

Document:-  
**A/CN.4/SR.346**

**Summary record of the 346th meeting**

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

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All States shall draw up regulations to prevent water pollution by oil, resulting from the exploitation of submarine areas.

All States shall co-operate in drawing up regulations to prevent water pollution from the dumping of radio-active waste.

54. Members might feel that the first of those provisions was unnecessary as the point was already covered in the existing text. In the second, however, the Netherlands Government had drawn attention to a new danger not covered by article 23.

55. Mr. PAL, pointing out that in its draft articles both on the high seas and on the territorial sea the Commission had dealt with the air space above, contended that in the present instance the provision should not be confined to water pollution only, but should also take contamination of the air into account. He had been prompted by the second proposal of the Netherlands Government to put forward a new text for article 23 reading:

1. All States shall draw up regulations to prevent pollution of the high seas by oil, ionizing radiation or radio-active fall-out or waste.

2. All States shall co-operate in drawing up regulations for the purposes above stated.

56. Owing to modern technical developments it was vitally necessary to forestall injurious and dangerous practices. The dangers of ionizing radiation and of radio-active fall-out and waste were well known, and States must be made responsible for drawing up the necessary regulations to prevent pollution by those agents also.

57. Mr. SANDSTRÖM doubted the wisdom of the amendment suggested by the Union of South Africa, because pollution must obviously be prevented in the territorial sea as well as in the high seas; he would therefore prefer that the text of article 23 should remain unchanged.

58. The CHAIRMAN observed that it was clear from the comment that the Commission had borne that point in mind.

59. Mr. SALAMANCA suggested that Mr. Sandström's preoccupation would be met by the deletion of the word "high" in paragraph 1 of Mr. Pal's text.

60. Mr. PAL accepted that amendment.

61. The CHAIRMAN, speaking as a member of the Commission, pointed out that the effect of Mr. Pal's text might be restrictive. Perhaps it should be made clear that there were other polluting agents. That would leave the door open for future agreement on international regulations.

62. Mr. PAL had no objection to such a modification.

63. Sir Gerald FITZMAURICE said that he could have accepted the second new provision proposed by the Netherlands Government, because States should be required to regulate the dumping of radio-active waste so as to prevent water pollution, but without scientific advice he was unable to form an opinion

on the technical implications of Mr. Pal's text. It was a well-known fact that radio-active fall-out could occur in, and perhaps drift from, places many thousands of miles from the site of the original explosion, and therefore the only way to prevent such pollution would be to prohibit atomic experiments altogether which, as he had already emphasized in another connexion, would be outside the normal scope of a draft on the high seas. Therefore, though sympathizing with the reasons which underlay Mr. Pal's proposal, he would be unable to support it.

64. Mr. ZOUREK believed that Mr. Pal was correct in proposing that the scope of the article should be extended to the airspace above the high seas, because the effects, for example, of ionizing radiation were more dangerous to seafarers than radio-activity in the water. He also favoured Mr. Pal's text because it was more comprehensive. The Transport and Communications Commission of the United Nations had already taken up the question of water pollution from radio-active waste five years previously, and it would be surprising if the Commission were to omit any mention of the matter in its draft.

65. Mr. SALAMANCA reaffirmed his opinion that it did not come within the Commission's competence to prohibit atomic experiments.

66. Mr. SCALLE considered that the text should make express reference to pollution of the superjacent air.

67. Mr. SANDSTRÖM asked for a separate vote on the first clause of Mr. Pal's text ending at the words "high seas by oil".

*Further discussion of article 23 and the amendments thereto was adjourned until the next meeting.*

*The meeting rose at 6.15 p.m.*

## 346th MEETING

*Tuesday, 15 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. I, A/CN.4/99 and Add. 1-6) (continued)**

1. The CHAIRMAN invited the Commission to continue its consideration of article 23 and the alternative wording proposed by Mr. Pal.<sup>1</sup>

*Article 23: Pollution of the high seas (continued)*

2. Mr. PAL said that perhaps Mr. Scelle's comment, at the end of the previous meeting, that the text should expressly refer to the air space above the high seas,<sup>2</sup> had been prompted by the French translation of his proposal, which referred to "les eaux de la haute mer" instead of simply "la haute mer". However, he would have no objection to a clarification on the lines suggested by Mr. Scelle, either in the text of the article itself or in the comment.

3. With regard to Sir Gerald Fitzmaurice's objection,<sup>3</sup> he explained that the words "ionizing radiation or radio-active fall-out or waste" had been taken from General Assembly resolution 913 (X), so that their meaning was presumably clear to all Member States.

4. Sympathy with his aim was not enough. His proposal did not seek anybody's sympathy. It was a demand of justice, and justice demanded that States must be required either to regulate their action so as to prevent the mischief or to refrain from such acts altogether. If they said that the act in question was such as not to admit of any regulation to avoid any possible danger, they had better refrain from the act. They should not be allowed to handle such uncontrollably mischievous matters simply by warning people off the high seas.

5. Mr. SANDSTRÖM considered that the provision should be confined to water pollution, since pollution of the air was a far wider problem; it involved the question of a State's responsibility for acts performed within its territory, and that must be dealt with in some other draft.

6. Mr. SCELLE said that he could not agree with Mr. Sandström's rigid formalism. For example, when dealing with the continental shelf the Commission had also framed rules concerning the superjacent waters and the air space above. Had it not done so, the draft articles adopted would have been even more defective than they were at present. The same considerations must prevail in the present instance because if article 23 were restricted to water pollution, it would be totally ineffective. After all, the radio-active fall-out which had caused injury to Japanese fishermen had been carried by air and not by water. He accordingly believed that a reference to the

airspace above should be inserted after the word "seas" in paragraph 1 of Mr. Pal's text. The freedoms listed in article 2 were eloquent proof of the impossibility of treating the different elements separately. Although the Commission was not entitled to prohibit atomic experiments, it should require States to draw up regulations to prevent such pollution of the water and air as might endanger navigation.

7. Mr. SANDSTRÖM remained unconvinced by Mr. Scelle's argument. The parallel with the draft articles on the continental shelf was inapt, since in the latter case the Commission had admitted certain sovereign rights which derogated from the principle of the freedom of the high seas. At present the Commission was discussing the responsibility of States for acts performed in their own territory as well as on the high seas, a matter which, he considered, belonged to another field.

8. Mr. ZOUREK disagreed with Mr. Sandström, since it was quite obvious that freedom of the high seas could not be enjoyed if either the water or the air were contaminated by radio-activity or if fish were poisoned by radio-active waste dumped in the sea. It followed that States must be required to enact the necessary regulations to protect seamen and travellers, whether on sea or land, from injury. As he had pointed out at the previous meeting,<sup>4</sup> the question was not a theoretical one and, as early as 1951 the Transport and Communications Commission of the United Nations had turned its attention to water pollution by radio-active waste from vessels propelled by atomic power. It would be absurd for the Commission to prohibit oil pollution, which was relatively localized, but to say nothing whatever about the incomparably more dangerous and extensive pollution from radio-active materials.

9. He agreed with Mr. Scelle that, for the purpose of the present article, water and air were inseparable and the Commission must also codify the rules relating to the air space above the high seas.

10. Sir Gerald FITZMAURICE said that, despite the arguments propounded by Mr. Scelle and Mr. Zourek, he continued to believe that the Commission should not include any provision concerning pollution by ionizing radiation or radio-active fall-out.

11. However, as he had stated at the previous meeting,<sup>5</sup> he had no objection to the Netherlands proposal regarding the dumping of radio-active waste (A/CN.4/97/Add.1 para.171).

12. It should be remembered that the Commission, when discussing article 2, had declined to accept Mr. Pal's proposal,<sup>6</sup> which, it had been agreed, was mainly concerned with atomic experiments, largely on the grounds that it was outside the Commission's terms of reference to prohibit such experiments and premature to take any stand on questions which were under active consideration by other United Nations bodies. Mr. Pal's present pro-

<sup>1</sup> A/CN.4/SR.345, para. 55.

<sup>2</sup> *Ibid.* para. 66.

<sup>3</sup> *Ibid.* para. 63.

<sup>4</sup> A/CN.4/SR.345, para. 64.

<sup>5</sup> *Ibid.*, para. 63.

<sup>6</sup> A/CN.4/SR.335, para. 36.

posal sought to achieve the same object by other means, but was obviously impossible to implement without entirely prohibiting atomic experiments, even for peaceful purposes, since it was very difficult to control radio-active fall-out, which was largely determined by winds and weather. Whatever the moral aspect of the problem, it would be going far beyond the Commission's competence to accept such a far-reaching proposal, which he would be compelled to oppose, though sympathizing with its aims.

13. Mr. SANDSTRÖM said he found the Netherlands proposal concerning the dumping of radio-active waste acceptable.

14. Mr. PAL pointed out that his proposal relating to article 2 had been withdrawn after the Commission had decided not to include a fifth freedom concerning scientific research,<sup>7</sup> so that Sir Gerald Fitzmaurice was wrong in saying that the Commission had declined to accept the proposal. The Commission had not taken any decision on it. Further, it was wrong to suggest that the present proposal was made with the same object. States desirous of manipulating such dangerous agents were now called upon only to regulate their use. A State could not have a simple right to warn people off the high seas, and a State which felt the need to harbour substances of such a dangerous and obnoxious character should not on any ground be permitted to avoid such regulation.

15. Mr. EDMONDS said that Mr. Pal's proposal went beyond the competence of the Commission and was unacceptable for the reasons given by Sir Gerald Fitzmaurice.

16. Mr. KRYLOV observed that Mr. Edmonds was perfectly free to vote against the proposal, but was surely wrong to argue that it was outside the Commission's competence: pollution was undoubtedly a question on which the Commission was entitled to pronounce. He himself had regretted the Commission's decision not to amend article 2, although Mr. Pal's point had in some measure been met by retaining the third sentence of the first paragraph of the comment on that article.<sup>8</sup>

17. He agreed that article 23 should also cover the air space above the high seas but doubted the wisdom of enumerating the various sources of pollution.

18. Faris Bey el-KHOURI said it would be unreasonable, in establishing rules for the high seas in general, not to extend article 23 to include pollution of the airspace above; for if the airspace were contaminated, freedom of navigation, freedom of fishing and freedom to fly over the high seas would all be endangered. He therefore supported Mr. Pal's proposal.

19. Mr. SPIROPOULOS said he had some difficulty in deciding what attitude to adopt, because he did not understand precisely what was meant by "ionizing radiation". Perhaps Mr. Pal's text could be modified by ending paragraph 1 at the word "oil" and, in paragraph 2, substituting the words "in order to prevent

pollution by oil, ionizing radiation or radio-active fall-out or waste" for the words "for the purposes above stated".

20. Sir Gerald FITZMAURICE and Mr. SANDSTRÖM found Mr. Spiropoulos' amendment acceptable.

21. Mr. ZOUREK considered that it would be a retrograde step to accept Mr. Spiropoulos' wording after the Commission had decided to retain the third sentence in the first paragraph of the comment on article 2, which read "States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States". The Commission would be unduly timorous if it did not impose an obligation on States to prevent practices liable to produce effects that violated the freedom of the high seas.

22. Mr. PADILLA-NERVO said that a general prohibition of the kind Mr. Zourek had in mind had already been included in the third sentence of the first paragraph of the comment on article 2, and could be enforced only by means of an international agreement, since national regulations would not suffice. He would therefore be prepared to accept a provision to the effect that States should co-operate in drawing up regulations to prevent pollution of the water and air by ionizing radiation or radio-active fall-out or waste, but he could not subscribe to the Commission's adoption of a provision prohibiting atomic experiments when the subject was under consideration in other United Nations bodies and when no general agreement had yet been reached on the use of atomic weapons.

23. On the other hand, he found the Netherlands proposal concerning the dumping of radio-active waste acceptable.

24. Mr. AMADO said that he would vote in favour of the original text of article 23 with the additions proposed by the Netherlands Government, because existing international law enjoined States to prevent pollution by oil. He could not, however, go as far as was proposed by Mr. Pal, because at the present stage all that could be hoped for was that States would reach agreement on regulations to control atomic experiments.

25. Mr. SALAMANCA said that the danger of pollution could not be averted in piecemeal fashion, and some general provision was necessary. It could be stated in the comment that the Commission, after considering Mr. Pal's proposal, had decided that the decisions of other United Nations bodies dealing with the effects of radiation must not be anticipated.

26. In the meantime, perhaps Mr. Spiropoulos' amendment offered the best solution because, though general, it took into account the technical considerations put forward by certain members. The Commission should prepare the ground for multilateral agreement.

27. Faris Bey el-KHOURI said that although the Commission could not enter into scientific questions it must not remain silent about pollution from other sources than oil. He therefore proposed a general text which would not anticipate future developments, reading:

<sup>7</sup> A/CN.4/SR.340, para. 1.

<sup>8</sup> *Ibid.*, para. 45.

States shall co-operate in drawing up regulations for the purpose of preventing the pollution of the high seas or atmosphere thereabove in any such way as to impede or endanger the enjoyment of the freedoms of the high seas.

28. Mr. PAL pointed out that Faris Bey el-Khouri's text would be even more limited in scope than the present article 23, which, over and above the danger to navigation, sought to prevent pollution of ports and beaches. Consequently, he could not accept it.

29. Nor could he withdraw his own text in favour of the wording suggested by Mr. Spiropoulos.

30. Mr. SCELLE observed that article 23, which in French opened with the words "Tous les Etats seront tenus d'édicter des règles visant à éviter", was not as great a menace to the freedom of States as Sir Gerald Fitzmaurice seemed to think. Mr. Pal's wording was very restrained; it would not have the effect of prohibiting atomic experiments, and was not open to such categorical objections as those raised by Sir Gerald Fitzmaurice.

31. Sir Gerald FITZMAURICE observed that the English text of article 23 was more forceful than the French.

32. The CHAIRMAN said that the Commission would have to vote on Mr. Pal's text first, as the furthest removed from the original, because it imposed a direct obligation on States to draw up regulations to prevent pollution from a number of specified sources. Mr. Padilla-Nervo's proposal would impose that obligation only in the case of oil and the dumping of radio-active waste.

33. Mr. AMADO was anxious to preserve the original text of article 23, which made it mandatory on States to prevent oil pollution.

34. Sir Gerald FITZMAURICE agreed that it was important to retain article 23, particularly since it referred to existing treaty provisions concerning the prevention of water pollution by oil.

35. Faris Bey el-KHOURI considered that the Commission should proceed by voting first on the principle whether article 23 should also cover the airspace above the high seas, and secondly on whether certain types of pollution should be named.

36. He added that if his own text were rejected he would support Mr. Pal's proposal.

37. Sir Gerald FITZMAURICE said that such a procedure might place some members in difficulties because they would be unable to vote on the first principle mentioned by Faris Bey el-Khouri without knowing whether it would form part of a mandatory provision. He therefore favoured the procedure outlined by the Chairman.

38. Mr. SANDSTRÖM, agreeing with Sir Gerald Fitzmaurice, pointed out that if the article were restricted to pollution by oil it could not apply to the airspace above.

39. Mr. AMADO thought that the Commission should first take a decision on article 23 as it stood,

since it embodied a traditional rule of international law; the English and French texts would, of course, be brought into line. Then it should decide the controversial issue whether or not States were to be requested to co-operate in drawing up regulations to prevent other forms of pollution.

40. The CHAIRMAN put to the vote paragraph 1 of Mr. Pal's text, with the amendments accepted by the author, reading:

All States shall draw up regulations with a view to preventing pollution of the seas and airspace above by oil, ionizing radiation, radio-active fall-out or waste or other polluting agents.

*Mr. Pal's text was not adopted, 6 votes being cast in favour and 6 against, with 2 abstentions.*

41. Mr. PADILLA-NERVO proposed that a second paragraph be added to article 23 reading:

All States shall draw up regulations to prevent pollution of the seas from the dumping of radio-active waste.

42. Mr. ZOUREK proposed the addition at the end of that text of the words "and other harmful agents".

43. Mr. SANDSTRÖM was unable to support Mr. Zourek's amendment because it was too imprecise.

44. Mr. SCELLE observed that another dangerous source of pollution, namely ruptured pipelines on the continental shelf, should be taken into consideration. He therefore proposed the deletion from article 23 of the words "discharged from ships".

45. Mr. FRANÇOIS, Special Rapporteur, suggested that the point raised by Mr. Scelle, which concerned pipelines in general and was already covered in the comment, could be referred to the Sub-Committee.

*It was so agreed.*

46. The CHAIRMAN put to the vote Mr. Padilla-Nervo's text for a new paragraph 2 of article 23.

*Mr. Padilla-Nervo's proposal was adopted by 12 votes to none, with 1 abstention.*

47. Mr. SCELLE considered that the provision was not entirely satisfactory but was better than nothing.

48. Mr. ZOUREK observed that his amendment still stood and might go some way towards meeting the views of those members who favoured a general provision and had been opposed to the enumeration of contaminating agents in Mr. Pal's text, on the ground that it was too technical.

49. The CHAIRMAN, speaking as a member of the Commission, expressed the view that by adopting Mr. Padilla-Nervo's text the Commission had implicitly rejected Mr. Zourek's amendment.

50. Mr. EDMONDS asked whether Mr. Zourek's object was to prevent pollution from the dumping of other polluting agents.

51. Mr. PADILLA-NERVO said that Mr. Zourek's amendment was not appropriate to the new paragraph 2, which dealt with the dumping of radio-active waste. He

intended to propose a new paragraph 3 which would require States to co-operate in drawing up regulations to prevent pollution as a result of technical and scientific experiments with radio-active materials. Perhaps Mr. Zourek's amendment would more appropriately apply to that text.

52. The CHAIRMAN observed that Mr. Zourek's object was to impose a direct obligation on governments to prevent pollution by other harmful agents.

53. Sir Gerald FITZMAURICE said that if that were so, Mr. Zourek was seeking to reopen the whole issue which had already been decided by the rejection of Mr. Pal's text. He therefore questioned whether it would be in order to put Mr. Zourek's amendment to the vote. Furthermore, it would entirely alter Mr. Padilla-Nervo's text.

54. The CHAIRMAN, speaking as a member of the Commission, expressed his agreement with Sir Gerald Fitzmaurice.

55. Mr. AMADO also held that the Commission would be reversing its earlier decision if it accepted Mr. Zourek's amendment.

56. Faris Bey el-KHOURI said that he had abstained from voting on Mr. Pal's amendment because it referred to specific agents of pollution. He was opposed to the introduction of matters of detail into the provisional articles, because such technical aspects were not the concern of the Commission, which should confine itself to the formulation of general principles. He had felt unable to vote for Mr. Padilla-Nervo's proposal for the same reason. He hoped, however, that his abstention, which had turned the scale in the vote on Mr. Pal's amendment, would not entail the abandonment of the basic idea of the proposal, for it was commendable.

57. Mr. ZOUREK explained that he had put forward his amendment to ensure that the Commission's vote was not interpreted as a rejection of the principle underlying Mr. Pal's proposal. Although his amendment to Mr. Padilla-Nervo's proposal had not been put to the vote, it was clear that a majority of members considered that that proposal should cover pollution not only by radio-active waste, but also by other harmful agents.

58. Sir Gerald FITZMAURICE said that Mr. Zourek's amendment, by imposing a direct obligation on governments to prevent pollution, not only by radio-active waste but by any other polluting agent as well, introduced an entirely fresh element that had not even been discussed. The obligation would, in fact, be impossibly wide and its recommendation would not exclude situations of manifest absurdity. It required only a little imagination to appreciate that the term "pollution" might be stretched to include essential activities of hygiene on board merchant or any other vessels. The term "harmful agent" required definition in relation to the seas, a question, however, which was one for scientists to decide. The Commission was competent to recognize scientifically established facts only, such as the pollution of water by oil discharged from ships, which had been made the subject of treaty provisions. Radio-active matter, on the other hand, had not yet been firmly established in the

category of polluting agents in all circumstances. As an amendment to paragraph 2, Mr. Zourek's proposal was unacceptable. Its inclusion in Mr. Padilla-Nervo's proposed paragraph 3 was, of course, a different matter.

59. The CHAIRMAN ruled that the adoption of Mr. Padilla-Nervo's proposed new paragraph 2 had effectively disposed of the mandatory aspect of the proposed article.

60. Mr. Zourek's point, however, might be met by a slight modification of the text of Mr. Padilla-Nervo's proposed new paragraph 3.

61. Mr. PADILLA-NERVO then proposed the addition of a new paragraph 3 to read:

All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or airspace above, resulting from experiments or activities with radio-active materials or other harmful agents.

62. Mr. FRANÇOIS, Special Rapporteur, in reply to Mr. ZOUREK, said that the question raised in the Netherlands proposal for article 23 a, quoted in paragraph 171 of document A/CN.4/97/Add.1, did not relate to the continental shelf only. The point would be borne in mind by the Sub-Committee.

63. The CHAIRMAN put to the vote Mr. Padilla-Nervo's proposed new paragraph 3.

*Mr. Padilla-Nervo's proposal was unanimously adopted.*

64. The CHAIRMAN put to the vote paragraph 1 of article 23 as amended.<sup>9</sup>

*Paragraph 1 of article 23, as amended, was unanimously adopted.*

*Article 23 as a whole, as amended, was unanimously adopted.*

65. The CHAIRMAN invited the Commission to turn to Chapter III: Submarine cables and pipelines. Chapter II, of which articles 25-33 were covered by a separate addendum (A/CN.4/97/Add.3) to the Special Rapporteur's report, would be dealt with later.

#### *Article 34*

66. Mr. FRANÇOIS, Special Rapporteur, said that his amendment proposed in paragraph 180 (A/CN.4/97/Add.1) was more appropriate as an addition to article 34 than to the third freedom of the seas listed in article 2, as had been suggested by Mr. Krylov.

*The Special Rapporteur's amendment was adopted.*

67. The CHAIRMAN pointed out that the addition of the words "high-tension power cables" would entail consequential amendments to other articles in Chapter III, a matter which could be left to the Sub-Committee, however.

#### *Article 35*

68. Mr. FRANÇOIS, Special Rapporteur, said that the Netherlands amendment in paragraph 182 related to drafting points only.

<sup>9</sup> A/CN.4/SR.343, para. 52.

*Article 35 was adopted, subject to drafting changes.*

*Article 36*

69. Mr. FRANÇOIS, Special Rapporteur, said that there were no comments from governments on the article.

*Article 36 was adopted.*

*Article 37*

70. Mr. FRANÇOIS, Special Rapporteur, hoped that the Commission would retain the text as drafted. He saw no reason for weakening the provision, which would be the effect of the United States amendment referred to in paragraph 186.

71. Mr. ZOUREK and Mr. SPIROPOULOS concurred.

*Article 37 was adopted.*

*Article 38*

72. Mr. FRANÇOIS, Special Rapporteur, said that the Yugoslav amendment in paragraph 190, though by no means necessary, was acceptable.

*It was so agreed.*

*Article 38, as amended, was adopted.*

*The meeting rose at 1.05 p.m.*

## 347th MEETING

*Wednesday, 16 May 1956, at 9.30 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, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. L. PADILLANERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCALLE, 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, A/CN.4/103) (*continued*)**

*Article 4: Status of ships (resumed from the 341st meeting)*

*Right of international organizations to sail vessels under their own flags*

1. The CHAIRMAN invited the Commission to resume

its consideration of article 4 of the provisional articles concerning the regime of the high seas (A/2934), and drew attention to the Special Rapporteur's supplementary report on the right of international organizations to sail vessels under their flags (A/CN.4/103).

2. Mr. FRANÇOIS, Special Rapporteur, introducing his supplementary report, said that the proposal submitted therein was not as complicated as might appear at first sight. Under paragraph 9, sub-paragraph (b) the Secretary-General would be given wide discretion in his selection of the State or States with which special agreements might be concluded permitting vessels to fly the flag of the State in combination with the United Nations flag. Sub-paragraphs (c) and (d) would entail some modification of national legislation, and ships flying the United Nations flag might claim most-favoured-nation privileges to which their own national flag would not entitle them.

3. Mr. Pal had submitted a proposal, broadly similar to his own, which read:

“Notwithstanding anything to the contrary, either expressly or by necessary implication, contained in these articles or in the laws and regulations of States concerning ships and shipping and concerning the nationality, registration, rights, obligations and immunities of ships, it shall be perfectly legitimate for the United Nations and other recognized international organizations to own, possess and/or operate ships required for the effective discharge of the functions entrusted to them by their respective constitutions, and the United Nations and other such international organizations shall have the right to sail such ships on the high seas under their respective flags. Such ships shall be entitled to be registered in any of the States Members of the United Nations at the request in writing of the executive head of the United Nations or other international organization as the case may be, and when so registered in any such State shall for all purposes be assimilated to a ship of the nationality of that State owned and/or operated by that State and used on its government's service.”

If it was a question of inserting that proposal either in the form of an article or in a condensed version in the comment on the article, he would favour the latter course. The question was hardly one of codification; it was rather a measure of organization, and the choice of means of implementing the provision could be left to States.

4. Mr. KRYLOV shared the Special Rapporteur's opinion. The fact that a minor incident had caused Mr. Stavropoulos to send a letter to the Commission<sup>1</sup> did not necessarily call for any action by the Commission. The case of the late Count Bernadotte and the subsequent advisory opinion of the International Court of Justice<sup>2</sup> could not be regarded as a precedent for the Commission.

5. Mr. PAL explained that he had had no intention of proposing the insertion of an article. His purpose

<sup>1</sup> A/CN.4/SR.320, para. 68.

<sup>2</sup> I.C.J. Reports 1949, p. 174.