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**Summary record of the 285th meeting**

Topic:  
**Law of the sea - régime of the high seas**

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## 285th MEETING

Thursday, 5 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/2943).

*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. K. 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/CN.4/79, A/CN.4/L.51) (*continued*)

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

*Article 10 [5] : Merchant ships on the high seas*  
(*resumed from the 284th meeting*)

1. Mr. FRANÇOIS (Special Rapporteur), replying to the question raised by Mr. Krylov at the previous meeting concerning article 10, said that it had been adopted at the third session by 8 votes to 1, with 2 abstentions.<sup>1</sup> According to the usual practice the names of members voting had not been recorded, but the discussion suggested that the one dissenting vote had probably been cast by Mr. Alfaro. He added that the Commission had voted on the principle of article 10, not on the final text.

<sup>1</sup> See *Yearbook of the International Law Commission, 1951*, vol. I, 121st meeting, para. 56.

*Article 12 [8] : State ships on the high seas*<sup>2</sup>

2. Mr. FRANÇOIS (Special Rapporteur) said that the crux of the article lay in the words "and non-commercial" which excluded merchant ships operated by the State from the privileges enjoyed by warships. As he had pointed out in the comment, the text had been taken from article 3 of the international convention for the unification of certain rules relating to the immunity of state-owned vessels, signed at Brussels on 10 April 1926.<sup>3</sup> Though certain States had not signed the Convention, he had included article 12 in his draft, for consideration by the Commission, as a considerable number of States had accepted the principle that it laid down.

3. Mr. KRYLOV considered that the Commission should not be over-ambitious by striving to legislate on too wide a range of specific questions. Moreover, as article 3 in the 1926 Convention, which was already somewhat out of date, had not been accepted by a considerable number of States, including some important maritime Powers—and it would be remembered that the United States of America had some vessels in commercial service—he doubted whether article 12 would serve any useful purpose. Certain States believed that vessels operated by them for commercial purposes should have a legal status differing from that of private merchantmen, and since, as Mr. Scelle was fond of pointing out, legal texts could not change facts, he would propose the deletion of the words "and non-commercial".

4. Mr. SCELLE said that, in reading the comment, he had been particularly struck by the last sentence. Apart from the question of pursuit, which was not of major importance, he could not envisage in what other circumstances a ship operated by a State would not be immune from the enforcement of policing powers. Moreover, the difference in status between state-operated and privately operated ships engaged in commerce was not very considerable, and he was therefore inclined to agree with Mr. Krylov that there was no particular advantage in retaining the words "and non-commercial".

5. Mr. FRANÇOIS (Special Rapporteur) pointed out that, in addition to the right of pursuit, there was the right of search in cases of suspected piracy. In that connexion, he wished to apologize for an error in the third sentence of the comment, which should have referred to article 21 and not to the following article. Since the question of immunity from police powers on the high seas would not often arise in the case of state-owned ships, he would be disposed to delete the whole article.

<sup>2</sup> Article 12 read as follows:

"Government yachts, patrol vessels, hospital ships, auxiliary vessels, supply ships and other craft owned or operated by a State and used exclusively on governmental and non-commercial service shall be deemed to be warships for all purposes connected with the exercise of powers on the high seas by a State other than the flag State."

<sup>3</sup> See text in Manley O. Hudson, *International Legislation*, vol. III, pp. 1837-1845.

6. Mr. SPIROPOULOS said that the issue was a delicate one, because the number of state-owned merchant vessels was substantial. If they were not assimilated to warships, they would not be immune, for example, from attachment in a port unless there were a specific provision to the contrary, as in the case of the convention concluded between Greece and the Soviet Union.

7. Mr. HSU asked whether the United States Government did in fact own merchant vessels.

8. Mr. EDMONDS said that there were some merchant vessels which were owned, not by the government itself, but by subsidiary corporations organized on the authority of the government but as separate entities. Those corporations were normally subject to different legal sanctions from those imposed on directly owned government property.

9. Mr. HSU considered that if many States claimed that there should be no difference between the status of government and that of privately operated merchant vessels, the words "and non-commercial" should be deleted. Otherwise they should be retained, and the matter left for settlement through bilateral agreements.

10. Mr. SCELLE said that the Special Rapporteur had confirmed his belief that the only problem involved was that of hot pursuit, and obviously no State would allow a vessel to leave one of its ports if it were suspected of having infringed the law. Accordingly, the question properly belonged to the régime of the territorial sea, and there should be no serious objection to Mr. Krylov's amendment.

11. Mr. SPIROPOULOS contended that if article 12 referred solely to the régime of the high seas, the need to enforce police powers was unlikely to arise so far as the vessels of civilized States were concerned, and Mr. Krylov's amendment would be appropriate, since the words "and non-commercial" added nothing to the text.

12. Mr. ZOUREK supported Mr. Krylov's amendment. In practice it would be useless to try to draw a distinction between State ships on commercial service and other state-operated ships. On the other hand, it would be difficult to accept the Special Rapporteur's suggestion that the article be dropped altogether, because the general structure of his text called for some provision to cover state-operated vessels other than warships.

13. Mr. SCELLE also believed that article 12 should be retained.

14. Mr. FRANÇOIS (Special Rapporteur) pointed out that if article 12 were retained without the words "and non-commercial" it would be inconsistent with the Convention of 1926, which expressly stipulated that state-owned ships could be assimilated to warships only when used for non-commercial purposes. For that reason, if Mr. Krylov's amendment were adopted, he would prefer the whole of the article to be deleted. In reply to Mr. Zourek, he would only say that the Com-

mission had already narrowed the range of the draft by dropping certain other of its provisions.

15. Mr. SPIROPOULOS said that the Special Rapporteur was right about the possibility of conflict with the 1926 Convention; but it should be remembered that at that time commercial vessels operated by the State had been, relatively speaking, an innovation, so that great prudence had had to be exercised in drafting article 3. In the many years which had elapsed since the adoption of that Convention, such vessels had given rise to no difficulties on the high seas. He therefore reiterated his view that there would be no particular advantage in retaining the words "and non-commercial". Some measure of inconsistency with earlier conventions was inevitable in the process of codification, and the Special Rapporteur should bear in mind that his text would also, in certain respects, run counter to customary law.

16. Mr. KRYLOV agreed with the preceding speaker. As Mr. H. Lauterpacht had cogently argued in an article published recently in the *American Journal of International Law*,<sup>4</sup> codification necessarily entailed some departure from the provisions of earlier international conventions.

17. Mr. ZOUREK observed that the Convention of 1926 had only been signed by a limited number of States, whereas the Commission was engaged in drafting a text which it hoped would be acceptable at least to all States Members of the United Nations. He did not consider that the Special Rapporteur's objection constituted adequate grounds for deleting article 12 altogether.

*Mr. Krylov's proposal that the words "and non-commercial" be deleted was adopted by 5 votes to 3, with 1 abstention.*

*Article 12, as amended, was adopted by 6 votes to 2, with 1 abstention.*

*Article 13 [9]: Safety of shipping<sup>5</sup>*

18. Mr. FRANÇOIS (Special Rapporteur) said that the provision contained in article 13 had already been discussed at length by the Commission at previous sessions. As explained in the comment, he had set forth in his second report (A/CN.4/42)<sup>6</sup> certain principles which in his view flowed from the International Regulations for Preventing Collisions at Sea. Though some members had feared that the Commission would be exceeding its competence if it discussed the technical questions involved, it had been admitted that it was desirable that the rules relating to the safety of life at

<sup>4</sup> "Codification and Development of International Law", *American Journal of International Law*, vol. 49 (1955), pp. 16-43.

<sup>5</sup> Article 13 read as follows:

"A State may not issue any regulations inconsistent with those jointly agreed upon by the majority of maritime States, if such inconsistency would jeopardize the safety of life at sea."

<sup>6</sup> See *Yearbook of the International Law Commission, 1951*, vol. II, p. 75.

sea should be consolidated, though the matter was not within the Commission's province. On the other hand, certain members had thought it necessary to draft a provision requiring States to refrain from issuing regulations contrary to those agreed to by other maritime States, regarding such an obligation as of real value which did not vest the principal maritime Powers with any exclusive right to regulate the policing of shipping and consequently oblige other States to adopt the regulations thus laid down.

19. The CHAIRMAN asked whether there was any reason for the different wording used in article 15, which referred to "the majority of vessels engaged in international seafaring" whereas article 13 spoke of "the majority of maritime States".

20. Mr. FRANÇOIS (Special Rapporteur) said that he would have no objection to using the same expression in both articles.

21. Mr. SCELLE expressed his full approval of the principle expressed in articles 13 and 15, which was perfectly consistent with the current trend of international law and the practice of international organizations, especially the International Labour Organisation. It would be remembered that States of chief industrial importance had to be represented in the Governing Body of the latter, which was thus, in recognition of plain facts, based on the principle of a qualified as distinct from a simple majority. In that respect, the wording of article 13 was not entirely satisfactory, since it gave equal weight to all maritime powers, which was unrealistic. The wording of article 15, on the other hand, was acceptable.

22. Mr. SPIROPOULOS pointed out that the sole purpose of article 13 was to stipulate that a State might not issue any regulations which might jeopardize the safety of life at sea. He therefore considered that the words "inconsistent with those jointly agreed upon by the majority of maritime States, if such inconsistency" could be deleted.

23. Mr. KRYLOV said that with that omission the article would be unobjectionable.

24. Mr. SCELLE disagreed with Mr. Krylov, considering it necessary to stipulate that regulations should not be inconsistent with those jointly agreed upon by the majority. Articles 13 and 15 had the great advantage of substituting for the stultifying rule of unanimity the effective rule of a genuine majority. Though some members of the Commission might not think so, he was first and foremost a realist, and therefore considered the rule of unanimity to be utterly inimical to the interests of the international community.

25. Later, he would have serious objections to raise to the words "jointly agreed", which were to him totally unacceptable because they suggested that a special agreement was necessary between States to establish regulations, whereas in fact they were built up out of a series of individual decisions in the same way as customary law.

26. Mr. ZOUREK said that it should be possible to reach agreement on a text of the kind proposed by Mr. Spiropoulos, but if any additional provision which was not implicit in the present text were added, difficulties would arise. The Commission was in fact dealing with a situation where maritime States appeared to claim a monopoly, although the high seas were open to all, including States without a seaboard, many of which possessed a growing merchant navy. He therefore favoured a text on the lines suggested by Mr. Spiropoulos, but drafted in a form appropriate to a draft convention.

27. Mr. SPIROPOULOS considered Mr. Scelle to be wrong in thinking that article 13 prohibited States from issuing regulations inconsistent with those agreed on by the majority; but it did preclude them from taking any steps which might jeopardize the safety of life at sea.

28. Mr. KRYLOV said that he would vote in favour of Mr. Spiropoulos' amendment. He also found article 15 acceptable.

29. Mr. FRANÇOIS (Special Rapporteur) did not think that the words which Mr. Spiropoulos wished to delete were useless, since they would serve to prevent a State that wished, for example, to reverse existing regulations on signals from claiming that it was justified in doing so, and that States which declined to accept the change would thereby be endangering the safety of life at sea.

30. Mr. SCELLE believed that Mr. Spiropoulos, whose amendment, if adopted, would deprive article 13 of all meaning, leaving nothing but a hollow though pious wish, has misunderstood him. The aim should be to achieve uniformity of regulations. That was why he supported the original text, which clearly stipulated that it lay with the majority to decide whether any regulations were capable of endangering the safety of life at sea. The acceptance of such a provision would bring the integration of the international community one step nearer.

31. Mr. SPIROPOULOS argued that the decision must lie not with the majority, but with an international tribunal.

32. Mr. SCELLE pointed out that laws were made by the majority.

33. The CHAIRMAN supported article 13. As in the case of national traffic regulations, there was some degree of uniformity in regulations for the safety of shipping, though there was no central international organ responsible for drawing them up.

34. Mr. LIANG (Secretary to the Commission) observed that the use of the abstract word "inconsistency" might give rise to misunderstandings. It was the regulations themselves which might jeopardize the safety at sea, and the text should be so amended.

35. He believed that the object which Mr. Scelle had in mind could only be achieved if the article were

re-cast to form two paragraphs, the first stipulating that regulations issued by any State should be consistent with those jointly agreed upon by the majority, and the second stating that those regulations should not be such as to jeopardize the safety of life at sea.

36. Mr. SPIROPOULOS said that Mr. Scelle's purpose would be fulfilled if the article were re-drafted to read: "A State may not issue any regulations inconsistent with those jointly agreed upon by the majority of maritime States, in respect of safety of life at sea." He could support such a text, though, of course, the notion it embodied had not been present in the original draft.

37. Mr. SCELLE said that Mr. Spiropoulos' text would be acceptable and seemed to him perfectly consistent with the purpose of the original draft.

38. Mr. FRANÇOIS (Special Rapporteur) said he was quite agreeable to articles 13 and 15 being brought into line by replacing the idea of the majority of maritime States expressed in article 13 by that of the majority of vessels. It was simply a matter of drafting.

39. The CHAIRMAN suggested that the secretariat be instructed to re-draft the article in that sense.

*It was so agreed.*

40. The CHAIRMAN put to the vote, subject to the above drafting amendment, Mr. Spiropoulos' proposal to substitute for the phrase following the words "maritime States" the phrase "in respect of safety of life at sea".

*Mr. Spiropoulos' proposal was rejected, 4 votes being cast in favour and 4 against, with 1 abstention.*

41. Mr. KRYLOV, explaining his abstention, said that he accepted the amendment in principle, but, in the absence of a precise text embodying the idea contained in article 15, he had been unable to cast his vote.

42. Mr. SALAMANCA queried the point of a vote, since any changes would be drafting amendments only.

43. Mr. ZOUREK, agreeing with the previous speaker, suggested that the vote on the article be deferred until a definitive text had been prepared.<sup>7</sup>

*It was so agreed.*

#### *Article 14 [11]: Safety of shipping<sup>8</sup>*

44. Mr. FRANÇOIS (Special Rapporteur) explained that he had embodied in his draft the provisions of article 11 of the Brussels Convention of 23 September 1910 for the unification of certain rules of law with

respect to assistance and salvage at sea,<sup>9</sup> and of article 8 of the same convention for the unification of certain rules relating to collision.

45. Mr. SPIROPOULOS asked why the first sentence referred only to assistance to "any person found at sea in danger of being lost", whereas the second sentence provided for assistance "to the other vessel, her crew and her passengers". It might be advisable, in the interests of uniformity, to include in the first sentence also assistance to the vessel.

46. Mr. FRANÇOIS (Special Rapporteur) said that article 11 of the Brussels Convention made no mention of a vessel. He would point out that acceptance of Mr. Spiropoulos' proposal would amount to an extension of the concept underlying article 14.

47. The CHAIRMAN assumed that assistance to the other vessel had been specifically mentioned in view of the special responsibility resting after a collision on one or other of the vessels involved. He would draw attention to a slight difference in meaning between the English "at sea" and French *en mer*, the latter meaning not only at sea but actually in the water.

48. Mr. SPIROPOULOS said that the Spanish expression *desaparecer en el mar* also implied that the person was in the water. Although he would not press his proposal, he would point out that, in general, international regulations on the subject applied equally to the vessel and to the persons on board.

49. Mr. FRANÇOIS (Special Rapporteur) suggested that, pending closer study of the question, further consideration of article 14 be deferred.<sup>10</sup>

*It was so agreed.*

#### *Article 15 [9]: Safety of shipping<sup>11</sup>*

50. Mr. FRANÇOIS (Special Rapporteur) said that whereas article 13 had been inspired by the London Convention, article 15, relating to signals in general, flowed from the International Code of Signals that had been freely accepted by all maritime States. That was one reason for making two separate articles, despite the very close relationship between them. If the Commission so desired, they could, of course, be combined. But for the seafarer unversed in the niceties of international law, it would be more convenient to have two separate articles using the same terminology. In view of the decision to defer further consideration of article 13, it might be wise to follow suit in the case of

<sup>7</sup> See *infra*, 294th meeting, para 78.

<sup>8</sup> Article 14 read as follows:

"The master of a vessel is bound so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to any person found at sea in danger of being lost. After a collision the master of each of the vessels in collision is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to the other vessel, her crew and her passengers."

<sup>9</sup> See text in *Treaties, Conventions, International Acts, Protocols and agreements between the U.S.A. and Other Powers* (Washington, Government Printing Office, 1923), vol. III, p. 2948.

<sup>10</sup> See *infra*, 286th meeting, para. 65; 294th meeting, para. 78.

<sup>11</sup> Article 15 read as follows:

"Every State shall require its ships on the high seas to use the signals accepted by the majority of vessels engaged in international seafaring, wherever the use of different signals might endanger the safety of shipping."

article 15 pending an examination of the possibility of combining them in one text.

51. The CHAIRMAN suggested that if the two articles were kept separate, they should be consecutive.

*Further consideration of article 15 was deferred.*<sup>12</sup>

*Further consideration of article 15 was deferred.*<sup>12</sup>

52. Mr. FRANÇOIS (Special Rapporteur) said that the Commission had previously decided<sup>14</sup> that the provisions of the Convention of 14 March 1884 for the protection of submarine cables<sup>15</sup> be covered in the articles and extended to include pipelines. Further, some provisions of the Convention having been found to be no longer entirely satisfactory, the *Institut de droit international* had in 1927 adopted certain recommendations for supplementing them.<sup>16</sup>

53. Articles 16, 17 and 18 had been drafted on the basis of the Convention, with the addition of provisions relating to pipelines, article 16 being a reproduction of article 5 of the rules on the continental shelf already adopted by the Commission. Article 19 was based on a resolution adopted by the *Institut*.

54. Mr. SCELLE said that there should be a new article laying absolute responsibility on the coastal State for the damage that would inevitably be caused by the exploitation of the natural resources of its continental shelf. There should also be a stipulation concerning the ever-present danger of pollution of the sea caused by the careless and inefficient setting-up of installations, for they constituted an acute danger of which the Commission should manifest its awareness. He would be prepared to submit a draft along those lines.

55. Paragraph 2 of the article was far from satisfactory. A term such as "reasonable measures" was quite unrealistic; who was to decide the precise connotation of "reasonable"? Further, the provision that the coastal State might not prevent the establishment or maintenance of submarine cables bordered on the absurd. The paragraph was so ill-conceived that one did not need to be a jurist to condemn its utter illogicality.

56. Mr. SPIROPOULOS, agreed and said that once the principle of the right to exploit the natural resources of the continental shelf had been accepted, paragraph 2 lost all meaning.

<sup>12</sup> See *infra*, 294th meeting, para. 78.

<sup>13</sup> Article 16 read as follows:

"1. All States may lay telegraph or telephone cables and pipe lines on the bed of the high seas.

"2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not prevent the establishment or maintenance of submarine cables."

<sup>14</sup> *Yearbook of the International Law Commission, 1950*, vol. I, 65th meeting, p. 200.

<sup>15</sup> See text in *British and Foreign State Papers*, vol. 75, p. 356.

<sup>16</sup> *Annuaire de l'Institut de droit international*, vol. 33 (1927), t. III, pp. 297-298.

57. Mr. SCELLE pointed out that that carried the logical implication of the deletion of article 5 of the rules on the continental shelf.

58. Mr. FRANÇOIS (Special Rapporteur), agreeing that paragraph 2 might well be deleted, suggested as a possible solution the addition to paragraph 1 of the words "subject to the provisions of articles of the rules on the continental shelf".

59. Mr. SCELLE said that the Special Rapporteur's suggestion amounted to the subordination of the principle of the freedom of the seas to rights over the continental shelf. That was a most improper reversal of circumstance.

60. Mr. SPIROPOULOS said that it was true that in theory there was a contradiction between paragraph 1 and article 2 of the rules on the continental shelf. There might well be a conflict of interests arising out of the laying of a submarine cable which would interfere with an existing installation. In such a case, in the interests of humanity, prior right could be claimed by the coastal State, and in practice the minor diversion of a submarine cable in order to avoid an installation would be of little significance.

61. Mr. SCELLE expressed pained surprise at the idea of a submarine cable being diverted in the interests of a private undertaking that was exploiting the natural resources of the seabed and subsoil.

62. Mr. SALAMANCA said that once again the question had arisen of the compatibility of two conflicting rights. He had every hope, however, that Mr. Scelle would be able to draft a formula which he himself would be able to support. It had to be remembered, however, that paragraph 2 very largely met Mr. Scelle's point.

63. Mr. SCELLE regretted his inability to achieve the impossible, in view of the Commission's decision not to reconsider the articles on the continental shelf. No compromise text could be devised, for there was an irresolvable opposition between the freedom of the seas and private interests when they were regarded as over-riding.

64. Mr. SPIROPOULOS suggested that the question was really one of drafting. Paragraph 1 was generally acceptable: it only remained therefore to bring paragraph 2 in line with article 5 of the rules on the continental shelf. The Special Rapporteur's proposed addition to paragraph 1 might provide a solution, but he would need to ponder that.

65. Mr. SCELLE urged that it would be more logical, instead of adding to paragraph 1 the phrase "subject to the provisions of the articles on the continental shelf", to amend article 5 of the latter by adding the words "subject to the provisions of the articles on submarine cables". The laying of submarine cables must be regarded as one of the manifestations of the freedom of the seas, and must take pride of place over commercial speculation.

On the proposal of the CHAIRMAN *further consideration of article 16 was deferred.*

*Article 17 [35]: Submarine cables and pipelines*<sup>17</sup>

66. Mr. LIANG, Secretary to the Commission, raised the point of the difficulty of satisfactorily accommodating articles 17, 18 and 19 in the plan of the complete draft. Indeed, the Special Rapporteur himself raised that point in the second paragraph of his comment. There was still an excess of detail in the three articles which, however appropriate in a convention, appeared to be out of place in a set of principles. As an example, he would quote the provision in the first sentence of article 17—the designation of the breaking or injuring in certain circumstances of a submarine cable or of a submarine pipeline as a punishable offence. Such concrete provisions might find a place in a convention, but it was doubtful whether they would fit into a statement of principles.

*Further consideration of article 17 was deferred.*

The meeting rose at 1 p.m.

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

"The breaking or injuring of a submarine cable beneath the high seas done wilfully or through culpable negligence and resulting in the total or partial interruption or embarrassment of telegraphic or telephonic communication, or in the breaking or injury of a submarine pipe line in like circumstance, shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their vessels, after having taken all necessary precautions to avoid the break or injury."

## 286th MEETING

*Friday, 6 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/CN.4/79) (continued)

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

1. The CHAIRMAN invited the Commission to continue its consideration of item 2 of the agenda: régime of the high seas (A/CN.4/79).

*Articles 16–17 [34–35] (resumed from the 285th meeting) and 18 [36]: Submarine cables and pipelines*<sup>1</sup>

2. Mr. FRANÇOIS (Special Rapporteur) replying to the Secretary's observations at the end of the previous meeting, said that articles 16, 17 and 18 could perhaps be deleted. Following the loss of a number of previous articles, however, the resulting draft would be a very meagre affair. With regard to submarine cables and pipelines, the Convention of 1884 for the protection of submarine cables contained seventeen articles and the *Institut de droit international* had made six recommendations. In his second report, he had retained seven of those and then, in accordance with the Commission's decision, had reduced them to four. The Secretary was now proposing a further cut, and he could not avoid the feeling that the tendency was becoming a little exaggerated.

3. In fact, articles 17 and 18 both embodied the main and essential principles of the 1884 Convention; in his opinion, article 17 contained a most important concept, which was supplemented by article 18. Upon reflection, he considered that he himself had carried the process of deletion too far, and that article 7 of the Convention—which had eventually been deleted from his second report—referring to compensation for the loss of fishing gear or anchors incurred in the avoidance of submarine cables or pipelines, should be reinstated.

4. Mr. LIANG (Secretary to the Commission) agreed that it was undesirable to delete articles as soon as the slightest difficulty arose over their acceptance, since the drafts prepared by the Commission should be as complete and comprehensive as possible. His doubts about articles 17 and 18 had been engendered by the fact that they had been taken direct but only in part, from conventions, and that they dealt with details of implementation rather than with general principles.

5. On the broader question of embodying provisions of international conventions in the texts that the Com-

<sup>1</sup> Article 18 read as follows:

"If the owner of a cable or pipe line beneath the high seas in laying or repairing that cable or pipeline causes a break in or injury to another cable or pipe line he shall be required to pay the cost of the repairs which such breaking or injury has rendered necessary."