

Document:-  
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**Summary record of the 342nd meeting**

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

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ment of existing law. He believed the first phrase of the Netherlands text, up to the words "it flies", would suffice.

71. Mr. FRANÇOIS, Special Rapporteur, said that he could support that amendment to the Netherlands proposal.

72. Mr. SALAMANCA, after expressing agreement with Mr. Amado, said that the article should lay stress on the functions rather than the characteristics of warships.

73. Mr. SPIROPOULOS said that he was still uncertain whether ships not possessing some of the features enumerated in the definition would be thereby excluded from the official list of warships of the country concerned. Perhaps the Sub-Committee might be requested to draft a definition in the light of the present discussion.

74. Sir Gerald FITZMAURICE said that some degree of precision was essential; otherwise there was danger of the kind of abuse which the authors of the Hague Convention had sought to prevent.

75. Mr. AMADO agreed.

76. Mr. PADILLA-NERVO considered that paragraph 2, as adopted at the previous session, already contained the necessary elements, and that perhaps the only addition required was a reference to the external marks distinguishing warships.

77. Mr. SPIROPOULOS said that if the enumeration in paragraph 2 was to be retained, Mr. Padilla-Nervo's suggestion should be followed, so as to make the definition complete.

78. The CHAIRMAN, observing that there seemed to be general support for paragraph 1, proposed that the decision on paragraph 2 be deferred until the next meeting.

*It was so agreed.*

*The meeting rose at 6.10 p.m.*

## 342nd MEETING

*Tuesday, 8 May 1956, at 10 a.m.*

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*Chairman:* Mr. F. V. GARCÍA-AMADOR.

*Rapporteur:* Mr. J. P. A. FRANÇOIS.

*Present:*

*Members:* Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Faris Bey el-

KHOURI, Mr. S. B. KRYLOV, Mr. L. PADILLA-NERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

*Secretariat:* Mr. LIANG, Secretary to the Commission.

**Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97 and Add. 1, A/CN.4/99 and Add. 1-6) (continued)**

*Article 7: Immunity of warships (concluded)*

1. The CHAIRMAN invited the Commission to continue its consideration of article 7, paragraph 2 (A/2934).

2. Mr. FRANÇOIS, Special Rapporteur, said that in the light of the discussion at the previous meeting he would suggest that the words "which is under the command . . . under regular naval discipline" be replaced by the words "and bearing the external marks distinguishing warships of its nationality". He believed that that suggestion, which was according to what had been proposed by Mr. Amado at the previous meeting, would satisfy the Netherlands and Yugoslav Governments.

3. Mr. SPIROPOULOS asked in what relation that definition would stand to the definition in the Hague Convention concerning the Conversion of Merchant Ships into Warships. Perhaps it should be made clear that the Commission's definition was for times of peace.

4. Mr. ZOUREK believed it might be desirable to retain the latter part of paragraph 2 as adopted at the previous session, because it contained at least some precise criteria.

5. Mr. SANDSTRÖM said it was bad policy to alter a definition already established after exhaustive discussion, and to do so would only give rise to misunderstanding and criticism. He saw no reason why the Commission should not retain the substance of the definition in the Hague Convention by inserting in the text adopted at the previous session a reference to the external marks distinguishing warships.

6. Mr. AMADO said that he would not press his proposal.

7. Mr. PADILLA-NERVO believed that the wording suggested by the Special Rapporteur would suffice, and would be acceptable to the Netherlands and Yugoslav Governments. There was no need for the Commission to discuss the consequences of adopting such a definition, because all the aspects of the problem had been thoroughly studied at the previous session.

8. The CHAIRMAN suggested that Mr. Spiropoulos' point could be met by prefacing paragraph 2 with the words "For the purposes of this article".

9. Mr. LIANG, Secretary to the Commission, pointed out that the definition in the Hague Convention had been drafted in such a way as to facilitate visit and search in order to ascertain whether a merchantman had been genuinely converted into a warship, and the wording, at least to some extent, reflected the legal usage of that time.

In present-day circumstances it was inconceivable that a vessel not commanded by a commissioned officer on his government's navy list and the crew of which was not subject to regular naval discipline could be a warship. He would therefore go so far as to suggest that the latter part of paragraph 2 was not only superfluous, but out of date. All the necessary elements were covered in the opening phrase: "The term 'warship' means a vessel belonging to the naval forces of a State."

10. The Chairman's amendment would make it clear that the Commission was not putting forward a general definition of warships.

11. Mr. SPIROPOULOS, observing that a definition had been included in the Hague Convention for obvious reasons, reiterated his doubts about the necessity of a definition in the present draft. If the Commission insisted on including one, he hoped it might be placed in the comment; but if that were done the Chairman's amendment was essential, in order to ensure that there was no conflict between the two definitions.

12. Mr. ZOUREK said that once a reference had been made in paragraph 2 to the external marks distinguishing warships, there would be no essential difference between the two definitions. Moreover, he considered it entirely undesirable to embody in the text a definition of a warship which did not correspond to the generally accepted definition of that term.

13. Faris Bey el-KHOURI thought it would be altogether inappropriate to insert a definition of warships in the draft, because it was for States themselves to determine which of their vessels came into that category. On the other hand he believed that the Commission should impose the requirement that they bear a clearly visible distinguishing mark.

14. The Sub-Committee should be requested to prepare a recommendation concerning a uniform international sign which, once adopted by all States, would be easily recognizable and would eliminate mistakes of identification.

15. Mr. LIANG, Secretary to the Commission, said that if the Commission decided to include a definition of warships, article 7 was not the proper place for it, since the impression might be given that the definition did not apply to the warships mentioned in articles 15 and 20.

16. Sir Gerald FITZMAURICE, observing that it was not easy to decide whether a definition was desirable, said that although there was considerable force in Mr. Spiropoulos's contention that it was not strictly necessary, he himself would hesitate to support its omission. The object of the Hague Convention had been to prevent merchant ships from turning themselves into commerce raiders in wartime, and seeking to acquire, quite inadmissibly, the status of warships simply by hoisting a naval flag in order to board, capture, or sink other vessels, after which they would revert to their former status of merchant ships. There was a parallel between that situation and the one dealt with in article 14, where it was laid down that piracy was an offence which could not be committed by a warship, so that there was some justification for providing

the same kind of safeguard against merchant vessels claiming the status of warships as was contained in the Hague Convention. For that reason he was inclined to favour paragraph 2 as adopted at the previous session, with the addition of a requirement that warships must carry distinguishing external marks.

17. Mr. AMADO regretted that he should have instigated a prolonged discussion. Although he still maintained his objection to the latter part of paragraph 2, he was prepared to withdraw it in favour of Mr. Padilla-Nervo's suggestion at the previous meeting.<sup>1</sup>

18. Mr. SPIROPOULOS proposed that paragraph 2 be deleted and the second sentence of the comment re-drafted to indicate that the Commission did not think it necessary to give a definition of the term "warship", the reference to articles 3 and 4 of the Hague Convention being retained.

19. Mr. EDMONDS believed that a decision to omit paragraph 2 after it had been adopted at the previous session would be misconstrued, and therefore favoured Mr. Padilla-Nervo's suggestion, for the reasons given by Sir Gerald Fitzmaurice.

*Mr. Spiropoulos' proposal was rejected by 5 votes to 3, with 6 abstentions.*

20. Mr. KRYLOV said that he had supported the proposal because he considered that the definition contained in the Hague Convention was a good one and that there was no need to add another in the present draft.

21. The CHAIRMAN put to the vote the first part of paragraph 2 with the amendments suggested during the discussion, reading: "For the purposes of these articles, the term 'warship' means a vessel belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality."

*The amended wording was adopted by 13 votes to none, with 1 abstention.*

22. The CHAIRMAN then put to the vote the remainder of paragraph 2, from the words "which is under the command" to the end.

*The remainder of the paragraph was adopted by 8 votes to 1, with 5 abstentions.*

23. Mr. SCALLE said that, although any definition was likely to be faulty because incomplete, the one just adopted was not restrictive and he welcomed the acceptance of the minimum conditions laid down in the latter part of the paragraph. Nor was there any harm in amplifying the text adopted at the previous session by referring to external distinguishing marks.

#### *Article 8: Immunity of other state ships*

24. Mr. FRANÇOIS, Special Rapporteur, said that the Governments of the Netherlands and the Union of South Africa had both objected to the Commission's decision to depart from the International Convention for the Unification of Certain Rules relating to the

<sup>1</sup> A/CN.4/SR.341, para. 76.

Immunity of State-owned Vessels by granting to state ships used on commercial government service the same immunity as was enjoyed by other state ships. Both had proposed that the Commission should revert to the Brussels Convention on that point. As he had indicated in paragraph 77 of the addendum to his report (A/CN.4/97/Add.1), such a change would be contrary to the Commission's intention to assimilate state ships used for commercial purposes to warships for the purposes of article 8, which, in practice, was likely to come into play only in the infrequent cases of pursuit or visit on suspicion of piracy or slave traffic. It remained for the Commission to decide whether the objections raised by the two governments he had mentioned were persuasive enough to justify modifying its previous decision.

25. Mr. PADILLA-NERVO believed the Commission should adhere to its earlier decision.

26. He found the United Kingdom amendment substituting the words "shall have the same immunity as" for the words "shall be assimilated to", acceptable.

27. Mr. LIANG, Secretary to the Commission, pointed out that there might be inconsistency between the comment and the text of article 8: the latter made no reference to commercial government service.

28. He also considered that the expression "auxiliary vessels" was imprecise.

29. Mr. AMADO proposed that the United Kingdom amendment be added after the phrase it was intended to replace.

30. Sir Gerald FITZMAURICE suggested that Mr. Amado's proposal might widen the scope of the provision. The purpose of the United Kingdom amendment was to make it clear that the State ships listed in article 8 were assimilated to warships only for the purposes covered in that article.

31. It would be remembered that the United Kingdom Government had also raised the question how a warship could verify the flag of a state ship other than by boarding it (A/CN.4/99/Add.1, page 56), which was precisely what it would be unable to do under article 8. If that were a serious difficulty, perhaps the Commission might consider a provision by which vessels on government service could not claim immunity from visit unless they bore a distinguishing mark.

32. Mr. SCELLE agreed with Mr. Padilla-Nervo that the United Kingdom amendment would make the text clearer and should be accepted.

33. Mr. ZOUREK observed that if the amendment were adopted, the opening words of the article would have to be revised, since they governed the phrase "shall be assimilated to".

34. Sir Gerald FITZMAURICE saw no reason for changing the opening words, which were useful in explaining the purpose of the article. The wording proposed by the United Kingdom Government was more in consonance with the spirit of the article and did not entail a change of substance.

*Mr. Amado's proposal that the words "and shall have the same immunity as" be inserted after the words "shall be assimilated to" was adopted.*

35. In reply to a question by the CHAIRMAN, Sir Gerald FITZMAURICE said that he had no formal proposal to make at that stage concerning the question raised by the United Kingdom Government. Perhaps the question had some indirect connexion with the Netherlands Government's misgivings about the Commission's decision to extend the application of article 8 to government ships on commercial service. Concern was felt in some quarters that article 8 might lead to an unduly wide extension of the classes of vessels enjoying complete immunity on the high seas. Consequently, there might be some value in stipulating that they could claim immunity only if they carried some distinguishing mark easily recognizable at sea.

36. Mr. SCELLE hoped that Sir Gerald Fitzmaurice would make a formal proposal to that effect.

37. Mr. SANDSTRÖM concurred.

38. Mr. PADILLA-NERVO suggested that the Special Rapporteur be requested to prepare a text to meet Sir Gerald Fitzmaurice's point.

39. Mr. FRANÇOIS, Special Rapporteur, said that he understood the reason for Sir Gerald Fitzmaurice's hesitation to make a formal proposal. It was difficult to prescribe the use of a uniform sign in the present case, which was quite different from that dealt with in article 7. Perhaps it might be enough for the Commission to draw attention to the question in the comment in the hope that international agreement on a sign would be reached. He did not feel that the time was ripe for inserting a mandatory provision in the draft itself.

40. Mr. SPIROPOULOS said that while international agreement on a sign would undeniably be useful, the only possible course at present was the one suggested by the Special Rapporteur.

41. Mr. SCELLE said there was nothing revolutionary in requiring State vessels to carry an internationally accepted sign, and it was both reasonable and necessary to include such a provision in draft articles designed to codify the law of the high seas.

42. Faris Bey el-KHOURI also considered that it was certainly time for the Commission to propose some uniform sign for adoption by all States.

43. Sir Gerald FITZMAURICE was prepared to accept the Special Rapporteur's suggestion that the question should be referred to in the comment. Indeed, that was the least the Commission could do, because it would be illogical to give a definition of warships and then, as it were, throw the door open to a wide class of vessels to claim the same immunity for certain purposes, without any of the safeguards imposed in article 7.

44. Mr. SANDSTRÖM, while unable to see how article 8 could be applicable if a vessel did not carry some distinguishing mark, considered that the Commission should merely draw attention to the situation in the

comment, without inserting a mandatory provision on the subject.

45. Mr. SCALLE appreciated the reasons why the Special Rapporteur and Sir Gerald Fitzmaurice felt that it was perhaps not the Commission's task to invent a sign for universal use, but thought it would not be enough to mention the point in the comment. He repeated his conviction that the vessels covered by article 8 should be required to carry a distinguishing mark, and that a mandatory provision to that effect should be included in the article itself.

46. Mr. SANDSTRÖM thought that the provision should be in rather different form—namely, that vessels could not claim immunity unless they carried an internationally accepted sign.

47. Mr. SPIROPOULOS asked whether such a sign was essential in order to prove that the vessel was a government one.

48. Mr. FRANÇOIS, Special Rapporteur, said he could not accept a provision of the kind described by Mr. Sandström, because it would not be enforceable until all States had agreed on the sign.

49. Mr. SANDSTRÖM said that he had been misunderstood. All he had meant was that as a general rule the right of visit could be invoked only if a vessel carried no sign.

50. Mr. FRANÇOIS, Special Rapporteur, did not believe the Commission could go so far as to stipulate that a vessel bearing no distinguishing mark could not claim immunity. Verification of the flag of another State was a delicate matter, and he would therefore prefer the United Kingdom Government's point to be covered in the comment.

51. Mr. ZOUREK pointed out that modern means of telecommunication rendered identification much easier, so that it should suffice to mention the question of a distinguishing mark in the comment.

52. Mr. AMADO proposed that, in order to expedite the work, the Special Rapporteur be asked to prepare a text covering the United Kingdom Government's point for inclusion in the comment.

53. Sir Gerald FITZMAURICE, endorsing the comments of Mr. Amado and Mr. Spiropoulos, said that the real problem was the establishment of the status of the vessels in question. On the whole, it would be advisable to leave the text of the article unchanged and make the required point in the comment.

54. The CHAIRMAN put to the vote the proposal that the question of a special sign to be borne by the vessels covered by article 8 be referred to by the Special Rapporteur in the comment on the article.

*The Chairman's proposal was adopted by 11 votes to none, with 3 abstentions.*

*Article 9: Signals and rules for the prevention of collisions*

55. Mr. FRANÇOIS, Special Rapporteur, said that the Yugoslav proposal in paragraph 82 of the addendum to

his report (A/CN.4/97/Add.1) was the only one that had been received. The Commission had adopted the text, as drafted,<sup>2</sup> by a majority vote and he could see no reason for reversing that decision.

56. Mr. SALAMANCA said the article was linked with article 5—Right to a flag—because if the Netherlands amendment to the latter article were taken up, the question would inevitably be reopened in any general discussion of that amendment.

57. Mr. PAL agreed with Mr. Salamanca that article 9 should be considered in conjunction with the text of article 5 *b*, proposed by the Netherlands Government, and noticed in paragraph 50 of the addendum to the Special Rapporteur's report. He further pointed out that in any case the drafting of the article would have to be amended. The words "their ships" in the present draft would require clarification. Those words might refer to the various categories of ships dealt with in article 8 as "owned or operated by a State" or to ships having the nationality of a State as referred to in articles 4 and 5, or, again, to ships having the nationality of one State though flying the flag of another, as contemplated in the United Kingdom proposal noticed by the Special Rapporteur in paragraph 54. The article should not be left so extremely vague.

58. Mr. FRANÇOIS, Special Rapporteur, agreed with Mr. Salamanca regarding the relationship between articles 5 and 9: a decision must be taken as to whether the text of the latter should be retained or amended.

59. While reserving the question of the place of the article, the Commission could take a decision on the phrase "the vessels forming the greater part of the tonnage of sea-going ships", which the Yugoslav Government wished to amend.

60. He agreed with Mr. Pal that the phrase "their ships" was not very felicitous; some such phrase as "ships flying the flags of those States" might be substituted for it.

61. Mr. KRYLOV also agreed, and suggested that the suitability of the latter part of the second sentence of article 9 could appropriately be considered after a decision had been reached on article 5. The wording of the second sentence certainly called for reconsideration.

62. Mr. SALAMANCA was unable to accept Mr. Krylov's suggestion. The Commission should decide there and then on the Yugoslav amendment, since its decision would assist the Sub-Committee in its review of article 5. The Sub-Committee itself would not be competent to discuss the Yugoslav amendment to article 9, the decision on which would have repercussions on article 5.

63. Mr. SANDSTRÖM, while agreeing with Mr. Pal on the need for clarification of the phrase "their ships", could not accept the Special Rapporteur's amendment. "Ships under their jurisdiction" would be a more suitable rendering of the idea.

<sup>2</sup> A/CN.4/SR.321, paras. 1 and 85-92.

64. On the choice between article 9 or the Netherlands proposal for article 5 *b*, the shorter text (article 9) adopted by the Commission was to be preferred.

65. As to the latter part of the second sentence, he reiterated his opinion that the text as drafted was the most suitable.

66. Mr. SCELLE shared Mr. Sandström's preference for article 9 rather than the Netherlands proposal for article 5 *b*. The question should be decided by the Commission in plenary session before the Sub-Committee came to consider article 5.

67. Sir Gerald FITZMAURICE did not see the supposed relationship between articles 5 and 9, which covered entirely different questions. Article 5 was concerned with the circumstances under which a ship was entitled to fly a particular flag, whereas article 9 dealt with the regulations imposed upon the ships so entitled.

68. The question of the place of article 9 could be reserved, but the question of its substance must be considered separately from article 5.

69. Mr. SPIROPOULOS agreed with the previous speaker.

70. With regard to Mr. Pal's point, he would support Mr. Sandström's proposed wording, "under their jurisdiction".

71. The most important question, however, was the criterion of tonnage in the last phrase of the article. In fact, article 9, which he could accept as a general statement, dealt with matters quite outside the codification of international law. If it were desired to re-draft the article, a definite proposal should be made—for instance, the adoption of the Yugoslav amendment.

72. The CHAIRMAN said that there were three questions to be decided. First, the relationship between articles 5 and 9; it appeared to be agreed that an article 9—whatever form it might take—should be retained; secondly, the question, raised by Mr. Pal, of the drafting of the first part of the first sentence of article 9; and, lastly, the question of the last part of the second sentence and the Yugoslav suggestion for its amendment.

73. Mr. AMADO, referring to the Chairman's second question, proposed amending the article to begin: "The regulations issued by States for ships under their jurisdiction must not be inconsistent . . ." He would reserve his position with regard to the Chairman's third question.

74. Mr. SANDSTRÖM pointed out that the article as drafted had the advantage over Mr. Amado's proposal that it made the issuing of regulations compulsory.

75. Faris Bey el-KHOURI suggested that a recommendation be inserted in the comment on the article, to the effect that a conference of maritime powers, preferably under the auspices of the United Nations, be convened to consider the issues raised in articles 7, 8 and 9.

76. Sir Gerald FITZMAURICE pointed out that, in accordance with many Maritime Conventions in force, and also with the International Code of Signals, which was followed by every maritime country in the world, the principle of the article was already applied. It was a

matter with which the Commission need hardly concern itself. Mr. Sandström was right in his comment on Mr. Amado's proposal, which was one not of drafting, but of substance. The question was of such importance that the Commission should categorically pronounce that States were under an obligation to issue regulations concerning the use of signals and the prevention of collisions on the high seas.

77. Mr. AMADO said that if the Commission preferred a mandatory provision, he would not press his proposal.

78. The CHAIRMAN said that there seemed to be general agreement that the text of the first sentence should read: "States shall issue for ships under their jurisdiction regulations concerning the use of signals and the prevention of collisions on the high seas."

*It was so agreed.*

79. Mr. ZOUREK, referring to the Chairman's third question, said that the criterion adopted by the Commission, by a small majority, at its previous session was unsatisfactory in that it introduced a concept of size, based on economic or political power; that concept was alien to international law, which was based on the equality of States. He need point only to the difficulties that would be met with in the drafting of provisions on the law of the air if codification were undertaken on that basis. The Yugoslav proposal was acceptable.

80. Mr. SANDSTRÖM recalled that the objectives of international law were practical and that the principle of majority tonnage, upon which the text was based, derived from essentially practical considerations.

81. Mr. SCELLE suggested that a discussion on the real and theoretical equality of States would be both endless and profitless. The Commission must decide that issue without delay.

82. Sir Gerald FITZMAURICE said that Mr. Zourek's point was of unquestionable general application. The case under consideration, however, was exceptional. It was not a question of the text being tailored to suit the convenience of Great Powers. A large proportion of the sea-going tonnage of the world was owned by small States, such as Norway and the Netherlands. Mr. Sandström was right in stressing the practical aspect of the question. Countries with large fleets had already been forced to give serious consideration to the best means for ensuring maximum safety at sea. The methods adopted therefore applied to a majority of vessels. It would be regrettable if an existing and satisfactory state of affairs were to be upset by a decision—that could not be unanimous—inspired by considerations quite remote from the essential technical requirements. He would vote against the Yugoslav proposal.

83. Mr. PADILLO-NERVO said that the core of the argument was contained in the first sentence and the first part of the second sentence, the final phrase being merely descriptive. As Sir Gerald Fitzmaurice had pointed out, the regulations in question were already in existence and were being observed. Since the article would not suffer by being abbreviated, he would propose the deletion from the second sentence of all the words after "accepted".

84. Mr. SPIROPOULOS, Mr. AMADO and Mr. KRYLOV supported Mr. Padillo-Nervo's amendment.

85. The CHAIRMAN put to the vote Mr. Padillo-Nervo's proposal to amend article 9 by the deletion from the second sentence of the words "for the vessels forming the greater part of the tonnage of sea-going ships".

*Mr. Padillo-Nervo's proposal was adopted by 9 votes to 3, with one abstention.*

86. The CHAIRMAN suggested that article 9, as amended, be referred to the Sub-Committee for revision in the light of the discussion.

*It was so agreed.*

*The meeting rose at 1.15 p.m.*

### 343rd MEETING

*Wednesday, 9 May 1956, at 10 a.m.*

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*Chairman:* Mr. F. V. GARCÍA-AMADOR.

*Rapporteur:* Mr. J. P. A. FRANÇOIS.

#### *Present:*

*Members:* Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. L. PADILLA-NERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

*Secretariat:* Mr. LIANG, Secretary to the Commission.

#### **Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97 and Add. 1, A/CN.4/99 and Add. 1-6) (continued)**

1. The CHAIRMAN invited the Commission to continue its consideration of item 1 of the agenda: Regime of the high seas.

#### *Article 10: Penal jurisdiction in matters of collision*

2. Mr. FRANÇOIS, Special Rapporteur, said it was interesting to note that the principle affirmed in the judgement of the Permanent Court of International Justice in the *Lotus* case was endorsed by only two countries, China and Turkey (A/CN.4/97/Add.1).

3. Other suggestions by governments dealt merely with drafting points, except the South African proposal, which was of substance and should be considered by the Commission. The article had not contemplated the case of a State waiving its jurisdiction over its own nationals in case of their penal or disciplinary responsibility for collision on the high seas. There was a certain analogy with the case of renunciation by a State of the diplomatic immunity enjoyed by its nationals, thus conceding jurisdiction to the other State.

4. Mr. KRYLOV said that the text was fully adequate; the South African proposal should be rejected.

5. Mr. PAL pointed out that in any case the drafting of the article called for revision. In the first phrase of paragraph 1, reference was made to "a collision or any other incident of navigation", whereas a few lines later only collision was mentioned.

6. Further, towards the end of the same paragraph, the phrase "flying the flag" was used. In view of the fact that in article 12—Slave trade—the wording used was "authorized to fly" a flag, it should be made clear whether the authorization to fly a flag or the actual use of a flag was the decisive criterion for the jurisdiction of the flag State.

7. On the whole, the Netherlands amendment provided a better text.

8. Mr. SANDSTRÖM pointed out that the South African amendment raised the thorny question of whether the waiving by a State of its jurisdiction, to the detriment of its own nationals, was legitimate—a question, surely, to be settled by case-law.

9. The CHAIRMAN said that Mr. Pal's points would be considered by the Sub-Committee. The general opinion of the Commission was against the South African proposal.

Subject to drafting changes, *article 10 was adopted.*

#### *Article 11: Duty to render assistance*

10. Mr. FRANÇOIS, Special Rapporteur, said that the amendments proposed referred to drafting changes only.

11. He wished to draw attention to an omission from his conclusion in paragraph 102 of document A/CN.4/97/Add.1. Between the two paragraphs of the proposed text, the last sentence of the present article 11 should be inserted, beginning with the work: "After a collision . . . etc." His proposal was based on that of the Yugoslav Government.

12. Sir Gerald FITZMAURICE pointed out that, whereas the Yugoslav proposal referred to "the other vessel", the Special Rapporteur's wording "other vessels" was extremely vague.

*It was agreed to refer the Special Rapporteur's text in paragraph 102 of document A/CN.4/97/Add.1 to the Sub-Committee.*

#### *Article 12: Slave trade*

13. Mr. FRANÇOIS, Special Rapporteur, said that the only amendment of substance was that proposed by the Government of Israel, substituting the term "state