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Summary record of the 263rd meeting

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263rd MEETING

Wednesday, 7 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. G. AMADO, Mr. R. CÓRDOVA, 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. SCELLE, 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)¹ (*continued*)

CHAPTER II: LIMITS OF THE TERRITORIAL SEA
(*resumed from the 262nd meeting*)

Article 14: (Article 11 of A/CN.4/61) Straits (*resumed from the 262nd meeting*)

1. The CHAIRMAN invited the Special Rapporteur to comment upon the new draft proposed by Mr. Zourek at the previous meeting.²

2. Mr. FRANÇOIS, Special Rapporteur, recalled the circumstances in which Mr. Zourek had prepared that new draft; at its 261st meeting, the Commission, on the proposal of Mr. Zourek, had deleted the last phrase ("even if the same State is the coastal State") from paragraph 1 of the original draft article on straits.³ It had then become necessary to supplement the draft article by new provisions concerning the case in which both shores of a strait joining two parts of the high seas belonged to the same State. That was the purpose of the draft which was being submitted by Mr. Zourek, particularly paragraph 4.

3. Nevertheless, the provisions contained in Mr. Zourek's draft seemed incomplete. There was first the case of a strait, both shores of which belonged to a

single State and which was not a recognized shipping route, having a width more than twice the breadth of the territorial sea. According to Mr. Zourek's proposal, such a strait would be governed by the terms of paragraph 1. That was tantamount to allowing States to incorporate into their territorial sea zones of high seas, which was unacceptable. Even if the interests of shipping were not apparently threatened, those of fishing, for example, might be affected.

4. There was another implication of Mr. Zourek's proposal which he could not accept. If the width of a strait of which both shores belonged to the same State did not exceed twice the breadth of the territorial sea, it would be inadmissible for that State to close it, even if it was not a recognized maritime route; passage should always be possible for ships which needed to go from one part of the high seas to another.

5. Mr. Zourek's proposal would only be acceptable in so far as it related to a belt of water situated between the coast and an island near the coast, if shipping normally circumnavigated the island. Such was the case of the Isle of Wight off the English coast.

6. For all those reasons, Mr. Zourek's new draft would have to be amended. The following words might be inserted in paragraph 1: "as well as in straits which have only one coastal State and the width of which is greater than twice the breadth of the territorial sea". In paragraph 4, the words: "which are used as a recognized shipping lane between two parts of the high seas" should be replaced by: "and the passage through which is useful to navigation between two parts of the high seas".

7. Mr. CÓRDOVA felt that the provisions in paragraph 3 of Mr. Zourek's proposal relating to enclaves of high sea were much too wide. The implication was that the coastal State could extend its sovereignty over certain areas of the high seas.

8. The Special Rapporteur's initial draft had provided that such enclaves could only be shared by the coastal States if they were not more than two miles across. That figure was, of course, an arbitrary one, but the Commission had to lay down some limit to the powers of States in that respect.

9. Mr. PAL pointed out that, in paragraph 2 of Mr. Zourek's draft, it would be preferable to keep to the term "limits of the territorial sea" rather than introduce the new concept of "maritime frontier".

10. With regard to paragraph 3, he agreed with Mr. Córdova that States should not have the right to share enclaves of high sea enclosed within straits, irrespective of the breadth of those enclaves. He would prefer the Commission to adhere to the provision contained in paragraph 2 of the Special Rapporteur's initial draft.

11. Finally, the provisions of paragraph 3 relating to the partitioning of the waters of a strait by agreement between the coastal States could not be applied to paragraph 4 of Mr. Zourek's draft, which dealt exclusively with straits having only one coastal State. Under

¹ *Vide supra*, 252nd meeting, para. 54 and footnotes.

² *Vide supra*, 262nd meeting, paras. 72-75.

³ *Vide supra*, 261st meeting, para. 46.

paragraph 3 the two coastal States were to be authorized to apportion and appropriate the intervening areas of the high seas by agreement. The fact that opinions varied might conceivably operate as a check. Where, however, there was only one coastal State, the rule meant simply that the areas of the high seas in question would be surrendered entirely to that State.

12. Mr. ZOUREK, replying first to Mr. François, said that his proposal did not claim to cover all cases, and that was deliberate; he did not wish to depart from the international law in force which, no more than the draft regulations prepared by the 1930 Codification Conference, could not deal with all conceivable cases. The Special Rapporteur's own initial draft related merely to the case of straits "which form a passage between two parts of the high sea". A strait having two or three coastal States was in fact in the same position as an inland sea surrounded by several States. He could see no useful purpose in considering enclaves between two belts of territorial sea in those straits, which in practice were not very large, as portions of the high seas.

13. The Special Rapporteur had also referred to fishing interests; in practice, many States had reserved exclusive fishing rights for their nationals in zones well outside the territorial sea. *A fortiori*, the coastal State of a strait should have the right to enact similar provisions with respect to the waters of straits.

14. Mr. LAUTERPACHT doubted if there existed many—or indeed any—enclaves of the high seas less than two miles across. He did not think so. If any such rare case existed, the States concerned could be left to decide the status of such enclaves by mutual agreement. It was an excess of refinement to attempt to cover such situations.

15. Mr. FRANÇOIS, Special Rapporteur, said that delegations to the 1930 Codification Conference, which had included shipping experts, had considered it necessary to discuss the problem and had suggested a solution; he had simply incorporated that solution in his draft. Presumably, the 1930 Conference had had a good reason for discussing the question and the Commission should not fail to deal with it.

16. Mr. ZOUREK thought that the Vancouver Straits contained enclaves of less than two miles in breadth. The example hardly supported the Special Rapporteur's draft provisions, for the United States and Canada had divided the enclaves in question.

17. Mr. AMADO said that if the case of enclaves was really a theoretical one, the Commission should not discuss it.

18. Mr. CORDOVA agreed with the Special Rapporteur that the Commission could not ignore a problem which had been discussed by the experts at the 1930 Conference. He could see no objection to the rule suggested by the Special Rapporteur. The only question was that of the maximum breadth of two miles. The choice of that figure was certainly arbitrary. On

the whole, however, paragraph 2 of the Special Rapporteur's initial draft seemed acceptable.

19. Mr. HSU said the Commission should first decide whether enclaves should be treated in the same way as the territorial sea; if the Commission decided that they should, there was no reason for limiting the rule to areas which did not exceed two miles in breadth.

20. Mr. FRANÇOIS, Special Rapporteur, pointed out that Mr. Zourek had not answered his most important objection, which concerned the case of a strait wider than twice the breadth of the territorial sea. To exclude such a case from the general rule, and to leave coastal States free to partition them at will, would indeed be a departure from the international law in force.

21. Mr. ZOUREK stressed that his draft paragraph 4 only dealt with cases already provided for by customary law. He pointed out that there existed no rules in international law governing the régime of straits which were not sea routes indispensable to international navigation. The Special Rapporteur's proposed amendment to paragraph 1 would in effect restore the phrase which the Commission had earlier decided to delete.

22. The CHAIRMAN pointed out that the two phrases were not identical, as the Special Rapporteur had added the condition "and the width of which is greater than twice the breadth of the territorial sea". In any case, the Commission could more usefully continue the discussion after the Special Rapporteur had submitted his amendment in writing.⁴

CHAPTER III: RIGHT OF PASSAGE (resumed from the 262nd meeting)

Article 19: Right of innocent passage through the territorial sea (article 15 of A/CN.4/61) (resumed from the 262nd meeting)⁵¹

23. Mr. FRANÇOIS, Special Rapporteur, explained that paragraph 1 of the draft article embodied the principle of free passage through the territorial sea which had been adopted by the 1930 Codification Conference. That principle was a very general one and its application was in a certain measure qualified by the articles which followed. The Commission might wish to add, at the end of paragraph 1, a provision along the following lines: "except as hereinafter otherwise provided".

24. Paragraph 2 was based on the judgement given on 9 April 1949 by the International Court of Justice in the Corfu Channel case.⁶ In that judgement, the Court had stressed that it was the duty of every State not to allow its territory to be used for acts contrary to the interests of other States.

25. Mr. CORDOVA said the general rule was that a State was sovereign over its territorial sea. Hence he

⁴ *Vide infra*, 271st meeting, para. 1.

⁵ *Vide supra*, 262nd meeting, paras. 77-81.

⁶ *I.C.J. Reports 1949*, p. 4.

could not agree that the right of passage should be raised to the status of a principle which prevailed over that rule. In fact, a State had the right, on security grounds, to forbid even the innocent passage of foreign ships through its territorial sea. The Commission had already accepted that principle by adopting the preceding article, and the same principle should be restated in article 19. In some cases even innocent passage might constitute a danger, and the coastal State to which the territorial sea belonged was the only proper judge on that point.

26. In the circumstances, he proposed the following amendments to the Special Rapporteur's draft:

(1) In paragraph 1, before the words: "a coastal State" the words "As a general rule" should be inserted.

(2) A new paragraph 2 should be inserted to read:

"2. 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."

(3) The old paragraph 2 to become paragraph 3.

27. Mr. SCALLE thought Mr. Córdova's amendments in no way altered the substance of the Special Rapporteur's draft. It had never been contended that States should not have the right to forbid access to their territorial sea in certain cases of danger to shipping. Nevertheless, Mr. Córdova's amendments were based on a mistaken principle which, if applied, would eventually mean that the territorial sea would be treated in the same way as the territory proper. Accordingly it conflicted with the traditional view that the sea was a unit and international public domain.

28. Mr. LAUTERPACHT thought Mr. Córdova's amendments should be considered in connexion with article 20 (Steps to be taken by the coastal State).⁷ Those amendments contained nothing objectionable, unless it was held that any exceptions to the principle of the freedom of passage contemplated therein were already authorized under the provisions relating to the security of States, in article 18.⁸

29. Moreover, he thought the right of innocent passage was the general rule and, as suggested at the previous meeting by Mr. García-Amador,⁹ it would be logical to formulate it at the beginning of chapter III. Accordingly he submitted the following draft provision:

"Subject to the provisions of this regulation, vessels of all States shall enjoy the right of innocent passage through the territorial sea."

30. He added that at a suitable moment he would raise two new points: firstly, the régime of the territorial

sea as applied to the waters lying between the coast and the straight base lines; and secondly, the question of artificial straits, such as the Kiel and Panama canals.

31. Mr. ZOUREK submitted the following amendments:

(1) In paragraph 1, the words "Subject to the provisions of articles 20 and 21" should be inserted before the words "a coastal State", the words "in the territorial sea" should be omitted, a comma added and the words "as this passage is defined in article 18" inserted. Accordingly the sentence in question would read:

"Subject to the provisions of articles 20 and 21, a coastal State may put no obstacles in the way of the innocent passage of foreign vessels, as this passage is defined in article 18."

(2) The following sentence should be added to paragraph 1:

"It may, however, close certain areas of its territorial waters to shipping, provided that recognized maritime routes are left open."

(3) Paragraph 2 should be deleted.

32. He pointed out that the order in which the articles in chapter III were arranged did not correspond to the principle adopted by the Commission in connexion with the earlier draft articles, according to which the sovereignty of the State over the territorial sea constituted the rule, and the right of innocent passage only an exception. It would be more logical to specify first the manifestations of that sovereignty and then to refer to the right of innocent passage through the territorial sea.

33. If the Commission refused to adopt that approach the new draft article 19 should, at least, contain a reference to the subsequent articles. It would also be necessary to add that the coastal State had the right to close certain areas of its territorial waters to shipping; such a clause was moreover in absolute agreement with existing international law. The coastal State should be free to close those areas to navigation even for long periods provided that routes used by international maritime traffic were left open.

34. He did not agree with Mr. Lauterpacht's proposal that the clause contained in paragraph 1 of article 19 should be the introductory clause of chapter III. The introductory clause of chapter III should be capable of applying to all vessels, regardless of whether they were warships, merchant vessels, or ships of any other kind. Actually, however, identical rules could not be applied to all types of ships so far as the right of passage was concerned. Moreover, international law as reflected in State practice, jurisprudence and internal legislation clearly did not recognize the right of passage in the case of warships.

35. The CHAIRMAN recalled that the Commission had taken the Special Rapporteur's draft as a basis for discussion. The order in which the provisions of the

⁷ *Vide infra*, 264th meeting, para. 1.

⁸ *Vide supra*, 262nd meeting, paras. 32, 63, 68, 70, 71.

⁹ *Ibid.*, para. 33.

chapter should be arranged was clearly not a question of form and hence not a question that could be referred to the Drafting Committee. The Commission would have to settle it itself after studying the articles submitted by the Special Rapporteur.

36. He put to the vote paragraph 1 of article 19 incorporating Mr. Lauterpacht's amendment as accepted by the Special Rapporteur:

“Subject to the provisions of this regulation vessels of all States shall enjoy the right of innocent passage through the territorial sea.”

Article 19, paragraph 1, as thus amended, was adopted by 12 votes to none, with 1 abstention.

37. The CHAIRMAN said that the vote did not prejudice the decision as to the final place of that clause in the draft regulation, and that the amendments submitted by Mr. Córdova and Mr. Zourek would be put to the vote when the Commission considered article 20.¹⁰

38. Mr. ZOUREK remarked that the right of the coastal State to close certain areas of the territorial waters to shipping, provided that the recognized sea lanes were left open, involved a principle which had a bearing on the problem as a whole.

39. Mr. SCELLE said that apparently Mr. Zourek wished the territorial sea to be governed by the rules applied to the air space. He strongly opposed any such tendency.

40. The CHAIRMAN invited debate on paragraph 2 of article 19.

41. Mr. LAUTERPACHT said he unhesitatingly approved the Special Rapporteur's draft. He recalled that, as the Special Rapporteur had pointed out in his comment, the paragraph was based on the International Court's decision in the Corfu Channel case. The Court had held Albania liable because that country had failed to notify States of the presence of mines which it had admittedly laid itself. It should therefore be stipulated that the coastal State was under a duty to give notice of any serious danger to shipping.

42. It was not desirable to go so far as to say that the coastal State was under a duty to remove obstacles to shipping, for example, to raise submerged wrecks, but it should notify the existence of such obstacles. The Commission should not impose excessively onerous obligations on the coastal State, but it would be useful to specify minimum obligations.

43. Mr. CORDOVA conceded that in its decision in the Corfu Channel case the Court had said that the coastal State should not allow its territorial waters to be used for acts contrary to the rights of other States. The Special Rapporteur's draft paragraph 2 was based on that decision. The Special Rapporteur had, however, gone very much further than the Court when he

said that the State was “bound to use the means at its disposal”; that formula would impose on the coastal State a positive obligation which was both excessive and inconsistent with the Court's decision.

44. Mr. FRANÇOIS, Special Rapporteur, did not think there was any difference of substance between Mr. Lauterpacht's draft and his own. He read the extracts from the Court's decision in the Corfu Channel case reproduced in the comments of his second report¹¹ and stressed the words: “the principle of the freedom of maritime communications”. He pointed out in reply to Mr. Córdova that the Court had said “the obligations incumbent upon...” In his report he had modified that expression and adopted the formula “is bound to use the means at its disposal”, terms which were perfectly usual in international law.

45. Mr. CORDOVA said the Commission could hardly impose on the coastal State the obligation to ensure freedom of navigation in the territorial sea; it did not in fact contest the State's right to lay mines in those waters. The right of innocent passage could not be an absolute right.

46. Mr. LAUTERPACHT recalled that in time of peace a coastal State was not normally entitled to lay mines in its territorial sea.

47. Mr. FRANÇOIS, Special Rapporteur, said that the draft regulation as a whole was concerned with the régime of the territorial sea in peacetime only.

48. Mr. ZOUREK said that even in peacetime there were periods of international tension which could not be termed war but during which a State might require to take security measures.

49. Mr. CORDOVA agreed with Mr. Zourek. Even in peacetime, a State erecting fortifications in its territorial sea could legitimately object to foreign ships navigating too close to those fortifications. He proposed that paragraph 2 should be deleted.

50. Mr. ZOUREK said that paragraph 2 was drafted in such general terms that it would impose excessive duties upon States. Its terms were very much wider than the International Court's judgement in the Corfu Channel case. In wartime, a neutral coastal State could not be held liable in respect of acts committed in its territorial waters by the belligerents. In any case, the Court's decision in the Corfu Channel case was not a precedent; with one exception the Court's conclusions had not been adopted unanimously by the judges and a number of them were controversial; moreover, the judgement dealt with the particular case of a certain strait, whereas article 19 related to the territorial sea in general. He was certain that States would find the Special Rapporteur's draft unacceptable and he accordingly proposed that paragraph 2 should be deleted.

¹⁰ *Vide infra*, 264th meeting, para. 1.

¹¹ A/CN.4/61 in *Yearbook of the International Law Commission, 1953*, vol. II. See also *I.C.J. Reports 1949*, p. 22.

51. Mr. LAUTERPACHT was in favour of retaining paragraph 2 but proposed that the words "to safeguard in the territorial sea the principle of freedom of maritime communication" should be replaced by "to ensure in the territorial sea the respect of the principle of the freedom of maritime communication". The word "safeguard" lent itself to the interpretation that the coastal State was bound to take protective action, such as removal of wrecks. He pointed out that the coastal State would only assume the duties in question in time of peace and within the limits of the means at its disposal. He felt strongly that the coastal State should notify other States of anything that interfered with freedom of communication. Perhaps it was sufficient to make that last point clear in the comment to the article.

52. Mr. PAL said that Mr. Lauterpacht's amendment did not appreciably alleviate the obligation that was being imposed upon the coastal States. Under the amendment, the coastal State would still assume a positive duty. It would be better to say that the coastal State "is bound not to interfere in the territorial sea with the freedom of maritime communication", subject possibly to a proviso to the effect that it had the right to safeguard its own interests in the territorial sea. The "innocent" character of passage might depend on the nationality of the ships involved. If the coastal State was at war with another State and a ship belonging to a third State attempted to pass through its territorial sea, such passage was certainly "innocent" from the legal standpoint; but the coastal State could hardly be forbidden in that case to lay mines in its territorial sea. In order to avoid such complications, perhaps paragraph 2 should be deleted altogether, or else a provision should be inserted to the effect that the coastal State was bound not to allow its territorial waters to be used for acts contrary to the rights of other States.

53. The CHAIRMAN pointed out that part of Mr. Pal's last proposal was already implicitly contained in paragraph 1 as adopted by the Commission.

54. Mr. AMADO said that the provisions of paragraph 2 were calculated to protect the interests of the coastal State as well as those of other States; the coastal State had to ensure freedom of maritime communication in its territorial sea if it wanted its own ships to navigate freely in the territorial sea of other States.

55. Mr. SCELLE said that paragraph 2 was indispensable to compensate for the far-reaching rights granted to the coastal State in the territorial sea.

56. Mr. HSU felt that the Special Rapporteur's draft, even as amended by Mr. Lauterpacht, would place a very onerous obligation upon smaller Powers, particularly during periods of prolonged international tension. A small State which did not have a powerful navy could not be expected to answer for acts committed in its territorial sea by other States.

57. Mr. LAUTERPACHT said that the words "means at its disposal" should reassure Mr. Hsu. No one denied that the coastal State exercised sovereign rights over the territorial sea, but that State nonetheless had, in respect of the maritime portion of its territory, international obligations differing from those which applied to the rest of the territory; that was specifically true of the right of passage. Paragraph 2 was only the application to the special case of maritime navigation of a general rule of international law: the rule that a State must not allow its territory to be used for acts contrary to the rights of other States.

58. Mr. HSU, replying to Mr. Lauterpacht, said that even if the convention did not specifically stipulate it, it was axiomatic that no one could be bound to perform the impossible. He insisted that the duties imposed by paragraph 2 were excessive.

59. Mr. FRANÇOIS, Special Rapporteur, accepted Mr. Lauterpacht's amendment.

60. Mr. ZOUREK said the possible implications of paragraph 2 in extending the coastal State's responsibility were far-reaching. For example, in its judgement in the Corfu Channel case, the International Court had relied on a report by experts who had assumed, among other things, that atmospheric conditions had been normal.

61. Mr. HSU asked if Mr. Lauterpacht really thought an express stipulation to cover the particular point was essential. Every coastal State naturally wished to retain sovereignty over its territorial sea and to punish any violation of its rights.

62. Mr. LAUTERPACHT recalled that the text submitted to the Commission took into account a very important decision adopted almost unanimously by the International Court of Justice. Unless it had very good reasons for doing so, the Commission should not disregard the authority of the Court's decision.

63. The CHAIRMAN put to the vote Mr. Zourek's proposal that paragraph 2 should be deleted.

The proposal was rejected by 7 votes to 5, with 1 abstention.

64. The CHAIRMAN put to the vote Mr. Pal's proposal that the words: "It is bound to use the means at its disposal to safeguard in the territorial sea the principle of the freedom of maritime communication..." should be replaced by the words: "It is bound not to interfere in the territorial sea with the freedom of maritime communication".

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

65. The CHAIRMAN put to the vote paragraph 2 incorporating Mr. Lauterpacht's amendment as accepted by the Special Rapporteur. The draft paragraph would read: "It is bound to use the means at its disposal to ensure in the territorial sea the respect of 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.”

Article 19, paragraph 2, as thus amended, was adopted by 5 votes to 4, with 3 abstentions.

66. Mr. ZOUREK explained that he had voted against paragraph 2 because under it States would have to accept obligations not contemplated by existing international law.

67. Mr. HSU said that he had voted against paragraph 2 because he had not been convinced by the arguments of the members of the Commission who thought the clause indispensable. Nor did he think that the paragraph in question could be based on the International Court's decision in the Corfu Channel case, as the text adopted differed greatly from the Court's conclusions.

68. The CHAIRMAN said that, as the Commission had not yet settled the order in which the provisions of chapter III should be arranged, article 19 as a whole should not be put to the vote at that stage in the discussion.¹²

The meeting rose at 1.5 p.m.

¹² See also below, 264th meeting, para. 57, and 277th meeting, paras. 22-32.

264th MEETING

Thursday, 8 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. G. AMADO, Mr. R. CÓRDOVA, 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)¹ *(continued)*

CHAPTER III: RIGHT OF PASSAGE *(continued)*

Article 20: Steps to be taken by the coastal State (article 16 of A/CN.4/61)²

1. Mr. CÓRDOVA said that at the previous meeting he had submitted a draft paragraph to be inserted in article 19;³ he now thought it more apposite for the Commission to consider it in connexion with article 20. In his opinion, article 20 as drafted by the Special Rapporteur was incomplete. It was more logical, in dealing with the subject of the right of passage, to begin with a general statement to the effect that the sovereignty of the coastal State should be exercised in accordance with the following articles. Such an introductory statement would dispense with the article proposed at the previous meeting by Mr. Lauterpacht. The initial statement could be followed by his (Mr. Córdova's) draft paragraph 2, reading:

“2. 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.”

2. Article 20 could then serve as a basis for a third paragraph which would lay down the way in which the sovereignty of the coastal State should be exercised in the matter of passage through its territorial sea. In article 20 the negative approach as expressed in the words “does not prevent” was unsatisfactory. It would be more logical to assert the rights of sovereignty and to specify how they were to be exercised; the right of passage was an exception to absolute sovereignty and should be mentioned in second place.

3. Mr. FRANÇOIS, Special Rapporteur, said that although Mr. Córdova's proposed rearrangement appeared logical, he (the Special Rapporteur) had followed the

¹ *Vide supra*, 252nd meeting, para. 54 and footnotes.

² Article 20 read as follows:

“The right of passage does not prevent the coastal State from taking all necessary steps to protect itself in the territorial sea against any act prejudicial to the security, public policy or fiscal interests of the State, and, in the case of vessels proceeding to inland waters, against any breach of the conditions to which the admission of those vessels to those waters is subject.”

³ *Vide supra*, 263rd meeting, para. 26.