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Summary record of the 277th meeting

Topic:
Other topics

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majority of the Commission was in favour of inserting it in the draft". Those words were not necessary.

The comment to article 2, paragraph 9 was adopted as amended.

Comment to article 2, paragraph 1¹

71. The CHAIRMAN submitted the comment to article 2, paragraph 11, to the Commission with two amendments, both to the effect that the term "defined" should be substituted for the term "referred to" at the end of the second paragraph, and also at the end of the first sentence of the third paragraph.¹⁵

72. Mr. ZOUREK said that several members of the Commission had favoured the drafting of article 2, paragraph 11, in such a manner as to restrict its application to those inhuman acts which were committed in execution or in connexion with aggression and other international offences. It was desirable that the comment should contain a reference to the dissenting opinion of the members concerned.

73. Mr. FRANÇOIS, Rapporteur, said that it was not always possible to insert minority opinions in the comment, a process which would be too cumbersome. He hoped Mr. Zourek would not press the matter.

74. Mr. ZOUREK said he would not insist on the point.

75. The CHAIRMAN submitted the comment to the vote.

The comment to article 2, paragraph 1, was adopted.

Comment to article 4

76. The CHAIRMAN invited the Commission to consider the comment to article 4.

The comment to article 4 was adopted.

Paragraphs 11 - 14 of chapter III

77. The CHAIRMAN invited the Commission to consider paragraphs 11 - 14 of chapter III of the draft report on the current session.

Paragraphs 11 - 13 were adopted.¹⁶

78. Mr. LIANG, Secretary to the Commission, said that in paragraph 14 the term "State" was stated to include a territory under an international régime.¹⁷ There were two types of territories under such a régime. Firstly, there were Trust Territories, secondly, there had existed at times "free cities" which were under an inter-

national régime but were not administered by any particular State. Paragraph 14 would seem to require amplification.

79. Faris Bel el-KHOURI said he did not recollect that the Commission had decided that the term "State" should be interpreted in the manner indicated in paragraph 14.

80. The CHAIRMAN said that the Drafting Committee had been asked by the Commission to draft the paragraph in question.¹⁸

81. Mr. CORDOVA said that whatever the régime of a territory under international control, its rulers could be guilty of an offence under the code.

82. Mr. HSU suggested that paragraph 14 should be placed as a comment to article 2, paragraph 8.

83. Mr. FRANÇOIS, Rapporteur, said that paragraph 14 might be redrafted to read: "The Commission took the view that for the purposes of the draft code a territory under an international régime should be assimilated to a State."

84. The CHAIRMAN requested the Rapporteur to redraft paragraph 14 of chapter III of the draft report for submission at the next meeting.¹⁹

The meeting rose at 1.20 p.m.

¹⁸ *Vide supra*, 267th meeting, paras. 34-38.

¹⁹ *Vide infra*, 280th meeting, para. 20.

277th MEETING

Monday, 26 July 1954, at 9.45 a.m.

CONTENTS

	<i>Page</i>
Consideration of the draft report of the Commission covering the work of its sixth session (<i>continued</i>)	
Chapter IV: Régime of the territorial sea (A/CN.4/L.48/Add.4)	181

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. J. ZOUREK.

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

¹⁵ Cf. *supra*, paras. 31-33 and 61.

¹⁶ These paragraphs correspond to paragraphs 51-53 of the Commission's final report on its sixth session; *vide supra*, footnote 7.

¹⁷ Cf. *supra*, para. 55.

Consideration of the draft report of the Commission covering the work of its sixth session (continued)

CHAPTER IV: RÉGIME OF THE TERRITORIAL SEA
(A/CN.4/L.48/Add.4)

1. The CHAIRMAN invited the members of the Commission to consider chapter IV of its draft report on the current session commencing with the draft articles on the régime of the territorial sea included in paragraph 17 of the chapter (A/CN.4/L.48/Add.4).¹

DRAFT REGULATIONS RELATING TO THE RÉGIME OF THE TERRITORIAL SEA

Article 1

2. Mr. FRANÇOIS, Rapporteur, pointed out that the Drafting Committee had combined, in the two paragraphs of article 1, the provisions which had been embodied in the former articles 1 and 2.

3. Mr. ZOUREK said he preferred, for paragraph 1, the text originally submitted by the Special Rapporteur, reading: "The territory of a State includes a belt of sea described as the territorial sea." That was in fact the text which the Commission had adopted.

4. The CHAIRMAN read the relevant passages of the Commission's records² showing that the Commission had adopted, for the clause in question, the text quoted by Mr. Zourek, but had later asked the Special Rapporteur to redraft articles 1, 2 and 3 as a whole.

The Commission adopted article 1 as contained in the draft report by 4 votes to 2, with 6 abstentions.

Article 2 (previously article 3)

5. The CHAIRMAN submitted article 2 to the Commission.

Article 2 was approved.

CHAPTER II: LIMITS OF THE TERRITORIAL SEA

Article 4 (previously article 5)

6. The CHAIRMAN submitted article 4 to the Commission.

Article 4 was approved.

¹ This document was mimeographed only. It was incorporated, with modifications, in the Commission's report on its sixth session as chapter IV. Paragraph 17 of chapter IV in the draft report corresponds to paragraph 72 in chapter IV of the final report. The modifications made by the Commission in draft chapter IV are set out in the present summary record and in the summary records of the 278th, 279th, 280th and 281st meetings. The Commission's final report on its sixth session is included in vol. II of *Yearbook of the International Law Commission, 1954*. It was also published separately in *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*.

² *Vide supra*, 252nd meeting, paras. 60 and 62, and 253rd meeting, paras. 44-49.

Article 5 (previously article 6)

7. Mr. LAUTERPACHT pointed out that he had proposed that the English text of paragraph 3 should read: "The coastal State shall give due publicity to any straight base line drawn by it."

It was agreed to redraft paragraph 3 as proposed by Mr. Lauterpacht.

Article 4 was adopted as amended.

Article 6 (previously article 7)

8. The CHAIRMAN proposed that the English text should read: "The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the base line equal to the breadth of the territorial sea."

It was so agreed.

Article 6 was adopted as amended.

Article 8 (previously article 9)

9. Mr. LAUTERPACHT proposed that the word "determining" should be replaced by "delimiting".

It was so agreed.

Article 8 was adopted as amended.

Article 9 (previously article 10)

10. Mr. FRANÇOIS, Rapporteur, pointed out that the Drafting Committee had redrafted article 9 so as to specify clearly that roadsteads situated in inland waters remained subject to the régime of those waters and not to the régime of the territorial sea.

11. Mr. LAUTERPACHT proposed that the words "belt" should be replaced by "outer limit".

It was so agreed.

Article 9 was adopted as amended.

Article 10 (previously article 11)

12. Mr. LAUTERPACHT proposed that the word "normally" should be replaced by "in normal circumstances".

It was so agreed.

Article 10 was adopted as amended.

Article 12 (previously article 13)

13. The CHAIRMAN submitted article 12 to the Commission.

Article 12 was adopted.

Article 13 (previously article 14)

14. Mr. FRANÇOIS, Rapporteur, said he had amended the first sentence of paragraph 4 in the light of a proposal made by Mr. Zourek.³

³ *Vide supra*, 271st meeting, paras. 1-14.

15. Mr. ZOUREK proposed that the title of the article should be altered to "Delimitation of the territorial sea in straits".

It was so agreed.

16. At the proposal of Mr. Zourek, the CHAIRMAN put to the vote the second sentence of paragraph 4, which had not previously been formally adopted.

The sentence was adopted by 11 votes to 1.

17. Mr. ZOUREK agreed that the enclaves in question should be treated in the same way as the territorial sea. He had voted against the particular sentence, however, because he did not approve of the maximum breadth laid down for the enclaves.

18. The CHAIRMAN put the article as amended to the vote.

Article 13 was adopted as a whole as amended.

Article 15 (previously article 16)

19. The CHAIRMAN submitted article 15 to the Commission.

Article 15 was adopted.

Article 16 (previously article 17)

20. The CHAIRMAN submitted article 16 to the Commission.

Article 16 was adopted.

CHAPTER III: RIGHTS OF PASSAGE

Article 17 (previously article 18)

21. Mr. LAUTERPACHT recalled that he had voted against the whole of paragraph 2, which he regarded as completely meaningless. The Commission had adopted the paragraph, and he bowed to its decision, but he pointed out that, purely for reasons of logic, the word "other" should be inserted before "of its interests".

It was so agreed.

Article 17 was adopted as amended.

Section A. Vessels other than warships

Article 18 (previously article 19, paragraph 1)

22. Mr. GARCÍA-AMADOR recalled that the Commission had decided to place the text of article 18 at the beginning of the chapter relating to the right of passage.⁴

23. Mr. LAUTERPACHT agreed with Mr. García-Amador and pointed out that articles 19, 21 and 22,

⁴ Cf. *supra*, 262nd meeting, paras. 33-37 and 263rd meeting, para. 68.

which could perfectly well apply to warships, should also be placed in the general provision of the chapter, before the sub-heading "Section A. Vessels other than warships".

24. Mr. FRANÇOIS, Rapporteur, said that the chapter had been taken from the draft prepared by the 1930 Codification Conference at The Hague.⁵

25. Mr. ZOUREK said that if the Commission were to change the position of article 18 and extend its provisions to warships, it would amount to an important change, not of form, but of substance. In agreement with other members of the Commission, he had always objected to warships being assimilated to merchant vessels so far as the right of passage was concerned.

26. Mr. LIANG, Secretary to the Commission, suggested that the text of article 18 be placed immediately after the title of chapter III, while said article should specify that warships were covered by the provisions of articles 26 and 27.

27. Mr. CÓRDOVA said it was essential that separate articles should deal with warships and merchant ships.

28. Mr. FRANÇOIS, Rapporteur, agreed with Mr. Córdova. In order to satisfy Mr. Lauterpacht and Mr. García-Amador, he suggested that the Commission might perhaps transfer the text of article 18 to the general part of the chapter, before section A.

29. Mr. PAL felt it would be preferable to delete the two sub-headings: "Section A. Vessels other than warships" and "Section B. Warships", which the Commission had never formally adopted.

30. The CHAIRMAN pointed out that during the discussions no objections had been raised to those words.

31. After a brief discussion, the CHAIRMAN proposed that article 18 should be maintained as it stood and in its position.

It was so agreed.

Article 19 (previously article 19, paragraphs 2 and 3)

32. The CHAIRMAN submitted article 19 to the Commission.

Article 19 was adopted.

Article 20

33. Mr. LAUTERPACHT pointed out that the word "other" should be inserted in paragraph 1 before "of its interests", and that, in paragraph 2, the word "it" should be replaced by "that".

It was so agreed.

Article 20 was adopted as amended.

⁵ *Acts of the Conference for the Codification of International Law*, vol. III: Minutes of the Second Committee (League of Nations publication, V. Legal, 1930.V.16), pp. 213-217.

Articles 21, 22, 23 and 24

34. The CHAIRMAN put these articles to the vote.

Articles 21, 22, 23 and 24 were adopted.

Article 25

35. Mr. CORDOVA was surprised to find that article 25 merely repeated the rules contained in articles 23 and 24. State-owned vessels operated for commercial purposes should be treated in every respect in the same way as merchant ships.

36. Mr. HSU agreed with Mr. Córdova.

37. Mr. FRANÇOIS, Rapporteur, proposed that the opening phrase of article 25 should read: "The rules contained in the foregoing articles of this chapter..."

It was so agreed.

38. The CHAIRMAN put to the vote article 25 as amended.

The article was adopted as amended by 10 votes to 1.

39. Mr. ZOUREK said he had voted against article 25 because he considered its provisions at variance with the international law in force.

Section B. Warships

40. Mr. LAUTERPACHT inquired if the report specified that the provisions relating to the territorial sea only applied in time of peace.

41. Mr. FRANÇOIS, Rapporteur, replied that the point was made clear in the comment to article 17.

42. Mr. LAUTERPACHT said it was surprising that such an important stipulation should only appear in a comment.

43. The CHAIRMAN said that for greater emphasis the point should be mentioned in the introduction.

44. Mr. LIANG, Secretary to the Commission, pointed out that, in principle, the Commission only dealt with the international law of peace.

45. The CHAIRMAN decided that the question would be discussed when the Commission considered the various paragraphs of chapter IV of the general report.

Article 26

46. Mr. LAUTERPACHT proposed that in paragraph 2 the term "described" should be replaced by "envisaged". He further proposed that, in paragraph 4, the term "may" should be replaced by "must".

It was so agreed.

Article 26 was adopted as amended.

Article 27

47. The CHAIRMAN submitted article 27 to the Commission.

Article 27 was adopted.⁶

48. Mr. ZOUREK proposed that the articles which had just been adopted should be reproduced in the report under the title "Draft articles relating to the régime of the territorial sea", which was similar to that used by the Commission in 1953 in connexion with the continental shelf.

49. Mr. LIANG, Secretary to the Commission, said that at the next session the Commission would be preparing a final draft regulation on the régime of the territorial sea; consequently it should be stressed that the decisions taken at the current session with respect to the territorial sea were purely provisional.

50. Mr. FRANÇOIS, Rapporteur, proposed that a suitable heading would be "Provisional articles relating to the régime of the territorial sea".

The Rapporteur's proposed heading was agreed to.

51. The CHAIRMAN invited the Commission to consider, paragraph by paragraph, the chapter of the report containing the various articles which had been adopted, together with the comments to them.

INTRODUCTION

*Paragraphs 1, 2, 3 and 4 (55, 56, 57, 58, 59) **

52. The CHAIRMAN proposed that the last sentence of paragraph 1 ("At the fourth session...") should be transferred to the beginning of paragraph 3. The work accomplished at the sixth session would in that way be set out more clearly.

53. Mr. ZOUREK was surprised that paragraph 4 should contain a reference to the bed and subsoil of the territorial sea and the air space above it. The Commission had not studied those questions during the current session.

54. Mr. FRANÇOIS, Rapporteur, explained that those questions had been discussed at the third session. To avoid any misunderstanding he would rearrange paragraphs 1 to 4 in the light of the remarks which had been made.

Paragraph 5 (60)

55. The CHAIRMAN submitted paragraph 5.

Paragraph 5 was adopted.

⁶ For the voting on the articles as a whole, *vide infra*, 281st meeting, para. 29.

* The numbers within parentheses refer to the paragraph numbers in the Commission's final report on its sixth session. *Vide supra*, footnote 1.

Paragraph 6 (61)

56. The CHAIRMAN submitted paragraph 6.

Paragraph 6 was adopted.

Paragraph 7 (62)

57. The CHAIRMAN submitted paragraph 7.

Paragraph 7 was adopted.

Paragraph 8 (63)

58. Mr. ZOUREK requested that the words "mentioned in paragraph 5" should be inserted after the words "The committee of experts".

59. Mr. LIANG, Secretary to the Commission, said that "group of experts" was probably a better description than "committee of experts".

60. Mr. HSU thought the best solution would be to give the names of the experts who had met at The Hague.

It was so agreed.

Paragraph 8 was adopted subject to that modification.

Paragraph 9 (64)

61. The CHAIRMAN submitted paragraph 9.

Paragraph 9 was adopted.

Paragraph 10 (65)

62. The CHAIRMAN submitted paragraph 10.

Paragraph 10 was adopted.

Paragraph 11 (66)

63. Mr. ZOUREK requested that the words "which follows broadly the 1952 draft" after "draft regulation" should be deleted.

It was so agreed.

Paragraph 11 was adopted as amended.

Paragraph 12 (67)

64. Mr. LAUTERPACHT requested that in the last line of the paragraph the words "article 16 (h)" should be replaced by "the provisions".

It was so agreed.

Paragraph 12 was adopted as amended.

Paragraph 13 (68)

65. Mr. FRANÇOIS, Rapporteur, said that, in accordance with the decision of the Commission, he had in that paragraph summarized the various proposals made by the members of the Commission with respect to the breadth of the territorial sea. The proposals had not

all been submitted at the sixth session as the Commission had only dealt with that problem indirectly; most of them had been submitted during the third session. In addition he had received a proposal from Mr. Hsu which would be added to the list in paragraph 13.

66. Mr. HSU pointed out that the opinions expressed by the members of the Commission during debate were not necessarily all formal proposals. Accordingly, several of the sub-paragraphs of paragraph 13 might well be deleted.

67. Mr. LIANG, Secretary to the Commission, said it was not clear that the proposals enumerated in paragraph 13 had been submitted by members of the Commission. Furthermore, the sequence in which those proposals were enumerated was not very logical.

68. Mr. LAUTERPACHT said that the enumeration was merely intended to give Governments an indication of the great variety of possible solutions and to induce them to give their views. There was, therefore, no point in giving the name of the author of the proposal in each case or in enumerating them in the most logical order.

69. Mr. FRANÇOIS, Rapporteur, said that all the points of view expressed in paragraph 13 had actually been formulated by members of the Commission, at any rate, as constituting possible bases for discussion.

70. Mr. ZOUREK requested the Special Rapporteur to insert in paragraph 13 a passage drafted on the following lines: "That it should be admitted that the breadth of the territorial sea depends on different factors which vary from State to State and that it should be agreed that each coastal State is entitled to fix the breadth of its territorial sea in the light of these factors."⁷

The meeting rose at 1.10 p.m.

⁷ *Vide infra*, 281st meeting, paras. 1-3.

278th MEETING

Monday, 26 July 1954, at 4 p.m.

CONTENTS

	<i>Page</i>
Consideration of the draft report of the Commission covering the work of its sixth session (<i>continued</i>)	
Chapter IV: Régime of the territorial sea (A/CN.4/L.48/Add.4) (<i>continued</i>)	185

Chairman : Mr. A. E. F. SANDSTRÖM

Rapporteur : Mr. J. P. A. FRANÇOIS