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Summary record of the 347th meeting

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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 Commission¹ 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 Justice² 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

¹ A/CN.4/SR.320, para. 68.

² I.C.J. Reports 1949, p. 174.

had been rather to suggest a form that the Special Rapporteur's proposals might take if it were decided to add an article on the subject.

6. Mr. SANDSTRÖM said that, although there was no sign of any intention on the part of the United Nations to operate a merchant fleet, that remained a possibility. The question might arise in future over, for instance, the provision of relief by the United Nations Children's Fund (UNICEF). Hence the Commission could not disregard the question, and he would support the Special Rapporteur's proposal.

7. Mr. AMADO said that international law was made by States and embodied in conventions. The Commission's task was to take existing law and codify it with the maximum clarity. It should beware of introducing innovations for which there was no clearly established necessity. In the case in point, a reply must certainly be made, but care should be taken to avoid any commitment. In that respect, the Commission might well take *Fabius Cunctator* as its model.

8. Mr. LIANG, Secretary to the Commission, thought it advisable for the Commission to reach a conclusion on the matter at the present session as it had apparently intended, according to its comment on article 4.³ The Special Rapporteur's report constituted part of the further study referred to in the comment. There was no attempt to press for the establishment of a rigid system of regulation on behalf of the international organizations. His personal view had been explicitly stated at the previous session.⁴

9. Mr. ZOUREK said that the question, however interesting theoretically, had little practical relevance, for the United Nations was not a State; consequently its flag could not be substituted for a national flag. He could hardly conceive of the United Nations owning a fleet of merchant vessels. Should such a situation ever arise, however, it could always be dealt with under Article 104 of the Charter.

10. In the case quoted by Mr. Stavropoulos, it would have been perfectly possible under South Korean legislation for the vessels concerned to have been registered in that country. The reasons given in the second paragraph of the letter⁵ clearly showed that an irregular procedure had been adopted in order to avoid sailing under the flag of South Korea vessels built at Hong Kong. A case of that kind could not justify the creation of a special United Nations registry. Existing law was perfectly adequate for all practical purposes. The best solution would be to state in the comment on the article that, after consideration, the Commission did not regard the introduction of international legislation on the subject as necessary.

11. Mr. SPIROPOULOS thought there was no diver-

gence of views on the issue and that a simple reference to it in the report would suffice.

12. Faris Bey el-KHOURI pointed out that although the United Nations was not a State, in the fulfilment of its purposes it could call upon the services of Members. For vessels to fly the United Nations flag alone would carry implications far beyond the scope of the Organization. To give one instance only, the United Nations had no legislation covering the several aspects of shipping and had no court of justice to enforce legislation. He would support the Special Rapporteur's proposal.

13. Mr. LIANG, Secretary to the Commission, said that there was no question of seeking a specific solution of the problems arising out of any particular incident.

14. His view was that, of the four points in the Special Rapporteur's proposal, the first three, in sub-paragraphs (a), (b) and (c) of paragraph 9, did not constitute legislation in the sense of establishing new law. The United Nations had an undoubted right to own ships. The question was whether United Nations registration would be exclusive of registration by a State; that had never been claimed. Sub-paragraph (b) of the Special Rapporteur's proposal contemplated the flying of two flags. The proposition that a vessel might fly only the United Nations flag had been discussed at the previous session; it had met with the criticism that the United Nations had no juridical regime to which the vessel would be subject. He thought the Special Rapporteur had clarified the legal situation and that the proposals in sub-paragraphs (a), (b) and (c) all fell within the scope of positive international law. The proposal in sub-paragraph (d) might raise difficulties, for it would affect the application of existing international agreements on navigation.

15. He repeated that it was not contemplated and no one had suggested that an article should be inserted in the draft.

16. Mr. SANDSTRÖM said that the Commission had certainly not shelved the question; in his opinion the time had come to undertake the further study referred to in the comment on article 4. The matter could not be disregarded in drafting the Commission's final report.

17. Mr. SPIROPOULOS suggested that a statement be added to the comment on article 4, to the effect that the Special Rapporteur had submitted proposals concerning the right of international organizations to sail vessels under their own flags and that the Commission, having taken note of them, regarded the question as one for consideration by governments.

18. Mr. ZOUREK said that while there was no essential disagreement on principle, in sub-paragraph (a) of the proposal stress was laid on the idea of a special United Nations registration entailing the right to fly the United Nations flag. That was an innovation.

19. He could not accept sub-paragraph (b), because vessels were already entitled by State legislation to fly the flag of their State, and there could therefore be no question of that right's being extended under a special agreement between the Secretary-General and a member of the United Nations. The essential basis was the right

³ *Official Records of the General Assembly, Tenth session, Supplement No. 9 (A/2934), page 4.*

⁴ A/CN.4/SR.320, paras. 84-87.

⁵ *Ibid.*, para. 68.

to fly the national flag conferred by the legislation of the State and not any special registration of the United Nations. He could not approve any derogation from that classic principle. It would be sufficient simply to say in sub-paragraph (a) that the Charter of the United Nations authorized registration by the United Nations of a vessel in the territory of a member State, as required for the exercise of its functions and the fulfilment of its purposes.

20. Mr. LIANG, Secretary to the Commission, thought that once the Secretary-General had received authorization from the General Assembly, he would certainly be competent to conclude a special agreement of the kind contemplated.

21. With regard to the question of presentation, Mr. Spiropoulos's proposal was acceptable.

22. Mr. FRANÇOIS, Special Rapporteur, said that he could not accept Mr. Zourek's statement that registration of a vessel by the United Nations in the territory of a Member State was always possible. When the national legislation prescribed the existence of a genuine link between the State and the ship—and that was just what the Commission aimed at—it would not be possible to register a United Nations vessel without amending the legislation.

23. Mr. ZOUREK replied that many States regarded registration as such a link.

24. Mr. FRANÇOIS, Special Rapporteur, said that that did not meet the Commission's intentions.

25. Faris Bey el-KHOURI pointed out that, although not specifically defined, there was an adequate link between State and ship provided by the flag of the Member State.

26. Mr. KRYLOV urged the adoption of Mr. Spiropoulos's proposal.

27. Mr. PAL said that, in reviewing articles already drafted, the Commission should keep in mind Mr. Stavropoulos's view that the possibility of registration of its own ships by an international organization should not be excluded.

28. Mr. SALAMANCA said that Mr. Pal had made one of the points that he himself had in mind.

29. With regard to the question of including a formal provision, he would support the Special Rapporteur's proposal to deal with the matter in the comment. The problem was really a simple one—should the Commission reply to the Legal Counsel's proposal or not? It would be discourteous to disregard it, and in any event the question must be settled at that session. The three, or if desired, four points contained in the proposal should be touched upon in the comment.

30. Mr. LIANG, Secretary to the Commission, said that all four points must certainly be mentioned in the comment. The Legal Counsel had desired the Commission to examine the question, and the present discussion, together with the proposal of the Special Rapporteur, constituted a reply.

31. Mr. AMADO thought the only practicable solution was to include a statement in the report to the effect that

the Commission had studied the question, that the Special Rapporteur had formulated four proposals, and that the Commission, not yet being in a position to take a decision upon a question involving such complex problems, had taken note of the Special Rapporteur's proposals.

32. The CHAIRMAN said that the consensus of opinion was against the inclusion of an article dealing with the right of international organizations to sail vessels under their flags. With regard to the formula to be included in the comment on article 4, it should be basically the proposal of the Special Rapporteur, which might, however, be broadened by the addition of Mr. Pal's reference to the right of international organizations other than the United Nations to sail ships on the high seas under their own flags and by any other items that Mr. Pal and the Special Rapporteur might judge appropriate. Subject to a decision at a subsequent reading, the Commission would not vote on the proposal at that stage, but would simply take note of it.

It was so agreed.

33. The CHAIRMAN invited the Commission to consider the re-drafts of articles 4, 5, 6 and 9 prepared by the Sub-Committee set up at the 341st meeting.⁶

Re-drafts of articles 4, 5, 6 and 9 proposed by the Sub-Committee

34. Mr. ZOUREK, Chairman of the Sub-Committee, introduced the proposed re-drafts for articles 4, 5, 6 and 9, which read as follows:

Article 4

1. Ships shall have the nationality of the State whose flag they are entitled to fly. They shall sail under its flag 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.

2. The nationality of merchant ships, and hence their right to the flag of the State of which they are nationals, shall be established by documents issued by the authorities of the State under whose flag they sail.

Article 5

Each State shall fix the conditions for the registration of ships in its territory and the right to fly its flag. 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.

Article 6

A ship which sails under the flags of two or more States, using them as convenient, 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 9

States shall issue for their ships regulations to ensure safety at sea, *inter alia*, with regard to:

⁶ A/CN.4/SR.341, para. 41.

1. Adequacy of the crew and reasonable labour conditions;
2. The construction, equipment and seaworthiness of the ship;
3. The use of signals, the maintenance of communications and the prevention of collisions.

In issuing such regulations the States shall observe internationally accepted standards; they shall take the necessary measures to guarantee the observance of the said regulations.

Article 4

35. He reminded the Commission that, as drafted at the previous session, the article linking the nationality of the vessel to registration had been based on existing regulations for aircraft. The Secretariat's publication on laws concerning the nationality of ships,⁷ however, had revealed great variations in practice. Nevertheless, the idea of linking the nationality of the vessel with the flag flown, which was common to all legislations, provided a solid basis for the first sentence of paragraph 1. The second part of that paragraph remained unchanged.

36. Paragraph 2 was an addition to cover the case of vessels that were not warships, which must be able to establish by appropriate documents their right to fly the flag of their State.

Article 5

37. Article 5 had given rise to a prolonged discussion in the Sub-Committee, as a result of the Commission's directive that it should be redrafted on the basis of formulation of a general principle. Of the several proposals by governments, the Sub-Committee had accepted the Netherlands proposal for article 5 *a* (A/CN.4/97/Add.1, para. 50) stressing the necessity for a genuine link between the State and the ship as a condition for the State's recognizing the right to fly its flag. That concept had met with criticism, particularly from Mr. Salamanca,⁸ and admittedly did not overcome all difficulties. It did, however, express the principle that a State could not afford any ship a means of escaping the jurisdiction of the State under which it had previously been registered. That was an important principle, and in view of the wide divergence in national practice it was impossible to devise a formula which would embrace all links between the State and the ship. Different States stressed the aspect of property, of nationality—or of registry. Several States insisted on the ship's company, either all or in part, being nationals of the State. Some members of the Sub-Committee had stressed the need to define the term "genuine link", a task that the Special Rapporteur might undertake in the comment on the article.

Article 6

38. The Sub-Committee had adopted both the Netherlands and the United Kingdom amendments (A/CN.4/97/Add.1 paras. 62 and 63). While the new article was certainly an improvement on the previous text, he himself

still had doubts regarding it, but would not ventilate them at that moment.

Article 9

39. The Sub-Committee had adopted the Netherlands proposal for article 5 *b* (A/CN.4/97/Add.1, para.50), thereby supplementing the provisions of the article as drafted, which had dealt only with regulations concerning the use of signals and the prevention of collisions on the high seas.

40. Mr. ZOUREK, speaking as a member of the Commission, deplored the complete absence of provisions making dual nationality of ships impossible.

41. Sir Gerald FITZMAURICE said that in the Sub-Committee he had reserved the right to make some general observations about the draft now before the Commission. Although perhaps it was the best that could be achieved in the absence of expert advice on the extremely complicated problems of nationality and registration, the articles as now drafted contained many obscurities. What, for example, was the criterion for determining which flag ships were entitled to fly when, in consequence of certain legislations, they might be entitled to fly more than one? It was largely due to the existence of that problem that the United Kingdom Government had proposed that article 4, paragraph 1, should not deal with the question of nationality, but with the question of the jurisdiction to which ships were subject when on the high seas.

42. Article 4, paragraph 2, though innocuous, suffered from the same defect, inasmuch as it was theoretically possible for more than one State to furnish documentary evidence proving that the ship was entitled to fly its flag.

43. In his opinion, since it would probably prove impossible to deal with the question of double nationality in a simple way and without going into lengthy and intricate detail, a provision concerning the jurisdiction to which ships were subject on the high seas, coupled with the provision contained in article 6, would have sufficed.

44. Mr. Zourek had argued that ships must not be allowed to give up one nationality and assume another, but surely it was equally undesirable for States to veto any change of nationality as was the practice of some.

45. Mr. SANDSTRÖM said that the order followed in article 4, paragraph 1, which took nationality as its starting-point, seemed to have been reversed in paragraph 2.

46. Mr. SCALLE considered that the whole draft was unsatisfactory and gave rise to many doubts. Article 4, paragraph 2, which referred solely to merchant vessels, conflicted with paragraph 1 by making the right to a flag depend upon nationality.

47. Another objection was that it was not clear whether more than one nationality could be recognized under article 4; if so there would be flagrant contradiction of article 6.

48. Mr. ZOUREK thought that considerable progress would be achieved and numerous difficulties removed if dual nationality were prohibited. He therefore favoured a provision on the following lines:

⁷ ST/LEG/SER.B/5.

⁸ A/CN.4/SR.341, para. 25.

1. A ship cannot be validly registered in more than one State.
2. In order to prevent cases of dual nationality of ships, States shall be required to oblige shipowners to declare in writing, when the right to the flag is granted or before registry, that they have not required and do not intend to require registry of the vessel in another State.
3. A ship previously registered in another State shall not be entered in the register of ships until it is proved by a certificate in due form that the said ship has been removed from the register of that State or will be so removed *ipso facto* when the new registry takes place.
49. With regard to the objection raised by Mr. Sandström and Mr. Scelle, he explained in defence of the text presented by the Sub-Committee that the primary criterion was nationality.
50. Article 4, paragraph 2, referred only to merchant ships because of the special situation of warships with regard to proof of nationality: that might be explained in the comment.
51. Mr. AMADO questioned the purpose of the words "using them as convenient" in article 6, which seemed to give ships a pretext for changing flags.
52. Mr. KRYLOV said that the Commission was being unduly hasty. The whole draft should be reviewed again by the Sub-Committee, some of whose members had now expressed grave doubts about its text.
53. Mr. SCELLE considered that one of the reasons why the draft was so defective was that the Sub-Committee had hesitated between allowing dual nationality and prohibiting it altogether.
54. Sir Gerald FITZMAURICE felt that many of the difficulties to which article 4 and, indeed, the whole of the Sub-Committee's draft, had given rise would be removed if the first sentence of paragraph 1 of that article were omitted and the second sentence amended by substituting the words "Ships shall sail under the flag of one State only" for the words "They shall sail under its flag", and by re-wording the last phrase to read "shall be subject to the exclusive jurisdiction of that State on the high seas". The text would then enunciate the essential condition that, whatever the ship's nationality or the flags it was entitled to fly, it could sail under one flag only and would be exclusively subject to the jurisdiction of the State of that flag. The provision would thus be entirely consistent with article 6.
55. Article 5 seemed harmless and was acceptable, although there could exist a genuine link between the ship and more than one State. However, he saw no way of overcoming that difficulty, except by adopting the United Kingdom criterion of effective control.
56. He considered Mr. Zourek's provision quite inoperable because it would give the State of registration the power of absolute veto on any change of registration.
57. Mr. KRYLOV said that despite the argument advanced by Sir Gerald Fitzmaurice, both in the Sub-Committee and the Commission itself, he remained firmly convinced that the question of nationality must be dealt with. The Netherlands Government, in insisting that there should be a genuine link between the State of registration and the ship, had provided a basis for a solution. Accordingly, the first sentence of article 4, though perhaps faulty in drafting, must be retained.
58. He considered dual nationality just as undesirable for ships as for individuals.
59. Mr. SPIROPOULOS agreed with Mr. Krylov that the Commission must make some pronouncement on the important question of nationality.
60. It must also decide whether or not dual nationality of ships, which at present did exist, should be prohibited. Members would have noted that when the question of dual nationality of individuals had been discussed at the Hague Conference for the Codification of International Law in 1930, no sanctions had been applied of the kind proposed in article 6.
61. Mr. PAL considered that articles 4, 5 and 6 should be restricted to merchant ships, in the light of the decisions taken on articles 7 and 8.
62. Sir Gerald FITZMAURICE believed that Mr. Pal's point was largely a matter of drafting and could be referred to the Sub-Committee.
63. He added that, if his own amendment to article 4, paragraph 1,⁹ were adopted, paragraph 2 could be transposed to form a second paragraph in article 5, the rest of which would remain unchanged. The subject of nationality would then be dealt with, in so far as that was possible, in article 5, and the two questions of nationality and jurisdiction would have been separated, thus making the whole scheme much clearer.
64. Mr. SCELLE asked whether the effect of Sir Gerald Fitzmaurice's amendment to paragraph 1 would be that once a merchant ship had chosen the flag under which it would sail, that decision was final.
65. Sir Gerald FITZMAURICE said that it would be enough to ensure that, when sailing on the high seas, merchant ships used the flag of only one State, to whose exclusive jurisdiction they would be subject. The question of nationality, unlike the question of the jurisdiction to which the vessel was subject, was not of primary importance to the law of the high seas.
66. Mr. SCELLE said that in that case article 4 would be altogether useless, because a ship would be subject to the jurisdiction of the flag State only when flying its flag, and could place itself outside that jurisdiction in the course of the voyage by hoisting another flag: a situation which was in total contradiction with article 6. Surely the aim must be to eliminate the fictitious system of flags of convenience practised by vessels claiming, for example, Panamanian or Liberian registry.
67. Sir Gerald FITZMAURICE observed that the objection, whether valid or not, applied equally to the original text of article 4.
68. Mr. SCELLE, acknowledging that that was correct, explained that the purpose of his question had been

⁹ See para. 57 above.

precisely to establish whether Sir Gerald's amendment had altered the import of the original text of that point.

69. Mr. ZOUREK observed that at the previous session the Commission had adopted an article dealing with the nationality of ships, and he had not heard a single convincing argument in favour of reversing that decision. In spite of Sir Gerald Fitzmaurice's advocacy, he remained convinced that the fundamentally important question of nationality, which was intimately linked with the freedom of the high seas, must be dealt with in the draft, since otherwise ships would be free to change flags even during a single voyage. A provision of the kind adopted at the previous session had given some guarantee against such abuse, and it would be difficult to justify its omission.

70. Mr. SALAMANCA said that in the present state of international law and with the present lack of uniformity in State regulations, he did not think the Commission could go further than the general provision contained in article 5.

71. With regard to dual nationality, he found the analogy between ships and persons inappropriate because the nationality of the latter was determined by *jus sanguinis* and *jus soli*. For shipowners on the other hand choice of nationality was often based on economic considerations and some might wish to change the registration of their ships in order to avoid taxation.

72. Mr. AMADO did not think that Sir Gerald Fitzmaurice had offered any real reason for omitting a provision concerning nationality.

73. He also wondered what the genuine link between the State and the ship would be if Sir Gerald Fitzmaurice's amendment to article 4, paragraph 1, were adopted. Perhaps the very change of flag itself might constitute a link.

74. Mr. SALAMANCA said it would be extremely difficult to determine what was a genuine link between a ship and its State of registry; perhaps the introduction of such a concept would go further than was required and would raise certain problems of ownership. States, particularly those with small merchant fleets, which had to follow a fairly liberal policy, might be apprehensive of transfers of registry—a point which the Commission should take into account.

75. It was not clear whether the provisions of article 9 applied to article 5. If they did, some specific reference was required in the text of the articles themselves.

76. Mr. PADILLA-NERVO said he had concluded from the discussion that there was no real difference of opinion in the Commission. He noted from the comment on article 4 that the main purpose of that article had been to prevent the chaos resulting from the absence of any authority over ships sailing the high seas. He believed that much of the confusion had sprung from dealing in one article with both nationality and the jurisdiction to which the ship was subject. He therefore agreed with Sir Gerald Fitzmaurice that article 4 should define the juris-

diction to which the ship was subject and that article 5 should be entirely devoted to the question of nationality. He accordingly proposed that the first sentence of article 4 be transferred to form the second sentence of article 5 and that paragraph 2 of article 4 become paragraph 2 of article 5. Article 4 would then consist of the second sentence of paragraph 1, as amended by Sir Gerald Fitzmaurice.

77. Sir Gerald FITZMAURICE, accepting Mr. Padilla-Nervo's proposal, pointed out that he had never wished to suggest that the subject of nationality should be omitted altogether, but had only sought to ensure that it was treated separately from the question of jurisdiction.

78. Mr. SPIROPOULOS said that if the Commission's intention was to allow only one nationality, he saw no reason for departing from the text adopted at the previous session and the criteria laid down in the original text of article 5. At present there seemed to be some contradiction in the Sub-Committee's text, which in article 4 appeared to countenance dual nationality, while in article 6 it imposed heavy penalties against a ship sailing under more than one flag.

79. Mr. ZOUREK failed to see the utility of Mr. Padilla-Nervo's proposal.

80. Mr. SANDSTRÖM believed that the original text of articles 4 and 5 was preferable, but could not express any final opinion until he had studied Mr. Padilla-Nervo's proposal in writing.

81. Mr. SCELLE was also unable to vote on Mr. Padilla-Nervo's proposal until the text had been circulated.

82. He repeated his view that the articles as at present drafted would lead to precisely the opposite result to that intended, by enabling ships to evade the jurisdiction of the flag State by changing flags.

83. Mr. AMADO observed that under Mr. Padilla-Nervo's proposal ships were entitled to sail under only one flag.

84. Mr. KRYLOV suggested that the vote be postponed until the following meeting. He considered that article 5, as amended, should precede the revised article 4, so that the primary question of nationality would be dealt with first.

85. Faris Bey el-KHOURI proposed the deletion of the second sentence of article 5 reading "Nevertheless, for purposes . . . between the State and the ship", because only States themselves could decide whether a genuine link existed and only they could lay down the conditions for the registration of ships. The Commission must not seek to impose such control or sanctions in the present draft.

It was agreed to defer the vote on Mr. Padilla-Nervo's proposal until the next meeting.

The meeting rose at 1 p.m.