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**Summary record of the 265th meeting**

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straight base-lines drawn in accordance with article 6.”

59. He said that some such provision was rendered necessary by the possible implication of the judgement of the International Court of Justice in the Fisheries case.<sup>12</sup> The original issue in that case had been the question whether the Norwegian decree of 1935 delimiting the Norwegian fisheries zone was in conformity with international law. The International Court had, however, acknowledged certain waters, covered by those decrees, as internal waters of Norway in general terms. The result was that the decision had unexpected repercussions on the right of passage. The reasons which militated in favour of the Court's decision so far as fisheries and similar economic rights were concerned did not necessarily—or properly—apply to the question of the right of passage. The Commission should make it clear that the character of internal waters attributed to the sea zones situated between straight base lines and the coast did not impair the freedom of passage therein.

60. Mr. SCALLE said that the sea had to be treated as a single unit. The rights of the coastal State decreased to seaward as the distance from the coast increased. A State could close a port; it could not interfere with freedom of passage in the territorial sea. Internal waters were a zone in which the State had greater powers than in the territorial sea, but they were nonetheless part of the sea.

61. The CHAIRMAN said that the concept of internal waters had been adopted by the International Court simply to provide for the special case of the Norwegian *skjaergaard*. In view of the peculiar character of the archipelagoes off the Norwegian coast, the Court had accepted the notion that the coast of Norway was constituted by the outer line of the *skjaergaard*. The waters thus left within Norway, which constituted internal waters, were extremely dangerous to navigation because of the many rocks and shoals. In practice, it was impossible for foreign ships to navigate therein except along the course indicated to them by the Norwegian authorities. There was no point in making any provision for freedom of passage in such waters. The internal waters recognized by the International Court included a series of channels, some of which, like the Indreleia, constituted routes prepared by means of artificial aids to navigation provided by Norway.

62. Mr. LAUTERPACHT said that straight base lines had been accepted by the International Court in cases other than the *skeargaard*. The object of the straight base lines system was to safeguard the legitimate interests of coastal States. The question before the Commission was whether the reasons underlying the straight base lines system justified interference with the freedom of navigation. He considered that the full jurisdiction of a coastal State over the internal waters in question should extend to such matters as the protection of resources and the regulation of fisheries; freedom of navigation should, however, be safeguarded.

It was therefore necessary for the Commission to adopt an article providing for the right of passage through these internal waters.

63. Mr. ZOUREK said that under existing international law the waters between straight base lines and the coast were internal waters of the coastal State. It would go beyond the scope of the Commission's task to draft a detailed regulation concerning internal waters. The base lines constituted demarcation lines between the internal waters and the territorial waters. Such waters included ports and it was universally agreed that the régime of ports was different from that of the territorial sea. It was unnecessary, and indeed undesirable, to make special provision for the right of passage through internal waters. Such a provision would constitute an undesirable innovation in existing international law.

The meeting rose at 1 p.m.

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## 265th MEETING

Friday, 9 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. 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).

<sup>12</sup> *I.C.J. Reports 1951*, p. 116.

### Order of business

1. The CHAIRMAN said he did not think the Commission could complete the examination of the articles on the territorial sea in the current session. Moreover, as the General Assembly at its next session was to debate the question of defining aggression and the establishment of an international criminal court, the Commission should discuss forthwith Mr. Spiropoulos' report on the draft Code of Offences against the Peace and Security of Mankind. He therefore suggested that the Commission should begin the consideration of that report on Monday, 12 July; it would also endeavour to finish, before the end of the session, the study of those articles on the territorial sea which did not concern the breadth of the territorial sea, and also to deal with the item relating to nationality to the extent agreed earlier.<sup>1</sup>

2. Mr. FRANÇOIS, Rapporteur, said the Commission might perhaps submit to Governments the articles which it had adopted and invite their comments on the question of the breadth of the territorial sea and on the articles relevant thereto.

3. Mr. HSU said the Commission should not submit an incomplete text to Governments, particularly as the question of the breadth of the territorial sea decisively affected all the articles of the regulation.

4. Mr. LIANG, Secretary to the Commission, said the General Assembly was anxious that the Commission should discuss the draft Code of Offences against the Peace and Security of Mankind during the current session. He added that the Secretariat did not expect to receive any further comments from Governments on the Code.

5. After an exchange of views, the CHAIRMAN put to the vote his proposal that the debate on Mr. Spiropoulos' report should begin on Monday, 12 July 1954.

*The proposal was adopted by 6 votes to 3, with 5 abstentions.*

6. Faris Bey KHOURI said he had voted against the President's proposal because he felt that the Commission should not discuss a report which it would be unable to deal with exhaustively during the session.

**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>2</sup> (continued)

#### CHAPTER III: RIGHT OF PASSAGE (continued)

##### *Proposed new article on freedom of passage in certain internal waters (continued)*

7. Mr. LAUTERPACHT said that provisionally he wished to withdraw his draft new article relating to the

area of water comprised between the coastline and straight base lines, which he had submitted at the 264th meeting.<sup>3</sup> He reserved the right to resubmit it at a later meeting.

##### *Proposed new article relating to the right of passage in favour of land-locked States*

(resumed from the 264th meeting)

8. Mr. SALAMANCA said he had proposed at the 264th meeting<sup>4</sup> that a new article be inserted providing that, when a State undertook international obligations relating to freedom of transit over its territory, either as a general rule or in a convention, the obligations thus assured also applied to passage of the territorial sea. He wished to amend his proposal in view of the Special Rapporteur's objection that such a provision would be tantamount to an interpretation of conventions between States. Nevertheless, in certain cases, the right of passage was much more important than the respect due to the sovereign rights of a coastal State over the territorial sea. For example, upon the completion of the St. Lawrence Seaway it would be absolutely essential for United States vessels to be able to pass freely through the territorial waters of Canada. Moreover, in practice, innocent passage was the rule and non-innocent passage the exception, whatever the Commission's somewhat negative attitude might suggest to the contrary.

9. The CHAIRMAN said it might be sufficient to insert the explanations referred to by Mr. Salamanca in the report on the present session.

10. Mr. SALAMANCA said that some such provision as he had suggested should actually form part of the regulation.

11. Mr. FRANÇOIS, Special Rapporteur, said that article 20 did not, of course, prevent a coastal State from granting to another State, by a special convention, rights more extensive than those contemplated in the draft regulation. That was self-understood, but he would not object to an express provision to that effect being inserted in the article.

12. The CHAIRMAN said a coastal State could hardly waive its right to restrict the right of passage in cases in which restrictions were necessary for security reasons.

13. Mr. SALAMANCA, replying to a question by Mr. Córdova, said that under its 1904 treaty with Chile, Bolivia had in perpetuity the absolute right of transit not only over Chilean territory proper, but also in the territorial sea of Chile. At a later stage in the debate, he would submit a new draft article along the lines he had indicated.

<sup>1</sup> *Vide supra*, 252nd meeting, para. 53.

<sup>2</sup> *Ibid.*, para. 54 and footnotes.

<sup>3</sup> *Vide supra*, 264th meeting, paras. 58-63.

<sup>4</sup> *Ibid.*, paras. 46-56.

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

(resumed from the 264th meeting)<sup>5</sup>

14. The CHAIRMAN put to the vote the whole of article 20, as amended:

"1. The coastal State may take all necessary steps in the territorial sea to protect itself against 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, 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.

"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 and security. In this case, the coastal State is found to give due publicity to the suspension."

*Article 20, as amended, was adopted by 9 votes to 2, with 2 abstentions.*

*Article 21 : Duty of foreign vessels during their passage  
(Article 17 of A/CN.4/61)<sup>6</sup>*

15. Mr. GARCÍA-AMADOR said that the laws and regulations enacted by the coastal State should conform not only to international usage but also to the provisions of the regulation itself. He proposed that paragraph 1 should be amended accordingly.

16. Mr. FRANÇOIS, Special Rapporteur, did not oppose such an amendment.

17. Mr. LAUTERPACHT felt that the words "international usage" in the English text did not correspond exactly to the French expression *coutume internationale* and were difficult to interpret. It would be simpler to say "international law". He proposed an amendment reading: "... in conformity with international law, including the articles of this regulation."

18. Mr. CORDOVA thought that if the expression "international law" was used, it would be unnecessary

<sup>5</sup> *Vide supra*, 264th meeting, paras. 1-34.

<sup>6</sup> Article 21 read as follows:

"1. Foreign vessels exercising the right of passage shall comply with the laws and regulations enacted in conformity with international usage by the coastal State, and, in particular, as regards:

- (a) The safety of traffic and the protection of channels and buoys;
- (b) The protection of the waters of the coastal State against pollution of any kind caused by vessels;
- (c) The protection of the products of the territorial sea;
- (d) The rights of fishing, shooting and analogous rights belonging to the coastal State.

"2. The coastal State may not, however, apply these rules or regulations in such a manner as to discriminate between foreign vessels of different nationalities, nor, save in matters relating to fishing and shooting, between national vessels and foreign vessels."

to refer to the regulation which, if adopted, would become an integral part of international law.

19. Mr. AMADO pointed out that the words "international usage" covered many practices and customs which were of the greatest importance in maritime law. It would therefore be preferable to retain the word "usage".

20. Mr. FRANÇOIS, Special Rapporteur, said that that was why he had used the word which had, moreover, been adopted by the 1930 Codification Conference.

21. Mr. LAUTERPACHT pointed out that the Special Rapporteur's report<sup>7</sup> reproduced the observations of the experts of the 1930 Codification Conference who had referred to "international law". The word "usage" was not sufficiently precise and would weaken the article.

22. Mr. CORDOVA also preferred the words "international law". It was impossible to make a mere practice adopted by seamen into a rule of international law binding upon States.

23. Mr. PAL proposed the words "international law and usage".

24. Mr. GARCÍA-AMADOR proposed the formula: "... in conformity with the articles of this regulation and with the other rules of international law."

25. Mr. SCELLE agreed with Mr. Amado. He proposed the following wording: "... in conformity with usage and with the articles of this regulation."

26. Mr. ZOUREK said the Commission was expected to codify all the existing international law relating to the territorial sea. It could therefore not refer to international usage. He proposed the words "... in conformity with the present articles."

27. Mr. FRANÇOIS, Special Rapporteur, thought Mr. Zourek's proposal would grant the coastal State excessive rights. The coastal State undoubtedly had the right to regulate passage through its territorial sea, but only within the limits of international law. Besides, the Commission could not possibly codify the vast number of rules, based on usage, concerning the passage of foreign ships. He accepted Mr. Scelle's proposed formula.

28. Mr. PAL also supported Mr. Scelle's proposal and withdrew his own amendment.

29. Mr. GARCÍA-AMADOR preferred his own proposal to Mr. Scelle's as the latter did not cover either conventional law or the general principles of international law.

30. Mr. LAUTERPACHT and Mr. CORDOVA supported Mr. García-Amador's proposal.

*Mr. Zourek's proposal that the words "international*

<sup>7</sup> A/CN.4/61 in *Yearbook of the International Law Commission, 1953, vol. II.*

usage" should be replaced by "the articles of this regulation" was rejected by 9 votes to 1, with 4 abstentions.

Mr. García-Amador's proposal that the words "in conformity with international usage" should be replaced by the words "in conformity with the articles of this regulation and with the other rules of international law" was adopted by 7 votes to 5, with 2 abstentions.

31. The CHAIRMAN said that in view of the adoption of Mr. García-Amador's amendment, which was further removed from the original text than Mr. Scelle's proposal, the latter did not have to be put to the vote.

32. Mr. AMADO expressed surprise at the Commission's decision to drop the expression "international usage"; in international law the *opinio juris* carried as much weight as conventional law.

33. Mr. ZOUREK explained that he had voted against Mr. García-Amador's amendment because he took the view that the draft articles should embody a complete codification of existing international law; otherwise they would not be of any great value.

34. Mr. SCELLE explained that he had voted against the amendment because the terms adopted were at variance with the language usual in conventions.

35. Mr. SPIROPOULOS said that he had voted against the amendment because he saw no valid reason for altering the text drafted at the 1930 Codification Conference by experts in maritime law.

36. The CHAIRMAN invited further comments on article 21, paragraph 1.

37. Mr. LAUTERPACHT asked what was meant by "shooting rights" in sub-paragraph (d).

38. Mr. FRANÇOIS, Special Rapporteur, replied that the words referred to sealing and under-water fishing.

39. Mr. LAUTERPACHT said that the enumeration of the cases in which foreign vessels were under a duty to comply with the laws and regulations enacted by the coastal State did not include the most important obligations, namely, those relating to public order and security. The point was dealt with in article 20;<sup>8</sup> he proposed that a new sub-paragraph should be inserted at the beginning of paragraph 2 which would refer expressly to the laws and regulations enacted under article 20.

40. Mr. CORDOVA supported Mr. Lauterpacht's proposal. Article 21 clearly had to mention the most important cases in which a State regulated the passage of vessels through its territorial sea.

41. Mr. LIANG, Secretary to the Commission, pointed out that articles 20 and 21 were not as closely connected as one might believe. As stated in the comments, article 20 gave States the right to verify innocent

character of passage and to take all necessary security measures; it gave States the right to take action even if no specific law or regulation existed, while article 21 merely enumerated a number of cases which were governed by usage. Logically, therefore, the two articles should remain quite distinct.

42. Mr. CORDOVA said he was not convinced by that argument; he did not understand why the Commission should emphasize the cases covered by usage and not even mention the all-important obligations of ships with regard to security.

43. Mr. SPIROPOULOS said it would be imprudent to upset the order of clauses drafted by experts in maritime questions.

44. Mr. AMADO pointed out that if the Commission formulated a rule which strengthened the rights of States, it would first and foremost be adding to the power of the great maritime nations. Article 21 referred to questions governed by international usage which embodied a multitude of rules.

45. The CHAIRMAN put to the vote Mr. Lauterpacht's proposal that the enumeration contained in article 21, paragraph 1, should be preceded by the words "Those enacted under article 20".

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

46. The CHAIRMAN put to the vote article 21, paragraph 1, as amended by the adoption of Mr. García-Amador's amendment.

*Article 21, paragraph 1, as amended, was adopted by 8 votes to 3, with 3 abstentions.*

47. Mr. FRANÇOIS, Special Rapporteur, said that Mr. Salamanca, by giving the example of the St. Lawrence Seaway, had shown that in certain special cases a State might grant privileges in its territorial sea to another State. That possibility should be taken into consideration. In its work of codification, the Commission had to ensure that States granted certain minimum rights in their territorial sea, but it could not oblige them to extend equal treatment to all flags. Accordingly, he felt inclined to withdraw paragraph 2 of article 21.

48. Mr. SCELLE agreed that the point raised by Mr. Salamanca had to be allowed for. Paragraph 2, at least in the form in which it had been proposed, was therefore too far-reaching.

49. Faris Bey el-KHOURI agreed that paragraph 2 might be dispensed with. States could always sign a convention providing for reciprocity of treatment.

50. Mr. AMADO pointed out that paragraph 2 did not impose any obligations upon foreign vessels, whereas the whole purpose of article 21 was precisely to deal with the duties of foreign vessels in the territorial sea. In view of that anomaly, he agreed that paragraph 2 should be omitted.

<sup>8</sup> *Vide supra*, para. 14.

51. Mr. LAUTERPACHT agreed that paragraph 2 was inconsistent with international practice; a State often granted special rights in its territorial sea to other States. Moreover, the Commission should not regard the articles adopted by the 1930 Codification Conference as sacrosanct. Nevertheless, if paragraph 2 was dropped altogether, States might consider themselves free to discriminate in the matter of safety of shipping, and that would be going too far.

52. Mr. FRANÇOIS, Special Rapporteur, gathered that the Commission wished paragraph 2 to be deleted. Ideally, of course, all forms of discrimination as between ships of different nationalities should have been barred, but in practice that was hardly feasible, even in respect of safety of shipping, for a State might conceivably require foreign ships, but not its own ships, to carry pilots in treacherous channels. By deleting paragraph 2, the Commission was not in any way acknowledging the right of States to take discriminatory measures. The question would merely be left to the discretion of each State. In view of the opinion expressed, he formally withdrew paragraph 2 of article 21; he would explain in the comment that although the Commission had in that respect departed from the text prepared at the 1930 Codification Conference, it did not mean to imply that States were entitled to make unjustified discriminations.

53. Mr. ZOUREK pointed out that paragraph 2 contained two quite distinct principles; firstly non-discrimination between foreign vessels of different nationalities, and secondly, non-discrimination between national vessels and foreign vessels. The latter principle could not be retained; it was normal for a State to grant preferential treatment to its own nationals in its territorial sea. Non-discrimination between different flags was, however, a cardinal principle which could hardly be disregarded. Accordingly, he proposed that the second phrase of article 21, paragraph 2 ("nor, save in matters relating to fishing and shooting, between national vessels and foreign vessels") should be deleted but that the first phrase should be retained.

54. Mr. LAUTERPACHT said the distinction between the two principles was a legitimate one; one of them could be retained while the other should be rejected.

55. Mr. FRANÇOIS, Special Rapporteur, said that one consequence of Mr. Zourek's proposal would be that two Scandinavian countries with very similar coastlines would be debarred from granting each other's vessels certain privileges in their respective territorial waters.

56. Mr. SCELLE said that the term "discrimination" had been variously interpreted; preferably the first phrase should specify that discrimination between foreign vessels "by reason of nationality" was forbidden. Such a formula would leave a coastal State free to stipulate, in the general interest, that ships with inadequately qualified personnel had to satisfy certain conditions before they could be admitted into territorial waters. He gathered that all members of the Commis-

sion were agreed that the second phrase should be deleted.

57. Mr. AMADO said that article 21 dealt only with the right of passage in the territorial sea; it was therefore normal for States to impose certain obligations upon vessels in order to ensure normal traffic. But a provision relating to possible discrimination was out of place in the article under reference.

58. Mr. LAUTERPACHT said that some degree of discrimination as between national vessels and foreign vessels was quite understandable in matters relating to fishing, as the Commission had acknowledged. It would, however, be a serious decision to admit possible discrimination in matters connected with the safety of shipping.

59. Mr. SCELLE explained that his proposal for retaining the first phrase in an amended form was based on a generally accepted rule: the policing of the high seas was the common responsibility of all the powers, whereas in the territorial sea, it was the coastal State which had that responsibility; it should therefore be allowed some latitude in the discharge of that responsibility.

60. Mr. ZOUREK recalled that Mr. Amado had stressed that article 21 dealt only with right of passage. The Commission had already decided, in connexion with article 20, that that right might be curtailed. He failed to see the connexion between the right of passage and the work of policing the territorial waters.

61. Mr. SCELLE replied that it was one of the essential functions of the State responsible for policing to ensure safety of passage. According to Mr. Zourek, in order to cross the territorial sea of a State, a vessel would have to follow clearly defined channels; in reality, the territorial sea should be regarded as a public thoroughfare where freedom of traffic was as complete as on public highways on land.

62. Mr. CORDOVA suggested that the Special Rapporteur might draft a new paragraph in the light of the remarks made during the discussion. There were undoubtedly cases in which States were entitled to discriminate, even as between foreign vessels of different nationalities; such was the case of a coastal State which had a treaty of alliance with another State or States.

63. Mr. AMADO said that political considerations should not influence the codification of international law. Yet, it was a fact that often States were guided by political motives and in consequence adopted discriminatory measures. Accordingly, he did not think that paragraph 2, even if consisting of the first phrase only, could be adopted.

64. Mr. FRANÇOIS, Special Rapporteur, said that it was practically impossible to draft a clause which would allow discrimination in certain cases while forbidding it in other cases. He therefore confirmed his intention of withdrawing paragraph 2.

65. Mr. ZOUREK pointed out that, in practice, the deletion of that paragraph would not prevent the rule it embodied from operating by virtue of the most favoured nation clause.

66. Mr. CORDOVA said that the most favoured nation clause was an exceptional one and only appeared in certain treaties. The Commission's duty was to lay down a general rule.

67. Mr. SCALLE pointed out that in practice the most favoured nation clause had never prevented a State from adopting discriminatory measures. If, however, the Special Rapporteur thought that in order to allow for the cases referred to by Mr. Salamanca, it was necessary to delete paragraph 2 completely, he would agree to that course.

68. The CHAIRMAN put to the vote Mr. Zourek's proposal that the first phrase of article 21, paragraph 2, should be retained.

*The proposal was rejected by 8 votes to 1, with 5 abstentions.*

69. The CHAIRMAN put to the vote article 21 as a whole, which, after the Special Rapporteur had withdrawn paragraph 2, consisted only of paragraph 1.

*Article 21, as amended, was adopted by 10 votes to 1, with 3 abstentions.*

*The meeting rose at 12.55 p.m.*

## 266th MEETING

*Monday, 12 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. CORDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, 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).*

### Draft Code of Offences against the Peace and Security of Mankind (item 4 of the agenda) (A/1858, A/2162 and Add. 1 and 2, A/CN.4/85)

1. The CHAIRMAN invited the Commission to consider the draft Code of Offences against the Peace and Security of Mankind, adopted by the Commission at its third session (1951),<sup>1</sup> in the light of the comments of governments<sup>2</sup> and the proposals for modifications submitted by the Special Rapporteur in his third report.<sup>3</sup>

2. Mr. SPIROPOULOS, Special Rapporteur, said that he had on the whole retained the draft adopted by the Commission at its third session and had only departed from it where the few comments from governments gave good reason for doing so. Most of those comments referred to the definition of aggression; only six concerned the articles of the draft Code.

#### *Title*

3. Dr. Manuel Duran of Bolivia had suggested the inclusion in the title of the word "integrity". He (Mr. Spiropoulos) personally considered, for reasons given by the Netherlands Government and because the title as submitted had been adopted by the General Assembly itself, that no change was necessary.

4. Mr. CORDOVA regretted that the comments of the Belgian Government had arrived too late to be considered in detail. They mentioned an alternative title which included the notion of "war crimes". Such an addition was logical and he proposed that the title of the draft Code as submitted should be replaced by the title proposed by the Belgian Government: "Code of offences against peace and humanity, and war crimes".

5. The CHAIRMAN put to the vote Mr. Córdova's proposal that the title should be amended on the lines suggested by the Belgian Government.

*The proposal was rejected by 6 votes to 3, with 2 abstentions.*

<sup>1</sup> See chapter IV of the Commission's report on its third session, *Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858)*. The draft Code is also reproduced in *Yearbook of the International Law Commission, 1951, vol. II, p. 134*.

<sup>2</sup> See *Official Records of the General Assembly, Seventh Session, Annexes, Agenda item 54, document A/2162 and Add.1. Document A/2162/Add.2, containing comments by the Government of Belgium, is in mimeographed form only. The comments of the governments (except those of Belgium which arrived too late to be included) are summarized in the Special Rapporteur's third report (see footnote 3).*

<sup>3</sup> A/CN.4/85 in *Yearbook of the International Law Commission, 1954, vol. II*.