

# **United Nations Conference on the Law of the Sea**

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Document:

**A/CONF.13/L.17**

## **Report of the Second Committee**

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume II (Plenary Meetings)*

**DOCUMENT A/CONF.13/L.15****Yugoslavia: amendment to article 72  
as adopted by the Fourth Committee (A/CONF.13/L.12)**[Original text: English]  
[21 April 1958]

In paragraphs 1 and 2 of article 72 delete the following words:  
“and unless another boundary line is justified by special circumstances”.

*Comment*

As for the delimitation, it is desirable to know *in advance* what criteria can be taken into consideration in drawing boundary lines, in order to avoid future misunderstandings and arbitrary interpretations. As regards the delimitation of two adjacent continental shelves, there are only two firm and solid criteria: (a) agreement between the States concerned, and (b) the principle of median lines. No other criterion is admissible and in particular no “special circumstances” can be taken into account, for their vagueness and arbitrary character could constitute a breeding ground for misunderstandings and dissensions. Where and in what Manual of International Law are such circumstances enumerated? And, in the final analysis, in whose interest is it that uneasiness and ill-temper in the relations between neighbouring States should be introduced?

**DOCUMENT A/CONF.13/L.16****Canada: amendment to the recommendations of the Fourth Committee  
concerning final clauses (A/CONF.13/L.12)**[Original text: English]  
[21 April 1958]

Add a final clause concerning reservations as follows:

*“Reservations*

“At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 67 to 73 inclusive.

“Any contracting State making a reservation in accordance with the preceding paragraph may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.”

**DOCUMENT A/CONF.13/L.17<sup>1</sup>****Report of the Second Committee**[Original text: English]  
[21 April 1958]**I. OFFICERS OF THE COMMITTEE**

1. At the first meeting of the Committee, on 26 February 1958, Mr. O. C. Gundersen (Norway) was elected as Chairman; and, at the second meeting, on 28 February 1958, the Committee elected Mr. Glaser (Romania) as Vice-Chairman and Mr. J. Madeira Rodrigues (Portugal) as Rapporteur.

**II. TERMS OF REFERENCE OF THE COMMITTEE**

2. The rules of procedure adopted by the Conference at its first plenary meeting on 24 February 1958 provided

in rule 47 that the Second Committee should consider those articles concerning the law of the sea, contained in the report of the International Law Commission covering the work of its eighth session (A/3159), which dealt with the general régime of the high seas—namely, articles 26 to 48 and 61 to 65.

**III. ORGANIZATION OF THE WORK OF THE COMMITTEE**

3. The Committee held thirty-seven meetings.  
4. Ten meetings were devoted to a general debate on the articles referred to the Committee (4th to 13th meetings).<sup>2</sup>

<sup>1</sup> Incorporating A/CONF.13/L.17/Corr.1, L.17/Add.1 and L.17/Add.1/Corr.1.

<sup>2</sup> At its 12th meeting, the Committee heard a statement by the representative of the International Labour Office concerning articles 29, 34 and 35.

At the conclusion of the general debate, the Committee decided to organize the articles into eight groups as follows:

- Group I: Article 26 (Definition of the high sea)  
Article 27 (Freedom of the high seas)
- Group II: Article 28 (The right of navigation)  
Article 34 (Safety of navigation)  
Article 35 (Penal jurisdiction in matters of collision)  
Article 36 (Duty to render assistance)
- Group III: Article 29 (Nationality of ships)  
Article 30 (Status of ships)  
Article 31 (Ships sailing under two flags)
- Group IV: Article 32 (Immunity of warships)  
Article 33 (Immunity of other government ships)
- Group V: Article 37 (Slave trade)  
Articles 38 to 45 (Piracy)
- Group VI: Article 46 (Right of visit)  
Article 47 (Right of hot pursuit)
- Group VII: Article 48 (Pollution of the high seas)
- Group VIII: Articles 61 to 65 (Submarine cables and pipelines)

5. The Committee discussed articles 26 and 27 at its 14th, 15th and 16th meetings; proposals relating to nuclear tests (A/CONF.13/C.2/L.30, L.64 and L.71/Rev.1) at its 17th and 18th meetings; articles 28, 34, 35 and 36 at its 19th, 22nd and 23rd meetings; articles 29, 30 and 31 and a proposal to add a new article after article 31 (A/CONF.13/C.2/L.51) at its 23rd and 24th meetings; articles 32 and 33 at its 25th and 26th meetings; articles 37 and 38 to 45 at its 27th meeting; articles 46 and 47 at its 28th meeting; a proposal for the insertion of a new article after article 48 (A/CONF.13/C.2/L.100) at its 30th and 32nd meetings; and articles 61 to 65 at its 30th and 32nd meetings. Proposals to adopt additional articles were also discussed at the 30th, 32nd, 33rd and 34th meetings.

6. The Committee decided to vote on the articles in their numerical order rather than in the order of grouping. Voting took place on the proposals relating to nuclear tests and on article 26 at the 20th meeting; on article 27 at the 20th, 21st and 22nd meetings; on articles 28, 29, 30 and 31 at the 26th meeting; on the proposal to add a new article after article 31, on articles 32 and 33, on a proposal for a new article after article 33, and on articles 34, 35 and 36 at the 27th meeting; on articles 37 to 45 at the 29th meeting; on articles 46, 47 and 48 at the 31st meeting; and on articles 61 to 65 and the proposal for a new article after article 65 at the 32nd meeting. Votes on other proposals for additional articles took place at the 32nd, 33rd and 34th meetings.

7. After completing the voting on the articles and proposals the Committee, at its 34th meeting, established a drafting group consisting of members of the Bureau of the Committee and the following representatives: Mr. Pluymers (Belgium), Mr. Kanakarathne (Ceylon), Mr. Uribe Holguín (Colombia), Mr. Jhirad (India), Mr. Campos Ortiz (Mexico), Mr. Keilin (Union of Soviet Socialist Republics) and Mr. Colcough (United States of America).

8. The drafting group held three meetings on 16 and 17 April 1958. On the basis of its report (A/CONF.13/C.2/L.152), the Committee made a number of drafting changes in the texts previously adopted by it. The Committee decided not to deal with the headings of the articles

proposed by the International Law Commission which, in its opinion, had best be considered by the Drafting Committee of the Conference. In one case only (see para. 19 below), the Committee decided to delete the heading of an article which was combined with the preceding article.

#### IV. CONSIDERATION OF AND VOTING UPON THE ARTICLES AND THE PROPOSALS AND AMENDMENTS RELATING THERETO

9. The results of the Committee's work are set forth below article by article followed by two draft resolutions. The Committee also decided to state in principle that the articles in general adopted by it did not override specific conventions in force (A/CONF.13/C.2/L.149). The texts adopted by the Committee are reproduced in the annex to this report.

##### *Article 26*

10. There were originally six amendments to article 26. The Committee adopted, by 23 votes to 6, with 22 abstentions, the first part of a proposal by France (A/CONF.13/C.2/L.6) to delete paragraph 2 of the International Law Commission text; it also adopted, by 52 votes to none, with 2 abstentions, the second part of a proposal by Greece (A/CONF.13/C.2/L.54) to refer that paragraph to the First Committee. All other proposals were either withdrawn or rejected. Article 26, as amended, was adopted by 53 votes to none, with 2 abstentions.

##### *Article 27*

11. Fourteen amendments to article 27 were submitted; of these, two were adopted. By a roll-call vote of 24 to 20, with 26 abstentions, the Committee adopted a proposal by Mexico (A/CONF.13/C.2/L.3) to insert, in the second sentence, after the words "Freedom of the high seas" the words "is exercised under the conditions laid down by these articles and by the other rules of international law". The Committee also adopted, by 30 votes to 18, with 9 abstentions, a proposal by the United Kingdom (C.2/L.68) to add, at the end of the article, the sentence "These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas." Article 27, as amended, was adopted by 50 votes to 4, with 12 abstentions.

##### *Article 28*

12. None of the amendments submitted was adopted and the International Law Commission text of article 28 was adopted by 60 votes to none, with no abstentions.

##### *Article 29*

13. Eleven proposals relating to article 29 were submitted, of which three were adopted. By 34 votes to 4, with 17 abstentions, the Committee adopted a proposal by Italy (A/CONF.13/C.2/L.28), after having approved, by 24 votes to 16, with 14 abstentions, a sub-amendment thereto proposed by France (A/CONF.13/C.2/L.93). As amended, the Italian proposal added, at the end of paragraph 1, the following sentence: "In particular, the State must effectively exercise its jurisdiction and control over ships flying its flag in administrative, technical and social matters." By 21 votes to 10 with 23 abstentions, the Committee also adopted an amendment by the Netherlands (A/CONF.13/C.2/L.22) to replace paragraph 2 of article 29 by the following: "Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect." Article 29, as amended, was adopted by 40 votes to 7, with 11 abstentions.

14. On the proposal of its drafting group, the Committee, at its 36th meeting, approved, together with some changes in the French and Spanish texts, the following drafting change:

The last part of paragraph 1 to read "jurisdiction and control in administrative, technical and social matters over ships flying its flag."

#### *Articles 30 and 31*

15. Of the six proposals relating to article 30, five were rejected and one was withdrawn. The Committee then adopted the International Law Commission text by 56 votes to 5, with 12 abstentions.

16. The Committee also approved, on the recommendation of its drafting group, a change in the Spanish text.

17. The six proposals relating to article 31 were either withdrawn or rejected. Thereafter, the Committee adopted the International Law Commission text by 55 votes to none.

18. The Committee approved a recommendation of its drafting group to make a change in the French text.

19. Upon the recommendation of the drafting group the Committee decided to combine articles 30 and 31 into a single article 30.

#### *Proposal for a new article after article 31*

20. A joint proposal by Mexico, Norway, the United Arab Republic and Yugoslavia for a new article after article 31 was adopted by the Committee by 29 votes to 12, with 14 abstentions (see annex, article 31).

#### *Article 32*

21. The two proposals relating to article 32 were withdrawn. The International Law Commission text was then adopted by 56 votes to none.

22. The Committee approved certain drafting changes in the French and Spanish texts as recommended by the drafting group.

#### *Article 33*

23. Five proposals relating to article 33 were withdrawn. The United States proposal (A/CONF.13/C.2/L.76) to replace the International Law Commission text was adopted by 46 votes to 9, with 2 abstentions.

24. On the recommendation of the drafting group, the Committee approved, in addition to a change in the French text, the deletion of the word "when".

#### *Proposal for a new article after article 33*

25. At its 27th meeting on 9 April 1958, the Committee adopted a proposal by the United Kingdom (C.2/L.113) to add after article 33 a new article on the definition of ships owned or operated by a State and used only on government non-commercial service. After reconsideration at the 33rd meeting of the Committee, on 14 April, the adopted proposal was withdrawn by the United Kingdom.

#### *Article 34*

26. Three proposals relating to article 34 were withdrawn. The Committee, by 26 votes to 7, with 22 abstentions, adopted a joint proposal (A/CONF.13/C.2/L.114) by the United Kingdom and the Netherlands to replace the International Law Commission text by a new text.

27. On the recommendation of the drafting group, the Committee approved a drafting change to replace the opening words of paragraph 1 by the following: "Every

State shall take such measures for ships under its flag as are necessary to ensure safety at sea. . . ."

28. The Committee also approved drafting changes in the French and Spanish texts.

#### *Article 35*

29. Of the six proposals relating to article 35, two were adopted. The first, by France (A/CONF.13/C.2/L.6), was voted on in two parts. The first part, to replace in paragraph 1 the words "the accused persons" by "the incriminated persons" was adopted by 24 votes to 8, with 17 abstentions; the second part, to insert a new paragraph between paragraphs 1 and 2, was adopted by 30 votes to 2, with 19 abstentions. The second proposal, submitted by the United States of America (A/CONF.13/C.2/L.44) to insert in paragraph 2, after the word "ship" and before the word "even", the words "on the high seas", was adopted by 22 votes to 17, with 17 abstentions. The International Law Commission text, as amended, was adopted by 39 votes to 1, with 16 abstentions. At the 36th meeting, on 18 April, the second adopted proposal was withdrawn by the United States.

30. On the recommendation of the drafting group, the Committee approved, in addition to a change in the Russian text, the following drafting changes in the English text:

In paragraph 1, to replace the words "the incriminated person" by "such person". In paragraph 2, to replace the words "qualifying certificate" by "certificate of competence or licence".

#### *Article 36*

31. Of the six proposals relating to article 36, the Committee adopted two: a proposal by Yugoslavia (A/CONF.13/C.2/L.18) to insert in sub-paragraph (b) the word "possible" between "all" and "speed", and a proposal by Denmark (A/CONF.13/C.2/L.36) to add a new paragraph at the end of the article. The first amendment was adopted by 39 votes to 3, with 12 abstentions, and the second by 33 votes to none, with 20 abstentions. The International Law Commission text, as amended, was adopted by 55 votes to none.

32. The Committee approved two changes recommended by the drafting group in the Spanish text.

#### *Article 37*

33. There were two proposals relating to article 37 of which one was withdrawn and the other rejected. The Committee then adopted the International Law Commission text by 50 votes to none.

34. In addition to changes in the Spanish text, the recommendation by the drafting group that the word "colours" should be replaced wherever it appeared in the English text by "flag" was approved.

#### *Article 38*

35. Three proposals relating to article 38 having been rejected, the Committee adopted the International Law Commission text by 51 votes to none, with 2 abstentions.

#### *Article 39*

36. Four amendments were submitted of which one was withdrawn and two rejected. The Committee adopted a proposal by Italy (A/CONF.13/C.2/L.80) to amend sub-paragraphs 1(a) and 1(b) by 18 votes to 16, with 19 abstentions. The International Law Commission text, as amended, was adopted by 45 votes to 7, with 3 abstentions.

37. The Committee approved, together with changes in the Spanish text, the following drafting changes in the English text:

In the opening sentence, to replace the word "in" by "of"; and in paragraph (3), to replace the word "incitement" by "inciting", and "intentional facilitation of an act" by "intentionally facilitating an act".

38. At its 36th meeting on 18 April, the Committee agreed to a suggestion by the representative of the Union of South Africa to include in its report to the Conference a sentence to the effect that the term "private aircraft" be used in the sense of non-state-owned aircraft.

#### *Article 40*

39. A proposal by Yugoslavia (A/CONF.13/C.2/L.19) which reformulated the text of article 40 by inserting the words "a warship" and consequent drafting changes was adopted by 23 votes to 11, with 15 abstentions. As a result, the International Law Commission text was not put to the vote.

40. The Committee approved a recommendation by the drafting group that the word "vessel" should be replaced by "ship". Certain changes recommended in the Spanish text were also approved.

#### *Article 41*

41. One proposal relating to article 41 was withdrawn and another rejected. The International Law Commission text was adopted by 45 votes to 7, with 5 abstentions.

42. The Committee approved a recommendation by the drafting group to make a change in the Spanish text.

#### *Article 42*

43. One proposal relating to article 42 was withdrawn and another rejected. The International Law Commission text was adopted by 45 votes to 7, with 5 abstentions. The Committee approved a recommendation by the drafting group to replace the words "national character" by "nationality" in the English text.

#### *Article 43*

44. As there were no proposals relating to article 43, the International Law Commission text was put to the vote and adopted by 41 votes to 8, with one abstention.

45. On the recommendation of the drafting group, the Committee approved certain changes in the Spanish text.

#### *Article 44*

46. The only proposal relating to article 44 having been rejected, the Committee adopted the International Law Commission text by 41 votes to 7, with 5 abstentions.

47. On the recommendation of the drafting group, the Committee approved a change in the Spanish text.

#### *Article 45*

48. The proposal by Thailand (A/CONF.13/C.2/L.10) to add the words "or other ships or aircraft on government service authorized to that effect" at the end of the article was adopted by 26 votes to 15, with 17 abstentions. The International Law Commission text, as amended, was adopted by 47 votes to 8.

#### *Article 46*

49. The two proposals relating to article 46 having been rejected, the Committee adopted the International Law Commission text by 39 votes to 4, with 9 abstentions.

50. On the recommendation of the drafting group, the Committee approved the following change, in addition to a change in the Spanish text:

In the first sentence of paragraph 2 of the English text, to replace the word "title" by "right".

#### *Article 47*

51. A motion to postpone the voting on article 47 was rejected. Another proposal to amend the article and divide it into two articles was also rejected. Thereafter, the Committee proceeded to vote on article 47 paragraph by paragraph.

#### *Paragraph 1*

Eight amendments to paragraph 1 were submitted, of which two were adopted: (a) The joint proposal by Poland and Yugoslavia (A/CONF.13/C.2/L.20/Rev.1 and L.61/Rev.1) to insert the words "or the contiguous zone" in four places in paragraph 1 was adopted by 33 votes to 9, with 16 abstentions; (b) The proposal by the Federal Republic of Germany (A/CONF.13/C.2/L.115) to insert after the words "the foreign ship" the words "or one of its boats" was adopted by 48 votes to 8, with 5 abstentions. Paragraph 1, as amended, was adopted by 50 votes to 3, with 9 abstentions.

#### *Paragraph 2*

After one proposal had been rejected and another withdrawn, paragraph 2 of the International Law Commission text was adopted by 60 votes to one, with one abstention.

#### *Paragraph 3*

Seven proposals relating to paragraph 3 were submitted, of which two were adopted: (a) The proposal by Mexico (A/CONF.13/C.2/L.4) to insert the words "or other craft working as a team and using the ship pursued as a mother ship" was adopted by a roll-call vote of 35 to 13, with 16 abstentions; (b) The proposal by India (A/CONF.13/C.2/L.95) to replace the words "bearings, sextant angles or other like means" by the words "such practical means as may be available" was adopted by 20 votes to 15, with 22 abstentions. Paragraph 3, as amended, was adopted by 47 votes to 2, with 11 abstentions.

#### *Paragraph 4*

As there were no proposals relating to paragraph 4, the International Law Commission text was adopted by 62 votes to none.

#### *Paragraph 5*

The proposal by Iceland (A/CONF.13/C.2/L.89) relating to paragraph 5 was voted on in two parts. The first part, to add the words "or aircraft" after the words "pursue the ship until a ship" and to add the words "...or other aircraft or ships which continue the pursuit without interruption" at the end of paragraph 5 (b) was adopted by 25 votes to 11, with 22 abstentions. The second part, to add a sub-paragraph (c), was rejected. Paragraph 5, as amended, was adopted by 59 votes to one, with 5 abstentions.

#### *Paragraph 6*

As there were no proposals relating to this paragraph, the International Law Commission text was adopted by 62 votes to none.

*Additional paragraph*

The proposal by the United Kingdom (A/CONF.13/C.2/L.96/Rev.1) to add a new paragraph 7 was adopted by 30 votes to 6, with 20 abstentions.

52. The text of article 47 as a whole, as amended, was adopted by 58 votes to 2, with 3 abstentions.

53. On the recommendation of the drafting group, the Committee approved certain changes in the Spanish text.

*Article 48*

54. Seven proposals relating to article 48 were submitted, of which two were adopted. The proposal by Uruguay (A/CONF.13/C.2/L.79) to add the words "and exploration" after the word "exploitation" was adopted by 51 votes to none, with 8 abstentions. Paragraph 1 of the International Law Commission text, as thus amended, was adopted by 61 votes to none, with one abstention.

55. The joint proposal by the United States and the United Kingdom (A/CONF.13/C.2/L.107) to delete paragraphs 2 and 3 and to adopt a draft resolution was adopted by a roll-call vote of 30 votes to 29, with 6 abstentions (for the text of the resolution, see annex; also para. 70 below).

56. On the recommendation of the drafting group, the Committee approved a change in the French text.

*Additional article relating to the pollution of the sea by radio-active waste*

57. The revised joint proposal by Argentina, Ceylon, Mexico and India (A/CONF.13/C.2/L.121/Rev.2) to add a new article relating to the pollution of the sea by radio-active waste was adopted by 58 votes to none.

58. The Committee approved a recommendation by the drafting group to insert this article immediately after article 48.

*Article 61*

59. Four proposals relating to article 61 were submitted, two of which were rejected and two adopted. The proposal by the United States (A/CONF.13/C.2/L.108) to replace the words "telegraph, telephone and high-voltage power" by "submarine" was adopted by 36 votes to 6, with 9 abstentions. The proposal by Denmark (A/CONF.13/C.2/L.101) to add a new paragraph 3 was adopted by 26 votes to 7, with 20 abstentions. The International Law Commission text, as amended, was adopted by 44 votes to none, with 7 abstentions.

60. The Committee approved a recommendation of the drafting group to replace in the English text the words "reparation of" by "repairing" in the second sentence of paragraph 3.

*Article 62*

61. Of the two proposals submitted relating to article 62, one was rejected and one adopted. The proposal by the Netherlands (A/CONF.13/C.2/L.97/Rev.1) to insert the words "by a ship flying its flag or by a person subject to its jurisdiction" between the words "the breaking or injury" and "of a submarine cable" was adopted by 40 votes to 3, with 12 abstentions. The International Law Commission text, as amended, was adopted by 54 votes to none, with 3 abstentions.

62. In addition to changes in the Spanish text, the Committee approved a recommendation of the drafting group to reword the phrase "submarine high-voltage power or pipeline" to read "submarine pipeline or high-voltage power cable."

*Article 63*

63. Of the two proposals submitted, one was adopted and one rejected. The proposal by Denmark (A/CONF.13/C.2/L.101) to add at the end of the article the words "of the reparation" was adopted by 30 votes to 3, with 20 abstentions. The International Law Commission text, as amended, was adopted by 53 votes to none, with 2 abstentions.

64. Together with a change in the Spanish text, the Committee approved a recommendation by the drafting group to replace, in the English text, the words "cost of the reparation" by "cost of the repairs".

*Article 64*

65. The proposal by the United States (A/CONF.13/C.2/L.111) to delete article 64 was adopted by 24 votes to 19, with 11 abstentions.

*Article 65*

66. As there were no proposal relating to article 65, the International Law Commission text was adopted by 49 votes to one, with 2 abstentions.

*Proposals for additional articles*

67. At the 32nd meeting on 12 April, the proposal by Denmark (A/CONF.13/C.2/L.100) for an additional article concerning measures to ensure the safety of navigation in fairways, as orally revised by the sponsor, was rejected by 22 votes to 6, with 23 abstentions.

68. At the 33rd meeting on 14 April, the representative of Colombia moved that his proposal (A/CONF.13/C.2/L.75) for an additional article concerning the settlement of disputes should be referred to the plenary meeting. The representative of the Union of South Africa proposed an amendment to the effect that the Committee should defer voting on the Colombian motion until it had decided what form of instrument it would recommend to the Conference for the incorporation of the Committee's conclusions. The Colombian motion, as amended, was adopted by 46 votes to none, with 2 abstentions.

69. At the 34th meeting, on 15 April, the representative of Portugal withdrew his proposal (A/CONF.13/C.2/L.38/Rev.2) for the addition of an article on the classification of ships.

*Draft resolution relating to article 48*

70. The Committee approved a change recommended by the drafting group to the Spanish text of the draft resolution relating to article 48 (see para. 55 above).

*Draft resolution relating to nuclear tests*

71. After the withdrawal by the United Kingdom of its draft resolution (A/CONF.13/C.2/L.64), two proposals remained relating to nuclear tests: a joint proposal by Czechoslovakia, Poland, the Union of Soviet Socialist Republics and Yugoslavia (A/CONF.13/C.2/L.30); and a draft resolution submitted by India and amended by Ceylon (A/CONF.13/C.2/L.71/Rev.1).

72. At the 20th meeting, on 28 March, the representative of the United States moved (a) to vote on the proposals relating to nuclear tests before voting on articles 26 and 27; and (b) to vote on the Indian draft resolution before voting on the four-power proposal. The first motion was adopted by 60 votes to none, with 1 abstention, and the second, by 53 votes to 11, with 3 abstentions.

73. A proposal by Yugoslavia to vote on the Indian draft resolution in two parts was rejected by 46 votes to 10,

with 7 abstentions. The Indian draft resolution was thereafter adopted by 51 votes to one, with 14 abstentions. A motion by the representative of India not to vote on the four-power proposal was adopted by 52 votes to 8, with 3 abstentions.

V. CONSIDERATION OF THE KIND OF INSTRUMENT REQUIRED TO EMBODY THE RESULTS OF THE COMMITTEE'S WORK

74. The Committee considered this question at its 34th and 35th meetings on 15 and 16 April. At the end of the discussion, it adopted, by 50 votes to 1, with 4 abstentions, an oral proposal by Turkey, as amended by Mexico, to the effect that the Committee: (a) did not wish to express by vote its opinion on the form of the instrument to embody the results of its work; and (b) decided to submit a report to the Conference containing a summary of the discussions which had taken place in the Committee on the question. The following summary is given in accordance with that decision.

75. Three possible forms of instrument to incorporate the Committee's conclusions were envisaged: (a) a declaration, with or without a supplementary protocol requiring ratification which would enable States to accept, if they so desired, the declaration as binding; (b) a convention having the normal status of a treaty; and (c) a declaration or protocol to be signed and ratified by States.

76. Of the three kinds of instrument, only the first was embodied in a formal proposal (A/CONF.13/C.2/L.150) submitted by the representative of the Union of South Africa, as a declaration which would be an expression of the existing principles of international law on the general régime of the high seas but which would not require ratification by States. There was some discussion in the Committee on the legal nature of a declaration. The second alternative was favoured by several representatives. The third alternative was suggested, but not embodied in a formal proposal, by the representative of the Netherlands, who proposed to insert in the preamble of the instrument a statement concerning the desirability of arriving at a codification of the rules of existing international law and of contributing to the progressive development of such rules.

77. Some representatives were opposed to a decision being taken on the kind of instrument required, either on the ground that any decision adopted should be the same in the case of all five committees, or on the assumption that whether there should be a separate convention governing the régime of the high seas was a question for the Conference itself to decide.

Annex

I

TEXT OF THE ARTICLES CONCERNING THE HIGH SEAS AS ADOPTED BY THE SECOND COMMITTEE

Article 26

The term "high seas" means all parts of the sea that are not included in the territorial sea, as contemplated by part I, or in the internal waters of a State.

Article 27

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 28

Every State has the right to sail ships under its flag on the high seas.

Article 29

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. Nevertheless, for purposes of recognition of the national character of the ship by other States, there must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 30

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

Article 31

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.

Article 32

1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article 33

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

Article 34

1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard *inter alia* to:

- (a) The use of signals, the maintenance of communications and the prevention of collisions;
- (b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;
- (c) The construction, equipment and seaworthiness of ships.

2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.

Article 35

1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the

penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

#### Article 36

1. Every State shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers,

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship, her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

2. Every coastal State shall promote the establishment and maintenance of an adequate and effective Search and Rescue service regarding safety on and over the sea and—where circumstances so require—by way of mutual regional arrangements co-operate with neighbouring States for this purpose.

#### Article 37

Every State shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall, *ipso facto*, be free.

#### Article 38

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

#### Article 39

Piracy consists of any of the following acts:

1. Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

2. Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

3. Any act of inciting or of intentionally facilitating an act described in sub-paragraph 1 or sub-paragraph 2 of this article.

#### Article 40

The acts of piracy, as defined in article 39, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

#### Article 41

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 39. The same applies if the ship or aircraft has been

used to commit any such act, so long as it remains under the control of the persons guilty of that act.

#### Article 42

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which the nationality was originally derived.

#### Article 43

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

#### Article 44

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

#### Article 45

A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

#### Article 46

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That while in the maritime zones treated as suspect in the international conventions for the abolition of the slave trade, the ship is engaged in that trade; or

(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in sub-paragraphs (a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

#### Article 47

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 66, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.



3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

5. Where hot pursuit is effected by an aircraft :

(a) The provisions of paragraphs 1 to 3 of the present article shall apply, *mutatis mutandis* ;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purpose of an inquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

#### Article 48

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

*New article relating to the pollution of the sea by radioactive waste (to be inserted immediately after article 48)*

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents.

#### Article 61

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

#### Article 62

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and

similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

#### Article 63

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

#### Article 64

[Deleted.]

#### Article 65

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

## II

### TEXT OF THE DRAFT RESOLUTIONS ADOPTED BY THE SECOND COMMITTEE

#### *Draft resolution relating to article 48*

*The United Nations Conference on the Law of the Sea,*  
*Recognizing* the need for international action in the field of disposal of radioactive wastes in the sea,

*Taking into account* action which has been proposed by various national and international bodies and studies which have been published on the subject,

*Noting* that the International Commission for Radiological Protection has made recommendations regarding the maximum permissible concentration of radio isotopes in the human body and maximum permissible concentration in air and water,

*Recommends* that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection should pursue whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radioactive materials to the sea, promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radioactive material in amounts which would adversely affect man and his marine resources.

#### *Draft resolution relating to nuclear tests* (in connexion with article 27)

*The United Nations Conference on the Law of the Sea,*  
*Recalling* that the Conference has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957,

*Recognizing* that there is a serious and genuine apprehension on the part of many States that nuclear explosions constitute an infringement of the freedom of the seas, and

*Recognizing* that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

*Decides* to refer this matter to the General Assembly for appropriate action.