CONF.13/C.2/L.38/Rev.2). The original Portuguese proposal (A/CONF.13/C.2/L.38) had been submitted on 21 March. On 25 March, it had been submitted in a revised form (A/CONF.13/C.2/L.38/Rev.1); and on the same day the United Kingdom had submitted a similar proposal to the First Committee (A/CONF.13/C.1/L.37). The same proposal (A/CONF.13/C.2/L.113) had then been submitted by the United Kingdom to the Second Committee at its 27th meeting on 9 April; and on the same day the Portuguese representative had once again submitted a revision (A/CONF.13/C.2/L.38/Rev.2) of his proposal. At the 39th meeting of the First Committee on that day, the United Kingdom representative had spoken on his proposal and stressed its importance. The representative of Turkey in the First Committee had opposed the United Kingdom proposal, pointing out that government non-commercial ships as defined therein included such vessels as fleet auxiliaries, military supply ships and troopships, which the Montreux Convention had classified as warships. Some surprise had been caused when the Second Committee had adopted the United Kingdom proposal (A/CONF.13/C.2/L.113) at its 27th meeting on 9 April. At the 39th meeting of the First Committee on that day, the United Kingdom proposal to that committee (A/CONF.13/C.1/L.37) had been withdrawn. It had now been decided that the whole question should be reconsidered in the Second Committee.

10. The illogical nature of the definition of ships on government non-commercial service proposed by the United Kingdom delegation and of that proposed by the Portuguese delegation was quite apparent. Since when, he asked, had warships ceased to be government ships? That lack of logic was not without a purpose, however. The United Kingdom's classification was intended to combine both warships and other government ships under the same heading, as could be seen from sub-paragraph (i) of the proposal where yachts were placed in the same category as various kinds of warships. The classification used in sub-paragraphs (i), (ii) and (iii) was quite arbitrary. Why should patrol vessels be included in sub-paragraph (i) and fishery protection vessels in sub-paragraph (ii), when it was well known that both types of ship belonged to the military fleets of States?

11. The classification was also incomplete. No mention was made of icebreakers, floating docks or, most important, floating wireless stations which some governments were sending to the shores of other States to make broadcasts of a far from harmless nature directed towards those States.

12. Finally, the definition of commercial vessels was also open to question. To put merchant ships in a special category apart from government ships was to ignore the fact that government merchant ships had long existed, and were continually increasing in numbers.

13. The only conclusion that could be drawn was that the United Kingdom classification was intended to give States freedom of passage and navigation for the largest possible number of warships in the territorial and internal waters of other States. The classification was, in fact, an attempt to camouflage certain warships. Its effect would be to confer immunity on certain classes of government ship, while at the same time depriving government merchant ships of such immunity, although that was violation of accepted international law. It was for that purpose that government ships and merchant ships had been placed in separate categories.

14. For those reasons, the classification of ships used in the proposal was unacceptable to his delegation. It would be harmful to the interests of most States represented, and contained a serious danger of conflict. It was to be hoped that the authors of the two proposals would withdraw them, but if they did not do so, he would urge that the classification of ships should be referred to the First Committee, or that a joint meeting should be held between the First and Second Committees to solve the whole problem.

15. Mr. GRANT (United Kingdom) said that the discussions in the First Committee had shown how difficult it was to reach a satisfactory definition of government ships and merchant ships. He thought that the United Kingdom proposal (A/CONF.13/C.2/L.113) provided the best definition possible.

16. The discussions in the First and Second Committees appeared to indicate a choice between two alternative courses. The idea of including a definition of ships — apart from warships which had already been defined in article 32 — might be abandoned, and, if the Committee thought that that was the best procedure, the United Kingdom would withdraw its proposal.

17. Alternatively, the Committee could accept the Soviet representative's suggestion that the question of definitions should be considered jointly by the drafting committees of the First and Second Committees.

18. Mr. SOLE (Union of South Africa) said that it was unwise to attempt to draft definitions after articles of a substantive character had been adopted. He pointed out that the International Law Commission had not attempted to draw up any definition such as that contained in the United Kingdom proposal. If the Conference had had more time at its disposal, it might have been worth referring the problem of definition to the First Committee or to a joint drafting committee of the First and Second Committees. But in the circumstances, he would urge the United Kingdom to withdraw its proposal.

19. It might be possible later to reconsider the question of definitions after a decision had been taken on the nature of the instrument embodying the Committee's conclusions. But since there was wide disagreement over the definitions, it would probably only create more difficulties to proceed any further in the matter.

20. Mr. TUNCEL (Turkey) congratulated the United Kingdom delegation on its attempt to define government ships. However, since that attempt had met with difficulties, the United Kingdom delegation was to be commended for its offer to withdraw its proposal.

21. Turkey had drawn attention in the First Committee to the differences between the United Kingdom's proposed definitions and the points of agreement reached in the Montreux Convention and the Treaty for the Limitation of Naval Armaments of 1936. It was true that warships might be placed on non-military,

non-commercial government service, but such service had not been clearly defined. It was essential that the difference between ships on such service and commercial ships should be made clear, since an armed ship constituted a danger to other States when passing through the territorial sea. It was for those reasons that Turkey had drawn the United Kingdom delegation's attention to the inconsistencies in its proposed definitions, and he was gratified by the United Kingdom's response.

22. The CHAIRMAN noted that the United Kingdom was prepared to withdraw its proposal (A/CONF.13/C.2/L.113).

ADDITIONAL ARTICLE PROPOSED BY ARGENTINA, CEYLON, INDIA AND MEXICO (A/CONF.13/C.2/L.121/Rev.1)

23. Mr. KANAKARATNE (Ceylon) explained that the additional article proposed jointly by Argentina, Ceylon, India and Mexico (A/CONF.13/C.2/L.121/Rev.1) substantially reproduced paragraphs 2 and 3 of article 48, which had been deleted by a majority of only one vote at the 31st meeting, when he had asked for two separate votes to be taken; first, on the deletion of articles 2 and 3, and secondly, on the draft resolution sponsored by the United States and the United Kingdom (A/CONF.13/C.2/L.107). Furthermore, in explaining his vote, he had stated that his delegation saw no reason for deleting the two paragraphs which, he felt, expressed something to which every State could subscribe. Many delegations had been disturbed on the occasion of that vote, and thought that the Committee should be given an opportunity to re-incorporate the two paragraphs in question.

24. Accordingly, the new joint proposal reproduced paragraphs 2 and 3 of the International Law Commission's article 48 almost verbatim. The only change in paragraph 1 was the addition of a reference to the "norms and regulations formulated by the competent international organizations". In that way, the sponsors felt that they had embodied the spirit of the United States and the United Kingdom resolution.

25. Paragraph 2 of the joint proposal reproduced paragraph 3 of the International Law Commission's text word for word, except that a reference had again been inserted to the "competent international organizations". The sponsors of the proposal were ready to consider any constructive amendments to it; but his delegation was anxious that the convention should include a specific article in which States would be required to take every possible measure to prevent the dumping of radio-active waste.

26. Mr. GARCIA ROBLES (Mexico) said that, while the resolution sponsored jointly by the United States and United Kingdom was very useful, it had had the most unfortunate result of eliminating paragraphs 2 and 3 of article 48. The new four-power proposal would be an improvement on the original paragraphs 2 and 3, which dealt with a different matter from that covered by paragraph 1. Moreover, under the new proposal, States would be obliged not only to draw up regulations, but also to take into account the regulations formulated by competent international organizations and to collaborate with those organizations. It was indispensable that the final instrument should contain some reference to regulations on the whole subject.

27. He also would be ready to consider any constructive suggestions to amend the proposal, in order to achieve what he hoped would be unanimous approval. If other delegations desired to hold informal discussions on it, he was ready to agree that consideration of the new article should be postponed for the time being.

28. Mr. VAN PANHUYS (Netherlands) said that his delegation had voted against the deletion of paragraphs 2 and 3 of the original draft. The new proposal was in substance the same as those two paragraphs. He asked whether it was in order to reconsider the matter.

29. The CHAIRMAN said that he preferred not to give a ruling; the best course would be to continue the discussion.

30. Mr. SOLE (Union of South Africa) felt grateful to the sponsors of the new proposal, which was acceptable to his delegation on the understanding that the United States and United Kingdom resolution would still stand. The Mexican representative's suggestion that the sponsors might undertake informal discussions in order to secure unanimous endorsement was very useful. A few improvements could certainly be made — for example, it was possible to argue that any release of radio-active material involved pollution; but there were circumstances in which a measure of such discharge represented no danger either to man or to his resources.

31. If the sponsors agreed, a vote might be taken on the principle of their proposal. The final text could then be prepared by the sponsors. The matter could be left in abeyance until the full texts of the drafts of all the committees, as submitted by the drafting committees, were available.

32. Mr. JHIRAD (India) stated that his delegation had been greatly disturbed by the fact that the joint resolution of the United States and United Kingdom had been pressed to a vote. He could not believe that those two countries, with their wonderful record for the maintenance of human values, would be apprehensive of accepting the responsibility laid dwon in an international instrument for the prevention of the pollution of the seas by radio-active waste. He could not credit that that had been their real intention. There was, in fact, no inconsistency between that resolution and the proposal now under discussion, and he made a special appeal to the United States and United Kingdom delegations to support the proposal. He would be ready to listen to any suggestions or comments in that connexion.

33. Sir Alec RANDALL (United Kingdom) assured the representative of India that the action taken by the United Kingdom delegation in connexion with article 48 in no way implied the lack of a deep feeling of responsibility on the question of pollution by radio-active materials. His government took the greatest care to avoid such pollution as far as possible, and he did not think that any harm had resulted from his country's activities.

34. He supported the South African representative's

suggestion, except that he would prefer a vote on the proposal to be postponed until a widely acceptable draft had been prepared. He was sensible of the strong feeling in the Committee that the resolution by itself was not enough; he yielded to that feeling and agreed that articles on the subject were needed in the final instrument. The subject was one of vital importance and, if possible, a unanimous decision should be reached.

35. Mr. COLCLOUGH (United States of America) also wished to reassure the Indian representative about his government's attitude. He was most anxious that there should be full understanding of its deep sense of responsibility in the matter. It was making very great efforts to obviate any harmful effects.

36. He supported the new article as a supplement to the resolution, but thought an attempt should be made to evolve a draft which would achieve unanimous acceptance.

37. Mr. KANAKARATNE (Ceylon) could not agree with the suggestion by the South African representative that a vote should first be taken on the principle of the proposal. The best solution would be for consideration to be deferred until the co-sponsors had had discussions with the United States, the United Kingdom, and other delegations, with a view to evolving a text which would achieve unanimous approval.

38. He felt obliged to recall that it was the United States representative who had opposed his delegation's suggestion for a division of the vote on the United States and United Kingdom resolution.

39. Mr. CERVENKA (Czechoslovakia) agreed with the explanations offered by the representative of Ceylon when introducing the four-power proposal. His delegation would suggest two amendments: first, in paragraph 1, to insert after the words "radio-active" the words "elements and"; secondly, in paragraph 2, to replace the words "experiments or activities" by the words "any activities".

40. The purpose of those amendments was to stress the significance of the peaceful uses of atomic energy and the measures to be taken to prevent the pollution of the seas by waste resulting from such activities. He could not believe that there would be any objection to it. His country, which took an active part in the International Atomic Energy Agency, was willing to co-operate in evolving a text that would secure a unanimous vote.

41. Mr. COLCLOUGH (United States of America) regretted the interpretation placed by the representative of Ceylon on the United States delegation's attitude towards the division of the vote on the joint resolution. He had objected purely on the "parliamentary" aspect and not on the substance of the matter. He reiterated his delegation's support for the four-power proposal.

42. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the voting on article 48 at the 31st meeting gave the impression of being more or less fortuitous; that could be the only explanation of the fact that paragraphs 2 and 3 of the article had been deleted by a majority of one vote.

43. In that connexion, attention must be drawn to the positive importance of the joint proposal of Argentina, Ceylon, India and Mexico. The vital interests of the peoples required that effective measures should be taken to eliminate pollution of the seas by radio-active substances and waste matter. It was a question of saving human lives, protecting health and conserving the very important food resources of the sea. The Soviet Union delegation considered that it was the duty of all governments to issue appropriate regulations forbidding the pollution of the sea by the dumping of radio-active substances and waste matter and to collaborate in the drawing up of such regulations. The dispositions of the additional article proposed by the four powers were directed towards the achievement of those important aims, and the Soviet Union delegation would therefore support the proposal.

44. Moreover, in view of the considerations advanced by one of the delegations, the Soviet Union delegation wished to point out that it was clearly a case of a new proposal and consequently there could be no question of its adoption requiring a reconsideration of the decision taken earlier.

The meeting rose at 12 noon.

THIRTY-FOURTH MEETING

Tuesday, 15 April 1958, at 2.45 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

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

ADDITIONAL ARTICLE PROPOSED BY PORTUGAL (A/CONF.13/C.2/L.38/Rev.2) (concluded) [1]

1. Mr. CARDOSO (Portugal) said that he was prepared to withdraw his proposal (A/CONF.13/C.2/L.38/Rev.2), on the understanding that the Drafting Committee would be asked to consider whether an article on definitions was necessary in the light of the decisions taken by the Second Committee itself and by the other committees.

2. Mr. KEÏLIN (Union of Soviet Socialist Republics) emphasized that the Portuguese proposal, not being a matter of drafting, could not be referred to the Drafting Committee without danger of serious controversy. The course proposed by the Portuguese representative was contrary to the rules of procedure. A drafting committee must confine itself strictly to matters of form, and was not empowered to take decisions of substance. The withdrawal of the Portuguese proposal meant that there was no substantive provision now before the Committee.

3. Mr. CARDOSO (Portugal) explained that he had withdrawn the substance of his proposal altogether, and only wished the Drafting Committee to consider whether, in the light of the articles adopted by the Committee, an article on definitions was required.

[1] Resumed from the 32nd meeting.

4. The CHAIRMAN observed that the Drafting Committee would only be required to discuss any drafting points that remained outstanding. The United Kingdom proposal for an additional article 33 A, containing a definition (A/CONF.13/C.2/L.113) had been withdrawn at the preceding meeting.

5. Mr. MINTZ (Israel) said that the Drafting Committee's attention should be drawn to the existence of government vessels operated by port services — a category which had not been mentioned in either the Portuguese or the United Kingdom proposal.

6. Mr. GLASER (Romania) said that, in case the Drafting Committee should decide that an article on definitions was required, he wished to state his view that such an article in an instrument of codification was not solely a matter of form, but affected issues of substance. For example, the definition of merchant ships withdrawn by the Portuguese representative raised important problems of substance by excluding government ships operated — as was the practice of a number of States — for commercial purposes.

7. The CHAIRMAN, sharing the view of the Soviet Union representative, assured him that the Drafting Committee would be called upon to examine only points of drafting.

ADDITIONAL ARTICLE PROPOSED BY ARGENTINA, CEYLON, INDIA AND MEXICO (A/CONF.13/C.2/L.121/Rev.2) (concluded)

8. Mr. GARCIA ROBLES (Mexico) announced that, a result of informal discussions between the authors of the four-power proposal and the representatives of the United Kingdom and the United States, agreement had been reached on a revised text (A/CONF.13/C.2/L.121/Rev.2). The words "experiments or" in paragraph 2 had been deleted as suggested by the Czechoslovak representative at the preceding meeting. He hoped that a similar spirit of conciliation would prevail in the settlement of other outstanding matters before the Conference.

9. Sir Alec RANDALL (United Kingdom) expressed appreciation of the initiative taken by the authors of the joint proposal and the conciliatory attitude they had displayed in meeting the views of the United States and United Kingdom delegations. His government, following the lead given by the President of the United States, had from the outset taken an active part in the establishment of the International Atomic Energy Agency (IAEA), and considered that the problem of pollution by radio-active waste should be referred to that agency; such a course was preferable to the adoption of provisions in very general terms. The authors of the joint resolution on the subject (A/CONF.13/C.2/L.107) had certainly not wished to cause delay, for they too believed that the matter should be given urgent attention. His delegation respected the apparently general desire for a draft article in addition to the resolution adopted at the 31st meeting and welcomed the four-power proposal, which was in line with the International Law Commission's intention not to prejudge the recommendations of the United Nations Scientific Committee on the Effects of Atomic Radiation; only an impartial international body could carry out the type of disinterested scientific study required. The joint proposal, in conjunction with the resolution, would provide the proper foundation for the widest possible co-operation on a vital problem, the complexity and scope of which were bound to increase.

10. Mr. COLCLOUGH (United States of America) supported the revised version of the proposed additional article which, in conjunction with the joint resolution already adopted, would ensure orderly progress towards the solution of a very important problem.

11. Mr. GIDEL (France) shared the satisfaction expressed at the agreement reached on the revised proposal, but urged that the Drafting Committee consider substituting the words "contamination by" for the words "the dumping of" in the text of paragraph 1.

12. Mr. HEKMAT (Iran) was gratified by the agreement reached on an important issue affecting the whole of humanity, and declared his support for the four-power proposal, which would usefully supplement the Commission's draft.

The additional article proposed by Argentina, Ceylon, India and Mexico (A/CONF.13/C.2/L.121/Rev.2) was adopted by 58 votes to none.

13. Mr. OHYE (Japan) explained that his support of paragraph 2 of the joint proposal in no way affected his government's position concerning the prohibition of nuclear tests.

14. Mr. SOLE (Union of South Africa) said that, in anticipation of an affirmative vote by the plenary Conference on the draft resolution adopted at the 31st meeting and the additional article that had just been adopted, arrangements had already been made to place on the provisional agenda for the next meeting of the Board of Governors of IAEA at the end of April an item entitled: "Pollution of the seas by radio-active waste: consideration of conclusions and recommendations of the United Nations Conference on the Law of the Sea". He hoped that the Board of Governors would take prompt steps in furtherance of the initiative taken at the Conference.

Appointment of a Drafting Committee

15. The CHAIRMAN proposed the appointment of a Drafting Committee composed of the officers of the Second Committee and the following representatives: Mr. Pluymers (Belgium), Mr. Kanakaratne (Ceylon), Mr. Uribe Holguín (Colombia), Mr. Jhirad (India), Mr. Campos Ortiz (Mexico), Mr. Keïlin (Union of Soviet Socialist Republics), and Mr. Colclough (United States of America).

The Chairman's proposal was adopted.

Consideration of the kind of instrument required to embody the results of the Committee's work

16. The CHAIRMAN drew the Committee's attention to the recommendation contained in the report of the General Committee (A/CONF.13/L.9, para. 5) that each committee should decide as soon as possible on any recommendations it might wish to make to the

Conference regarding the kind of instrument or instruments required to embody the results of its work.

17. Mr. ROJAS (Venezuela) said that, in his delegation's view, the Committee should refrain from making any recommendation whatever. The decision was one solely for the plenary Conference and, in any event, no recommendation could possibly be formulated before the Committee's rapporteur had submitted his draft report.

18. Mr. SOLE (Union of South Africa) thought that if every committee were to leave the matter to the plenary Conference, its business would never be concluded before the closing date. It was the Committee's duty to examine every point at issue, on the clear understanding that any recommendations agreed upon would be in no way binding on the delegations and might have to be modified in the light of decisions taken by other committees.

19. In the opinion of the South African delegation, the most appropriate instrument in which to embody the results of the Second Committee's work would be a simple declaration, adopted by a two-thirds majority. The articles on the régime of the high seas — unlike those relating to new concepts such as the continental shelf — nearly all had a long history behind them, and represented reasonably well-established principles of the law of nations, which could be affirmed in an instrument less cumbersome than a convention. Moreover, a declaration would probably prove more widely acceptable.

20. The most important argument in favour of a declaration, however, was that a formal convention would require parliamentary approval and ratification and raise the difficult problem of reservations, while a less categorical document which merely stated what the majority believed to be the applicable law would require none of those formalities and yet afford equally valuable guidance to any court dealing with a dispute. In that connexion, the South African delegation favoured the traditional system of leaving the application of international law to municipal tribunals and felt serious misgivings regarding the procedures for the settlement of disputes suggested by Colombia (A/CONF.13/C.2/L.75), Switzerland (A/CONF.13/BUR/L.3) and certain other delegations. The adoption of any such proposal would necessitate an additional protocal, which — besides re-opening the issues of ratification and reservations — probably could not be agreed upon in the time available.

21. He therefore hoped that the Drafting Committee would consider the possibility of a declaration and examine such questions as the type of preamble needed and the majority by which the document should be approved.

22. Sir Alec RANDALL (United Kingdom) said that his delegation supported the general purport of the South African suggestion; it believed that a declaration would be all the more suitable because of the decision taken by the Committee at its 32nd meeting that nothing should be done to prejudice existing conventions on maritime matters. He thought, however, that many delegations might find some difficulty in subscribing to such a declaration without referring the matter to their governments. That being so, the declaration should perhaps remain open for signature for a period of six months or a year.

23. Mr. FROELICH (Switzerland) observed that the Swiss delegation had some difficulty in following the South African representative's contention that a declaration would not require any parliamentary approval or other constitutional process. No document could ever be binding on a State which had not approved it in the manner prescribed by its constitution. The term " declaration " was in itself both felicitous and of traditional significance, but an instrument bearing that heading would be subject to the same procedural requirements as any other multilateral agreement.

24. Mr. SOLE (Union of South Africa) replied that it was indeed the express design of the South African delegation that the articles on the régime of the high seas should be embodied in some instrument that would not require any ratification or other time-consuming action by parliamentary assemblies.

Mr. FROELICH (Switzerland) hoped that the manifest misunderstanding of the meaning of the term " declaration " would be cleared up by the Drafting Committee.

The meeting rose at 4.30 p.m.

THIRTY-FIFTH MEETING

Wednesday, 16 April 1958, at 3.10 p.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

Consideration of the kind of instrument required to embody the results of the Second Committee's work (A/CONF.13/C.2/L.150) *(concluded)*

1. Mr. WAITE (New Zealand) said that importance should be attached to consideration of the kind of instrument in which the text was to be embodied, as well as to the discussion of the International Law Commission's draft articles themselves. The question of form could affect the status accorded to the Committee's work, and it was important to ensure that that status correctly reflected its true nature.

2. The Second Committee, to a far greater extent than any other committee, had been more concerned with the codification of existing principles of law than with the development of new doctrines, although of course codification could not take place without elements of development. As well as the benefits which could come out of the Conference, there was a danger that doubt might be cast on accepted principles of customary international law; the form in which the work of the Committee was to be presented should be chosen with that risk in mind.

3. The alternatives seemed to be, broadly, either to embody the articles in an international instrument which would be binding on States which became parties to it; or to enunciate them as a formulation, by the Conference, of the law relating to the régime of the high seas.

4. It was true that States becoming parties to a convention would have accepted a contractual obligation to apply the provisions of the articles. Commitments of that kind, however, were usually associated with the acceptance of some new obligation ; when it was a question of codification, the position might be rather different. It had been said by Sir Cecil Hurst that the intrinsic value of a rule formulated by an authoritative body might sometimes suffice to give that rule the necessary force, even if it was not embodied in a convention. That statement might be true of the articles on the régime of the high seas adopted by the Conference. The very act of adopting them might in itself be the best way of ensuring their permanence and authority. His delegation would be interested to see whether other delegations believed that an act of a declaratory nature would be the best way of assuring such permanence and authority. If that view met with substantial support, the Drafting Committee could examine further the best way in which to give effect to it.

5. Mr. LÜTEM (Turkey) thought that the Committee was competent to make recommendations on the type of instrument required to embody the results of its work ; on the other hand, it could leave the matter entirely to the plenary Conference. There was little use in discussing the type of instrument before it was known what the other committees had decided. It was even possible that the plenary Conference would confine itself to submitting a report in general terms to the United Nations General Assembly, in order that the Member States might be able to come to a conclusion. He thought the Committee should go no further than to submit its report to the General Committee, so that it could be discussed at a plenary meeting. It would then be known whether or not any instrument would be required.

6. Mr. TAYLHARDAT (Venezuela) said that his delegation was opposed to a decision being taken on the kind of instrument required. The problems before the Conference formed a whole, and any decision adopted should be the same in the case of all five committees. It had been urged that the plenary Conference would not have enough time to decide on the kind of instrument required ; but that was one of the most important questions before the Conference, and as much time as possible should be devoted to it. His delegation was also opposed to the proposal by the Union of South Africa (A/CONF.13/C.2/L.150) that the instrument should take the form of a declaration. That proposal seemed to be in conflict with the views expressed by the South African representative in the Fourth Committee.

7. The Committee undoubtedly was competent to take a decision, since there was a recommendation that it should do so ; but he agreed with the representative of Turkey that it was under no compulsion. In the opinion of his delegation, the Committee should not take a decision, but should leave it to the plenary Conference to decide the question.

8. Mr. VASQUEZ ROCHA (Colombia) said that, whatever might be the position of those representatives who felt that the results of their work should be embodied in a declaration, the Government of Colombia had sent a delegation to the Conference with full powers to negotiate and to commit that country juridically, precisely because it expected that the work of the Conference would be embodied in a convention. The draft of the International Law Commission was a codification of the international maritime law at present in force and the purpose of the Conference was to formulate the best possible rules. If all its labours brought forth nothing more than a declaration, which would be of moral value only, imposing no obligations and having no legal force, it would disappoint the hopes of the public. The Universal Declaration of Human Rights had been generally approved, yet its provisions were often disregarded because there was no power to compel States to observe them.

9. A mere declaration would be inappropriate to the type of draft which they had been considering. The draft contained a series of rules of law, imposed specific obligations, and gave States the right to ensure that they were fulfilled. A declaration would make the work of the International Law Commission nugatory. It was true that, when the appropriate time came, a convention or conventions could be drawn up embodying those articles which had received the approval of the majority of the States represented at the Conference. He could not follow the argument that a declaration would shorten the process of incorporating the decisions of the Conference in the law of each State. In Colombia, ratification by the competent constitutional bodies would be essential, and a declaration such as that recommended in the South African proposal would not be legally binding. In his opinion the results of the Conference's work should be embodied in a convention, the implementation of which could be legally enforced.

10. Mr. GIDEL (France) doubted whether any useful decisions could be reached in the Committee ; it was a question for the Conference itself to decide. It would, indeed, be unfortunate if the decision was not taken by the plenary Conference ; for however varied its component parts might be, the law of the sea formed a unified whole, and it would be a mistake if one part of the text was not associated with the other parts. Whatever decision was taken, it should conform with the rules governing international instruments.

11. Mr. BIERZANEK (Poland) pointed out that some declarations, such as the Atlantic Charter of 1941, were not ratified ; others, like the Declaration of Paris of 1956, were ratified and only differed in title from treaties. He could not agree that the articles adopted by the Committee were merely an expression of the principles of the existing international law of the high seas. For example, article 35 stated exactly the opposite principle to that upheld by the Permanent Court of International Justice in the *Lotus* case.[1] Again, with regard to article 29, it could hardly be suggested that the doctrine of the " genuine link " was not a new one. Whatever the final instrument was called, its legal status must be clear.

12. Mr. VITELLI (Italy) considered that the articles should be embodied in a convention, which would be open for signature by all States wishing to accede to it

[1] *Publications of the Permanent Court of International Justice, Series A, No. 10.*

and would be subject to ratification ; moreover, arbitration clauses should be included. A declaration would not bind States to take the necessary legal and administrative measures.

13. Mr. MATINE-DAFTARY (Iran) agreed that a declaration would be of less value than a convention, since it would have no binding force.

14. Mr. VAN PANHUYS (Netherlands) said that the problem was of a general nature and would thus require consideration by the plenary Conference in any case. He had misgivings as to the legal value of a declaration which would be neither signed nor ratified and thus could not have the normal status of a treaty.

15. There was a third solution, which he would embody in a proposal, though he would not, for the time being, put it forward as such. His proposal would be worded as follows :

> " The Second Committee resolves to recommend to the plenary session of the Conference that the draft articles adopted by the Committee might appropriately be embodied in a declaration to be signed and ratified by States, and containing in its preamble a statement of the following tenor:
>
> " The signatory States, considering that it is desirable to arrive at a codification of the rules of existing international law concerning the régime of the high seas and wishing at the same time to contribute to the progressieve development of such rules . . . have agreed upon the following provisions . . ."

16. Such an instrument would have the same advantages as a convention or a treaty, and clauses concerning the settlement of disputes could also be inserted ; he considered it important that there should be such clauses.

17. The CHAIRMAN said that the Netherlands proposal, although not formally submitted, should in any case appear in the summary record.

18. Mr. SOLE (Union of South Africa) wished to make clear that in his proposal (A/CONF.13/C.2/L.150) there was no question either of signature of an instrument or of ratification. If it met with approval, the Conference would adopt a simple declaration consisting of all those articles dealt with in the Second Committee which had received a two-thirds vote in a plenary meeting. Such an instrument would have no legally-binding force, but would be available to courts which might be required to adjudicate on disputes or topics covered by those articles. It would be similar to the Declaration on Human Rights. A binding instrument was doubtless desirable ; but his delegation had felt that the major maritime Powers would be unlikely to ratify such an instrument without many reservations.

19. Those States which felt that they could be bound by the articles could sign a separate protocol, such as that proposed by the Netherlands, in which they would accept the articles as legally binding on them, and a provision for compulsory jurisdiction in the settlement of disputes.

20. Mr. KANAKARATNE (Ceylon) said that his delegation could not support the South African proposal. He could not agree that the difficulties facing the major maritime Powers were good grounds for not adopting a binding instrument. The United Nations General Assembly had expressly stated in its resolution No. 1105 (XI) of 21 February 1957 that the Conference should " embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate ". The reference to " such other instruments " was secondary. The instrument should embody the spirit of Article 13, paragraph 1 a of the Charter, which referred specifically to " encouraging the progressive development of international law and its codification ".

21. The proposal referred to a declaration which would be an expression of existing principles of international law ; but views were divided on what those principles were. The Conference had been called together not merely to establish those principles but to create international law. It had done constructive work on new subjects. The new article on the pollution of the high seas by radio-active waste could not possibly be considered an expression of existing international law. The International Law Commission, in paragraph 25 of chapter II of its report (A/3159), referred to the " preparation of draft conventions on subjects which have not yet been regulated by international law ". Again, there had been considerable difference of opinion in the Conference on what were the existing principles governing the breadth of the territorial sea.

22. The Conference had been called for the purpose of recommending an international code of the law of the sea ; if necessary there could be several conventions, but nothing should dissuade delegations from securing a binding agreement. The South African proposal was not consonant with the achievements of the Conference and would not be acceptable to world public opinion.

23. Mr. GLASER (Romania) said that the Conference was both confirming existing international law and creating new international law, and that those two activities should not be confused. For example, Grotius had spoken of the *mare liberum,* and the Committee had adopted an article which stated that the high seas were free. It would thus appear that the Committee had merely confirmed an existing principle. However, if Grotius had been asked for his opinion on whether nuclear tests should be prohibited on the high seas, he would have been unable to answer, since he would have had no idea of what nuclear tests were. Thus, the " freedom of the high seas " in the context of 1958 was in some ways different from that principle as it had been understood by Grotius ; and from the scientific point of view, therefore, the Committee could not state that the articles it had adopted were merely " an expression of existing principles of international law ", as was stated in the South African proposal (A/CONF.13/C.2/L.150). It was clear, moreover, that the discussions in the Conference had been largely devoted to deciding what form international law relating to the sea should take in the future. He thought, therefore, that many delegations, like his own, would be unable to accept the South African proposal.

24. He suggested, as a solution to the problem, that no vote should be taken on the form of instrument to be recommended to the Conference, but that the rapporteur should simply be asked to prepare a report for

submission to the Conference, informing it of all the views which had been expressed in the Second Committee.

25. The CHAIRMAN pointed out that the Conference's decision on the form of instrument to be adopted would have to be taken by a two-thirds majority. It might thus be unwise for representatives to press their views too strongly, since, if they did so, the Conference might not be able to adopt any instrument at all.

26. He pointed out that there were three parts to the South African proposal. It recommended, first, that the draft articles adopted by the Committee should be embodied in a separate instrument. It then recommended that that instrument should take the form of a declaration. Lastly, it suggested what the contents of the declaration should be. The Committee could thus decide whether it wished to recommend the adoption of a separate instrument, and could also express its preference concerning the form of the instrument.

27. Mr. LÜTEM (Turkey) said that it would be unwise for the Committee to take a decision on the form of instrument to be adopted before a vote on that question had taken place at a plenary meeting of the Conference. He suggested, therefore, that the Committee should decide not to make a recommendation regarding the kind of instrument in which it wished its work to be embodied, and should also decide to submit a report to the Conference containing a summary of the discussions which had taken place in the Committee on that question.

28. Mr. CERVENKA (Czechoslovakia) said that his delegation favoured a convention as the form of instrument to embody the Committee's work. Many important conventions had been concluded in recent years, and he could therefore not see why the largest conference ever summoned by the United Nations should adopt a different type of instrument.

29. He thought it necessary that the articles adopted should be submitted to all governments for ratification. If there were no ratification by governments, they would be free to ignore the provisions of the articles at will. Vagueness in the application of the articles would show that the conference had made little progress in its work.

30. He agreed that it would be better not to take a vote on the kind of instrument to be recommended. If there were such a vote, however, his delegation would be obliged to vote against the South African proposal.

31. Mr. CAMPOS ORTIZ (Mexico) said that a decision on the kind of instrument to be adopted was a matter for the plenary Conference. It could only be taken when the results of the work in all the committees were known. Moreover, divisions of opinion would be hardened if votes were taken on that question in the committees and recommendations relating to instruments were adopted by only narrow majorities. He therefore supported the Turkish suggestion that the Committee should decide to make no recommendation and confine itself to submitting a report to the Conference. He thought, however, that that suggestion should be amended so as to make clear that the Committee did not wish to express by vote its opinion on the form of instrument to be adopted.

32. Mr. LÜTEM (Turkey) accepted the Mexican amendment to his suggestion.

33. Mr. JHIRAD (India) said that his delegation understood the point of view of those representatives who thought that the question of the form of instrument to be adopted could be considered only by a plenary meeting of the Conference, but felt that it would be of assistance to the plenary meeting if the Committee expressed its own views.

34. He could not accept the South African proposal that the instrument should take the form of a declaration, or agree that the articles adopted by the Committee expressed " existing principles of international law ". Article 35 as adopted by the Committee, for example, stated a principle contrary to the opinion of the International Court of Justice.

35. He thought that the instrument should take the form of a convention binding States which accepted it. Such a convention could either embody the results of the Second Committee's work alone or combine them with the results of the other committees' work.

36. Mr. SOLE (Union of South Africa) thought that it would be undesirable for the Committee to vote either on the South African proposal or on any other proposal relating to the kind of instrument to be adopted. He was prepared to accept the Turkish suggestion, but thought it should be made clear in the rapporteur's report that the Committee considered that there were three possible forms of instrument : a declaration, with or without a supplementary protocol which would enable States which so desired to accept the declaration as binding ; a convention of the normal kind ; and a declaratory convention of the type which had been proposed by the Netherlands representative.

37. Mr. VITELLI (Italy) felt that the Committee should decide whether it wished the results of its work to be embodied in a separate instrument, and whether that instrument should take the form of a declaration or a convention.

38. Mr. KEÏLIN (Union of Soviet Socialist Republics) said that the results of the work of the Conference should be embodied in clear legal provisions. The most common form of instrument was a convention, which had the advantage of being more specific than a declaration and of carrying a legal obligation. The contents of a declaration were likely to be vague, and to have less legal force and effect than a convention.

39. Since a decision on the form of instrument to be adopted had to be taken by a plenary meeting of the Conference, and since it was important that such a decision should be accepted as widely as possible, he supported the Turkish suggestion.

40. Mr. DE CASTRO (Philippines) said that the Committee should recommend that those articles which it had adopted by a two-thirds majority should be embodied in a convention, and that those which had been adopted by a smaller majority should be embodied in a declaration. He pointed out that no instrument would be binding on his country unless ratified by the Philippines Senate.

The Turkish suggestion, as amended by the Mexican representative, was adopted by 50 votes to 1, with 4 abstentions.

The meeting rose at 5.5 p.m.

THIRTY-SIXTH MEETING

Friday, 18 April 1958, at 3.30 p.m.

Chairman : Mr. O. C. GUNDERSEN (Norway)

Consideration of the report of the Drafting Committee (A/CONF.13/C.2/L.152)

1. At the request of the CHAIRMAN, Mr. GLASER (Romania : Vice-Chairman) read aloud the report of the Drafting Committee.

2. The CHAIRMAN invited the Committee to comment on the report.

3. Mr. CARDOSO (Portugal) wished his opinion to be placed on record that, in addition to article 35, paragraph 3, other articles were not clearly drafted. The expression " private aircraft " in article 39 should be " civil aircraft "; article 46, paragraph 1, should refer to powers conferred not only by treaty but also by articles 47 and 66 and should make clear that the words " merchant ships " included merchant ships owned or operated by governments. In article 47, the expression " foreign ship " should be " foreign merchant ship ". He wished also to place on record that, in order to speed the Committee's work, he had refrained from pressing those changes, which the Chairman had accepted as drafting changes. The Chairman of the Drafting Committee, however, had ruled that they were changes of substance ; and so his delegation was deprived of a vote on them unless it chose to disrupt the course of the Committee's work. Moved by goodwill and desiring comprise, it would, however, merely ask for the foregoing observations to be recorded. His remarks should not be construed in any way as a criticism of the Chairman of the Drafting Committee.

4. Mr. MINTZ (Israel) wished to know whether the Drafting Committee had discussed the titles of the different articles.

5. Mr. GLASER (Romania) replied that the Drafting Committee had dealt with titles in one case only : where article 31 had been combined with article 30. He felt that the question was one for the Drafting Committee of the Conference.

6. The CHAIRMAN agreed. He would invite the Committee to consider the articles one by one.

Articles 26 to 28

No comment.

Article 29

7. Mr. TRUJILLO (Ecuador) said that he could not fit into the existing Spanish text the new draft of article 29, paragraph 1, last part : " jurisdiction and control in administrative, technical and social matters over ships flying its flag ". Furthermore, he felt that the insertion of the words " en su territorio " (in the Spanish text only) in the first sentence of that paragraph was quite unnecessary : obviously a State could fix the conditions for the grant of its nationality to ships in its own territory only, and not in that of a foreign State. It would be better to reject this suggestion and to replace the words " un registro " by " su registro ".

8. The CHAIRMAN said that such suggestions might be referred to the Languages Division of the Secretariat. If thereafter there were still a problem, it could be taken up with the Drafting Committee of the Conference.

Article 30

No comment.

Article 31

The Drafting Comittee's proposal to combine article 31 with article 30, deleting the title " Ships sailing under two flags ", and to renumber as article 31 additional article 31 A, adopted at the 27th meeting, was adopted.

Article 32

9. Mr. BREUER (Federal Republic of Germany) recalled that, when the Committee had voted on article 32, his delegation had reserved the right to propose in the Drafting Committee of the Conference to transfer the text of article 32, paragraph 2, to article 24. He wished to know whether that proposal should now be submitted to the Drafting Committee, or whether that body could arrange for it to reach the Drafting Committee of the Conference.

10. The CHAIRMAN reminded the representative of the Federal Republic of Germany that the Committee's Drafting Committee had finished its work. If he had any proposal to make, he should make it at once.

11. Mr. COLCLOUGH (United States of America) said that that suggestion had been discussed in the Drafting Committee. It had been decided not to transfer the paragraph because there was no certainty that the results of the Conference would be embodied in one instrument. In any case, the removal of a text from one group of articles to another was a matter for the Conference Drafting Committee.

Articles 33 and 34

No comment.

Article 35

12. The CHAIRMAN drew the Committee's attention to the fact that the majority of the Drafting Committee " had doubts as to the precise meaning of paragraph 3 of article 35 ".

13. Mr. CARDOSO (Portugal) said that, as was mentioned in the report of the Drafting Committee, he felt " that paragraph 2 is a qualification of paragraph 1 ". He certainly considered that there was no point in the reference to " disciplinary matters " in paragraph 2.

14. Mr. COLCLOUGH (United States of America) replied that the Drafting Committee had considered the question, and had decided that the expression " disciplinary matters " in paragraph 2 was used in a different context from " disciplinary procedures " in paragaph 1. The word " matters " had a wider meaning and no confusion should be caused.

15. Mr. JHIRAD (India) thought that article 35, paragraph 3 (former paragraph 2), conveyed no precise meaning. It was, in fact, incomprehensible to persons well versed in shipping affairs. He had never heard of the arrest or detention of a ship on the high seas in peacetime. He had asked the sponsors of the original proposal to insert in the paragraph the reference to " the high seas" (A/CONF.13/C.2/L.44) to explain their intention ; they had replied that the Committee was dealing with the law of the high seas and therefore could not consider what happened in territorial waters. He was not impressed by that argument. Article 35, paragraph 1, in fact, referred to proceedings against the master of a ship, and clearly such proceedings would not be taken on the high seas. He would express his concern that the supporters of that provision should state that in such a case the decision should be left to the courts. That was not the attitude to be taken by a conference that had met in order to establish the law of the sea.

16. Mr. COLCLOUGH (United States of America) said that the proposal to insert the words " on the high seas " in paragraph 3 (A/CONF.13/C.2/L.44) had been submitted by his delegation and adopted by the Committee (27th meeting). He recognized that its implications might be questioned, but he had opposed any change in the Drafting Committee because the matter was one of substance.

17. His delegation had held that the reference in the International Law Commission's commentary to the Brussels Convention of 10 May 1952 might, if adopted, deprive the coastal State of jurisdiction over collisions or other incidents of navigation occurring in its territorial sea. Accordingly, his delegation had proposed to insert in paragraph 3 the words " on the high seas ". It had now been made clear to him, however, that the International Law Commission had not meant to derogate from the jurisdiction of the coastal State over incidents occurring in its territorial sea. On that understanding, he asked permission to withdraw those four words.

It was so agreed.

18. Sir Alec RANDALL (United Kingdom), referring to the phrase " to pronounce the withdrawal of such certificates " in paragraph 2, said that his delegation wished to place on record that it understood those words to mean permanent or temporary withdrawal.

Articles 36 to 38

No comment.

Article 39

19. Mr. SOLE (Union of South Africa) said that the words " private aircraft " had referred, not to privately owned aircraft (which was what the term " private aircraft " meant in English), but to civil aircraft. If the expression " private aircraft " were retained in the article, there should be a commentary stating that it referred to civil aircraft.

20. Mr. GLASER (Romania) said that the whole question of the terms " private aircraft " and " civil aircraft " had been discussed in the Drafting Committee. It had been pointed out that the terminology of the International Civil Aviation Organization, which used the term " civil aircraft ", was different from that of the International Law Commission. Moreover, if the term " private aircraft " were changed to " civil aircraft ", the first paragraph of article 39 would contain the expression " a private ship or a civil aircraft ", which would suggest a difference, not merely of terminology, but also of substance. Such a distinction was indeed one of substance, for a government non-military aircraft was not covered by the article as it stood, but would be covered if the words " private aircraft " were changed to " civil aircraft ". The Drafting Committee had thus considered that it could not change the wording of the article, and that the Second Committee would do so if it wished.

21. Mr. SOLE (South Africa) suggested that the Second Committee's report to the Conference should point out that the term " private aircraft " meant " non-state-owned aircraft ".

It was so agreed.

22. Mr. GALAN (Spain) said that to insert the words " o ayudar intencionalmente " in paragraph 3 was unnecessary, since intentional facilitation amounted to incitement.

23. Mr. CARDONA (Mexico) pointed out that the Spanish-speaking members of the Drafting Committee had wished to keep the Spanish text as close as possible to the original English text. In English, " incitement " and " intentional facilitation " might not always amount to the same thing, and the Spanish translation was merely intended to reflect that difference.

24. Mr. CARDOSO (Portugal) said that in English " inciting " had a moral connotation, " intentional facilitation " a purely physical one.

25. Mr. GALAN (Spain) rejoined that, in that case, the words "a este propósito " should be added after the proposed insertion of " o ayudar intencionalmente ".

26. The CHAIRMAN repeated his observation that such matters should be taken up with the Languages Division of the Secretariat.

Articles 40 to 45

No comment.

Article 46

27. Sir Alec RANDALL (United Kingdom) said that, as article 45 had been amended to permit ships or aircraft on government service — other than warships or militairy aircraft — to seize a ship on account of piracy, it should be made clear that the provisions of article 46 applied to those ships or aircraft as well as to warships. His delegation understood that that point had been discussed in the Drafting Committee, which had concluded that, since the purpose of article 46 was to

restrict the actions of warships, it would, *a fortiori*, restrict the actions of other government ships or aircraft.

28. Mr. KEÏLIN (Union of Soviet Socialist Republics) stated that, in view of the United Kingdom statement, his delegation reserved its right to have its views included in the summary record.

29. Mr. CARDOSO (Portugal) asked that the Second Committee's report to the Conference should state that the expression " foreign merchant ships " mentioned in article 46 covered merchant ships owned and operated by governments.

30. Mr. COLCLOUGH (United States of America) said that since the Committee had rejected (31st meeting) the Bulgarian proposal (A/CONF.13/C.2/L.117) that " the provisions of paragraphs 1 to 3 of the article shall not apply to government ships operated for commercial purposes ", it followed that those paragraphs applied to government ships.

Articles 47 and 48, the draft resolution relating to article 48 and the additional article relating to pollution of the sea by radio-active waste

No comment.

Articles 61 to 65

No comment.

Draft resolution relating to nuclear tests

No comment.

Decision on the relationship of the articles adopted by the Second Committee at its 32nd meeting to existing conventions

No comment.

The meeting rose at 5.10 p.m.

THIRTY-SEVENTH MEETING

Monday, 21 April 1958, at 3.05 p.m.

Chairman: Mr. O. C. GUNDERSEN (Norway)

Consideration of the draft report of the Committee (A/CONF.13/C.2/L.153)

1. The CHAIRMAN invited representatives to comment on the Committee's draft report to the Conference (A/CONF.13/C.2/L.153). The rapporteur would incorporate agreed changes in the final version, and typing errors would be corrected.

2. Mr. TRUJILLO (Ecuador) considered that the Committee should take into account in its report the phrases which the Fifth Committee wished to add to articles 27 and 28, as noted in section XI of its report (A/CONF.13/L.11).

3. The CHAIRMAN pointed out that each report should deal only with the proceedings of the Committee to which it related. The reports of the Second and Fifth Committees would go to the plenary Conference, which would deal with the sentences at issue as it saw fit.

4. Mr. KANAKARATNE (Ceylon) observed that the vote on the additional article inserted after article 48 was incorrectly recorded; there had been 58 votes in favour, not 28.

5. Mr. KEÏLIN (Union of Soviet Socialist Republics) thought, first, that since the question of prohibition of nuclear tests had been considered in connexion with article 27, the discussion should be reported and the draft resolution on it inserted immediately after the passage on article 27 and not at the end of the report.

6. Secondly, the Committee had never voted on any recommendation that the Conference adopt the articles, as stated in the last paragraph of the draft report. It would therefore be better merely to transmit the Committee's conclusions to the plenary Conference.

7. Finally, the second and third paragraphs of section V on consideration of the kind of instrument to embody the results of the Committee's work laid insufficient stress on the fact that many representatives had been in favour of adopting the articles in the form of a convention. Either the paragraphs should be shortened or the countries in favour of either procedure should be listed.

8. The CHAIRMAN said that the U.S.S.R. representative was right in thinking that the Committee had never voted on the articles as a whole and had not decided to recommend them to the Conference for adoption. Accordingly, it might be better to delete the last paragraph of the draft report.

9. Mr. COLCLOUGH (United States of America) said that his delegation had voted on the articles on the assumption that their adoption would be recommended to the Conference. Such a recommendation was implicit in the allocation of articles to committees; otherwise delegations would have been voting *in vacuo*. He considered that the U.S.S.R. representative's first point was covered by the reference to the United States motion in the second paragraph of the part headed " Draft resolution relating to nuclear tests " at the end of section IV.

10. Mr. GLASER (Romania) supported the Chairman as regards the last paragraph of the draft report. The recommendation that the Conference should adopt the articles might be interpreted as an attempt to give advice or to exercise moral pressure. Moreover, there was no such recommendation in the reports of other committees.

11. Sir Alec RANDALL (United Kingdom) agreed with the United States representative that the Committee, in adopting the articles, had intended that they should go to the Conference for approval. The difficulty might be solved by altering the beginning of the paragraph concerned to read: " The Committee decided to submit for the approval of the Conference the articles and draft resolutions . . . "

12. The CHAIRMAN considered that that wording would not be quite accurate. He suggested that the

paragraph open with the words: "The Committee submits to the Conference the articles and draft resolutions..."

It was so decided.

The draft report was adopted.

Completion of the Committee's work

13. The usual courtesies having been exchanged, *the CHAIRMAN declared that the Committee had completed its work.*

The meeting rose at 4.15 p.m.

ANNEXES

(*Note.* — For the contents of these annexes, see Index to documents of the Second Committee, p. ix of this volume.)

ARTICLES 26 TO 48 AND 61 TO 65 OF THE DRAFT OF THE INTERNATIONAL LAW COMMISSION (A/3159)

Part II

HIGH SEAS

SECTION I. GENERAL REGIME

DEFINITION OF THE HIGH SEAS

Article 26

1. The term " high seas " means all parts of the sea that are not included in the territorial sea, as contemplated by part I, or in the internal waters of a State.

2. Waters within the baseline of the territorial sea are considered "internal waters ".

FREEDOM OF THE HIGH SEAS

Article 27

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas comprises, *inter alia* :

(1) Freedom of navigation ;

(2) Freedom of fishing ;

(3) Freedom to lay submarine cables and pipelines ;

(4) Freedom to fly over the high seas.

SUB-SECTION A. NAVIGATION

THE RIGHT OF NAVIGATION

Article 28

Every State has the right to sail ships under its flag on the high seas.

NATIONALITY OF SHIPS

Article 29

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship.

2. A merchant ship's right to fly the flag of a State is evidenced by documents issued by the authorities of the State of the flag.

STATUS OF SHIPS

Article 30

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

SHIPS SAILING UNDER TWO FLAGS

Article 31

A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

IMMUNITY OF WARSHIPS

Article 32

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term " warship " means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

IMMUNITY OF OTHER GOVERNMENT SHIPS

Article 33

For all purposes connected with the exercise of powers on the high seas by States other than the flag State, ships owned or operated by a State and used only on government service, whether commercial or non-commercial, shall be assimilated to and shall have the same immunity as warships.

SAFETY OF NAVIGATION

Article 34

1. Every State is required to issue for ships under its jurisdiction regulations to ensure safety at sea with regard, *inter alia,* to :

(*a*) The use of signals, the maintenance of communications and the prevention of collisions ;

(b) The crew, which must be adequate to the needs of the ship and enjoy reasonable labour conditions ;

(*c*) The construction, equipment and seaworthiness of the ship.

2. In issuing such regulations, each State is required to observe internationally accepted standards. It shall take the necessary measures to secure observance of the regulations.

PENAL JURISDICTION IN MATTERS OF COLLISION

Article 35

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which the accused person is a national.

2. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

DUTY TO RENDER ASSISTANCE

Article 36

Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers,

(*a*) To render assistance to any person found at sea in danger of being lost ;

(*b*) To proceed with all speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him ;

(*c*) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

SLAVE TRADE

Article 37

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its colours, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its colours, shall *ipso facto* be free.

PIRACY

Article 38

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 39

Piracy consists in any of the following acts :

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed :

(*a*) On the high seas, against another ship or against persons or property on board such a ship ;

(*b*) Against a ship, persons or property in a place outside the jurisdiction of any State ;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft ;

(3) Any act of incitement or of intentional facilitation of an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Article 40

The acts of piracy, as defined in article 39, committed by a government ship or a government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private vessel.

Article 41

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 39. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 42

A ship or aircraft may retain its national character although it has become a pirate ship or aircraft. The retention or loss of national character is determined by the law of the State from which the national character was originally derived.

Article 43

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 44

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 45

A seizure on account of piracy may only be carried out by warships or military aircraft.

RIGHT OF VISIT

Article 46

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting :

(*a*) That the ship is engaged in piracy ; or

(*b*) That while in the maritime zones treated as suspect in the international conventions for the abolition of the slave trade, the ship is engaged in that trade ; or

(*c*) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (*a*), (*b*) and (*c*) above, the warship may proceed to verify the ship's title to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

RIGHT OF HOT PURSUIT

Article 47

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship is within the internal waters or the territorial sea of the pursuing State, and may only be continued outside the territorial sea if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea receives the order to stop, the ship giving the order should likewise be within the territorial sea. If the foreign ship is within a

contiguous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by bearings, sextant angles or other like means, that the ship pursued or one of its boats is within the limits of the territorial sea or, as the case may be, within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft :

(*a*) The provisions of paragraphs 1 to 3 of the present article shall apply *mutatis mutandis* ;

(*b*) The aircraft giving the order to stop must itself actively pursue the ship until a ship of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

POLLUTION OF THE HIGH SEAS

Article 48

1. Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

2. Every State shall draw up regulations to prevent pollution of the seas from the dumping of radioactive waste.

3. All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or air space above, resulting from experiments or activities with radioactive materials or other harmful agents.

SUB-SECTION C. SUBMARINE CABLES AND PIPELINES

Article 61

1. All States shall be entitled to lay telegraph, telephone or high-voltage power cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

Article 62

Every State shall take the necessary legislative measures to provide that the breaking or injury of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine high-voltage power cable or pipeline, shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 63

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost.

Article 64

Every State shall regulate trawling so as to ensure that all the fishing gear used shall be so constructed and maintained as to reduce to the minimum any danger of fouling submarine cables or pipelines.

Article 65

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

DOCUMENT A/CONF.13/C.2/L.3

Mexico: proposal

[*Original text : Spanish*]
[*12 March 1958*]

Article 27

Insert the following between the words " high seas " and " comprises ":

" is exercised under the conditions laid down by these articles and by the other rules of international law. It ".

DOCUMENT A/CONF.13/C.2/L.4

Mexico: proposal

[*Original text: Spanish*]
[*12 March 1958*]

Article 47

PARAGRAPH 1

Insert between the words " as defined in article 66," and " the pursuit may only be undertaken ", the following words :

" or within a conservation zone for the living resources of the sea unilaterally adopted by the coastal State in accordance with article 55 ".

Replace the words " the zone was " by the words " the said zones were ".

PARAGRAPH 3

After the words " within the contiguous zone " at the end of the first sentence, add the following : " or within a conservation zone for the living resources of the sea unilaterally adopted by the coastal State in accordance with article 55 ".

Insert between the words " or one of its boats " and " is within the limits ", the following words : " or other craft working as a team and using the ship pursued as a mother ship ".

Replace the words " is within " by the words " are within ".

DOCUMENT A/CONF.13/C.2/L.5 *

Colombia: proposal

[*Original text: English*]
[*12 March 1958*]

Article 33

The article to read as follows :

" Ships used exclusively on non-commercial government service owned or operated by a State shall enjoy the same immunity as warships in regard to the exercise of jurisdiction on the high seas by any State other than the flag State. Only warships may exercise policing rights."

* Incorporating document A/CONF.13/C./L.5/Corr.1.

DOCUMENT A/CONF.13/C.2/L.6 *

France: proposal

[*Original text: French*]
[*14 March 1958*]

Article 26

PARAGRAPH 1

The paragraph to read as follows :

" The term ' high seas ' means all parts of the sea beyond the outer limit of the territorial sea as determined in the relevant articles."

PARAGRAPH 2

Delete this paragraph.

Article 27

The article to read as follows :

" 1. The high seas are open to all nations ; the fundamental principle of the freedom of the high seas means that no State may validly purport to subject any part of them to its sovereignty.

" 2. Exercise of the freedom of the high seas is regulated by international law in order to ensure their use in the interests of the entire international community."

Article 28

The article to read as follows :

" Every State has the right to sail such ships on the high seas as are entitled to fly its flag."

Article 29

The article to read as follows :

" 1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly.

" 2. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship.

* Incorporating document A/CONF.13/C.2/L.6/Corr.1.

The criteria applied by the State of registration for the grant of its nationality must in any event provide for effective and constant control to ensure that living, working and safety conditions on board conform to the minimum standard recognized as essential in the general interests of navigation.

" 3. The right of a ship to fly the flag of a State is evidenced by documents issued by the authorities of the State of the flag."

Article 34

PARAGRAPH 1

Paragraph 1 (*a*) to read as follows :

" (*a*) The use of signals and means of communication and the prevention of collisions ; "

Article 35

PARAGRAPH 1

Substitute the words " the incriminated person " for the words " the accused person " near the end of the paragraph.

ADDITIONAL PARAGRAPH

Insert, between paragraph 1 and the present paragraph 2 (which would then become paragraph 3), a new paragraph reading as follows :

" 2. In disciplinary matters, the State which has issued a master's certificate or a qualifying certificate shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them."

Article 36

Article 36 to come immediately after article 34.

Note. — Article 35, on the subject of penal jurisdiction in matters of collision, should logically follow the more general provision concerning collisions contained in sub-paragraph (*c*) of the present draft article 36.

In sub-paragraph (*b*), delete the words " with all speed ".

Note. — These words are, to say the least, unnecessary, in view of the general qualification expressed at the beginning of article 36 in the phrase " in so far as he [the master of a ship] can do so without serious danger to the ship, the crew or the passengers ".

Article 48

PARAGRAPH 2

Substitute the words " contamination by radio-active substances " for the words " the dumping of radio-active waste ".

DOCUMENT A/CONF.13/C.2/L.7

Portugal: proposal

[*Original text : English*]
[*14 March 1958*]

Article 27

The article to read as follows :

" 1. The high seas being open to all nations, no State may purport to subject any part of them to its jurisdiction, sovereignty or any authority whatsoever. States are moreover bound to refrain from any acts which might adversely affect the use of the high seas by other States and cannot consequently exert any jurisdiction whatsoever over a navigable belt of water ensuring the access to the high seas of any other coastal State.

" 2. Freedom of the high seas shall be enjoyed in conformity with the provisions of the articles and other applicable rules of international law, and comprises, *inter alia* :

(*a*) Freedom of navigation ;

(*b*) Freedom of fishing ;

(*c*) Freedom to lay submarine cables and pipelines ;

(*d*) Freedom to fly over the high seas ;

(*e*) Freedom to undertake research, experiments and exploration."

DOCUMENT A/CONF.13/C.2/L.10

Thailand: proposal

[*Original text : English*]
[*18 March 1958*]

Article 45

Add the following words at the end of the article :
" or other ships or aircraft on government service authorized to that effect."

DOCUMENT A/CONF.13/C.2/L.11

Brazil: proposal

[*Original text: French*]
[*19 March 1958*]

Article 28

The article to read as follows:

" 1. Every State has the right to sail ships of its nationality on the high seas.

" 2. A ship shall not have the right to sail on the high seas if it does not possess the nationality of a State or if it uses the nationality of more than one State.

" 3. Every ship shall fly the flag of the State whose nationality it uses for the purposes of navigation."

Article 29

The article to read as follows:

" 1. Every State shall lay down the conditions governing the acquisition and loss of its nationality by a ship.

" 2. Before granting its nationality to a ship every State shall insist on conditions guaranteeing effective control and jurisdiction on the part of the State in question over the ship, in particular conditions regarding:

(*a*) The participation of its nationals or of persons resident in its territory in the ownership or operation of the ship, or in the financial control and in the management of the body corporate owning or operating the ship;

(*b*) The establishment in its territory of the head office or of the place in which the body corporate owning or operating the ship effectively carries on its activity.

" 3. The provision of the preceding paragraph shall not apply to ships:

(*a*) Owned or operated by the State or by organizations under its control;

(*b*) Sailing under its flag in the service of an international organization of which the State is a member.

" 4. A state shall not grant its nationality to a ship possessing the nationality of another State, except in the following circumstances:

(*a*) If the ship has fulfilled the conditions governing the loss of nationality laid down by the legislation of the State of its nationality; or

(*b*) If the ship has been confiscated by reason of violation of the laws of a State other than the State of its nationality.

" 5. Except in the case of warships (article 32) the right of a ship to use the nationality of a State is evidenced by documents issued by the authorities of that State."

Article 30

(*See document A/CONF.13/C.2/L.11/Rev.1, which follows.*)

DOCUMENT A/CONF.13/C.2/L.11/Rev.1

Brazil: revised proposal

[*Original text: English*]
[*3 April 1958*]

Article 29

The article to read as follows:

" 1. Every State shall fix the conditions governing the acquisition and loss of its nationality by a ship.

" 2. No State shall grant its nationality to a ship unless there is a genuine link between the State and the ship that guarantees effective control and jurisdiction over the ship.

" 3. No State shall grant its nationality to a ship possessing the nationality of another State, unless the ship has fulfilled the condition governing the loss of its nationality laid down by the legislation of the State of its nationality.

" 4. Except in the case of warships (article 32) the right of a ship to use the nationality of a State is evidenced by documents issued by the authorities of that State."

Article 30

The article to read as follows:

" 1. Save in exceptional cases expressly provided for by treaties or in these articles, a ship shall be subject on the high seas to the exclusive jurisdiction of the State whose nationality it uses for the purpose of navigation.

" 2. A ship may not change its flag during a voyage or while in a port of call unless such change reflects in fact, and in accordance with the laws of the States concerned, the loss of one nationality and the acquisition of another."

DOCUMENT A/CONF.13/C.2/L.12/Rev.1

Liberia: proposal

[*Original text : English*]
[*28 March 1958*]

Article 29

PARAGRAPH 1

The paragraph to read as follows :

" 1. Eeach State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory and for the right to fly its flag. The State shall exercise effective jurisdiction and control over the ship. Ships have the nationality of the State whose flag they are entitled to fly."

DOCUMENT A/CONF.13/C.2/L.13

Philippines: proposal

[*Original text : English*]
[*19 March 1958*]

Article 37

HEADING

Change the heading " Slave trade " to " Slave trade and forced labour ".

ADDITIONAL PARAGRAPH

Add a second paragraph, reading as follows :

" 2. Every State that is bound by any convention for the suppression of forced labour, as defined in such convention, shall assume the same obligation as that imposed by the preceding paragraph, with respect to persons subjected to forced labour."

DOCUMENT A/CONF.13/C.2/L.15

Yugoslavia: proposal

[*Original text : French*]
[*20 March 1958*]

Article 27

The article to read as follows :

" 1. The high seas are open to all nations on the same terms.

" 2. The fundamental principle of the freedom of the high seas means :

" (*a*) That no State exercises sovereignty over the high seas and no State may validly purport to subject any part of them to its sovereignty, authority or control in any way whatsoever, except in the cases provided for by these articles ;

" (*b*) That States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States ;

" (*c*) That jurisdiction over ships on the high seas rests exclusively in the flag State, except in the cases provided for by these articles.

" 3. The exercise of the freedom of the high seas is regulated by international law with the object of ensuring their use in the interests of the entire international community.

" 4. Freedom of the high seas comprises, *inter alia* :

(*a*) Freedom of navigation ;

(*b*) Freedom of fishing ;

(*c*) Freedom to lay submarine cables and pipelines ;

(*d*) Freedom to fly over the high seas."

DOCUMENT A/CONF.13/C.2/L.16

Yugoslavia: proposal

[*Original text: French*]
[*20 March 1958*]

Article 31

At the beginning of the article, after the words " A ship which sails ", insert the words " on the high seas ".

Comment

The Yugoslav delegation proposes this amendment with the object of making the text clearer. Although article 31 appears in part II (High Seas), the Yugoslav delegation considers it should be stated expressly that the article applies to the high seas alone, for part II also includes articles which do not apply to the high seas exclusively.

DOCUMENT A/CONF.13/C.2/L.17

Yugoslavia: amendment to document A/CONF.13/C.2/L.5

[*Original text: French*]
[*20 March 1958*]

Article 33

The text proposed by Colombia for article 33 (A/CONF.13/C.2/L.5) to be divided into two paragraphs, and an additional paragraph to be inserted between them. The article as redrafted would thus read:

" 1. Ships used exclusively on non-commercial government service owned or operated by a State shall enjoy the same immunity as warships for all purposes connected with the exercise of jurisdiction on the high seas by any State other than the flag State.

" 2. Ships used on commercial government service which are owned or operated by a State shall enjoy the same immunity on the high seas as the ships referred to in paragraph 1 of this article, except in the special zones specified by these articles and except in any case where the hot pursuit of any such ship is continued into the high seas, in which latter case the ship in question shall be assimilated to a private merchant ship.

" 3. Only warships may exercise policing rights."

DOCUMENT A/CONF.13/C.2/L.18

Yugoslavia: proposal

[*Original text: French*]
[*20 March 1958*]

Article 36

Insert the word " possible " between the words " al " and " speed " in sub-paragraph (*b*).

Comment

The Yugoslav delegation considers that the expression " with all speed " is not the most appropriate, because, according to the practice of shipping, it might mean that the ship is bound, in all cases, to reach the velocity ordinarily described as " full speed ". The Yugoslav delegation therefore considers the expression " with all possible speed " preferable, for it enables the master of the ship to proceed at the greatest speed possible in the particular circumstances, taking into account the weather, the state of the sea and the performance of the ship.

DOCUMENT A/CONF.13/C.2/L.19

Yugoslavia: proposal

[*Original text : French*]
[*20 March 1958*]

Article 40

The article to read as follows :

" The acts of piracy, as defined in article 39, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private vessel."

Comment

The term *navire d'Etat* corresponds to the English term " government ship " and does not include warships. The Yugoslav delegation believes that it would be desirable to specify that this article covers both types of vessel.

DOCUMENT A/CONF.13/C.2/L.20/Rev.1 and L.61/Rev.1

Poland and Yugoslavia: proposal

[*Original text : French*]
[*3 April 1958*]

(This document replaces the proposals by Yugoslavia (A/CONF.13/C.2/L.20) and Poland (A/CONF.13/C.2/L.61) previously circulated.)

Article 47

PARAGRAPH 1

In the second sentence, insert the words " or the contiguous zone " between the words " or the territorial sea " and the words " of the pursuing State ", and again between the words " outside the territorial sea " and the words " if the pursuit ".

In the third sentence insert the words " or the contiguous zone " after the words " within the territorial sea ", each time they occur.

DOCUMENT A/CONF.13/C.2/L.21

Netherlands: proposal

[*Original text : English*]
[*20 March 1958*]

Article 27

The article to read as follows :

" 1. The high seas are open to all nations. Freedom of the high seas comprises, *inter alia* :

(*a*) Freedom of navigation ;

(*b*) Freedom of fishing ;

(*c*) Freedom to lay submarine cables and pipelines ;

(*d*) Freedom to fly over the high seas.

" 2. No State may validly purport to subject any part of the high seas to its sovereignty.

" 3. Ships on the high seas shall be subject to the exclusive jurisdiction of the State whose flag they are entitled to fly, save in exceptional cases expressly provided for in international treaties or in the present articles."

DOCUMENT A/CONF.13/C.2/L.22 *

Netherlands: proposal

[*Original text : English*]
[*20 March 1958*]

Article 29

The article to read as follows :

" 1. Each State shall fix the conditions for the grant of the right to fly its flag in such a manner that a genuine link between the State and the ship is ensured, implying in particular the exercise of effective jurisdiction and control over the ship. In the absence of such link other States are not bound to recognize the national character of the ship.

" 2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect."

[The words " to that effect ", at the end of the above text, were substituted for the phrase " evidencing this right " which appeared in the original version of the proposal. See summary record of the 24th meeting of the Second Committee, para. 36.]

* Incorporating documents A/CONF.13/C.2/L.22/Corr.1, 2 and 3.

DOCUMENT A/CONF.13/C.2/L.23

Netherlands: proposal

[*Original text : English*]
[*20 March 1958*]

Articles 30 and 31

Replace the two articles by the following text :

" Ships shall sail under the flag of one State only. A ship which sails under the flags of two or more States may be treated by every other State as a ship which is not entitled to fly the flag of any State."

DOCUMENT A/CONF.13/C.2/L.24 and Add.1

Netherlands: proposal

[*Original text : English*]
[*20 and 27 March 1958*]

Article 34

PARAGRAPH 1

Substitute the words " entitled to fly its flag " for the words " under its jurisdiction ".

ADDITIONAL PARAGRAPH

(Document A/CONF.13/C.2/L.24/Add.1)

Delete paragraph 1 (*b*) and add a new paragraph 3 as follows :

" 3. Measures shall be taken in every State to ensure, whether by means of laws or regulations, collective agreements between shipowners and seafarers, or a combination of laws or regulations and such collective agreements, that the manning of each vessel is adequate to its safety requirements, and that the labour conditions of the crew are reasonable, taking into account, in so far as they are not already in force for the State concerned, the applicable international labour instruments."

DOCUMENT A/CONF.13/C.2/L.25

Netherlands: proposal

[*Original text : English*]
[*20 March 1958*]

Article 36

The article to read as follows :

" Every State shall take the necessary legislative measures to ensure that the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers,

(*a*) Renders assistance to any person found at sea in langer of being lost ;

(*b*) Proceeds with all speed to the rescue of persons in distress if informed of their need for assistance, in so far as such action may reasonably be expected of him ;

(*c*) After a collision, renders assistance to the other ship, her crew and her passengers and, where possible, informs the other ship of the name of his own ship, her port of registry and the nearest port at which she will call."

DOCUMENT A/CONF.13/C.2/L.26

Romania and Ukrainian Soviet Socialist Republic: proposal

[*Original text : Russian*]
[*21 March 1958*]

Article 26

PARAGRAPH 1

Add the following :

" For certain seas a special régime of navigation may be established for historical reasons or by virtue of international agreements."

DOCUMENT A/CONF.13/C.2/L.27

Romania: proposal

[*Original text : French*]
[*21 March 1958*]

Article 31

Between the words " according to convenience " and " may not ", insert the words " during the same voyage ".

DOCUMENT A/CONF.13/C.2/L.28 *

Italy: proposal

[*Original text : French*]
[*21 March 1958*]

Article 29

PARAGRAPH 1

The paragraph to read as follows :

" 1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship ; in particular, the State must effectively exercise its jurisdiction and control over ships flying its flag."

* Incorporating documents A/CONF.13/C.2/L.28/Corr.1 and Corr.2.

DOCUMENT A/CONF.13/C.2/L.29

Poland: proposal

[*Original text : French*]
[*21 March 1958*]

Article 27

The article to read as follows :

" 1. All nations have the right to use the high seas freely. Freedom of the high seas comprises, *inter alia* :

(*a*) Freedom of navigation ;

(*b*) Freedom of fishing ;

(*c*) Freedom to lay submarine cables and pipelines ;

(*d*) Freedom to fly over the high seas.

" 2. The high seas being open on a basis of complete equality to all nations, no State may validly purport to subject any part of them to its sovereignty.

" 3. States are bound to refrain from any act which might adversely affect the use of the high seas by nationals of other States."

DOCUMENT A/CONF.13/C.2/L.30

Czechoslovakia, Poland, Union of Soviet Socialist Republics and Yugoslavia: proposal

[*Original text : French*]
[*21 March 1958*]

Article 27

After article 27 insert a new article worded as follows :

" States are bound to refrain from testing nuclear weapons on the high seas."

DOCUMENT A/CONF.13/C.2/L.32

Albania, Bulgaria, Union of Soviet Socialist Republics: proposal

[*Original text : English*]
[*21 March 1958*]

Article 27

At the end of the article, add the following :

" No naval or air ranges or other combat training areas limiting freedom of navigation may be designated on the high seas near foreign coasts or on international sea routes."

DOCUMENT A/CONF.13/C.2/L.34 *

Peru: proposal

[*Original text : Spanish*]
[*21 March 1958*]

Article 27

The article to read as follows :

" The high seas are open to all States. The following rights, *inter alia*, may be exercised on the high seas :

(1) The right of free navigation ;

(2) The right to fish, without prejudice to the rights of the coastal State under this convention ;

(3) The right to lay submarine cables and pipelines ;

(4) The right to fly over the high seas."

* Incorporating document A/CONF.13/C.2/L.34/Corr.1.

DOCUMENT A/CONF.13/C.2/L.35

Peru: amendment to document A/CONF.13/C.2/L.4

[*Original text : Spanish*]
[*21 March 1958*]

In the Mexican proposal (A/CONF.13/C.2/L.4) to add a phrase to paragraphs 1 and 3 of article 47, replace the words " article 55 " by a blank. The phrase in question would then read : " or within a conservation zone for the living resources of the sea unilaterally adopted by the coastal State in accordance with article . . ."

Note. — The above phrase would apply to the maritime zone proposed by the Peruvian delegation in the Third Committee, circulated subsequently as document A/CONF.13/C.3/L.41.

* See the proposal by Costa Rica, Chile, Ecuador and Peru in the Third Committee, circulated subsequently as document A/CONF.13/C.3/L.41.

DOCUMENT A/CONF.13/C.2/L.36

Denmark: proposal

[*Original text : English*]
[*21 March 1958*]

Article 36

ADDITIONAL PARAGRAPH

Add the following new paragraph :

" Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and — where circumstances so require — by way of mutual regional arrangements co-operate with neighbouring States for this purpose."

DOCUMENT A/CONF.13/C.2/L.37

Portugal: proposal

[*Original text : English*]
[*21 March 1958*]

Articles 32 and 33

Articles 32 and 33 and their headings to be replaced by a single article, reading as follows :

IMMUNITY OF STATE SHIPS

Article 32

" State ships on the high seas have complete immunity from the jurisdiction of any State other than the flag State."

DOCUMENT A/CONF.13/C.2/L.38/Rev.1

Portugal: proposal

[*Original text : English and French*]
[*25 March 1958*]

Additional article 29 A *

Insert between articles 29 and 30 a new article worded as follows :

" *Classification of ships*

" 1. For the purposes of these articles, all ships fall into two categories :

(*a*) State ships

(*b*) Merchant ships

" State ships are ships owned or operated by a State with the purpose of carrying out military and/or scientific non-commercial functions and/or others dependent or related thereto, including notably hospital ships and survey ships. They must always be under the command or control of an officer duly commissioned by his government and bear and/or carry an external mark or marks of their category.

" Merchant ship is any ship other than a state ship.

" 2. For the purposes of these articles state ships are divided in two categories :

(*a*) Military or warships

(*b*) Non-military or government ships

" A warship is a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

" Government ships are state ships other than warships."

* It was indicated in document A/CONF.13/C.2/L.38/Rev.1/Corr.1 of 3 April 1958 that the additional article proposed by Portugal was to be inserted in a place to be determined by the drafting committee, and not between articles 29 and 30.

DOCUMENT A/CONF.13/C.2/L.38/Rev.2

Portugal: revised proposal

[*Original text : English*]
[*9 April 1958*]

Additional article

" Classification of ships

" 1. For the purposes of these articles all ships fall into one or other of the following categories :

(*a*) Warships

(*b*) Government ships

(*c*) Merchant ships

" Warships are ships belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

" 2. Government ships are ships which being owned or operated by a government fall into one or other of the following categories :

(i) Yachts, patrol vessels, hospital ships, fleet auxiliaries, military supply ships, troopships ;

(ii) Cable ships, ocean weather ships, vessels carrying out scientific investigations, fishery protection vessels ;

(iii) Vessels employed in services of a similar character to those referred to in (i) and (ii).

" They must always bear and/or carry an external mark or marks of their category and should always be under control of an [officer duly commissioned by his government].

" 3. Merchant ships are all ships other than warships or government ships."

Remarks. — The drafting committee is the competent organ to determine where to insert the article if accepted.

In the expression " officer duly commissioned by his government " the terms " officer " and " commissioned " are taken in a broad sense and intend to mean " a responsible person duly placed in charge by his government as its representative on board ". Such person may or may not discharge concurrently the office of captain, skipper or master of the ship. The above-mentioned expression is placed between brackets so that its drafting may be left to the drafting committee.

DOCUMENT A/CONF.13/C.2/L.39

Federal Republic of Germany: proposal

[*Original text : English*]
[*21 March 1958*]

Article 28

Delete the words " on the high seas ".

Article 29

PARAGRAPH 1

At the end of the paragraph, substitute the words " between the State, the ship and its owner " for the words " between the State and the ship ".

DOCUMENT A/CONF.13/C.2/L.40

United States of America: proposal

[*Original text : English*]
[*21 March 1958*]

Article 28

The article to read as follows :

" Every State has the right to navigate on the high seas ships having its nationality and flying its flag as a symbol thereof."

Comments

There are two principles underlying the rule stated in article 28 :

(*a*) Every State, whether or not it has a seacoast, has the legal power to grant its nationality to ships operating upon the high seas. States not having a seacoast were first regarded as having this power by the peace treaties (1919) following World War I, and again in the Declaration of Barcelona (1921).

(*b*) Ships fly the flag of the State of their nationality as a symbol, and prima facie evidence, of their nationality. Thus when it is stated that a ship is " flying " or " sailing under " a particular flag, what is meant is that the ship has the nationality of the flag State. However, there are other situations where a ship may properly display the

flag of a State of which it is not a national without any intention of claiming the latter's nationality.

For example, it is not unusual for a ship to fly at the mast-head or yard-arm the flag of a State other than the State of its nationality. Thus at the yard-arm at sailing time a ship sometimes flies the flag of the country to which she is bound, and in a foreign port the flag of that State is frequently flown as a courtesy.

DOCUMENT A/CONF.13/C.2/L.41

United States of America: proposal

[*Original text : English*]
[*21 March 1958*]

Article 30

The article to read as follows :

" 1. Ships shall have the nationality of one State only. A State shall not grant its nationality to a ship already having the nationality of another State.

" 2. A ship may not change its nationality, and hence its flag, during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of documentation.

" 3. Save in cases expressly provided for in international treaties or in these articles, ships shall be subject to the exclusive jurisdiction of the State of their nationality while on the high seas."

Comments

Article 30 deals with three separate, although related, topics, viz: (*a*) single nationality, (*b*) change of nationality, and (*c*) jurisdiction and control. The proposed re-draft of article 30 is intended to separate and clarify these topics.

(*a*) *Single nationality*. The opening phrase of article 30, that " Ships shall sail under the flag of one State only . . ." is intended to mean that " ships shall have the nationality of one State only," and it is believed the article should so state, as in paragraph 1 of the proposed re-draft.

(*b*) *Change of nationality*. The last sentence of article 30 regarding a change of flag is intended to refer to a change of nationality, and it is believed the article should so state, as in paragraph 2 of the re-draft.

(*c*) *Jurisdiction and control*. Article 30, in stating that, subject to the two mentioned exceptions, ships " shall be subject to its [the flag State's] exclusive jurisdiction on the high seas " is intended to mean that ships " shall be subject to the exclusive jurisdiction of the State of their nationality while on the high seas ". It is believed that the article should so state, as in paragraph 3 of the re-draft.

DOCUMENT A/CONF.13/C.2/L.42

United States of America: proposal

[*Original text : English*]
[*21 March 1958*]

Article 31

The article to read as follows :

" A ship using the flags of two or more States as a symbol of nationality according to convenience may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality."

Comments

Article 31 is intended only to condemn the use of more than one flag in such a manner as to create the impression that the ship has now one nationality and now another. It is believed that this intention should be clarified.

DOCUMENT A/CONF.13/C.2/L.43

United States of America: proposal

[*Original text : English*]
[*21 March 1958*]

Article 34

PARAGRAPH 1

Delete the words " with regard *inter alia* to " and sub-paragraphs (*a*), (*b*) and (*c*).

Comments

The specifics of the safety of navigation are covered in the lengthy International Convention for the Safety of Life at Sea which was signed in London on 10 June 1948. To this treaty there were forty-six parties as of 31 October 1956. Discussions are already under way for another international conference to be held in 1959 or 1960 to consider amendments to the 1948 Convention. Safety of navigation is a technical subject best handled by a separate convention.

DOCUMENT A/CONF.13/C.2/L.44

United States of America: proposal

[*Original text: English*]
[*21 March 1958*]

Article 35

PARAGRAPH 2

After the words " No arrest or detention of the ship ", insert the words " on the high seas ".

Comments

Article 35 is intended to apply to incidents occurring only on the high seas. The proposed amendment is to make the limitation explicit in this paragraph.

DOCUMENT A/CONF.13/C.2/L.45

China: proposal

[*Original text: English*]
[*21 March 1958*]

Article 26

PARAGRAPH 2

Transfer paragraph 2 to become paragraph 2 of article 4.

Article 27

The article to read as follows:

" 1. The high seas shall be open to all nations. No State may validly purport to subject any part of them to its sovereignty.

" 2. Freedom of the high seas comprises, *inter alia*:

(*a*) Freedom of navigation;

(*b*) Freedom of fishing;

(*c*) Freedom to lay submarine cables and pipelines;

(*d*) Freedom to fly over the high seas."

Article 39

PARAGRAPH 1

Add a third sub-paragraph, reading as follows: " On the high seas, against the persons of property on board the ship if, for these ends, the person or persons committing such act take over the navigation or command of the ship."

DOCUMENT A/CONF.13/C.2/L.46

Albania and Czechoslovakia: proposal

[*Original text: French*]
[*21 March 1958*]

Articles 38 to 43

Articles 38 to 43 to be replaced by a single article, reading as follows:

" All States are bound to take proceedings against and to punish acts of piracy, as defined by present international law, and to co-operate to the fullest possible extent in the repression of piracy."

DOCUMENT A/CONF.13/C.2/L.48

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text: English*]
[*21 March 1958*]

Article 30

The article to read as follows:

" Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive authority on the high seas. A ship may not change its flag save in the case of a real transfer of ownership or change of registry."

DOCUMENT A/CONF.13/C.2/L.49

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text : English*]
[*21 March 1958*]

Article 34

The article to be deleted, and its subject-matter covered by a resolution.

Draft resolution

The United Nations Conference on the Law of the Sea,

Desiring to emphasize the importance of ensuring safety at sea,

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

Draws attention to the following international instruments :

The International Load Line Convention of 5 July 1930,

The International Convention of 10 June 1948 for the Safety of Life at Sea,

The International Regulations of 1948 for Preventing Collisions at Sea,

Commends the acceptance of these instruments to all States which are not yet parties to them, and

Expresses appreciation of, and support for, the work of the International Labour Organisation concerning conditions for crews.

DOCUMENT A/CONF.13/C.2/L.50

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text : English*]
[*21 March 1958*]

Articles 35 and 36

The articles to be deleted, and their subject-matter covered by a resolution.

Draft resolution

The United Nations Conference on the Law of the Sea,

Desiring to affirm the principles stated in article 35 and 36 of the draft articles drawn up by the International Law Commission,

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

Draws attention to the following international conventions :

Convention of 23 September 1910 for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea,

Convention of 23 September 1910 for the Unification of Certain Rules of Law with respect to Collisions between Vessels,

International Convention of 10 May 1952 for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions and Other Incidents of Navigation,

International Convention of 10 June 1948 for the Safety of Life at Sea — chapter V of the annexed regulations,

Commends the acceptance of these instruments to all States which are not yet parties to them ; and

Expresses the belief that world-wide acceptance of these instruments will be the most effective method of putting into effect and securing universal respect for the principles affirmed in articles 35 and 36 of the draft articles drawn up by the International Law Commission.

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

Mexico, Norway, United Arab Republic and Yugoslavia: proposal

[*Original text : English*]
[*21 March 1958*]

Additional article 31 A

" The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization."

DOCUMENT A/CONF.13/C.2/L.52/Rev.1

Portugal: proposal

[*Original text : English*]
[*1 April 1958*]

Articles 39 and 40

Replace the expressions " private ship " and " private vessel " by the expression " merchant ship ", and the expression " private aircraft " by the expression " civil aircraft ", wherever they occur in the text of the above articles.

DOCUMENT A/CONF.13/C.2/L.53

Portugal: proposal

[*Original text : English*]
[*24 March 1958*]

Article 47

Replace the term " foreign ship " by the expression " foreign merchant ship ", whenever it occurs in the text of article 47.

DOCUMENT A/CONF.13/C.2/L.55

Greece: proposal

[*Original text : English*]
[*24 March 1958*]

Article 30

The article to read as follows :

" Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive authority on the high seas. A ship may not change its flag save in the case of change of registry."

DOCUMENT A/CONF.13/C.2/L.56

Greece: proposal

[*Original text : English*]
[*24 March 1958*]

Article 34

The article to read as follows :

" Every State is required to issue for ships under its jurisdiction regulations to ensure safety at sea."

Comments

Subjects included in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1 and paragraph 2 should be covered by a recommendation to be issued by the Conference, recommending to all States the acceptance of (*a*) the International Load Line Convention, (*b*) the International Convention for the Safety of Life at Sea and the International Regulations for Preventing Collisions at Sea (1948) and expressing the appreciation of the work of the International Labour Organisation on questions concerning the crews.

DOCUMENT A/CONF.13/C.2/L.57

Greece: proposal

[*Original text: English*]
[*24 March 1958*]

Article 41

The article to read as follows:

" A ship or aircraft is considered a pirate ship or aircraft if the persons in dominant control have manifested their intention of using it for the purpose of committing one of the acts referred to in article 29. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act."

DOCUMENT A/CONF.13/C.2/L.58

Venezuela: proposal

[*Original text: Spanish*]
[*24 March 1958*]

Article 61

PARAGRAPH 2

Amend this paragraph to read as follows:

" 2. Subject to its right to impose prior conditions as to the route to be followed, in order to prevent undue interference with the exploration of the continental shelf and the exploitation of the seabed, subsoil and their resources, the coastal State may not impede the laying or maintenance of such cables or pipelines."

Comment

The Venezuelan delegation considers that, if the coastal State is under the obligation to permit the laying of submarine cables or pipelines and to enact legislation on the question of damage done to them wilfully or through culpable negligence, it is also entitled to be consulted on the proposed route of the telegraph cables, waterpipes, oil or gas pipelines, and high-tension cables with a view to planning their disposition in such a way that they will not interfere with existing installations or impede future developments.

The above amendment is closely connected with article 70 of the draft, to which the Venezuelan delegation to the Fourth Committee has submitted an amendment (A/CONF. 13/C.4/L.34).

DOCUMENT A/CONF.13/C.2/L.59

Thailand: proposal

[*Original text: English*]
[*24 March 1958*]

Article 35

PARAGRAPH 1

The paragraph to read as follows:

" 1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities of the flag State."

DOCUMENT A/CONF.13/C.2/L.60

Spain: proposal

[*Original text: Spanish*]
[*24 March 1958*]

Articles 28, 29, 30 and 31

Substitute for the heading " Sub-section A. Navigation " " Sub-section A. Freedom of navigation and regulation thereof " and for articles 28 to 31 and their headings the following texts and headings:

" THE RIGHT OF NAVIGATION AND STATUS OF SHIPS

" Article 28

" By virtue of the freedom of the seas, States have the

right to sail ships under their flags on the high seas and to exercise sole jurisdiction over them, save as otherwise provided in this convention and in international treaties.

" NATIONALITY OF SHIPS

" Article 29

" 1. States shall be entitled to fix the conditions for the grant, retention or loss of their nationality by ships, for the registration of ships in their territory and for the right to fly their flag.

" 2. In any event, for purposes of recognition of a ship's nationality and flag by other States, there must exist between the State, the owner and the ship a genuine link evidenced by authentic documents issued in due form by a competent authority.

" REGISTRATION

" Article 30

" 1. The flag is the distinctive outward sign of a ship's nationality ; accordingly each ship shall sail under the flag of a single State. Any ship using two or more according to convenience may not claim protection under any of them with respect to any other State, and may be assimilated to a ship without nationality.

" 2. Changes of flag in a port of call or during a voyage must necessarily represent a real transfer of ownership or change of registry of the ship."

DOCUMENT A/CONF.13/C.2/L.63

United Kingdom of Great Britain and Northern Ireland: proposal

[Original text : English]
[25 March 1958]

Article 27

SUB-PARAGRAPH 4

Substitute the words " Freedom of flight over the high seas " for the words " Freedom to fly over the high seas ".

DOCUMENT A/CONF.13/C.2/L.64 *

United Kingdom of Great Britain and Northern Ireland: draft resolution

[Original text : English]
[25 March 1958]

This Committee,

Recalling that the Conference on the Law of the Sea has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957, and

Recognizing that the General Assembly by a decisive majority adopted resolution 1148 (XII) of 14 November 1957, which stated that there should be

(i) Immediate suspension of nuclear tests with prompt installation of international control ;

(ii) Cessation of production of fissionable materials for war ;

(iii) Progressive reduction of stocks of nuclear weapons ; and

Recognizing that the question of nuclear tests and production is still within the competence of the General Assembly and the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Decides that this committee does not pronounce upon any question relating to nuclear tests, but leaves this matter to the competence of the General Assembly.

* Incorporating document A/CONF.13/C.2/L.64/Corr.1.

DOCUMENT A/CONF.13/C.2/L.65 *

Spain: proposal

[*Original text : Spanish*]
[*25 March 1958*]

Article 27

The article to read as follows :

" The high seas are free and open to all nations ; no State may validly purport to subject any part of them to its sovereignty.

" Freedom of the high seas comprises, *inter alia,* freedom to navigate, fish, lay and maintain submarine cables and pipelines, and to fly over the seas."

* Incorporating document A/CONF.13/C.2/L.65/Corr.1.

DOCUMENT A/CONF.13/C.2/L.66

Brazil: proposal

[*Original text : French*]
[*25 March 1958*]

Article 27

Replace article 27 by the following texts :

Article 27

LEGAL STATUS OF THE WATERS OF THE HIGH SEAS

" 1. The waters of the high seas are for the joint use of all States.

" 2. No State may validly purport to subject any part of them to its sovereignty."

Article 27 A

EXERCISE OF AUTHORITY BY STATES OVER THE WATERS OF THE HIGH SEAS

" No State may exercise over the waters of the high seas any authority other than that permitted by these articles or by other rules of international law, or exercise such authority for purposes other than those referred to in these articles or rules."

Article 27 B

USE OF THE WATERS OF THE HIGH SEAS

" 1. All States are entitled to use the waters of the high seas in accordance with the relevant regulations.

" 2. The use of the waters of the high seas is regulated solely :

(*a*) By international law ; and

(*b*) By States, in such cases, for such purposes and within such limits as are authorized or determined by international law.

" 3. All States shall use the waters of the high seas in such a way as not to interfere unduly with their use by other States."

DOCUMENT A/CONF.13/C.2/L.67

Brazil: proposal

[*Original text : French*]
[*25 March 1958*]

Article 26

The article to read as follows :

" The term ' waters of the high seas ' means those waters lying between the outer limits of the territorial seas."

DOCUMENT A/CONF.13/C.2/L.68

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text : English*]
[*26 March 1958*]

Article 27

Add the following text :

" These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

DOCUMENT A/CONF.13/C.2/L.70 *

Mexico: amendment to document A/CONF.13/C.2/L.15

[*Original text : Spanish*]
[*26 March 1958*]

Article 27

Amend as follows the text proposed by Yugoslavia (A/CONF.13/C.2/L.15) for article 27 :

1. For paragraph 2 (*b*) substitute the following :

" (*b*) That no State may lawfully commit any act which adversely affects other States or their nationals in the enjoyment, in conformity with these provisions, of the freedom of the high seas."

2. Delete sub-paragraph (*c*).

* Incorporating document A/CONF.13/C.2/L.70/Rev.1.

DOCUMENT A/CONF.13/C.2/L.71

India: draft resolution

[*Original text : English*]
[*26 March 1958*]

The Committee,

Recalling that the Conference on the Law of the Sea has been convened by the General Assembly of the United Nations in accordance with resolution A/RES/478 of 22 February 1957,

Recognizing that there is a serious and genuine apprehension on the part of many States that nuclear explosions on the high seas constitute an infringement of the freedom of the seas,

Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Considers that it is not necessary to prescribe any rule relating to nuclear tests on the high seas, and that this matter should be left to the decision of the General Assembly.

DOCUMENT A/CONF.13/C.2/L.71/Rev.1

India: revised draft resolution

[*Original text : English*]
[*27 March 1958*]

The United Nations Conference on the Law of the Sea,

Recalling that the Conference has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957, and

Recognizing that there is a serious and genuine apprehension on the part of many States that nuclear explosions constitute an infringement of the freedom of the seas,

Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Decides to refer this matter to the General Assembly for appropriate action.

DOCUMENT A/CONF.13/C.2/L.73

Turkey: amendment to document A/CONF.13/C.2/L.50

[*Original text: English and French*]
[*27 March 1958*]

Add the following paragraph at the end of the draft resolution proposed by the United Kingdom (A/CONF.13/C.2/L.50):

" *Expresses the hope* that an international body be set up to solve the conflicts of competence which may result in the event of a collision or other incident of navigation concerning a ship on the high seas."

DOCUMENT A/CONF.13/C.2/L.74

Union of South Africa: proposal

[*Original text: English*]
[*28 March 1958*]

Article 35

PARAGRAPH 1

Add the following at the end of the paragraph:

" A State may, however, waive its jurisdiction, either generally or in a particular case, over its own nationals who may be involved in penal or disciplinary responsibility for collision on the high seas."

DOCUMENT A/CONF.13/C.2/L.75

Colombia: proposal

[*Original text: Spanish*]
[*28 March 1958*]

Additional article

Any dispute arising between States with regard to the interpretation or implementation of articles 26-48 and 61-65 shall be referred to the International Court of Justice by application of either party, unless the parties agree to seek a solution by another method of peaceful settlement.

DOCUMENT A/CONF.13/C.2/L.76

United States of America: proposal

[*Original text: English*]
[*28 March 1958*]

Article 33

The article to read as follows:

" *Ships owned or operated by a State and used only on government non-commercial service shall, when on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.*"

Comments

The apparent intent of the drafters of articles 32 and 33 was to draft parallel provisions. Article 32, however, refers to jurisdiction, whereas article 33 uses the phrase "exercise of powers". For purposes of clarity, the use of identical words in these companion articles is called for.

In addition, the International Law Commission's commentary indicates that it was not intended that government-owned ships other than warships should have policing rights on the high seas. As drafted, the article might be interpreted as meaning that other government-owned ships have such rights. The proposal clarifies the article to conform with the intent of the International Law Commission.

The United States delegation believes that the immunity of a vessel owned or operated by a State should be based on the purpose of its service.

DOCUMENT A/CONF.13/C.2/L.77

United States of America: proposal

[*Original text: English*]
[*28 March 1958*]

Article 37

In the English text, substitute the word " flag " for the word " colours " wherever it appears.

Note. — The substitution is suggested for the sake of uniformity.

DOCUMENT A/CONF.13/C.2/L.79

Uruguay: proposal

[*Original text: Spanish*]
[*28 March 1958*]

Article 48

PARAGRAPH 1

Insert the words " and exploration " between " exploitation " and " of the seabed ".

DOCUMENT A/CONF.13/C.2/L.80

Italy: proposal

[*Original text: French*]
[*28 March 1958*]

Article 39

PARAGRAPH 3

Sub-paragraphs (*a*) and (*b*) to read as follows :

" (*a*) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft ;

" (*b*) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State."

DOCUMENT A/CONF.13/C.2/L.81

Italy: proposal

[*Original text: French*]
[*28 March 1958*]

Article 41

Replace the word " intended " by the word " used ", and delete the words " to be used ".

DOCUMENT A/CONF.13/C.2/L.82

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text: English*]
[*31 March 1958*]

Article 34

The article to read as follows:

"1. Every State shall satisfy itself concerning, and take such measures as are necessary to ensure, safety at sea for ships under its jurisdiction with regard, *inter alia*, to:

(*a*) The use of signals, the maintenance of communications and the prevention of collisions;

(*b*) The manning of ships and working conditions of crews;

(*c*) The construction, equipment and seaworthiness of ships.

"2. In taking such measures each State is required to conform to generally accepted standards and to take any steps which may be necessary to ensure their observance."

DOCUMENT A/CONF.13/C.2/L.83

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text: English*]
[*1 April 1958*]

Article 33

In the third and fourth lines, substitute for the words "used only on government service whether commercial or non-commercial" the following: "used only on government service for non-commercial and non-fishing purposes"

Article 38

Add after the word "piracy" in line two the words "*jure gentium*".

Article 39

Re-word the opening phrase and paragraph 1 as follows:

"Such piracy consists in any of the following acts:

1. Any illegal acts of violence, detention or any act of depredation, or any attempt to commit such acts, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed:

Delete paragraph 3.

Article 41

The article to read as follows:

"A ship or aircraft which has been used to commit any act or acts of piracy as defined in article 39 shall, so long as it remains under the control of the person or persons who have committed that act or those acts, be considered to be a private ship or aircraft."

Additional article 65 A

Add after article 65 a new article reading as follows: —

"Every State has the right to fly aircraft:

(i) Over all areas of the sea more than three miles from the coast measured from the appropriate baseline;

(ii) Along straits used for international navigation between two parts of the high seas; and

(iii) Above waters constituting the sole means of access to an airport of a State."

DOCUMENT A/CONF.13/C.2/L.84

Norway: proposal

[*Original text: English*]
[*1 April 1958*]

Article 44

The article to read as follows:

"If the suspicions of piracy prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, compensation shall be paid for any loss or damage that may have been sustained.

Note. — Article 44 and article 46, paragraph 3 now cover partly the same problem, but in different terms. The International Law Commission considered this inconsistency at its eighth session and decided to reword article 19 (present article 44) on the lines of article 21 (present article 46), paragraph 3. [*Yearbook of the International Law Commission*, 1956, Vol. II, pp. 19 and 20, paras. 136 to 138, and Vol. I, 343rd meeting, para. 66.] Apparently by an oversight the amendment was not effected.

DOCUMENT A/CONF.13/C.2/L.85

Federal Republic of Germany: proposal

[*Original text: English*]
[*1 April 1958*]

Article 32

PARAGRAPH 2

Transfer paragraph 2 to become paragraph 2 of article 24.

Comment

The delegation of the Federal Republic of Germany proposes that, unless the rules concerning territorial waters are to be preceded by a general definitions clause, the definition of warships should be transferred to article 24 where warships are first mentioned.

Article 33

The article to read as follows:

"For all purposes connected with the exercise of powers on the high seas by States other than the flag State, ships owned or operated by a State and used only on non-commercial government service shall have the same immunity as warships."

Comment

In the view of the delegation of the Federal Republic of Germany, there is no rule of international law that justifies a variation in the status of merchant ships according to whether they are owned by private persons or by a State.

DOCUMENT A/CONF.13/C.2/L.86

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text: English*]
[*1 April 1958*]

Article 29

PARAGRAPH 2

The paragraph to read as follows:

"Documents issued by the authorities of the State of the flag shall be prima facie evidence of a merchant ship's right to fly that flag."

DOCUMENT A/CONF.13/C.2/L.87

Use of the United Nations flag on vessels: note by the Secretariat

[*Original text: English*]
[*1 April 1958*]

I. *Introduction*

1. Three principal instances have occurred in which the United Nations flag has been flown on vessels. These instances cover a variety of circumstances, but the use of the flag has always been conditioned by urgent and practical considerations. The flag has been used on both registered and unregistered ships on the high seas and in the territorial sea. In the case of registered vessels, the United Nations flag has been flown either together with or without the national flag of those vessels.

2. The three examples outlined below are as follows:

(*a*) The fishing vessels of the United Nations Korean Reconstruction Agency;

(*b*) The vessels of the United Nations Emergency Force;

(*c*) The vessels of the United Nations Suez Canal Clearance Operation.

II. *The fishing vessels of the United Nations Korean Reconstruction Agency*

3. During 1954 the United Nations Korean Reconstruction Agency (UNKRA) had ten wooden fishing trawlers (each of approximately 77.5 gross tons) constructed in Hong Kong as a contribution to the reconstruction of the fishing industry of the Republic of Korea. Early in 1955 it became necessary to navigate these vessels to Pusan, in Korea, for delivery to their future Korean owners. The question arose of what flag should be flown, and what registry used on the voyage from Hong Kong to Pusan. British registry was unavailable under the applicable legislation, by reason of the vessels' ownership. Nor could Korean registry be obtained while the vessels were still owned by UNKRA. It would theoretically have been possible to bring the future Korean owners to Hong Kong and transfer ownership to them there, thus making Korean registry available, but apart from the unreasonable expense involved there were urgent reasons connected with their course *en route* to Pusan why it was necessary that the vessels should be under United Nations rather than Korean ownership during the trip. Consequently it was decided that the United Nations should itself undertake the function of registration, and should navigate the vessels to Pusan under the United Nations flag. This was, in fact, done. The vessels, in several groups, left Hong Kong,

called at a Japanese port, and proceeded thence to Pusan, all without incident. In Pusan they were handed over to their Korean owners.[1]

III. *The vessels of the United Nations Emergency Force*

4. In organizing the United Nations Emergency Force (UNEF) in Egypt at the end of 1956, and in the early months of 1957, considerable reliance had to be placed on transportation of troops and material by sea, particularly from the base camp established at Naples. Vessels were chartered by UNEF itself, or made available by participating or other governments. The United Nations flag was flown by certain of these vessels, on some occasions alone, and on others together with the national flag. The Yugoslav Government, for instance, transported its contingent to UNEF in its own military transports, which, with the concurrence of the Secretary-General, flew the United Nations flag alone. Other vessels, including an aircraft carrier made available by the Canadian Government, displayed both their national flag and the United Nations flag. It was and remains the practice for all vessels on assignment to UNEF to display the United Nations flag while in Egyptian ports.

5. Vessels on charter to UNEF have either displayed the United Nations flag alone, or together with their national flags. A Greek vessel under charter for several months to transport troops to and from Gaza and Beirut used both flags.

6. The Agreement between the United Nations and the Government of Egypt concerning the status of UNEF in Egypt, dated 8 February 1957 (A/3526), makes provision for the display of the United Nations flag on vessels assigned to or owned by the Force while within Egyptian territory. Paragraph 20 of the Agreement (A/3526) reads:

"The Egyptian Government recognizes the right of the Force to display within Egyptian territory the United Nations flag on its headquarters, camps, posts or other premises, vehicles, vessels and otherwise as decided by the Commander. Other flags or pennants may be displayed only in exceptional cases and in accordance with conditions prescribed by the Commander. Sympathetic consideration will be given to observations or requests of the Egyptian authorities concerning this last-mentioned matter."

7. The display of the United Nations flag on vessels on assignment to UNEF serves the very useful purpose of identifying the vessels as part of a United Nations project. Likewise, the use of the flag was rendered imperative at the time UNEF was established as a result of the conditions in the area of the Force's operations. The flag also indicated that ships on assignment to UNEF are entitled to the privileges and immunities provided for in the relevant international instruments. In this respect the Agreement between the United Nations and the Government of Egypt, referred to above, provides in paragraph 23 that:

"The United Nations Emergency Force, as a subsidiary organ of the United Nations established by the General Assembly, enjoys the status, privileges and immunities of the Organization in accordance with the Convention on the Privileges and Immunities of the United Nations. The provisions of article II[2] of the Convention on the Privileges and Immunities of the United Nations shall also apply to the property, funds and assets of Participating States used in Egypt in connexion with the national contingents serving in the United Nations Emergency Force."

8. UNEF has recently taken title to a landing craft mechanized (LCM) of 26 tons deadweight and a cargo capacity of 30 tons. This craft will primarily be used for the off-loading of UNEF cargo from the Gaza roadstead and landing it on the Gaza beach. In addition to this lighterage function, however, sea and weather conditions will necessitate its sailing, possibly over the high seas, to Beirut harbour for mooring during extended periods when it is not in use in Gaza. Moreover, it may make occasional voyages between Gaza and Beirut and Gaza and Port Said for the transportation of cargo. The LCM will not be placed on any national registry. It will sail under the United Nations flag alone and carry a United Nations "sea letter". As the vessel is UNEF property, and of a quasi-military character, this appears to be the most appropriate solution.

9. The absence, at first sight, of a national jurisdiction for any crimes committed while the LCM is on the high seas is not expected to present any major problem, as the crew will be composed entirely of members of the Force, who are subject to UNEF regulation 34 (*a*), which provides that:

"Members of the Force shall be subject to the criminal jurisdiction of their respective national States in accordance with the laws and regulations of those States. They shall not be subject to the criminal jurisdiction of the Courts of the Host State. Responsibility for the exercise of criminal jurisdiction shall rest with the authorities of the State concerned, including as appropriate the commanders of the national contingents."

In the identical exchanges of notes between the Secretary-General and the States participating in UNEF, the former is given assurances by each of the latter that they "will be prepared to exercise jurisdiction with respect to any crime or offence which might be committed by a Member of... [their respective]... national contingent[s]."

10. It is not thought that any questions will arise relating to jurisdiction over goods carried on board the LCM, since in all cases the goods will be the property either of UNEF or, on occasion, the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).

IV. *The vessels of the United Nations Suez Canal Clearance Operation*

11. The United Nations Suez Canal Clearance Operation (UNSCO) involved the use of vessels of at least nine nationalities. These vessels were assembled together at the end of 1956 and early 1957 in one of the largest salvage fleets ever organized. The majority of the vessels were obtained under contract or sub-contract from private firms; some, however, in the earlier stages of the operation, were made available by the United Kingdom and French Governments from the salvage vessels they had available in the area.

12. Provision for the use of the United Nations flag on the salvage fleet assembled by UNSCO was made both in the Agreement between the United Nations and the Government of Egypt regarding the clearance of the Suez Canal of 8 January 1957 (A/3492) and in contract entered into between the United Nations and the consortium of private salvage firms. The Agreement with Egypt stated that:

"The undertaking [UNSCO] would be regarded as a United Nations enterprise and its personnel would be under obligation to discharge their functions and regulate their conduct solely in the interests of the United Nations.

[1] This matter was brought to the attention of the International Law Commission at its sevenh session (A/CN.4/SR.320).

[2] Article II provides, *inter alia*, that:

"... The property and assets of the United Nations, wherever located and by whomever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action."

In keeping with the United Nations responsibilities, the vessels would fly the flag of the United Nations in place of their national flags. The property and persons engaged in the clearance operation (including the contractors, sub-contractors and their personnel) would, in view of their United Nations character, be covered by the Convention on the Privileges and Immunities of the United Nations to which Egypt is a party, in so far as it may be applicable *mutatis mutandis.*"

Article 13.1 of the contract between the United Nations and the consortium of Smit-Svitzer provided that:

"Smit-Svitzer shall ensure that each of its vessels utilized in the performance of the work shall fly the UN flag in place of its national flag while in the Suez Canal area, in accordance with the provisions of the United Nations Flag Code and any regulations made pursuant thereto by the Secretary-General or his duly authorized representative. The use of the UN flag on the vessels concerned shall not be deemed to effect any alteration in their national registration."

13. As in the case of UNEF, the use of the United Nations flag by UNSCO vessels served to identify them as part of a United Nations project, and to indicate that they were entitled to the protection of the Organization. Urgent practical considerations, in the light of local circumstances, made it necessary for the vessels to fly the United Nations flag. In practice, however, the masters of most vessels continued also to display their national flags.

DOCUMENT A/CONF.13/C.2/L.88

Israel: proposal

[*Original text: English*]
[*1 April 1958*]

Article 28

Replace the words "under its flag" in paragraph 1, by the words "having its nationality".

Article 34

PARAGRAPH 1

Replace the words "to issue for ships under its jurisdiction regulations" by the words "in respect of ships having its nationality".

PARAGRAPH 2

Paragraph 2 to read as follows:

"2. In taking the measures set out in paragraph 1, each State is required — taking account of relevant treaty provisions — to observe generally accepted standards and to take any steps which may be necessary to secure their observance."

Article 35

PARAGRAPH 1

Delete the words "or of the State of which the accused person is a national".

ADDITIONAL PARAGRAPH

Add after paragraph 2 the following paragraph:

"3. The provisions of paragraph 1 shall not prevent the State of which the person incriminated is a national from taking any action in respect of certificates of competence or licences issued by that State or from prosecuting its own nationals for offences committed while on board a ship having the nationality of another State."

Article 36

ADDITIONAL PARAGRAPH

Insert at the beginning of the present article the figure "1", and add the following new paragraph 2:

"2. The provisions of this article shall be applied subject to the relevant treaty provisions."

DOCUMENT A/CONF.13/C.2/L.89

Iceland: proposal

[*Original text: English*]
[*1 April 1958*]

Article 47

PARAGRAPH 1

The third sentence to read as follows:

"It is not necessary, at the time when the foreign ship receives the order to stop, that she or the ship giving the order to stop, should be within the territorial sea."

PARAGRAPH 3

The paragraph to read as follows:

"Hot pursuit is deemed to have begun as soon as the pursuing ship has satisfied itself by bearings, sextant angles, radar observations or other like means, that the ship pursued or one of its boats is or has been within the limits of the territorial sea or, as the case may be, within the contiguous zone.

"Visual or auditory signal to stop shall be given as soon as it may be seen or heard by the foreign ship."

PARAGRAPH 5

In sub-paragraph (*b*), add the words "or aircraft" after the words "pursue the ship until a ship" and add the following at the end of the sub-paragraph: "... or other

aircraft or ships which continue the pursuit without interruption."

Add a new sub-paragraph (*c*), as follows:

"If a ship has been observed within the limits of the territorial sea or, as the case may be, within the contiguous zone, and her acts and identity have been properly certified, the ship may be arrested on the high seas for further investigation without uninterrupted hot pursuit, if the arrest is made within 24 hours."

DOCUMENT A/CONF.13/C.2/L.93

France: amendment to document A/CONF.13/C.2/L.28

[*Original text: French*]
[*2 April 1958*]

Add the following words at the end of the text proposed by Italy for paragraph 1 of article 29 (A/CONF.13/C.2/L.28):

" in administrative, technical and social matters ".

DOCUMENT A/CONF.13/C.2/L.94

Pakistan: proposal

[*Original text: English*]
[*2 April 1958*]

Article 47

PARAGRAPH 2

Add the following in continuation of this paragraph: " but, where possible, the extradition of the offender may be secured through bilateral treaties ".

DOCUMENT A/CONF.13/C.2/L.95

India: proposal

[*Original text: English*]
[*2 April 1958*]

Article 47

PARAGRAPH 1

The paragraph to read as follows:

"The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship is within the internal waters or the territorial sea or the contiguous zone (as defined in article 66) of the pursuing State, and may only be continued outside such areas if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the said areas receives the order to stop, the ship giving the order should likewise be within the said areas."

PARAGRAPH 3

For the words " bearings, sextant angles or other like means" substitute, " such practicable means as may be available."

DOCUMENT A/CONF.13/C.2/L.96/Rev.1

United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text: English*]
[*8 April 1958*]

Article 47

PARAGRAPH 1

Delete the last sentence.

Add a paragraph as follows:

"Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained".

Article 48

PARAGRAPH 1

Delete this paragraph and adopt a resolution in the following terms:

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

Desiring to emphasize the importance of preventing the pollution of the high seas by the discharge of oil;

Draws attention to the International Convention of 12 May, 1954 for the Prevention of Pollution of the Sea by Oil;

Expresses the belief that the objectives of paragraph 1 of draft article 48 drawn up by the International Law Commission will be achieved by States participating in the International Convention of 12 May, 1954."

DOCUMENT A/CONF.13/C.2/L.98

Netherlands: proposal

[*Original text: English*]
[*3 April 1958*]

Article 47

Divide article 47 into two articles, to read as follows:

Article 47 a

RIGHT OF HOT PURSUIT

"1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. It may be exercised only by warships or military aircraft, or by other ships or aircraft on government service specially authorized to that effect.

"2. Such pursuit must be commenced when the foreign ship is within the internal waters or the territorial sea of the pursuing State, without it being necessary that, at the time when the foreign ship within the territorial sea receives the order to stop, the ship or aircraft giving the order should likewise be within the territorial sea or within the air space above it. It may, however, exceptionally be undertaken when the foreign ship is within a contiguous zone, as defined in article 66, if there has been, within the internal waters or the territorial sea of the coastal State, a violation of the rights for the protection of which the zone was established.

"3. Hot pursuit may be commenced only after:

"(*a*) The pursuing ship or aircraft has satisfied itself by bearings, sextant angles or similar means that the ship pursued or one of its boats is within the limits of the territorial sea, or, as the case may be, within the contiguous zone;

"(*b*) A visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship. In the case of hot pursuit by an aircraft, that aircraft must itself actively pursue the ship until a ship of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself.

"4. Hot pursuit may be continued outside the territorial sea or the contiguous zone only if it has not been interrupted; it ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

Article 47 b

ESCORT ACROSS THE HIGH SEAS

The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purpose of an inquiry before the competent authority, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary."

Note. — This amendment is of a drafting character. It provides, moreover, for a more logical and systematic arrangement of the subject matter. Furthermore, it incorporates into the text itself the substance of the comment made in para. 2 (*a*) *in fine* of the International Law Commission's commentary on article 47.

DOCUMENT A/CONF.13/C.2/L.99

Denmark: proposal

[*Original text: English*]
[*3 April 1958*]

Article 47

PARAGRAPH 1

Add at the end of the text:

"The pursuit may also be undertaken against a ship on account of offences committed previously within a maximum period of two years. An arrest can only be made if the ship has the same master and belongs to the same owner as was the case when the previous offence was committed.

PARAGRAPH 2

Add at the end of the text:

"If, however, the ship pursued remains within sight of the pursuer without anchoring or mooring and leaves the said territorial sea not later than 6 hours after entering, the pursuit may be resumed.

Substitute for the words "other like means" the words: "by other reliable technical means such as Decca, loran and radar."

DOCUMENT A/CONF.13/C.2/L.100

Denmark: proposal

[*Original text: English*]
[*3 April 1958*]

Additional article

Insert after article 48, or at another appropriate place in part II, section I, sub-section A, a new article, worded as follows:

"A State which by international agreement or custom has assumed responsibility for buoyage and other similar measures to ensure the safety of navigation in fairways outside the territorial sea shall be entitled to issue such regulations as are necessary to meet this responsibility and to enforce them against anybody, irrespective of nationality, who navigates in these waters."

Comment

In certain areas of the high seas adjacent to its coasts, where the waters are shallow, a State may have undertaken to ensure the safety of navigation by means of light-vessels, buoys and other similar navigational aids, and to mark and remove obstacles to navigation, such as wrecks. Experience has proved that it may be difficult for a State to meet this responsibility without being able to exercise some limited jurisdiction over foreign vessels in these areas of the high seas. In particular, there may be a need for exercising some authority over salvage contractors engaged in removing wrecks, to make sure that the removal is completed in such a manner that guaranteed depths and other conditions of navigability are maintained and no other danger to navigation arises. As jurisdiction for this purpose would be exercised in the general interests of international shipping, and not solely in those of the coastal State, an exception to the general principles governing the régime of the high seas seems justified.

DOCUMENT A/CONF.13/C.2/L.101

Denmark: proposal

[*Original text: English*]
[*3 April 1958*]

Article 61

Add the following new paragraph 3:

"3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the sea-bed. In particular possibilities of repairing existing cables or pipelines shall not be prejudiced."

Article 63

Add at the end of the article the words: "of repair".

DOCUMENT A/CONF.13/C.2/L.102

Italy: proposal

[*Original text: French*]
[*3 April 1958*]

Article 61

PARAGRAPH 1

Replace the words "telegraph, telephone or high-voltage power cables" by the words "cables of any kind".

Article 62

Replace the first sentence by the following:

"Every State shall take the necessary legislative measures to provide that the breaking or injury of either a submarine cable of any kind or of a submarine pipeline beneath the high seas done wilfully or through culpable negligence shall be a punishable offence."

Article 63

Insert between the words "to another cable or pipeline" and the words "they shall bear the cost", the following phrase: "or prevent its working normally".

Article 64

Add the following paragraph at the end of the article: "For this purpose, the presence of submarine cables or pipelines shall be duly recorded on nautical charts."

DOCUMENT A/CONF.13/C.2/L.103

Italy: proposal

[*Original text: French*]
[*3 April 1958*]

Article 48

Replace the three paragraphs of the article by the following sole paragraph:

"Every State shall draw up regulations to prevent any persistent pollution whatsoever of the seas or of the superjacent air space, taking account of existing treaty provisions on the subject."

DOCUMENT A/CONF.13/C.2/L.104

Panama: amendment to document A/CONF.13/C.2/L.12/Rev.1

[*Original text: English*]
[*3 April 1958*]

Article 29

In the text proposed by Liberia for paragraph 1 of article 29 (A/CONF.13/C.2/L.12/Rev.1), amend the phrase "grant of its nationality" to read: "grant, retention and loss of its nationality".

DOCUMENT A/CONF.13/C.2/L.105

United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 47

PARAGRAPH 3

Delete the words "bearings, sextant angles or other like means" and substitute therefor the words "an accepted method of piloting or navigation."

Comments

The article, as drafted, refers only to methods of "piloting" to determine position The terms used to describe such methods do not necessarily include methods of "navigation", including modern electronic methods The amendment would clearly permit the use of all effective modern methods of both piloting and offshore navigation.

DOCUMENT A/CONF.13/C.2/L.106

United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 48

PARAGRAPH 1

Delete this paragraph and recommend that the Conference adopt the resolution the text of which is given below.

Comments

The vast and technical subject of oil pollution has been dealt with experimentally in the 1954 International Convention for the Prevention of Pollution of the Sea by Oil. Furthermore, the subject of oil pollution has been under study by the Transport and Communications Commission of the United Nations and by the Economic Commission for Europe, which, in turn, has called for continued United Nations study of the problem by the World Health Organization and the Food and Agriculture Organization.

Recognizing that the 1954 Convention was experimental in nature and that the pollution problem continues under extensive study, it is considered that the most appropriate action by this conference would be the adoption of the following resolution:

Draft resolution

The United Nations Conference on the Law of the Sea,

Recognizing the need for international co-operation with respect to the problem of pollution of the high seas by oil and other petroleum products,

Taking into account the complexities of this extremely technical problem which involves not only ships, but pipelines and other facilities related to the exploration and exploitation of the continental shelf;

Noting that various international organizations are presently studying this problem;

Recommends that States render all possible assistance to the interested international organizations and that, pending the outcome of the studies of the respective organizations, States promote national programmes designed to minimize the possibility of the pollution of the sea by oil.

DOCUMENT A/CONF.13/C.2/L.107 *

United Kingdom of Great Britain and Northern Ireland and United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 48

PARAGRAPHS 2 AND 3

Article 48, paras. 2 and 3: Delete these paragraphs and recommend that the Conference adopt the resolution the text of which is given below.

Comments

The United States and the United Kingdom, as two of the leaders in the peaceful use of atomic power, believe that it is necessary to encourage international action in the field of disposal of radioactive wastes. All of the available scientific and technical competence in the field of radiological protection should be marshaled and utilized to assist States in establishing standards and drawing up internationally acceptable regulations controlling the disposal of radioactive wastes in such a way as to avoid pollution of the seas and to avoid irreparable harm to the marine resources of man.

Several international agencies are interested in this problem. In view, however, of its primacy in the field of atomic energy, the International Atomic Energy Agency should be called upon by this Conference to take the lead.

It is the opinion of the sponsors of this proposal that the resolution which follows is more appropriate and will be more effective in achieving the goal of early international action in this most important field than the draft article prepared by the International Law Commission.

Draft resolution

The United Nations Conference on the Law of the Sea,

Recognizing the need for international action in the field of disposal of radioactive wastes in the sea,

Taking into account action which has been proposed by various national and international bodies and studies which have been published on the subject;

Noting that the International Commission for Radiological Protection had made recommendations regarding the maximum permissible concentration of radio isotopes in the human body and maximum permissible concentration in air and water.

Recommends that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection should pursue whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radioactive materials to the sea, promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radioactive material in amounts which would adversely affect man and his marine resources.

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* Incorporating document A/CONF.13/C.2/L.107/Corr.1.

DOCUMENT A/CONF.13/C.2/L.108

United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 61

PARAGRAPH 1

Replace paragraph 1 by the following: "All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas."

Comments

Article 61 is based on article 1 of the International Convention for the Protection of Submarine Cables which was signed in 1884 and to which thirty-five nations are parties. The draft article differs from the Convention in that it specifies the types of cables to which it applies, whereas the Convention speaks only of "submarine cables". The latter term is used in all other articles having to do with cables, including article 70, which has already been adopted by the Fourth Committee.

For purposes of uniformity the term "submarine cables" should also be used in this article.

DOCUMENT A/CONF.13/C.2/L.109

United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 62

Delete the whole of this article.

Comments

This article and the next three (articles 63, 64 and 65) all contain detailed provisions relating to the protection of submarine cables rather than basic principles. While based in the main on the Convention of 14 March 1884 for the Protection of Submarine Cables to which some 35 States have become signatories, these articles do not include a number of substantive provisions of that convention. Of the fifteen articles of that convention, the substance of only five has been dealt with here. Desirable as it might be to have all States as signatories to the principles enunciated in the Convention of 1884, it is not possible for this conference to give the detailed and technical consideration to this matter which would be required. On the other hand, it is not desirable to include only a portion of this technical subject matter. Since the draft articles are for the most part taken almost verbatim from the 1884 Convention, the adoption of these articles without reference to the remaining articles of that convention might well raise doubts as to the continued validity of the Convention, which in its entirety represents the whole of existing international law on the protection of submarine cables.

Furthermore, article 62, while based on article 2 of the 1884 Convention, omits the provisions of that convention which provide that the criminal penalties shall be no bar to a civil action for damages. This omission, if the article were adopted, might give rise to the interpretation that this concept had been repudiated.

DOCUMENT A/CONF.13/C.2/L.110

United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 63

Delete the whole of this article.

Comment

The basic reasons for the deletion of articles 62, 63, 64 and 65 are set forth in the proposal of the United States of America relating to article 62 (A/CONF.13/C.2/L.109).

DOCUMENT A/CONF.13/C.2/L.111

United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 64

Delete the whole of this article.

Comments

The basic reasons for the deletion of articles 62, 63, 64 and 65 are set forth in the proposal of the United States of America relating to article 62 (A/CONF.13/C.2/L.109).

In addition, this article has no counterpart in the Convention of 14 March 1884. It purports to be based on a resolution of the London Conference of 1913, which was attended by the representatives of ten States. The substance of that resolution was as follows:

It is in the interest of both the fishing industry and the submarine cable service that all gear used in trawling should be constructed and maintained in such a condition as to reduce to a minimum the danger of catching on submarine cables on the ocean bottom.

The proposed article 64 goes beyond the language of the resolution on which it is said to be based in that it places an affirmative duty on States to regulate trawling so as to reduce the danger of fouling submarine cables. There is no principle of international law requiring that nations regulate trawling in this manner nor is there a provision in any existing international convention imposing such an obligation. If standards for the regulation of trawling to prevent injury to submarine cables are to be enacted into law and consequently have some relevance to an ultimate determination of fault or negligence they should have uniformity. This could best be done by way of an international conference devoted to this technical problem.

DOCUMENT A/CONF.13/C.2/L.112

United States of America: proposal

[*Original text: English*]
[*3 April 1958*]

Article 65

Delete the whole of this article.

Comments

The basic reasons for the deletion of articles 62, 63, 64 and 65 are set forth in the proposal of the United States of America relating to article 62 (A/CONF.13/C.2/L.109).

Additionally, this article, which is based on article VII of the 1884 Convention, omits entirely the second paragraph of that article, which reads as follows:

"In order to be entitled to such indemnity, one must prepare, whenever possible, immediately after the accident, in proof thereof, a statement supported by the testimony of the men belonging to the crew; and the captain of the vessel must, within twenty-four hours after arriving at the first port of temporary entry, make his declaration to the competent authorities. The latter shall give notice thereof to the consular authorities of the nation to which the owner of the cable belongs."

The inclusion of the first paragraph of article VII of the 1884 Convention with the omission of the second might lead to improper interpretations of the intent as to the latter.

DOCUMENT A/CONF.13/C.2/L.113

United Kingdom of Great Britain and Northern Ireland: draft resolution

[*Original text: English*]
[*8 April 1958*]

Additional article 33 A

The United Kingdom delegation withdraws that part of its proposal (A/CONF.13/C.2/L.83) which concerns article 33, in favour of the United States proposal (A/CONF.13/C.2/L.76), and proposes the following additional article 33 A:

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

(i) Yachts, patrol vessels, hospital ships, fleet auxiliaries, military supply ships, troopships;

(ii) Cable ships, ocean weather ships, vessels carrying out scientific investigation, fishery protection vessels;

(iii) Vessels employed in services of a similar character to (i) and (ii)."

Note. — A definition in identical terms has already been submitted by the United Kingdom delegation to the First Committee as additional article 20 A (A/CONF.13/C.1/L.37). If that proposal is adopted by the First Committee, and if articles 20 and 33 are to be included in a single instrument, it may not be necessary to repeat the definition as article 33 A. It is also possible, as the delegation of the Federal Republic of Germany has pointed out in its proposal (A/CONF.13/C.2/L.85), that several definitions may be placed in a general clause preceding the rules concerning the territorial sea. If such a proposal is adopted, the United Kingdom delegation proposes that the definition set out above should be included in that general clause.

DOCUMENT A/CONF.13/C.2/L.114

Netherlands and United Kingdom of Great Britain and Northern Ireland: proposal

[*Original text : English*]
[*8 April 1958*]

Article 34

The article to read as follows :

" 1. Every State shall take such measures as are necessary to ensure safety at sea for ships under its flag with regard, *inter alia,* to :

(*a*) The use of signals, the maintenance of communications and the prevention of collisions ;

(*b*) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments ;

(*c*) The construction, equipment and seaworthiness of ships.

" 2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance."

[*This draft supersedes the proposals submitted separately by the Netherlands and the United Kingdom, circulated as documents A/CONF.13/C.2/L.24 and Add.1, and A/CONF.13/C.2/L.82.*]

DOCUMENT A/CONF.13/C.2/L.115 *

Federal Republic of Germany: proposal

[*Original text : French*]
[*9 April 1958*]

Article 47

PARAGRAPH 1

In the second sentence after the words " the foreign ship ", insert the phrase " or one of its boats ".

PARAGRAPH 3

Replace the words " bearings, sextant angles or other like means " by the words " appropriate means ".

Article 48

PARAGRAPH 1

Insert after the words " pollution of the seas " a comma and the words " for example,".

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* Incorporating document A/CONF.13/C.2/L.115/Corr.1.

DOCUMENT A/CONF.13/C.2/L.116

Israel: proposal

[*Original text : English*]
[*9 April 1958*]

Article 47

PARAGRAPH 1

At the end of the first sentence, after the words " of that State " in the fourth line, add the following : " provided that such laws and regulations are in conformity with international law."

Comment

As the right of hot pursuit derives from international law, it cannot be exercised except to prevent violation of laws and regulations which themselves conform with international law ; this principle, though implicit in the formulation of article 47 as proposed, should be embodied in its text.

PARAGRAPH 3

Replace the words " the pursuing ship has satisfied itself " by the words " it is established ".

Comment

The question as to whether the hot pursuit was legal cannot, under any judicial concept, be left exclusively to the subjective appreciation of the situation by the pursuing ship, but must depend ultimately on objective examination. If the matter is controversial it is for the appropriate tribunal to satisfy itself that in the circumstances the pursuit was legitimate.

At the end of the paragraph, add the following phrase " and after a buoy or another practicable sign has been

located by the pursuing ship at the place where the pursuit has been commenced."

Comment

The object of this proposal is to facilitate the disposal of any controversy as to whether the hot pursuit was commenced legitimately, by providing some means of ascertaining the spot at which the pursuit actually commenced.

ADDITIONAL PARAGRAPH

After paragraph 6 add the following:
" 7. The provisions of article 47, paragraph 3, apply in respect of hot pursuit."

Comment

Paragraph 3 of article 46 provides for the payment of compensation in respect of loss or damage to a ship when boarded and delayed without good reason. As the International Law Commission stated in paragraph 3 of the commentary to article 46, the purpose of this provision is to prevent the right of visit being abused. The same considerations apply to the case of hot pursuit, and warrant the award of compensation to a ship in respect of loss or damage caused to her, by reason of the improper and unfounded exercise against her of the right of hot pursuit.

DOCUMENT A/CONF.13/C.2/L.117

Bulgaria: proposal

[*Original text: French*]
[*9 April 1958*]

Article 46

ADDITIONAL PARAGRAPH

Add a new paragraph as follows:
" 4. The provisions of paragraphs 1 to 3 of this article shall not apply to government ships operated for commercial purposes."

DOCUMENT A/CONF.13/C.2/L.118

Czechoslovakia: proposal

[*Original text: French*]
[*9 April 1958*]

Article 48

PARAGRAPH 2

The paragraph to read as follows:

" Every State shall, in order to prevent pollution of the seas, draw up regulations prohibiting the dumping of radioactive elements and waste in the sea."

PARAGRAPH 3

The paragraph to read as follows:

" All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or air space above by radioactive materials or other harmful agents."

DOCUMENT A/CONF.13/C.2/L.119

Yugoslavia: amendment to document A/CONF.13/C.2/L.96/Rev.1

[*Original text: French*]
[*10 April 1958*]

Add at the end of the operative part of the draft resolution submitted by the United Kingdom on article 48, paragraph 1 (A/CONF.13/C.2/L.96/Rev.1), the following paragraph:

" *Recommends* that all States participating in this conference which have not signed, ratified or acceded to the International Convention of 12 May 1954 be invited to do so as soon as possible and to take the action mentioned in the preceding paragraph."

DOCUMENT A/CONF.13/C.2/L.121/Rev.1

Argentina, Ceylon, India and Mexico: proposal

[*Original text : English and Spanish*]
[*12 April 1958*]

Additional article

1. Every State shall draw up regulations to prevent pollution of the seas from the dumping of radioactive waste, taking into account the norms and regulations formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in drawing up regulations with a view to the prevention of pollution of the seas or air space above, resulting from experiments or activities with radioactive materials or other harmful agents.

DOCUMENT A/CONF.13/C.2/L.121/Rev.2

Argentina, Ceylon, India and Mexico: proposal

[*Original text : English and Spanish*]
[*14 April 1958*]

Additional article

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents.

DOCUMENT A/CONF.13/C.2/L.150

Union of South Africa: draft resolution

[*Original text : English*]
[*15 April 1958*]

The Second Committee

1. *Recommends* to the plenary session of the Conference that the draft articles adopted by the Committee be embodied in a separate instrument on the régime of the high seas which shall take the form of a declaration by the Conference that the provisions therein set forth are considered by the United Nations Conference on the Law of the Sea, met in Geneva from 24 February to 26 April 1958, by a majority of not less than two-thirds of States present and voting, as an expression of existing principles of international law on the Régime of the High Seas.

2. *Requests* its drafting committee to draw up a suitable preamble to such an instrument and to submit the text of the preamble and the final texts of the draft articles to the Committee for approval at its next meeting.

DOCUMENT A/CONF.13/L.17/Add.1 *

Text of the articles and draft resolutions adopted by the Second Committee

[*Original text : English, French and Spanish*]
[*22 April 1958*]

I

Article 26

The term " high seas " means all parts of the sea that are not included in the territorial sea, as contemplated by part I, or in the internal waters of a State.

Article 27

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia* :

(1) Freedom of navigation ;

* Incorporating document A/CONF.13/L.17/Add.1/Corr.1.

(2) Freedom of fishing ;

(3) Freedom to lay submarine cables and pipelines ;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 28

Every State has the right to sail ships under its flag on the high seas.

Article 29

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship ; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 30

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 31

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.

Article 32

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term " warship " means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article 33

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 34

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard, *inter alia,* to :

(*a*) The use of signals, the maintenance of communications and the prevention of collisions ;

(*b*) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments ;

(*c*) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 35

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

Article 36

Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers,

(a) To render assistance to any person found at sea in danger of being lost ;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him ;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and — where circumstances so require — by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

Article 37

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

Article 38

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 39

Piracy consists of any of the following acts :

(1) Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed :

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft ;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State ;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft ;

(3) Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

Article 40

The acts of piracy, as defined in article 39, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 41

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 39. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 42

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which the nationality was originally derived.

Article 43

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 44

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article 45

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article 46

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting :

(*a*) That the ship is engaged in piracy ; or

(*b*) That while in the maritime zones treated as suspect in the international conventions for the abolition of the slave trade, the ship is engaged in that trade ; or

(*c*) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (*a*), (*b*) and (*c*) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Article 47

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.

3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft :

(*a*) The provisions of paragraphs 1 to 3 of the present article shall apply *mutatis mutandis* ;

(*b*) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other

aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article 48

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

New article relating to the pollution of the sea by radioactive waste (to be inserted immediately after article 48)

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents.

Article 61

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 62

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precuations to avoid such break or injury.

Article 63

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 64

[Deleted.]

Article 65

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

II

Draft resolution relating to article 48

The United Nations Conference on the Law of the Sea,

Recognizing the need for international action in the field of disposal of radioactive wastes in the sea,

Taking into account action which has been proposed by various national and international bodies and studies which have been published on the subject,

Noting that the International Commission for Radiological Protection has made recommendations regarding the maximum permissible concentration of radio isotopes in the human body and maximum permissible concentration in air and water,

Recommends that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection should pursue whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radioactive materials to the sea, promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radioactive material in amounts which would adversely affect man and his marine resources.

III

Draft resolution relating to nuclear tests
(in connexion with article 27)

The United Nations Conference on the Law of the Sea,

Recalling that the Conference has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957,

Recognizing that there is a serious and genuine apprehension on the part of many States that nuclear explosions constitute an infringement of the freedom of the seas, and

Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Decides to refer this matter to the General Assembly for appropriate action.

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