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Summary record of the 284th meeting

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Law of the sea - régime of the high seas

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284th MEETING

Wednesday, 4 May 1955, at 10 a.m.

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* The number within brackets indicates the article number in the draft contained in Chapter II of the Report of the Commission (A/2934).

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. Douglas L. EDMONDS, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

Régime of the high seas (item 2 of the agenda) (A/2456, A/CN.4/79, A/CN.4/L.51, A/CN.4/L.52) (continued)

DRAFT ARTICLES (A/CN.4/79, SECTION II)
(continued)

Article 2 [2]: Freedom of the high seas
(resumed from the 283rd meeting)

1. The CHAIRMAN invited the Commission to continue its consideration of item 2 of the agenda—régime

“An international administrative authority set up within the framework of the United Nations shall be competent to deal with any application from natural or juridical persons, supported by one or more governments, with a view to prospecting, investigating and exploiting the resources of the bed and subsoil of the high seas. This authority shall consider whether such application is justified and whether effect can be given to it. It may grant an international concession for this purpose, the utilization of which it will regulate, taking into consideration, if it thinks fit, the opinion of committees of experts and jurists appointed to report on applications for concessions. The Commission’s decisions shall be subject to ratification by the Economic and Social Council. Their validity may be disputed before the International Court of Justice or before a special tribunal on the grounds of illegality or misuse of power.

“The very serious and multiple reasons justifying the abandonment of the Commission’s draft, and also the above (or some similar) proposal, were developed in an article in the last number of the *Revue générale de droit international public*, an offprint of which has been circulated to all the members of the Commission.”

of the high seas—and requested Mr. Zourek to introduce his amendment to article 2 (A/CN.4/L.52).¹

2. Mr. ZOUREK recalled that at the previous meeting he had expressed his general approval of article 2, subject to a more precise definition. He had a further drafting amendment to make to his addition: in the last line, the phrase “to their use” should be replaced by “to the use of the high seas”.

3. Mr. LIANG (Secretary to the Commission) pointed out that since there was no previous mention of coastal States in the article, the word “other” in Mr. Zourek’s proposal had no application.

4. Mr. FRANÇOIS (Special Rapporteur) agreed and also doubted whether the amendment improved the text. The phrase “save in the exceptional cases provided for in the following articles” might be kept; for the rest, the only fresh element was the concept of prejudicial activities. That, however, was such a vague notion that it would be unwise to introduce it into the article.

5. Mr. SCELLE said that the proposal would be acceptable if the word “even” (*même*) were substituted for the word “save” (*sauf*). It was obvious that, despite the provision “even in exceptional... cases...”, any derogation from the right to freedom of the high seas could be settled by the injured government bringing an action for the infringement of that right. That would still apply even if the articles on the continental shelf were finally retained. He would suggest substituting for the phrase “the nationals of other States” (*les ressortissants d’autres Etats*) the term “the international community” (*la communauté internationale*).

6. Mr. ZOUREK suggested that his text might be further clarified by the insertion between the words “utilized” and “save” of the words “by any State” (*par aucun Etat*). In the light of Mr. François’ objection, the force of which he appreciated, it might be advisable to add a new article on the concept of prejudicial activities, which might appropriately come at the end of that section.

7. The CHAIRMAN, speaking as a member of the Commission, said he failed to understand Mr. Scelle’s suggestion. The contradiction with paragraph 1 of article 6 of the provisions relating to the continental shelf was a different matter entirely.

8. Mr. SCELLE urged that his proposal constituted confirmation of that article.

9. The CHAIRMAN, supported by Mr. ZOUREK, pointed out that article 6 provided for some attenuation of the right to the freedom of the seas. Any interference must not be unjustifiable; nevertheless the restriction existed.

¹ See *supra*, 283rd meeting, footnote 13.

10. Mr. FRANÇOIS (Special Rapporteur) agreed and pointed out that the phrase "following articles" referred, not only to those on the continental shelf, but also to those on other rights, such as that of hot pursuit. Approval of Mr. Scelle's proposal would upset the whole system adopted by the Commission.

11. Mr. SCELLE said that the use of the word "unjustifiable", which was essentially subjective, was itself entirely unjustifiable in any serious legal document. In the last resort, the matter was one of individual judgment in specific cases. He would, however, support any proposal for the addition of a new article establishing the principle that in the exceptional cases mentioned in Mr. Zourek's proposal any conflict should be settled by a special court.

12. The CHAIRMAN then read out paragraph 77 of the report of the Commission's fifth session (A/2456) which commented on article 6 of the provisions relating to the continental shelf.

13. Mr. HSU, supporting Mr. Scelle's proposal, said that in such borderline cases it would be safer to err on the side of strictness of interpretation.

14. Mr. EDMONDS said that approval of Mr. Scelle's proposal would undoubtedly lead to difficulties in determining whether there had been interference. He thought it unnecessary to add a further qualification to that already adequately expressed in paragraph 1 of article 6 of the provisions on the continental shelf.

15. Mr. SCELLE said that the essential issue was whether, in the case of a dispute, the last word would remain with the coastal State or with a court.

16. Mr. SALAMANCA said that there had been a shift in the direction of the discussion which had been begun by Mr. François' accepting the phrase "save in the exceptional case... following articles" in Mr. Zourek's amendment. Subsequently, the question had been raised of the compatibility of the articles on the continental shelf with the principle of the freedom of the seas, and Mr. Scelle had wished to introduce an entirely new concept. He suggested the deletion from Mr. Zourek's amendment of the words "provided for in the following articles" and he would support the proposal to add a new article.

17. Mr. FRANÇOIS (Special Rapporteur) said that Mr. Scelle's aim seemed in fact to be to reverse the decision taken by the Commission at its previous session, in seeking which he was, of course, perfectly within his rights. His two alternatives, however, had oversimplified the issue, for since the notion of prejudicial activities was a new one, its interpretation by a court could by no means be foreseen. The safeguard was, therefore, largely illusory. He would ask Mr. Scelle whether he had included in his concept those other elements, such as hot pursuit, which were obviously prejudicial activities. There was surely no need to enunciate such a truism that trespass on the right to the freedom of

the seas should be prohibited. He preferred Mr. Zourek's proposal, since Mr. Scelle's drafting would only create further ambiguity.

18. Mr. SCELLE said that, although he had no hope of the Commission's revising its attitude on the subject, his integrity as an independent jurist had impelled him to put forward his suggestion. He felt sure that Grotius, in his controversy with Selden on the issue of the freedom of the seas, would not have expected such a triumph for his ideas. He (Mr. Scelle) was waiting impatiently for the judgment of the International Court of Justice in the dispute on the continental shelf between Australia and Japan, although he had no doubt in his own mind that its ruling would be that the concept of the continental shelf had no basis in law. However long the Court took before delivering judgment, it would be very much longer before States reached agreement on the articles on the continental shelf.

19. The CHAIRMAN, speaking as a member of the Commission, suggested that Mr. Zourek's opening phrase "Since the high seas are open to all nations" was too vague; specific mention should be made, for instance, of the inclusion of freedom of navigation and fishing.

20. Mr. FRANÇOIS (Special Rapporteur) queried the usefulness of the previous speaker's suggestion, which, if the principle of articles 2 and 7 were accepted, would be unnecessary. If, however, it was considered desirable to mention specifically those two rights, care would have to be taken lest others, equally important, be excluded by omission of mention.

21. Mr. ZOUREK, agreeing with the Chairman, said that his (the Chairman's) observation reinforced his argument for a separate article. He suggested that, pending the drafting of a new article to cover that point, the Commission defer further consideration of article 2.²

It was so agreed.

Articles 3 (resumed from the 283rd meeting), 4 and 5:

*Freedom of the high seas*³

22. The CHAIRMAN, reverting to the decision to defer consideration of articles 3, 4 and 5 taken at the

² See *infra*, 293rd meeting.

³ Article 4 read as follows:

"1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or fish production.

"2. Subject to the provisions of paragraphs 1 and 5 of this article, the coastal State is entitled to construct and maintain on the continental shelf installations necessary for the exploration and exploitation of its natural resources and to establish safety zones at a reasonable distance around such installations and to take in those zones measures necessary for their protection.

"3. Such installations, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no

close of the previous meeting, suggested that articles 3 and 4, as he himself had suggested, together with article 5, on the proposal of the Special Rapporteur, be deleted, subject to subsequent reconsideration.

There being no objections, *it was so decided*.

23. Mr. SCELLE, in reply to an invitation by the Chairman to introduce his proposal on the régime of the high seas (A/CN.4/L.51),⁴ said that he would not wish to waste the Commission's time by putting forward a proposal that had no prospect of approval.

24. The CHAIRMAN said that a discussion on the proposal would certainly be unprofitable in the sense that the articles on the continental shelf transmitted to the General Assembly could not be the subject of further discussion. The Commission, however, would be glad to hear any observations Mr. Scelle might care to make on the subject.

25. Mr. SCELLE, withdrawing his proposal, requested that the text be inserted in the summary record of the meeting. Mr. Scelle's proposal (A/CN.4/L.51) read as follows:

"An international administrative authority set up within the framework of the United Nations shall be competent to deal with any application from natural or juridical persons, supported by one or more governments, with a view to prospecting, investigating and exploiting the resources of the bed and subsoil of the high seas. This authority shall consider whether such application is justified and whether effect can be given to it. It may grant an international concession for this purpose, the utilization of which it will regulate, taking into consideration, if it thinks fit, the opinion of committees of experts and jurists appointed to report on applications for concessions. The Commission's decisions shall be subject to ratification by the Economic and Social Council. Their validity may be disputed before the International Court of Justice or before a special tribunal on the grounds of illegality or misuse of power."

26. Mr. HSU, while appreciating the Chairman's ruling, pointed out that the General Assembly had not yet approved the articles on the continental shelf. In view of the inevitable conflict between those articles and the

territorial sea of their own and their presence does not affect the delimitation of the territorial sea of the coastal State.

"4. Due notice must be given of any such installations constructed, and due means of warning of the presence of such installations must be maintained.

"5. Neither the installations themselves nor the said safety zones around them may be established in narrow channels or on recognized sea lanes essential to international navigation."

Article 5 read as follows:

"On the high seas adjacent to its territorial sea, the coastal State may exercise the control necessary to prevent and punish the infringement, within its territory or territorial sea, of its customs, immigration, fiscal or sanitary regulations. Such control may not be exercised at a distance beyond twelve miles from the base line from which the breadth of the territorial sea is measured."

⁴ See *supra*, 283rd meeting, footnote 16.

articles on the régime of the high seas, he would suggest that the Commission bear that fact in mind and, in order to help the General Assembly in its decision, consider the possibility of alternative drafts, depending on whether the articles on the continental shelf received approval or not.

27. The CHAIRMAN said that Mr. Hsu's helpful suggestion could be considered at a subsequent stage.

*Article 6: Merchant ships on the high seas*⁵

28. Mr. FRANÇOIS (Special Rapporteur) said that he had doubts as to the necessity of the definition of a ship, which would be more appropriate in a complete work of codification. He was wedded to the inclusion of the article, although, in view of the difficulties that had arisen, some of which he had mentioned in the comment on the article, he had thought it useful to suggest a definition.

29. After a short discussion, in which Mr. KRYLOV, Mr. SCELLE, the CHAIRMAN and Mr. FRANÇOIS, Special Rapporteur, took part:

It was unanimously agreed to delete article 6.

*Article 7 [4]: Merchant ships on the high seas*⁶

30. Mr. FRANÇOIS (Special Rapporteur) said that in drafting article 7 he had wished to avoid any risk of controversy on the subject of the territoriality of a vessel.

31. Mr. SCELLE suggested that it would be desirable to define a merchant ship.

32. Mr. ZOUREK pointed out that the article applied to all ships, and that the word "merchant" might therefore be deleted.

33. Mr. KRYLOV said that Mr. Scelle's comment really referred to a different subject. It would be advisable to modify Mr. François' draft as little as possible. The existing text was quite satisfactory and the Commission should endeavour to press on with its work.

34. Mr. LIANG (Secretary to the Commission) said that the plan of the Special Rapporteur had contemplated dealing first with merchant ships, and then with State vessels, including warships. The point could be considered when that subject was reached. In the present context, it would be advisable to retain the concept of a merchant ship as a ship engaged in commerce.

35. In reply to a question by the CHAIRMAN, he thought it unnecessary to go into details of the scope of the jurisdiction of the flag State; it would suffice

⁵ Article 6 read as follows:

"A ship is a device capable of traversing the sea but not the air space, with the equipment and crew appropriate to the purpose for which it is used."

⁶ Article 7 read as follows:

"A merchant ship on the high seas shall be subject solely to the jurisdiction of the flag State."

merely to specify that a merchant ship on the high seas should be subject solely to that jurisdiction.

36. Mr. ZOUREK said that the Special Rapporteur, in his comment on article 12, expressed certain doubts about the validity of the distinction between warships and other vessels; there was therefore no reason to prolong the discussion on article 7.

37. With regard to jurisdiction, it might be advisable in the comment to explain the difference in the meaning of that word in French and in English. It had a much wider connotation in the latter language.

Article 7 was unanimously approved.

Article 8: Merchant ships on the high seas⁷

38. Mr. FRANÇOIS (Special Rapporteur) said that the provision in article 8 was academic rather than practical. As he had pointed out in the comment, he had borne in mind the criticism of the comparison of the ship without a nationality to the pirate.

39. In reply to Mr. SCALLE, who raised the question of the situation of a ship suspecting of piracy another ship not navigating under a regular flag, and to Mr. HSU, who asked for a definition of "public vessels", he said that both those points were dealt with in subsequent articles.

40. Mr. ZOUREK suggested that the exact meaning of the phrases *le pavillon d'un Etat* and *droit de visite et de perquisition* in the French text required clarification.

41. Mr. FRANÇOIS (Special Rapporteur) said that in the English text the words: "a State" meant "any State", that was, a ship not flying the flag of any State.

42. Mr. LIANG (Secretary to the Commission) had doubts about the implementation of the provisions of the article, which should perhaps be clarified. The article referred to boarding and searching in peacetime, an act which, of course, was severely restricted. Public vessels of another State engaged in such an act at their own risk, and the State was responsible should its suspicions prove not to have been justified.

43. Mr. FRANÇOIS (Special Rapporteur) said that if, as a result of boarding, it was ascertained that the vessel had no right to fly the flag of any State, the act would be justified. In the contrary case, compensation would have to be paid.

44. Mr. SCALLE said the article was unsatisfactory in that it propounded a generalization of the right of boarding and searching. The French Government had always been utterly opposed to that principle, on the grounds of its liability to abuse by a powerful maritime State.

⁷ Article 8 read as follows:

"The public vessels of all States may board and search on the high seas any ship not authorized to fly the flag of a State. Nevertheless, any such ship shall not be treated as a pirate unless it commits acts of piracy."

45. Mr. FRANÇOIS (Special Rapporteur) said that his main purpose in article 8 had been to ensure that a ship without a flag should not be treated as a pirate unless it committed acts of piracy. It was for that reason that he had provided for such vessels being boarded or searched. He quite saw, however, that the adoption of the latter provision might in a sense prejudge article 21. He would therefore be prepared to delete that provision, and article 8 would then read "A ship not authorized to fly the flag of any State shall not be treated as a pirate unless it commits acts of piracy."

46. Mr. ZOUREK wondered whether, in view of the Special Rapporteur's suggestion, the whole of article 8 might not be eliminated, since the right of search and the question of piracy would be dealt with in other articles.

47. Mr. FRANÇOIS (Special Rapporteur) explained that the sole reason for the insertion of article 8 was that some provision was necessary to cover ships without a flag. If the Commission could agree on the principle, the problem would be mainly one of drafting.

48. Mr. LIANG (Secretary to the Commission) pointed out that there was some purpose in retaining the latter part of article 8, as suggested by the Special Rapporteur, in order to cover the special case of ships sailing without a flag.

49. The heading of articles 6 to 10 might be expanded, to indicate their subject-matter with greater precision.

50. Mr. ZOUREK said that, in view of the foregoing observations, he must state his position in greater detail. The Special Rapporteur's suggested new text would not be acceptable to him because it still contained the word "authorized", and the question remained: what authority should decide whether a ship was authorized to fly a particular flag or not? At present, the law only recognized the right to verify the flag flown by a vessel, if there were serious grounds for thinking that it was engaged in piracy or the slave trade, whereas the Special Rapporteur's text implied the possibility of questioning the legality of a vessel's flying a particular flag. It was the task of the Commission to codify existing rules and not to put forward provisions whose effect would be to put an end to the freedom of navigation. He would therefore propose a new text for article 8 if it were retained.

51. The CHAIRMAN said that article 8 should be considered in conjunction with article 21. For his part, he saw no objection to the Special Rapporteur's amended text: its position in the draft could be considered later.

52. Mr. SCALLE, fully supporting Mr. Zourek's view, said that he intended to raise a substantive objection to article 21, because he considered that the proviso "unless there is reasonable ground for suspecting" constituted a totally unacceptable interference with the freedom of navigation.

53. Mr. FRANÇOIS (Special Rapporteur) suggested

that further discussion on article 8 be deferred until article 21 was taken up.⁸

It was so agreed.

Article 9 [6]: Merchant ships on the high seas⁹

54. Mr. FRANÇOIS (Special Rapporteur) said that article 9 dealt with a controversial issue. He had accepted the view of those authors who considered that a ship sailing under two flags could not rely on either for protection, and should be treated as a ship without nationality.

55. Mr. KRYLOV expressed surprise at the Special Rapporteur's decision and asked for an explanation. Personally, he was unable to see why the nationality acquired under the first flag should not be regarded as valid.

56. Mr. ZOUREK said that he too would be interested to learn why the Special Rapporteur had favoured a proposition which would create statelessness among ships, a situation which would give rise to numerous difficulties.

56. Mr. FRANÇOIS (Special Rapporteur) pointed out that dual nationality could create even greater difficulties in the case of ships than in the case of individuals. It was for that reason that he had sought to impose the severest sanction against the acquisition of a second flag without prior withdrawal of the first. With the sanction he proposed, such vessels would be virtually unable to engage in trade because they would not be authorized to enter any port. He wished to make clear, moreover, that there was a considerable body of opinion in favour of such a sanction. The Commission must bear in mind that ships, unlike individuals, could only acquire a second nationality as the result of a deliberate act, and that should be discouraged by every possible means.

58. Mr. LIANG (Secretary to the Commission) said that the Secretariat had almost finished a compilation of the laws of States on the nationality of ships,¹⁰ which had been found to be extremely complex. In the course of compilation he had found instances in which a nationality had been conferred on ships without any voluntary act on the part of the owner of the ships. The solution offered by the Special Rapporteur might be regarded as somewhat drastic and should perhaps be replaced by the provisions contained in certain commercial treaties and referred to in the comment on article 9.

⁸ See *infra*, 286th meeting, paras. 62-64; 293rd meeting, paras. 69-70.

⁹ Article 9 read as follows:

"A ship which sails under the flag of two or more States may not claim, with respect to another State, any of the nationalities in question and shall be treated as though it were a ship without a nationality."

¹⁰ *Laws concerning the nationality of ships* (United Nations publication, Sales No.: 1956.V.1), *Supplement* (United Nations publication, Sales No.: 59.V.2).

59. Mr. HSU said that he would be prepared to make a formal proposal in that sense.

60. Mr. LIANG (Secretary to the Commission) said that he had made no specific suggestion, but had merely raised a point for consideration by the Special Rapporteur.

61. Mr. FRANÇOIS (Special Rapporteur) said that, apart from the Secretary's observation, he had heard no argument to convince him of the need for attenuating his text. After hearing the views of the Commission on the principle involved he would, however, like to study the matter further.

62. Mr. SCALLE said that he had been impressed by the Secretary's statement, which had altered his original views about the nationality of ships, and might well affect his initial support for a rigid rule of the kind proposed. Clearly, the Commission should inform itself further on an important issue, which must not be despatched without due reflection. He therefore proposed that further consideration of article 9 be deferred.¹¹

It was so agreed.

Article 10 [5]: Merchant ships on the high seas¹²

63. Mr. FRANÇOIS (Special Rapporteur) explained that, apart from the drafting changes indicated in the comment, article 10 had already been approved at the third session. It would be remembered that the Commission had rejected his proposal that one of the conditions governing the right to fly the flag of a State should be that the master of the vessel was a national of that State, on the ground that such a rule would be too strict since some countries lacked sufficient qualified personnel.

64. Mr. KRYLOV said he would be interested to learn which member of the Commission had cast the only dissenting vote against the text, and for what reasons.¹³

65. Mr. LIANG (Secretary to the Commission) undertook to look up the records.

66. Mr. SCALLE said that the Commission had once again been pulled up short by the anarchy created by the exercise of sovereign rights. It was one of the tasks of the Commission to promote the progressive develop-

¹¹ See *infra*, 293rd meeting, para. 71.

¹² Article 10 read as follows:

"Each State may fix the conditions on which it will permit a ship to be registered in its territory and to fly its flag. Nevertheless, for the purposes of the recognition of its national character by other States, not less than 50 per cent of the ship must be owned by:

"(a) Nationals of or persons permanently resident in the territory of the State concerned; or

"(b) A partnership or commandite company in which half the partners with personal liability are nationals or persons permanently resident in the territory of that State; or

"(c) A joint stock company organized under the laws and having its registered office in the territory of that State."

¹³ See *infra*, 285th meeting, para. 1.

ment of international law by bringing about international agreement on rules with binding force. If it were to accept a multiplicity of different laws on the nationality of ships, far from encouraging progress it would be making a retrograde step. Every failure to draw up general rules meant that anarchy could spread without let or hindrance. The Commission was faced with a new factor that called for careful reflection, and he for his part must refresh his memory on that particular domain of international law. He would be guided, as always, by the consideration that it was the Commission's mission to contribute towards the integration of the international community, and not to ignore the disruptive effect of piecemeal national legislation.

67. Mr. FRANÇOIS (Special Rapporteur) did not think that Mr. Scelle's observations would warrant the Commission's deferring its decision on article 10.

68. Mr. SCELLE observed that he had only asked for time for further study.

69. Mr. ZOUREK, stating that he had not taken part in the discussions at the third session, expressed the view that article 10 was broad in scope since it purported to establish the conditions for registering ships. It did not, however, make any provision, and he did not think that the failure could have been intentional, to cover ships owned by the State. That omission should surely be rectified.

70. Mr. SPIROPOULOS said that he was bound to comment on Mr. Scelle's statement. Though his general thesis was, of course, unexceptionable, it must be pointed out that the Commission was engaged in codifying, not in unifying, rules governing the registration of ships. Unfortunately the time was not yet ripe for achieving the ideal in the shape of a generally accepted law for universal application, and little purpose would be served by striving to draw up a set of perfect rules which would have no chance whatsoever of adoption. In his opinion, the Special Rapporteur's text went to the limit of what States would be prepared to accept at the present time and it would be useless to go further, since certain matters pertaining to nationality must remain within domestic jurisdiction. In the various international instruments designed to eliminate anomalies arising out of dual nationality, a whole series of questions had been left for settlement by the State concerned.

71. Mr. SCELLE repeated that he only wished to have time for further thought, adding that article 10 was, in fact, more acceptable than certain others, because it did not imply that a nationality could be imposed. Moreover, it went some way towards unifying existing municipal law on the subject.

72. The CHAIRMAN pointed out that the Commission was engaged in a first reading. There would, therefore, be ample time for members to submit amendments during the second reading.

73. Mr. FRANÇOIS (Special Rapporteur), in answer to Mr. Zourek, pointed out that article 10 referred exclu-

sively to merchant ships. The problem of government ships was much simpler, but if a provision on that point were necessary it could be inserted.

74. The CHAIRMAN observed that article 12 made no mention of merchant ships.

75. Mr. FRANÇOIS (Special Rapporteur) said that they were subsumed under "other craft".

76. Mr. ZOUREK said that he would make a proposal concerning article 12 at the appropriate time.

77. Mr. KRYLOV considered Mr. Scelle's request for time for reflection perfectly legitimate. He too did not wish to be hurried into a decision without giving the matter careful thought, and if the article were put to the vote now, he would be obliged to oppose it. The discussion had proved very valuable and no doubt if the Commission were not too hasty it might be able to move faster later.

It was agreed to defer the vote on article 10.¹⁴

Article 11 [7]: State ships on the high seas¹⁵

78. Mr. FRANÇOIS (Special Rapporteur) explained that article 11 dealt with the immunity of warships from the jurisdiction of any State other than the flag State. The definition of a warship contained in paragraph 2 had been borrowed from the Geneva Convention of 1949 relative to the treatment of prisoners of war and had been long accepted in international law.

79. Mr. ZOUREK asked whether a warship committing a manifest violation of the general rules of international law would continue to enjoy the same immunity.

80. Mr. FRANÇOIS (Special Rapporteur) said that there were, of course, instances when the requirements of legitimate defence would over-ride the provision contained in article 11, paragraph 1.

81. Mr. SPIROPOULOS suggested the deletion from paragraph 1 of the words "in all circumstances", which added nothing to the sense and might cause confusion.

The amendment was accepted.

Article 11 was approved as amended.

The meeting rose at 12.55 p.m.

¹⁴ See *infra*, 294th meeting, para. 1.

¹⁵ Article 11 read as follows:

"1. Warships on the high seas shall in all circumstances enjoy complete immunity from the jurisdiction of any State other than the flag State.

"2. The term 'warship' means a vessel belonging to the naval forces of a State, under the command of an officer duly commissioned by the government whose name occurs on the list of officers of the military fleet and the crew of which are under regular naval discipline."