

Document:-  
**A/CN.4/SR.262**

**Summary record of the 262nd meeting**

Topic:  
**Law of the sea - régime of the territorial sea**

Extract from the Yearbook of the International Law Commission:-  
**1954 , vol. I**

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of a single rule. Several different systems were used by States for that purpose in keeping with special needs. He had mentioned the case of river boundaries; in drawing such boundaries, States employed different methods, sometimes even in respect of the same river. At the Commission's fifth session he had opposed the adoption of a rigid rule and had urged that States should be left free to decide frontier questions in territorial waters by mutual agreement.

61. Mr. CORDOVA pointed out that in many cases, the outer limit of the continental shelf was more important than that of the territorial sea. The concept of the continental shelf had been evolved in order to enable States to exploit the resources of the sub-soil of the sea, such as petroleum. As it seemed impossible to lay down two different boundaries, it would be more practical to make the limits of the territorial sea coincide with those of the continental shelf.

62. Mr. FRANÇOIS, Special Rapporteur, pointed out that article 16 was not concerned with laying down the boundary of the continental shelf; as Mr. PAL had said, the continental shelf was by definition situated outside the belt of territorial sea. The limits of the territorial sea and that of the continental shelf were quite distinct. He was merely proposing to deal with both problems through the application of the same principle—namely, that of the median line which the Commission had adopted at its fifth session; but it would be wrong to infer that because the principle applied was similar, therefore the boundaries in both cases necessarily coincided. The question before the Commission was whether the general principle adopted at the previous session should be supplemented by the provisions contained in his draft.

63. Mr. SPIROPOULOS agreed that the Special Rapporteur's remark applied to the majority of cases. The problem, however, of the territorial sea of a State extending over the continental shelf of another State would inevitably arise in the case of very narrow straits.

64. Mr. SCALLE said that the present difficulties showed how right he had been in the opinion he had expressed on the continental shelf at the Commission's fifth session. He could think of cases where submarine areas which stretched from the coast of one State to the territorial sea of another State, without reaching the 200-metre isobath.

The meeting rose at 6 p.m.

## 262nd MEETING

Tuesday, 6 July 1954, at 9.45 a.m.

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*Chairman*: Mr. A. E. F. SANDSTRÖM

*Rapporteur*: Mr. J. P. A. FRANÇOIS

#### *Present*:

*Members*: Mr. R. CORDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCALLE, Mr. J. SPIROPOULOS, Mr. J. ZOUREK.

*Secretariat*: Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

**Régime of the territorial sea (item 2 of the agenda) (A/CN.4/53, A/CN.4/61 and Add. 1, A/CN.4/71 and Add. 1 and 2, A/CN.4/77)<sup>1</sup> (*continued*)**

#### CHAPTER II: LIMITS OF THE TERRITORIAL SEA (*continued*)

*Article 16: Delimitation of the territorial sea of two States the coasts of which are opposite each other (A/CN.4/77) (*continued*)<sup>2</sup>*

1. The CHAIRMAN said the Commission would resume consideration of article 16 pending the submission of Mr. Zourek's redraft of article 14 on straits.

2. Mr. FRANÇOIS, Special Rapporteur, said that the Commission appeared to favour for article 16 the approach adopted at its fifth session with regard to the continental shelf. He therefore proposed that for article 16 the Commission should adopt the same

<sup>1</sup> *Vide supra*, 252nd meeting, para. 54 and footnotes.

<sup>2</sup> *Vide supra*, 261st meeting, paras. 55-64.

terminology as for article 7 on the continental shelf.<sup>3</sup> It should add in the comments to the article that the committee of experts had drafted a more detailed regulation<sup>4</sup> which though not adopted by the Commission in detail, was appended for the consideration of Governments. If his proposal were adopted the last sentence of paragraph 1 and the whole of paragraph 2 could be deleted.

3. Mr. HSU thought that, while the median line had been adopted for the purpose of determining the boundary of the continental shelf, it was difficult to accept the same method for the delimitation of the territorial sea between two States. Serious difficulties might arise in the case of two States applying different rules with regard to the breadth of the territorial sea, and the method of the median line would not be applicable. It was, therefore, premature to adopt the median line before agreeing on the rule for the delimitation of the territorial sea. It was perhaps more practical to adopt a less rigid rule.

4. The CHAIRMAN suggested that the Commission might adopt the draft of paragraph 1 as submitted by the Special Rapporteur, and add in the comments to the article that the paragraph in question had been drafted by analogy with article 7, paragraph 1, relating to the continental shelf.

5. In reply to Mr. HSU, he said that the rule as proposed by the Special Rapporteur would favour neither of the parties in question, and the position of the median line would be calculated as from the coasts.

6. Mr. LAUTERPACHT thought that the objections raised by Mr. Pal at the previous meeting and by Mr. Hsu were valid, but only to a certain extent. When the draft regulation was adopted in its entirety, the Commission would have dealt with the question of the delimitation of the territorial sea. It was important to remember that the whole draft was to be based on

<sup>3</sup> See chapter III of the Commission's report on its fifth session, *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456)*. Also in *Yearbook of the International Law Commission, 1953*, vol. II. Article 7 read as follows:

"1. Where the same continental shelf is contiguous to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States is, in the absence of agreement between those States or unless another boundary line is justified by special circumstances, the median line every point of which is equidistant from the base lines from which the width of the territorial sea of each country is measured.

"2. Where the same continental shelf is contiguous to the territories of two adjacent States, the boundary of the continental shelf appertaining to such States is, in the absence of agreement between those States or unless another boundary line is justified by special circumstances, determined by application of the principle of equidistance from the base lines from which the width of the territorial sea of each of the two countries is measured."

<sup>4</sup> See the report of the Committee of Experts, annex to A/CN.4/61/Add.1 in *Yearbook of the International Law Commission, 1953*, vol. II.

the assumption that there was a single uniform distance for the breadth of the territorial sea. If, for historical or other reasons, a State made a claim to wider territorial waters, that would be an exception to the general rule which would have to be dealt with on an *ad hoc* basis.

7. He agreed in principle with the provisions of paragraph 1 but suggested that such technical phrases as "a distance of less than two T miles" be replaced by "less than double the breadth of the territorial sea".

8. He regretted the Special Rapporteur's apparent intention to drop the last sentence of paragraph 1 and all of paragraph 2. Their drafting had been the result of a considerable amount of work, and he believed that the Commission should make the provisions of the draft regulation as detailed as it reasonably could.

9. Mr. FRANÇOIS, Special Rapporteur, agreed with Mr. Lauterpacht that the draft as submitted presupposed final agreement on a uniform breadth for the territorial sea. If two States with coastlines facing each other adopted different distances for the breadth of their territorial waters, the article as drafted by him would not apply. It applied only when the breadth of the territorial sea was identical for both States.

10. Mr. Lauterpacht's proposal for simplifying such expressions as "a distance of less than two T miles" could be referred to the Drafting Committee.

11. He had proposed the deletion of the last sentence of paragraph 1 and of the entire paragraph 2, so as to avoid making the provisions too detailed, but would not object to their being included in the comments to the article; that would give governments an opportunity of discussing them. If the majority wished the paragraphs in question to stand, he would not press the point.

12. Mr. PAL said the Special Rapporteur had to a great extent allayed his fears. Mr. Lauterpacht, however, had not been right in saying that the entire draft was meant to be based on the assumption that there was a single uniform distance for the breadth of the territorial sea. No doubt article 16 itself was based on such an assumption; but draft article 4, which was to define that breadth, was likely to give the States a great deal of freedom in that respect.

13. Mr. HSU accepted the Special Rapporteur's explanation that article 16 as drafted would only apply in cases where the territorial sea of two States was of equal breadth.

14. Mr. CORDOVA feared that if the Commission failed to agree on a uniform breadth for the territorial sea, States would claim the right to adopt different breadths. It was therefore necessary to state clearly that the article only applied if the territorial seas of two States were equal in breadth.

15. The CHAIRMAN gathered that the majority of the Commission wished article 16, paragraphs 1 and 2, to be replaced by a simple draft on the lines of

article 7, paragraph 1, of the draft articles on the continental shelf adopted at its fifth session.

16. Mr. ZOUREK could not agree with that approach. There was no doubt that the question was one of *lex ferenda*, as there was no law in force to cover the matters dealt with in those paragraphs. He saw no reason for imposing on States a single method for delimiting their maritime frontiers, particularly as the possible situations were so diverse that no single method sufficed to cover them all. The article before the Commission should be applicable also to cases where States did not have the same breadth of territorial sea, as it would not be realistic to expect agreement on a uniform breadth for the territorial sea. The most that could be done was to retain the Special Rapporteur's draft article as a subsidiary rule and to say that the principle of equidistance applied to cases where the requirements of shipping, the configuration of the coastline or the interests of the States involved did not call for the application of another method. He also thought that if article 16 were replaced by paragraph 1 of article 7 on the continental shelf, it would be too rigid and would have little hope of being adopted by States.

17. The CHAIRMAN pointed out that the adoption of article 7, paragraph 1, on the continental shelf as a basis for article 16 still left States a certain margin for agreement as it stated expressly: "... the absence of agreement between those States or unless another boundary is justified by special circumstances ..."

18. He put to the vote the proposal that paragraphs 1 and 2 of article 16 as drafted by the Special Rapporteur should be replaced by an article drafted on the lines of article 7, paragraph 1, relating to the continental shelf as contained in the Commission's report on the régime of the high seas.<sup>5</sup>

*The proposal was adopted by 4 votes to 1, with 8 abstentions.*

*Paragraph 3 was adopted by 10 votes to none, with 3 abstentions.*

*Article 16 as a whole, as amended, was adopted by 6 votes to 1, with 6 abstentions.*

19. Mr. ZOUREK said he had voted against article 16 for the reasons he had given during the discussion.

*Article 17: Delimitation of the territorial sea of two adjacent States (A/CN.4/77)<sup>6</sup>*

20. Mr. FRANÇOIS, Special Rapporteur, said that for article 17 he now proposed the same method as that

adopted at the Commission's fifth session for the delimitation of the continental shelf. The article should accordingly be redrafted on the lines of article 7, paragraph 2, relating to the continental shelf<sup>7</sup> and the phrase "in the absence of agreement between those States or unless another boundary line is justified by special circumstances" added.

21. The question of arbitration could provisionally be left open.

22. Mr. SCELLE did not agree with the Special Rapporteur's proposal that the question of arbitration should for the time being be left open. Differences could very well arise concerning the delimitation of the territorial sea of two adjacent States, particularly if a third party's interests were affected.

23. Mr. FRANÇOIS, Special Rapporteur, replied that there was no question of a third party as the Commission was dealing with the delimitation of the territorial sea between two States only.

24. Mr. SCELLE pointed out that as long as no fixed uniform breadth had been agreed for the territorial sea, two States, the coasts of which were separated by twenty miles, could adopt territorial waters twelve and eight miles in breadth, respectively. In that case, they would eliminate the high seas completely and a third State would be entitled to protest.

25. Mr. FRANÇOIS, Special Rapporteur, said that the case referred to by Mr. Scelle would not arise if agreement was reached on a uniform breadth.

26. Mr. PAL said that in certain cases the territorial sea might be measured from the base lines and not from the coastline, and suggested that the word "coastlines" at the end of the first sentence of the article should be replaced by the words "base lines".

27. He also suggested that the last sentence of the article beginning with the words "The methods whereby..." should be entirely deleted.

28. Mr. FRANÇOIS, Special Rapporteur, recalled that he had already withdrawn his draft of article 17 in favour of article 7, paragraph 2, on the continental shelf, which referred to base lines.

29. Mr. SCELLE hoped that a general arbitration clause would be inserted in the draft regulation to cover all possible disputes.

30. The CHAIRMAN put to the vote article 17 formulated, in principle, by analogy with article 7, paragraph 2, of the draft articles on the continental shelf adopted by the Commission at its fifth session.<sup>7</sup>

*The article, to be redrafted on these lines, was adopted in principle by 9 votes to 1, with 3 abstentions.*

31. Mr. ZOUREK said he had voted against the adoption of article 17, for the same reasons as he had given with regard to article 16.

<sup>5</sup> *Vide supra*, para. 2 and footnote 3.

<sup>6</sup> Article 17 read as follows:

"Except where already otherwise determined the boundary line through the territorial sea of two adjacent States shall be drawn according to the principle of equidistance from the respective coastlines. The methods whereby this principle is to be applied shall be agreed upon between the parties concerned in each specific case."

<sup>7</sup> *Vide supra*, footnote 3.

## CHAPTER III: RIGHT OF PASSAGE

*Article 18: Meaning of the right of passage  
(article 14 of A/CN.4/61)*<sup>8</sup>

32. Mr. FRANÇOIS, Special Rapporteur, said there was fairly general agreement among States with regard to the provisions of this particular chapter. The right of passage had been discussed in the Second Committee of The Hague Codification Conference in 1930, and a regulation had been adopted which had subsequently been discussed by the plenary conference.<sup>9</sup> A greater measure of agreement on that chapter existed among States than on any of the articles previously discussed by the Commission. Accordingly, the right of passage was suitable for codification and he hoped that the articles as submitted by him would not give rise to lengthy discussion.

33. Mr. GARCÍA-AMADOR pointed out that the right of passage was defined in article 19,<sup>10</sup> whereas article 18 contained only a definition of "passage"; he therefore proposed that the body of article 19 should precede article 18 and that the corresponding alterations be made to the headings.

34. Mr. LAUTERPACHT agreed that paragraph 1 of article 19 might come first as it was more logical to begin with a general statement. He did not think, however, that the position of paragraph 2 of article 19 should be altered.

35. On the whole he agreed with the provisions of article 18 as submitted, with the exception of the reference to "public policy" in paragraph 2. "Public policy" was a very elastic term which could be variously interpreted. It would give a very wide measure of discretion, productive of uncertainty and possible arbitrariness, to the administrative authorities of the State. It had probably been translated from the French *ordre public*, and he proposed that it should be replaced by the word "law". Clearly, if the term "law" was adopted, it would refer to such national law as was consistent with international law. If the word "law" were adopted, it would be possible to delete the reference to the fiscal interests of the State; it was not logical to mention fiscal interests if no reference

<sup>8</sup> Article 18 read as follows:

"1. 'Passage' means navigation through the territorial sea for the purpose either of traversing that sea without entering inland waters, or of proceeding to inland waters, or of making for the high sea from inland waters.

"2. Passage is not *innocent* when a vessel makes use of the territorial sea of a coastal State for the purpose of doing any act prejudicial to the security, to the public policy or to the fiscal interests of that State.

"3. Passage includes stopping and anchoring, but in so far only as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress."

<sup>9</sup> *Acts of the Conference for the Codification of International Law*, vol. III: Minutes of the Second Committee, pp. 164 *et seq.*, 202 *et seq.* and 213 *et seq.*; vol. I: Plenary Meetings, pp. 50 *et seq.* The text of the 1930 regulation is identical with the text of article 18.

<sup>10</sup> *Vide infra*, para. 77, footnote 17.

were made to such other interests as, for instance, sanitary interests.

36. Finally, he was interested in the views of the Special Rapporteur on the comments of the Second Committee of the 1930 Hague Codification Conference<sup>11</sup> concerning the extent to which the provisions of the article on the freedom of passage affected the obligations of States in other matters such as navigation, and so on.

37. The CHAIRMAN agreed that the drafting committee should rearrange the articles in a more logical sequence.

38. Mr. FRANÇOIS, Special Rapporteur, did not think it necessary to replace the words "public policy" by the word "law". The expression *ordre public* had been used by the Codification Conference in 1930, and although it might sound slightly ambiguous, it had acquired a sufficiently clear meaning in international law.

39. Mr. SCALLE said that there were countries whose national law was in flagrant contradiction with recognized international law. He was opposed to ships being forced to comply with the national laws of a country if those laws violated international law.

40. Mr. CORDOVA said that in some cases the national law of a country should be taken into account. If, for example, a country was in the throes of revolution and a port had been occupied by a rebel force, the legitimate Government should be entitled to prohibit even innocent passage through its territorial sea. He proposed that the words "public policy" be replaced by the words "public order".

41. Mr. LAUTERPACHT agreed that "public order" was a better formula, but he nevertheless found it still too wide. It would give great latitude to the authorities of the coastal State, who would be able to give the term a very broad interpretation of which ships would not necessarily be aware.

42. Mr. LIANG, Secretary to the Commission, said that at the 1954 session of the Institute of International Law, after a thorough discussion, it had been agreed that the English equivalent of *ordre public* was "public policy". The term "public order" could not be used instead, because it had a completely different connotation. "Public policy" was indeed a vague term but it was well established in legal usage and had been used by the 1930 Codification Conference. It covered what French jurists called *ordre public national*.

43. Mr. SPIROPOULOS agreed with Mr. Liang's remarks concerning the term "public policy". The provisions of article 18, paragraph 2, were a corollary of those embodied in article 19, which laid down that foreign vessels had the right of innocent passage through the territorial sea. Article 18, paragraph 2,

<sup>11</sup> *Vide supra*, footnote 9.

defined the cases where passage was not innocent. Thus, a ship which carried out dangerous experiments, or even mere research on the water depth, in the territorial sea of a foreign State would be acting in a manner contrary to the public policy of the State concerned. The text prepared at the 1930 Codification Conference had been drafted after careful consideration of the terms to be used; and unless they could be improved upon he would favour their retention. Innocent passage through the territorial waters of a foreign State meant simply crossing those waters without any other accompanying action.

44. Mr. LAUTERPACHT said that "public policy" concerned to a large extent the economic, social and political régime of a State. That was a criterion which varied from one State to another and could not therefore constitute a suitable basis for the restriction of the right of passage. He agreed that the term "public order" might not be suitable either; it might lead to confusion with the term "good order" used in article 23.<sup>12</sup> He would be prepared to agree to a provision referring to the law of the coastal State. If such law were incompatible with international law then the municipal law in question would constitute a violation of article 18 itself. He proposed that the phrase "to the security, to the public policy or to the fiscal interests, etc." be replaced by the words "to the security of the coastal State or to any law or regulation of that State which is not inconsistent with article 19, paragraph 1". He would delete the reference to fiscal interests which should not be singled out for special reference: a State had many other more important interests, such as public health.

45. Mr. FRANÇOIS, Special Rapporteur, said that Mr. Lauterpacht's suggestion did not seem conducive to much greater clarity; it begged the question as to what laws were inconsistent with article 18, paragraph 1.

46. Mr. SCELLE said that "public policy", or *ordre public national*, would be a dangerous term to use because there were some countries where slavery or forced labour was part of public policy. It would be wrong to suggest that foreign ships could be interfered with in order to safeguard such a policy. The territorial sea was above everything else a part of the sea, and the sea had to be treated as a unity. The coastal State had certain rights in the territorial sea, and they had to be exercised in a manner compatible with international law. But the territorial sea was still part of the sea. There was another theory according to which the territorial sea was regarded purely and simply as part of the territory of a State. That theory was as wrong in law as it was in geography. He would favour a redraft which, while retaining the reservation relating to "public policy", stipulated that the public policy of the coastal State must be consistent with international law.

47. Mr. PAL agreed with Mr. Lauterpacht and Mr. Scelle that the expression "public policy" was dangerously wide and vague and should certainly be avoided in that particular context. If even for internal purposes the term "public policy" was well-nigh undefinable, then *a fortiori* it was far too broad for the purposes of international regulation, particularly if each State was to be free to interpret it at its own discretion.

48. Mr. SCELLE, in reply to a question by the Chairman, said that the French term *ordre public* included laws which were deemed to be part of constitutional practice. With regard to the reference to fiscal interests, he agreed with Mr. Lauterpacht that there was no reason to single them out for special reference and that a better expression would be "and especially, sanitary or fiscal interests".

49. Mr. LIANG, Secretary to the Commission, drew attention to the observations contained in the report of the Second Committee of the 1930 Codification Conference,<sup>13</sup> in which it was suggested that "fiscal interests" included such matters as public health regulations.

50. The term "law", if used instead of "public policy", would give even more freedom to States to restrict the right of innocent passage.

51. Mr. LAUTERPACHT said he had not suggested that any law of the coastal State should be allowed to interfere with the right of passage. On the contrary, his amendment referred to "any law not inconsistent with the right of passage". It had been suggested that such a provision would be begging the question. That would not be so if some impartial authority were to be the judge of whether a municipal law interfered with the right of passage. Mr. Scelle, in his reference to public policy consistent with international law, was very near to his own view. Reverting to the expression "fiscal interests", he said the term was much vaguer than "fiscal regulations". The provision in question would probably prove unacceptable to maritime nations.

52. Mr. CORDOVA said that it should be provided that a coastal State was empowered to suspend the exercise of the right of innocent passage in certain cases.

53. Mr. FRANÇOIS, Special Rapporteur, said that article 20 (article 16 of A/CN.4/61) covered that point.<sup>14</sup>

54. The CHAIRMAN said that the carefully drafted 1930 provision should be retained except where some decisive argument justified an alteration to its provisions.

<sup>13</sup> *Acts of the Conference for the Codification of International Law*, vol. III: Minutes of the Second Committee, p. 213. Also in comments to article 14 of A/CN.4/61 in *Yearbook of the International Law Commission, 1953*, vol. II.

<sup>14</sup> *Vide infra*, 264th meeting, para. 1.

<sup>12</sup> *Vide infra*, 272nd meeting, para. 8.

55. Mr. ZOUREK said that, in practice, vessels only passed through the territorial sea in order to enter or leave a port if the port concerned was open. Passage to enter or to leave a port did not give rise to any difficulties. The only debatable issue was that of lateral passage. In his opinion, the term "passage" did not cover such actions as hovering; the only admissible purpose of passage was to proceed to the port of destination. Moreover, it should be clearly specified in the comment in what cases passage was "innocent". It could not be said that a ship sent to the territorial waters to take photographs of coastal defences was innocently passing through those territorial waters.

56. He did not agree with Mr. Scelle's proposal for introducing the notion of international public order which was not part of public international law. That would be tantamount to making a foreign ship the judge of whether the municipal law of the coastal State was to be disregarded in the name of a new principle, a course which would be absolutely contrary to the sovereignty of States over territorial waters recognized by international law.

57. Mr. HSU inquired what the term "public policy" suggested to the Special Rapporteur.

58. Mr. FRANÇOIS, Special Rapporteur, said that he had taken the term *ordre public* from the 1930 draft. The latter had been drawn up in French and the French term *ordre public* was an accepted term having a clear meaning in legal parlance. He saw no valid reason to depart from the 1930 wording.

59. Mr. SCELLE said that it was not possible to give an exact definition of the term "public policy". In any case, it was never possible for the legislator to lay down rules valid for all cases. It was always the courts which applied the law to special cases. The law laid down that one might kill in self-defence, but it was the judge who decided whether self-defence actually existed in a particular case. That was why he insisted that arbitration should be provided for in the draft regulation.

60. Mr. SPIROPOULOS suggested that paragraph 2 should be redrafted to provide that passage was not innocent if a foreign vessel committed acts which were not necessary for its passage through the territorial sea.

61. Mr. ZOUREK asked the Special Rapporteur whether the passage of a ship with a view to menacing the integrity or independence of the coastal State or for any other purpose incompatible with international law and the United Nations Charter would constitute a breach of paragraph 2.

62. Mr. FRANÇOIS, Special Rapporteur, said that should such a breach of the Charter occur, any State would be entitled to invoke the Charter and claim that the passage was not innocent.

63. The CHAIRMAN put to the vote article 18, paragraph 1.

*Article 18, paragraph 1, was adopted by 11 votes to none, with 2 abstentions.*

64. Mr. SCELLE proposed that the last phrase of paragraph 2 as from the words "to the security" should be deleted and replaced by the words "to the security or public policy of that State or to such of its interests as the territorial sea is intended to protect (*intérêts que l'existence d'une mer territoriale a pour but de sauvegarder*)".

65. Mr. CORDOVA said that Mr. Scelle's proposal was too wide. He would prefer to maintain the existing draft but add "health and immigration" to "fiscal" interests.

66. Mr. SCELLE said that an enumeration could not cover all cases. Besides fiscal, health and immigration interests, there was the question of fisheries, and many other legitimate interests of the coastal State.

67. The CHAIRMAN put to the vote Mr. Lauterpacht's proposal for replacing the words "to the security, to the public policy or to the fiscal interests of that State" at the end of article 18, paragraph 2, by the words "to the security of the coastal State or to any law or regulation of that State which is not inconsistent with the principles of article 19, paragraph 1".

*The proposal was adopted by 5 votes to 2, with 5 abstentions.*

68. The CHAIRMAN put to the vote Mr. Scelle's proposal for replacing the phrase "to the security, to the public policy or to the fiscal interests of that State" by the words: "to the security or public policy of that State or to such of its interests as the territorial sea is intended to protect".

*The proposal was adopted by 5 votes to 2, with 4 abstentions.*

69. Mr. CORDOVA withdrew his amendment which differed less from the original draft than that by Mr. Scelle which had just been adopted.

70. The CHAIRMAN put to the vote article 18, paragraph 2, as amended:

"Passage is not innocent when a vessel makes use of the territorial sea of a coastal State for the purpose of doing any act prejudicial to the security or public policy of that State or to such of its interests as the territorial sea is intended to protect."

*Article 18, paragraph 2, as amended, was adopted by 10 votes to none, with 3 abstentions.*

71. The CHAIRMAN put to the vote article 18, paragraph 3.

*Article 18, paragraph 3, was adopted by 12 votes to none, with 1 abstention.*

CHAPTER II : LIMITS OF THE TERRITORIAL SEA  
(*resumed*)

Article 14: Straits (article 11 of A/CN.4/61)  
(*resumed from the 261st meeting*)<sup>15</sup>

72. Mr. ZOUREK proposed certain amendments. For article 14, paragraph 1, the Commission had adopted the following text:

“In straits which join two parts of the high seas, the limits of the territorial sea shall be ascertained in the same manner as on other parts of the coast if the straits separate two or more States.”

He proposed a drafting change so that the paragraph would read:

“In straits joining two parts of the high seas and separating two or more States, the limits of the territorial sea shall be ascertained in the same manner as on other parts of the coast.”

73. For paragraph 2 he proposed the following text:

“If the breadth of the straits referred to in paragraph 1 is less than the extent of the belt of territorial sea adjacent to the two coasts, the maritime frontier of the States in question shall be determined in conformity with article 16.”

74. He proposed that paragraph 3 should read:

“If the breadth of the straits exceeds the extent of the two belts of territorial sea, the waters lying between the two belts shall form part of the high seas. Nevertheless, if as a consequence of this delimitation an area of the sea should be entirely enclosed within the territorial sea, that area may, by agreement between the coastal States, be deemed to be part of the territorial sea.”

75. Finally, he proposed that paragraph 4 should read:

“In the case of straits with only one coastal State which are used as a recognized shipping lane between two parts of the high seas, such straits shall be treated in the same way as the straits referred to in paragraph 1, and the provisions of paragraphs 1 and 3 hereof shall be applicable thereto.”

76. The CHAIRMAN said that Mr. Zourek's proposals would be discussed at a following meeting.<sup>16</sup>

CHAPTER III : RIGHT OF PASSAGE (*resumed*)

Article 19: Right of innocent passage through the territorial sea (article 15 of A/CN.4/61)<sup>17</sup>

77. Mr. CORDOVA proposed that paragraph 1 should read: “As a general rule, a coastal State may put no

obstacles . . .” The coastal State had the right to stop innocent passage in certain cases. He would, therefore, propose, in addition to the insertion of the words “as a general rule”, that the following provision should be added:

“The coastal State may suspend temporarily and in definite areas of its territorial sea the exercise of the right of innocent passage on the ground that it is necessary for the maintenance of public order. In this case, the coastal State is bound to give due publicity to the suspension.”

78. Such a provision would cover the case in which a State needed to stop even the innocent passage of foreign ships in order to protect them against damage during a rebellion. In answer to a query by Mr. Lauterpacht, he pointed out that in such cases it was not enough to warn the foreign ships concerned. The Mexican International Claims Commission had received claims concerning damage sustained by foreign ships during a rebellion, although the ships in question entered the troubled areas despite warnings.

79. Mr. FRANÇOIS, Special Rapporteur, said that article 19, paragraph 1, laid down the general principle of the right of innocent passage. Other articles, particularly articles 20 and 23,<sup>18</sup> provided for cases in which the freedom of shipping might be interfered with by the coastal State.

80. Mr. Córdova's proposal might be covered by the insertion, after the words: “A coastal State may not put obstacles in the way of innocent passage . . .”, of the words: “except in the circumstances expressly referred to in the following articles”.

81. Mr. SALAMANCA said that article 19, paragraph 1, should have been placed at the beginning of chapter III as suggested by Mr. García-Amador. A provision to the effect that a coastal State had the right to regulate the conditions of passage, as laid down for warships in article 26, paragraph 2,<sup>19</sup> should then follow.

The meeting rose at 1 p.m.

<sup>17</sup> Article 19 read as follows:

“1. A coastal State may put no obstacles in the way of the innocent passage of foreign vessels in the territorial sea.

“2. It is bound to use the means at its disposal to safeguard in the territorial sea the principle of the freedom of maritime communication and not to allow such waters to be used for acts contrary to the rights of other States.”

<sup>18</sup> *Vide infra*, 264th meeting, para. 1 and 272nd meeting, para. 8.

<sup>19</sup> *Vide infra*, 272nd meeting, footnote 14.

<sup>15</sup> *Vide supra*, 261st meeting, paras. 24-54.

<sup>16</sup> *Vide infra*, 263rd meeting, paras. 1-22.