

Document:-  
**A/CN.4/SR.325**

**Summary record of the 325th meeting**

Topic:  
**Law of the sea - régime of the territorial sea**

Extract from the Yearbook of the International Law Commission:-  
**1955 , vol. I**

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"3. The coastal State may suspend temporarily and in definite areas of its territorial sea the exercise of the right of passage if it should deem such suspension essential for the protection of the rights referred to in paragraph 1. Should it take such action, it is bound to give due publicity to the suspension.

"4. There must be no suspension of the innocent passage of foreign vessels through straits used for international navigation between two parts of the high seas."

106. Mr. FRANÇOIS (Special Rapporteur) said that article 19 had been re-drafted so as to omit the reference to public policy or "*ordre public*". Paragraph 4 of the article was new; through inadvertence, the corresponding provision had appeared in the 1954 draft in the section referring only to warships whereas, in fact, it applied to all vessels.

107. Sir Gerald FITZMAURICE said he would abstain from voting on article 19 for reasons which he would give later.

108. Mr. ZOUREK said he also would abstain from voting on article 19, because he had understood the Commission at its previous session (246th meeting, paras. 1 and 31) to have adopted the principle that the coastal State had the right to suspend right of passage altogether.

*Article 19 was adopted by 8 votes to none, with 2 abstentions.*

*Article 20 [19]: Duties of foreign vessels during their passage*

"Foreign vessels exercising the right of passage shall comply with the laws and regulations enacted by the coastal State in conformity with those rules and other rules of international law 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 conservation of the living resources of the sea;

"(d) The rights of fishing, hunting and analogous rights belonging to the coastal State;

"(e) Any hydrographical survey."

109. Mr. FRANÇOIS (Special Rapporteur) explained that sub-paragraph (e), referring to "any hydrographical survey", was intended to give the coastal State the exclusive right of mapping its seas.

*Article 20 was adopted unanimously.*

*Further consideration of the revised draft articles submitted by the Drafting Committee was deferred till the next meeting.*

The meeting rose at 1.15 p.m.

## 325th MEETING

Friday, 1 July 1955, at 4 p.m.

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

*Chairman* : Mr. Jean SPIROPOULOS

*Rapporteur* : Mr. J. P. A. FRANÇOIS

*Present* :

*Members*: Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.

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

### Régime of the territorial sea (item 3 of the agenda) (*continued*)

#### REVISED DRAFT ARTICLES SUBMITTED BY THE DRAFTING COMMITTEE (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the draft articles on the régime of the territorial sea as revised by the Drafting Committee.

#### *Article 21 [20]: Charges to be levied upon foreign vessels*

2. Mr. FRANÇOIS (Special Rapporteur) said that the text of article 21 in the draft adopted at the previous session<sup>1</sup> had been retained unchanged.

3. Mr. SANDSTRÖM proposed that the two sentences

<sup>1</sup> For text of the provisional articles adopted at the sixth session, see "Report of the International Law Commission covering the work of its sixth session" (A/2693), para. 72, in *Yearbook of the International Law Commission, 1954*, vol. II.

of which the article was composed should form a single paragraph because the second stated an exception to the general rule laid down in the first.

*It was so agreed.*

*Article 21, as amended, was adopted unanimously.*

*Article 22 [21]: Arrest on board a foreign vessel*

"1. A coastal State may not take any steps on board a foreign merchant vessel passing through the territorial sea to arrest any person or to conduct any investigation by reason of any crime committed on board the vessel during its passage, save only in the following cases:

"(a) If the consequences of the crime extend beyond the vessel; or

"(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

"(c) If the assistance of the local authorities has been requested by the captain of the vessel or by the consul of the country whose flag the vessel flies.

"2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign vessel lying in its territorial sea, or passing through the territorial sea after leaving the inland waters.

"3. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation."

4. Mr. FRANÇOIS (Special Rapporteur) explained that paragraph 3 had been modified in order to make it even more plain that the coastal State should only take steps to make an arrest when the case was genuinely urgent.

5. Mr. ZOUREK failed to understand why outward- and inward-bound vessels should be treated on a different footing.

6. Mr. SANDSTRÖM said that he had asked himself the same question whether it was in fact reasonable to make a distinction in cases when a crime had been committed in the inland waters or on the territory of the coastal State by a passenger on a ship heading for the high seas.

7. Mr. FRANÇOIS (Special Rapporteur) pointed out that if the vessel was merely passing through the territorial sea its connexion with the coastal State was too tenuous to allow the latter to make arrests on board except in the cases laid down in paragraph 1. On the other hand, if the coastal State discovered that a passenger on a vessel lying in one of its ports or passing through the territorial sea after leaving inland waters had committed a crime it seemed reasonable to allow it to make an arrest provided the vessel had not left the territorial sea.

8. Mr. SANDSTRÖM said that the Special Rapporteur had perhaps not fully understood his doubts, which he

would illustrate by way of the following example. If a theft had been committed on board a vessel coming from the high seas and traversing the territorial sea in order to enter a port or inland waters the coastal State had no right of arrest, but if the vessel were leaving inland water in order to reach the high seas the arrest could be carried out provided the vessel had not left the territorial sea.

9. Mr. FRANÇOIS (Special Rapporteur) said that the reason for the difference was simple: in the first case the arrest could be made when the vessel reached port; in the second the vessel was leaving the area where the coastal State exercised jurisdiction and the right of arrest in the territorial sea must therefore be allowed. However, he must repeat that there was no right of arrest if the vessel did not touch the shore of the coastal State but merely passed through its territorial sea.

10. The CHAIRMAN observed that the view taken at the 1930 Conference for the Codification of International Law was that just expounded by the Special Rapporteur.<sup>2</sup>

11. Mr. SANDSTRÖM said that he now understood the distinction between the two cases but wondered whether it was very logical.

12. The CHAIRMAN pointed out that the Commission would in any case be able to re-examine the article at the following session.

*Article 22 was adopted unanimously.*

*Article 23 [22]: Arrest of vessels for the purpose of exercising civil jurisdiction*

"1. A coastal State may not arrest or divert a foreign vessel passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the vessel.

"2. A vessel may be arrested only in respect of a maritime claim arising from one of the causes listed in article 1 of the International Convention relating to the Arrest of Sea-going Ships concluded at Brussels on 10 May 1952.

"3. A claimant may arrest either the particular vessel in respect of which the maritime claim arose, or any other vessel owned by the person who at the time when the maritime claim arose was the owner of the particular vessel; but no vessel, other than the particular vessel in respect of which the claim arose, may be arrested in connexion with any maritime claim relating to:

"(a) disputes as to the title to or ownership of any vessel;

"(b) disputes between co-owners of any vessel as to the ownership, possession, employment or earnings of that vessel;

"(c) the mortgage or hypothecation of any vessel.

<sup>2</sup> See League of Nations publication, *V. Legal, 1930.V.16* (document C.351(b).M.145(b).1930.V.), p. 215.

“4. The above provisions are without prejudice to the right of the coastal State in accordance with its laws to levy execution against, or to arrest, a foreign vessel lying in the territorial sea, or passing through the territorial sea after leaving the inland waters for the purpose of any civil proceedings.”

13. Mr. FRANÇOIS (Special Rapporteur) said that article 23 had been substantially modified following the Commission's decision to bring it into line with article 1 of the International Convention relating to the Arrest of Sea-going Ships, concluded at Brussels on 10 May 1952.<sup>3</sup> That decision had been taken because the Commission had found that its former article 24, based as it had been on the system endorsed at the Conference for the Codification of International Law, was not fully in accord with the Convention, which had been the result of a very careful examination of the problem by experts in maritime law.

14. The task of harmonization had not been easy because article 1 of the Convention was of great length and enumerated sixteen cases in which the right to arrest vessels for the purpose of exercising civil jurisdiction was recognized. To enumerate those sixteen cases would have made article 23 inordinately long and quite out of proportion to the remainder of the draft. It had accordingly been decided to insert a bare reference to article 1 of the Convention in paragraph 2. Of course that reference in no way implied acceptance of the Convention as a whole or of any of its specific provisions other than the list included in article 1.

15. One feature of the Convention was that it allowed a claimant to arrest any other vessel belonging to the owner of the particular vessel in respect of which the maritime claim had arisen. That rule, together with the three exceptions to it contained in the Convention, had been reproduced in paragraph 3. Paragraph 4 was the same as paragraph 2 in article 24 of the Commission's previous draft.

16. Mr. KRYLOV confessed that the Convention of 1952 was of such daunting complexity that he had not, as he would have wished, prepared an alternative text to that submitted by the Special Rapporteur. Nevertheless he must express his general disapproval of the practice of simply referring to other agreements or treaties in what was intended to become a legal instrument, instead of quoting the relevant passage in full. Nor could he share the Special Rapporteur's certainty that the reference in question had no binding implication as to the rest of the Convention.

17. For the foregoing reasons, and because he wished to consult Soviet experts, he would abstain from voting on the text, which he hoped might be improved at the next session.

18. Mr. ZOUREK stated that it was not easy to reconcile the interests of navigation with those of the coastal State, and the desire to bring the text of article 23 into line with the Convention of 1952 had not had a very favourable result for navigation. The original text had been based on the principle that vessels which were merely passing through the territorial sea could only be arrested for failure to abide by the obligations assumed for purposes of passage alone. According to the revised text there would be sixteen cases in which arrest was possible, and that, in his opinion, would be going very much too far. Moreover, the Convention of 1952 itself provided that the arrest could only take place after a warrant had been issued by a tribunal. He was therefore opposed to paragraph 2 and the provision in paragraph 3 which entitled claimants to arrest other vessels owned by the same person. The Commission had surely not decided in favour of such far-reaching modifications but had simply requested the Drafting Committee to examine the possibility of bringing the text of the original article 24 into line with the Convention.

19. Sir Gerald FITZMAURICE confessed himself surprised by Mr. Zourek's opposition to article 23, seeing that Mr. Zourek's main concern throughout the discussion seemed to have been with the interests of the coastal State, rather than with the freedom of navigation.

20. Mr. KRYLOV wondered whether the Commission might not be well advised to revert to the text adopted at the previous session since the efforts to bring it into line with the Convention of 1952 had not had particularly satisfactory results. The Convention, after all, would still be binding on the signatory States.

21. The CHAIRMAN observed that if the revised text of article 23 were accepted and the draft articles were ratified, States which had not signed the Convention of 1952 might regard exercise of the rights laid down in article 23 as contrary to international law, considering that vessels could only be arrested for the purpose of exercising civil jurisdiction on the cases laid down in article 22. States might therefore be hesitant to apply article 23 lest it be challenged as contrary to general international law.

22. Mr. FRANÇOIS (Special Rapporteur) said that the Convention of 1952 had, to the detriment of the freedom of navigation, conferred greater rights on coastal States than they had enjoyed in the past. He doubted whether States which had felt that development to be necessary would be prepared to revert to the stand taken at the 1930 Codification Conference.

23. He shared Sir Gerald Fitzmaurice's surprise at Mr. Zourek's sudden defence of the freedom of navigation.

24. Mr. SANDSTRÖM asked whether the Convention of 1952 had been ratified by a significant number of States. If the number indicated that the Convention reflected a new trend of development, he would support the revised text of article 23.

<sup>3</sup> United Kingdom, Parliamentary Papers, 1952-53, vol. XXIX, Cmd. 8954. Also extracts in *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), p. 723.

25. Mr. FRANÇOIS (Special Rapporteur) replied that to the best of his knowledge the States which had ratified the Convention numbered about ten.

26. The CHAIRMAN said that it would be illuminating to see what comments the new text gave rise to on the part of governments.

27. Mr. ZOUREK said that his remarks should have caused no surprise since he had consistently sought to reconcile the two fundamental principles of the sovereignty of the coastal State and the freedom of the high seas, being anxious not to limit the former uselessly in favour of the latter. In the present instance there was no reason to fear encroachment upon the sovereignty of the coastal State whose full right to make arrests on board vessels lying in its ports was adequately protected in article 22, paragraph 2. Obviously any vessel expecting an arrest to take place would be careful not to enter the territorial sea of the State concerned. The practical significance of article 23 therefore was not very great. However, he considered that the Commission should revert to the text adopted at the sixth session.

28. The CHAIRMAN suggested that it might be wiser for the Commission to examine the whole question further before taking a final decision.

29. Sir Gerald FITZMAURICE, referring to the concluding remark made by Mr. Zourek, who shortly before had protested against the rights conferred upon the coastal State in the new version of article 23, pointed out that under paragraph 2 of the Commission's original text the coastal State's right of arrest was unrestricted whereas in the new text it was limited to sixteen cases.

30. Mr. ZOUREK observed that in the text adopted at the previous session the useful distinction accepted by the 1930 Codification Conference between passage through the territorial sea and entry into a port had been maintained.

*Article 23 was adopted by 7 votes to 1, with 3 abstentions.*

*Article 24 [23]: Government vessels operated for commercial purposes*

"The rules contained in the preceding articles of this chapter shall also apply to government vessels operated for commercial purposes."

31. Mr. KRYLOV said that he would vote against article 24 for the reasons he had given in the course of the first reading (306th meeting, para. 50).

32. Mr. ZOUREK said he too would vote against article 24. It would have been preferable to leave that article in abeyance, as had been done with article 25.

*Article 24 was adopted by 7 votes to 2, with 1 abstention.*

*Article 25 [24]: Government vessels operated for noncommercial purposes*

33. Mr. FRANÇOIS (Special Rapporteur) said article 25 had been left in abeyance.

34. Sir Gerald FITZMAURICE recalled the proposal which he had made at the 299th meeting (paras. 85-89) for an article to safeguard the right of passage over waters behind straight base lines which had previously been territorial waters subject to the right of passage.

35. When his proposal had been presented at the 299th meeting, the Commission had decided, on the suggestion of the Special Rapporteur, that the proper time to discuss it was in connexion with article 5 on straight base lines (para. 90).

36. He had therefore reverted to his proposal at the 316th meeting (paras. 50-53). Several members had replied that the Commission was dealing exclusively with the régime of the territorial sea and not with the right of passage in internal waters. That argument was a purely technical one, and it should not have stopped the Commission from dealing with the matter.

37. He drew attention to the fact that straight base lines laid down by the Government of Iceland in March 1952 and put into effect in May 1952 had had the effect of turning into internal waters maritime areas which were as far as 30 or even 50 miles off the coast. The total area involved exceeded 5,0000 square miles and in one particular gulf (Faxaflói) the area thus technically transformed into internal waters was no less than 2,500 square miles.<sup>4</sup>

38. The creation of an artificial category of internal waters out of what had always been territorial waters subject to the right of passage, waters which were geographically part of the sea and not inland waters at all, created an extremely serious problem and one which the Commission ought not to refuse to discuss.

39. He had decided not to press his proposal at the present stage, but reserved the right to revert to it at the next session when he hoped the Commission would give it full and fair consideration.

40. Mr. SCELLE agreed with Sir Gerald Fitzmaurice's remarks. An artifice of procedure had added to the inland waters—those waters which were geographically inland, i.e., nearly always behind the coastline—a second category of waters placed under the exclusive control of the coastal State. Such artificial inland waters should be subject to a régime as close to that of the territorial waters as possible.

41. The CHAIRMAN said that the matter would be discussed at the next session. It would, however, be useful to insert a paragraph thereon in the report on the present session.

42. Mr. FRANÇOIS, speaking as Rapporteur, said that he would devote a paragraph of the report on the current session to the matter raised by Sir Gerald Fitzmaurice.

<sup>4</sup> For a map of Iceland illustrating the effect of the base lines see "Report of the International Law Commission covering the work of its fifth session" (A/2456), Annex II, No. 8, in *Yearbook of the International Law Commission, 1952*, vol. II.

*Article 26 [25]: Passage*

"1. The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification. It shall, in general, grant innocent passage subject to the observance of the provisions of articles 19 and 20.

"2. It may not interfere in any way with passage through straits used for international navigation between two parts of the high seas.

"3. Submarines shall navigate on the surface."

43. Mr. FRANÇOIS (Special Rapporteur) said that the text of the article on passage had been amended so as to give satisfaction to a number of comments made by governments.

44. Mr. SCALLE proposed the deletion of the words "in any way" in paragraph 2.

45. Mr. KRYLOV said the text of paragraph 2 was couched in far too general terms. It appeared to cover all straits. Some straits, such as the Dardanelles, however, were governed by special international conventions.

46. Mr. SANDSTRÖM said that the matter could be covered by the insertion of the words "except where otherwise provided by international convention".

47. The CHAIRMAN felt it went without saying that a special rule (such as that embodied in a treaty on a particular strait) derogated from a general one.

48. Mr. SCALLE said that the provisions of paragraph 2 could refer to any strait, because all of them connected two parts of the high seas. A better formulation was to specify that only straits essential to international navigation were intended.

49. Mr. SANDSTRÖM said that the terms "used for international navigation" constituted a sufficient qualification.

50. Mr. FRANÇOIS (Special Rapporteur) recalled that the Commission had agreed to adopt the criterion accepted by the International Court of Justice in the Corfu Channel Case<sup>5</sup> and had rejected a proposal by Mr. Zourek that the words "indispensable to international navigation" be substituted for the words "used for international navigation."<sup>6</sup>

51. Mr. SCALLE pointed out that Mr. Zourek's amendment had been rejected by 4 votes to 3 with 5 abstentions. Those members who disapproved of it were therefore only half as numerous as those who were not opposed to it.

52. Sir Gerald FITZMAURICE said that the first sentence of paragraph 1 did not represent existing international law. The prevailing international practice was to give notification only when warships were visiting

ports. They were not at present required to advise the coastal State every time they wished merely to pass through its territorial waters.

53. The first sentence, moreover, was quite unnecessary, in that article 19 (on the rights of protection of the coastal State) applied to all ships and gave the coastal State all the rights it needed in order to protect its legitimate interests.

54. There was no reason to make innocent passage subject to notification.

55. Finally, he drew attention to the necessity of referring in paragraph 2 to "innocent passage", and not merely to "passage".

56. In reply to a question by Mr. ZOUREK, Mr. FRANÇOIS (Special Rapporteur) said that paragraph 2 only applied to straits which were actually used for international navigation. It did not apply to straits which it might be possible to use for that purpose but which were not, in fact, being so used.

57. Sir Gerald FITZMAURICE said that a term such as "essential" or "indispensable" would introduce an undesirable subjective element. The only straits that could be described as absolutely essential were straits leading to inland seas, such as the Sound leading into the Baltic and the Bosphorus leading into the Black Sea. Such vital waterways as the Suez Canal or the Panama Canal could, in strict logic, be described as non-essential because shipping could go round the Cape of Good Hope or round Cape Horn.

58. Mr. EDMONDS moved that article 26 be re-considered. He recalled that the Commission had adopted only a decision of principle regarding that article at its 307th meeting (para. 54). On that very feeble vote embodying a most indefinite statement concerning the ground which the article should cover, the Drafting Committee had prepared detailed provisions which constituted a broadening of the principle upon which the Commission had agreed.

59. He recalled his abstention from voting at the time because he had felt that the question had been put to the Commission in a manner which made it very difficult, if not impossible, to vote upon.<sup>7</sup>

60. Mr. FRANÇOIS (Special Rapporteur) said that the only question involved in the vote to which Mr. Edmonds referred had been whether the coastal State had the right to impose previous authorization or notification upon passing foreign warships. In the 1954 text (A/2693), that right had been denied, save for exceptional circumstances. The decision at the current session had been the reverse.

*The Commission rejected Mr. Edmonds' motion to reconsider article 26 by 5 votes to 3, with 3 abstentions.*

61. In reply to a question raised by Mr. SCALLE on paragraph 2, Mr. FRANÇOIS (Special Rapporteur) said

<sup>5</sup> *I.C.J. Reports 1949*, p. 4.

<sup>6</sup> 308th meeting, para. 39.

<sup>7</sup> 307th meeting, para. 55.

the provision was intended to forbid the closing of a strait used for international navigation.

62. Mr. SANDSTRÖM recalled the issue involved in the Corfu Channel Case.<sup>8</sup> That case had been pleaded on the basis of the fact that although the Corfu Channel was not essential to navigation, it was nonetheless a strait actually being used by international shipping.

63. Mr. SCELLE deplored the tendency of the Commission to turn into general principles rulings of the International Court of Justice which concerned specific instances. It did not necessarily follow that because the International Court of Justice had given a ruling in a certain sense in a particular case, that ruling could be turned into an abstract rule of law.

64. Mr. KRYLOV said a more precise formulation of paragraph 2 would be "straits normally used for international navigation".

65. He recalled that in the Corfu Channel Case the International Court of Justice had had in view the considerable number of small Greek ships which used that channel.

66. Mr. FRANÇOIS (Special Rapporteur) accepted Mr. Krylov's suggestion for the inclusion of the word "normally". The same modification should also be made in article 18.

67. With reference to Mr. Scelle's proposal to delete the words "in any way" from paragraph 2, he pointed out that the 1930 Codification Conference had stated, in the French text, that the coastal State had no right to interfere with passage *sous aucun prétexte*.

68. Mr. EDMONDS said he still felt that the vote taken at the 307th meeting "that the coastal State could, in law and as a matter of principle, forbid the passage of foreign warships through its territorial sea" did not warrant the broad and comprehensive wording proposed by the Drafting Committee.

69. He submitted that the new text was not properly before the Commission.

70. Mr. KRYLOV, in his capacity as Chairman of the Drafting Committee, rejected Mr. Edmonds' criticism. The Drafting Committee had not gone outside its competence in drafting article 26.

71. Sir Gerald FITZMAURICE, referring to his objections to article 26, said the general feeling in the Drafting Committee had been that those objections concerned points of substance which should be taken up before the full Commission. He had therefore intended to place his objections before the Commission at the present stage. He recalled that the question put to the vote at the 307th meeting had been framed in the following manner: whether there were any circumstances in which the coastal State could forbid passage to foreign warships. It was a case of laying down a right of some sort without attempting to define it.

72. In actual fact, article 19 contained all that was necessary for the protection of the coastal State; and the provisions of article 26 went far beyond that was required as a result of the Commission's vote.

73. Mr. SANDSTRÖM agreed with Mr. Krylov that the Drafting Committee had acted, in connexion with article 26, on the basis of the decision taken at the 307th meeting.

74. Mr. SCELLE proposed that the word "innocent" be inserted before the word "passage" in paragraph 2. Such an amendment would make it clear that passage with a view to aggressive action could be prevented in any case.

75. Mr. FRANÇOIS (Special Rapporteur) said that any warship wanting to pass would claim that its passage was innocent.

76. With regard to the remarks made by Sir Gerald Fitzmaurice and Mr. Edmonds, he agreed with Mr. Krylov that the Drafting Committee had acted in the only manner incumbent upon it following the vote taken at the 307th meeting.

77. Mr. ZOUREK asked for the various paragraphs of article 26 to be voted separately.

78. Mr. EDMONDS enquired from the Chairman whether he would be in order in proposing the adoption of article 26, paragraph 1 of the 1954 draft (A/2963) in place of the text proposed by the Drafting Committee.

79. The CHAIRMAN said that such a proposal would not be in order because it would be tantamount to a proposal to reconsider the decision taken at the 307th meeting, and a proposal along the latter lines had already been rejected at the present meeting (para. 60 above).

*Article 26, paragraph 1, was adopted by 8 votes to 2.*

*Mr. Scelle's proposal to delete the words "in any way" from paragraph 2 was rejected, 4 votes being cast in favour and 4 against, with two abstentions.*

*Mr. Scelle's proposal to add the word "innocent" before the word "passage" in paragraph 2 was adopted by 5 votes to 3 with 2 abstentions.*

*Paragraph 2 as amended was adopted by 9 votes to none with 1 abstention.*

*Paragraph 3 was adopted by 10 votes to none with 1 abstention.*

80. The CHAIRMAN then put to the vote article 26 as a whole. As amended, the text read as follows:

"1. The coastal State may make the passage of warships through the territorial sea subject to previous authorization or notification. Normally it shall grant innocent passage subject to the observance of the provisions of articles 19 and 20.

"2. It may not interfere in any way with innocent passage through straits normally used for international navigation between two parts of the high seas.

<sup>8</sup> *I.C.J. Reports 1949*, p. 4.

“3. Submarines shall navigate on the surface.”

*In that form, article 26 was adopted by 8 votes to 2 with 1 abstention.*

*Article 27 [26]: Non-observance of the regulations*

“If any warship does not comply with the regulations of the coastal State and disregards any request for compliance which may be brought to its notice, the coastal State may require the warship to leave the territorial sea.”

81. Sir Gerald FITZMAURICE drew attention to the futility of the provision in question. The coastal State, it was therein stated, could require a warship concerned to leave the territorial sea. But a foreign warship which was passing through the territorial sea was *ipso facto* in process of leaving it.

*Article 27 was adopted by 6 votes to 2, with 3 abstentions.*

82. The CHAIRMAN said that the vote on the draft articles as a whole would be taken at a later stage.

83. Replying to a question by Sir Gerald FITZMAURICE, Mr. FRANÇOIS (Rapporteur and Special Rapporteur) said that the proper time for the expression of dissenting opinions would be when the Commission came to discuss its report.

The meeting rose at 6.30 p.m.

### 326th MEETING

*Monday, 4 July 1955, at 3 p.m.*

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*Chairman* : Mr. Jean SPIROPOULOS

*Rapporteur* : Mr. J. P. A. FRANÇOIS

*Present* :

*Members* : Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.

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

### Draft report of the Commission covering the work of its seventh session (A/CN.4/L.59 and Add.1)

#### CHAPTER I: INTRODUCTION (A/CN.4/L.59)

1. Mr. FRANÇOIS (Rapporteur) said Faris Bey el-Khouri had drawn his attention to the fact that the report was subdivided into chapters and that the draft provisional articles concerning the high seas were themselves divided into chapters.

2. Mr. KRYLOV said there was no inconsistency in the term “chapter” being used in both connexions. In the one case the term referred to sub-divisions of the report; in the other, it referred to subdivisions of a quasi-legislative text.

3. Mr. SANDSTRÖM said the term “chapter” had been used in both contexts in previous reports without giving rise to any objection.

4. Mr. FRANÇOIS (Rapporteur) said the term would therefore be retained.

#### *Paragraph 1 [1] \*: Introduction*

5. Mr. LIANG (Secretary to the Commission) said chapter I had been prepared by the Secretariat. The last sentence of paragraph 1, in its reference to those chapters submitted to the General Assembly for information and those submitted for decision, would naturally be put in final form in accordance with the actual decisions of the Commission.

*Paragraph 1 was adopted subject to final drafting of the last sentence.*

#### *Paragraphs 2-4 [5-7]: Officers*

*Paragraph 5 [3] \*: Seats to be filled as a result of vacancies arising since the sixth session*

*Paragraphs 6-7 [2 and 4] \*: Membership and attendance*

6. Mr. SANDSTRÖM proposed that the section on membership and attendance, appearing as paragraphs 6 and 7, be made to precede the paragraphs concerning officers, as had been done in previous reports of the Commission.

7. Mr. EDMONDS pointed out that there were two material errors in the draft report. The final sentence of paragraph 5 spoke of the term of office of members of the Commission as expiring on 31 December 1957, whereas the correct date was 31 December 1956. In paragraph 7, the final sentence, stating that he (Mr. Edmonds) had attended meetings from 2 May to 25 June inclusive, was an obvious mistake.

8. Mr. LIANG (Secretary to the Commission) agreed with Mr. Sandström's proposal. He further suggested that the last sentence of paragraph 5, dealing with the term of office, and the last two sentences of paragraph 7, which referred to the exact dates between which certain members attended the Commission's meetings, be deleted as unnecessary. That would also eliminate the errors noted by Mr. Edmonds.

\* The numbers within brackets indicate the paragraph numbers in the “Report” of the Commission.