

Document:-  
**A/CN.4/SR.326**

**Summary record of the 326th meeting**

Topic:  
**Other topics**

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

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“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 SCHELLE, 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.

9. Mr. FRANÇOIS (Rapporteur) accepted the alterations suggested by the Secretary to the Commission.

10. In reply to a question by Mr. KRYLOV, Mr. FRANÇOIS stressed that the reference to the total absence of two members of the Commission, as it appeared in the first sentence of paragraph 7, would not be deleted.

11. Mr. GARCÍA AMADOR said that the absence of Mr. Padilla Nervo was due to health reasons and to the call of his official duties, and not to "professional and health reasons" as somewhat inaccurately stated in paragraph 7.

12. Mr. LIANG (Secretary to the Commission) said an appropriate expression would be used to meet Mr. García Amador's remark.

13. The CHAIRMAN proposed that paragraphs 2 to 7 of the report be re-drafted by the Secretariat, taking into account the suggestions made by Mr. Sandström, Mr. García Amador and the Secretary to the Commission, which had been accepted by the Rapporteur.

*It was so agreed.*<sup>1</sup>

*Paragraphs 8-10 [8-10]: Agenda*

14. Mr. GARCÍA AMADOR recalled that the subject of the responsibility of States had been included in the agenda by a decision taken at the Commission's two hundred and eighty-second meeting.<sup>2</sup> That item should therefore appear as item 6 of the agenda in paragraph 8 of the report; the items shown as 6, 7, 8 and 9 would then have to be renumbered 7, 8, 9 and 10.

15. Mr. FRANÇOIS (Rapporteur) said the correction would be made.

*Subject to this amendment, paragraph 8 was adopted.*

16. Mr. LIANG (Secretary to the Commission) suggested that the words "documents submitted in connexion with" and the reference to the two reports on the law of treaties, be deleted from paragraph 9 so that the second sentence thereof would read:

"The Commission decided to adjourn to its next session the consideration of item 4—namely, the law of treaties—and the examination of the report on diplomatic intercourse and immunities submitted by Mr. A. E. F. Sandström, Special Rapporteur."

17. Mr. FRANÇOIS (Rapporteur) accepted that suggestion.

*Thus amended, paragraph 9 was adopted.*

*Paragraph 10 was adopted without comment subject to final drafting.*

<sup>1</sup> The document was later issued in revised form (A/CN.4/L.59/Rev.1).

<sup>2</sup> 282nd meeting, para. 10.

CHAPTER II: RÉGIME OF THE HIGH SEAS  
(A/CN.4/L.59/Add.1)

INTRODUCTION

*Paragraphs 1-5 [11-15]*

*Paragraphs 1-5 were adopted without comment.*<sup>3</sup>

18. Mr. ZOUREK called for the inclusion in the introductory chapter to the Commission's report on the régime of the high seas of a reference to the memorandum submitted by the Government of the Polish People's Republic concerning freedom of navigation on the high seas (A/CN.4/L.53).

19. Mr. FRANÇOIS (Rapporteur) suggested that such a reference be included in the general part of the report.

20. Mr. LIANG (Secretary to the Commission) said the memorandum of the Government of the Polish People's Republic had been referred to the Commission because it had on its agenda an item on the régime of the high seas. The logical place for a reference to it was indeed the chapter on the high seas.

21. Mr. KRYLOV said the relevant paragraph could be placed immediately after paragraph 5 and numbered 6. The present paragraph 6 would therefore be re-numbered 7.

22. Mr. FRANÇOIS (Rapporteur) agreed.

The CHAIRMAN asked whether it was the Commission's wish that a paragraph be drafted by the Rapporteur along the lines proposed.

*It was so agreed.*

Mr. SANDSTRÖM pointed out the necessity of a reference to the memorandum by the Government of Ecuador (A/CN.4/L.63).

Mr. FRANÇOIS (Rapporteur) said the memorandum by the Government of Ecuador primarily concerned the régime of the territorial sea. He therefore proposed to insert a reference to it in the chapter of the report dealing with the régime of the territorial sea.

*It was so agreed.*

*Paragraph 6 [17]*<sup>4</sup>

Mr. SALAMANCA proposed insertion of the words "pursuant to resolution 899 (IX) of the General Assembly" after the opening words of paragraph 6, "The Commission proposes at its eighth session". That would make it clear that the Commission, in grouping together systematically in a single report all the rules adopted by it in respect of the high seas, the territorial sea and all related questions, would be acting in ac-

<sup>3</sup> In document A/CN.4/L.59/Add.1, para. 5 read as follows: "At its seventh session, the Commission studied the new report (A/CN.4/79) submitted by the special rapporteur. His findings are given below." (See *infra*, 327th meeting, para. 22).

<sup>4</sup> For paragraph 16, see *infra*, 329th meeting, para. 63.

cordance with its terms of reference under the above-mentioned resolution.

Mr. FRANÇOIS (Rapporteur) agreed.

*Subject to this amendment, paragraph 6 (now paragraph 7) was adopted.*

#### DRAFT ARTICLES CONCERNING THE HIGH SEAS

##### *Article 1: Definition of the high seas*

23. Sir Gerald FITZMAURICE pointed out that the term "inland waters", used both in article 1 and in the comment thereto, was not adequate. The term "internal waters" was preferable and would correspond exactly to *eaux intérieures* used in the French original.

24. The waters concerned were hardly ever inland waters in the geographical sense. The adjective "inland" suggested lakes or rivers, and the term "inland waters", as used at the time of the 1930 Conference of Codification, was intended to cover waters which were geographically inland—i.e., actually behind the coast line.

25. The problem of artificial "internal waters" which were behind straight base lines but were geographically part of the sea had only appeared in 1951, after the International Court of Justice's judgement in the Fisheries Case.

26. Mr. SANDSTRÖM supported Sir Gerald Fitzmaurice's proposal to substitute "internal" for "inland" in the English text; the French and Spanish texts used words which corresponded to "internal".

27. Mr. GARCÍA AMADOR said the difficulty raised by Sir Gerald Fitzmaurice involved matters of substance and could best be dealt with at the following session.

28. He recalled that as long ago as the 1930 Conference of Codification, the Governments of Norway and Sweden had submitted a proposal in which reference was made to "inland" waters which were not actually behind the coast line but were enclosed by archipelagos.<sup>5</sup>

29. He agreed, however, that the term "internal waters" appeared to correspond to the Spanish text more nearly than the term "inland waters".

30. The CHAIRMAN said that perhaps the difficulty could have been avoided altogether if the article had been framed to state that the term "high seas" meant all parts of the sea which were beyond the territorial sea of a State.

31. Mr. FRANÇOIS (Rapporteur) agreed to the substitution of the word "internal" for the word "inland" in the English text of article 1 and the comment thereto.

*Subject to this amendment, the comment to article 1 was adopted.*

<sup>5</sup> See League of Nations publication, *V.Legal, 1930.V.16* (document C.351(b).M.145(b).1930.V), pp. 190 and 194.

##### *Article 2: Freedom of the high seas*

32. Mr. EDMONDS pointed out that sub-paragraph 4, which referred to freedom to fly over the high seas, ran counter to a decision by the Commission not to deal with rights in the air.

33. He suggested the deletion of that sub-paragraph.

34. Mr. FRANÇOIS (Rapporteur) said that Mr. Edmonds' objection could be met quite satisfactorily by means of a statement in the comment to the effect that the Commission had not examined the question of freedom to fly over the high seas because that matter would be dealt with when the Commission came to codify air law.

35. Mr. KRYLOV said that Mr. Edmonds' proposal was tantamount to a proposal for reconsideration of an article voted by the Commission. A two-thirds majority would therefore be required before it could be discussed.

36. Mr. EDMONDS said he did not want to change a decision of the Commission. He wanted the text of article 2 to agree with a decision of the Commission.

37. Mr. ZOUREK said that the reference to the four freedoms in article 2 had been the subject of a specific decision by the Commission.

38. Mr. SCELLE said he agreed in principle with Mr. Edmonds' proposal to delete sub-paragraph 4.

39. If it were not possible at that late stage to delete the sub-paragraph in question, the comment to the article should, he proposed, make it clear that the Commission did not deal with freedom to fly over the high seas in the draft articles, any more than it dealt with several other important freedoms connected with the high seas. There was the freedom to carry out scientific research on the high seas; more important still was the freedom to extract mineral wealth from the high seas. The Commission, in its draft articles on the continental shelf, had granted to the coastal State the right to exploit the mineral wealth of the soil and sub-soil of the high seas wherever the depth of the sea did not exceed 200 metres. It would be the height of absurdity if the coastal State, which might well not have a continental shelf, was not allowed to extract mineral wealth from the high seas themselves—as distinct from exploiting their living resources.

40. If his proposal were not adopted by the Commission, he requested that his dissenting opinion be put on record.

41. Mr. SANDSTRÖM pointed out that the four numbered sub-paragraphs of article 2 were preceded by the words "Freedom of the high seas comprises, *inter alia*:" It was clear that the four freedoms mentioned in the numbered sub-paragraphs were not the only ones.

42. He recalled that article 2 of the draft articles on the territorial sea gave the coastal State sovereignty over the air space above its territorial waters. It was

therefore logical to make reference to freedom to fly over the high seas in the corresponding article of the draft concerning the régime of the high seas.

43. Mr. KRYLOV pointed out that the question of the continental shelf would be re-examined by the Commission at its next session. He suggested that the comment to article 2 should contain a reference to the fact that the freedom to fly over the high seas had not been fully examined by the Commission.

44. Sir Gerald FITZMAURICE said that even when with the words "*inter alia*" the list given in article 2 entailed considerable danger. Such lists always tended to be regarded as exclusive.

45. Mr. HSU agreed with Sir Gerald Fitzmaurice in his misgivings concerning the enumeration.

46. Mr. ZOUREK, on a point of order, pointed out that the Commission was discussing the comments to the articles and not the articles themselves.

47. The CHAIRMAN confirmed that the Commission was voting only the comments to the articles.

48. Any member could, if he wished, ask at any stage for the reconsideration of an article already voted. But any such proposal would require a two-thirds majority.

49. Mr. SCELLE said that he, for his part, did not propose reconsideration of the article itself. He only proposed that the comment to the article should contain a reference to the fact that the Commission had reserved for later discussion not only the question of freedom to fly over the high seas but also such freedoms as freedom of scientific research and freedom to extract mineral wealth from the high seas.

50. Mr. FRANÇOIS (Rapporteur) said it would be very difficult to include a paragraph in the comment along the lines suggested by Mr. Scelle. There was, for instance, the question of atomic tests carried out on the high seas: any reference by the Commission to the freedom of scientific research on the high seas might be construed as the expression of its views on that extremely delicate problem.

51. He would endeavour to draft a passage which would give some satisfaction to the objections of Mr. Scelle and certain other members, but if his solution were not approved by Mr. Scelle, he did not think that a footnote recording dissent would be appropriate. The best way of solving the problem would be to make reference in the body of the report to the fact that "certain members" had drawn attention to the point in question, without actually mentioning them by name.

52. The CHAIRMAN proposed that the comment to article 2 be reserved until the Rapporteur had had an opportunity of preparing the promised passage.<sup>6</sup>

*It was so agreed.*

<sup>6</sup> See *infra*, 329th meeting, para. 46.

In document A/CN.4/L.59/Add.1, the comment to article 2 read as follows:

"The principle generally adopted in international law that the

#### *Article 3 : Right of navigation*

53. Mr. GARCÍA AMADOR proposed that the final paragraph of the comment to article 4, which referred to ships flying the United Nations flag, be placed under article 3, where it properly belonged.

54. Mr. FRANÇOIS (Rapporteur) said that a note would be placed under article 3 containing a cross reference to the paragraph in question, which he proposed should be left where it stood.

*The comment to article 3 was adopted, subject to inclusion of the note proposed by the Rapporteur.*

#### *Article 4 : Status of ships*

55. Mr. FRANÇOIS (Rapporteur) said the last line of the first paragraph of the French text of the comment to article 4 contained a typographical error; the reference was to articles 18, 21 and 22 (and not to articles 16, 21 and 22).

*The comment to article 4 was adopted, subject to correction of the typographical error in the French text.*

#### *Article 5 : Right to a flag*

56. Mr. FRANÇOIS (Rapporteur) drew attention to the following typographical errors in the French text:

(i) Sub-paragraph 2 (b) of article 5 should read:

*(b) d'une société en nom collectif ou en commandite, dont la majorité des membres personnellement responsables sont...*

(ii) The following words should be added to the second sentence of the comment, after the words *naviguant à son service*:

*par exemple, un navire appartenant à une société nationalisée; and the corresponding words should be deleted from sub-paragraph 2 (b).*

57. Mr. KRYLOV questioned the validity of the suggestion contained in sub-paragraph 1 that it was suffi-

high seas are open to all nations governs all regulations on the subject. No State may subject the high seas to its jurisdiction, the term "jurisdiction" being used here in a broad sense, including not merely the judicial function but any kind of sovereignty or authority. States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States. Freedom of the seas includes freedom of navigation, freedom to lay submarine cables, and freedom to fly through the superjacent air-space. But any freedom that is to be exercised in the high seas contains certain rules, most of them already recognized in positive international law, which are designed not to limit or restrict the freedom of the high seas but to safeguard its exercise in the interests of the entire international community. Among the points covered by these rules are: 1. The right of States to exercise their sovereignty on board ships flying their flag; 2. The exercise of certain policing rights; 3. The right of States concerning the conservation of the living resources of the high seas; 4. The institution by coastal States of zones contiguous to their shores for the purpose of exercising certain well-defined rights; 5. The rights of coastal States with regard to the continental shelf. Points 1, 2 and 3 are the subject of the present regulations; points 4 and 5 were dealt with by the Commission in the report covering the work of its fifth session (A/2456)."

<sup>7</sup> Document A/CN.4/L.59/Add. 1 contained no comment to article 3.

cient for a ship to sail in the service of a State for it to be entitled to fly the flag of that State.

58. Sir Gerald FITZMAURICE agreed that the mere fact of a ship's sailing in the service of a State did not necessarily warrant its use of the flag of that State. A State might well charter a ship actually belonging to another State. The nationality of a ship was a much more fundamental question and rested on its ownership by nationals of a particular State or by a nationalized company of that State.

59. He proposed that the words "or sail in its service" after the words "be the property of the State concerned" be deleted from sub-paragraph 1 of article 5 and that the second sentence of the comment be amended to read as follows: "Obviously the State enjoys complete liberty in the case of ships owned by it or ships which are the property of a nationalized company."<sup>8</sup> To speak of "its own ships", as had been done in the original text of the comment, would beg the question, for the words "its own ships" might be taken to describe ships that flew the flag of that particular State.

60. Mr. ZOUREK thought that the domestic legislation of certain States enabled their flag to be flown by ships which were chartered by their nationals.

61. Mr. FRANÇOIS (Rapporteur) said that his search for countries having such legislation had yielded Switzerland and Yugoslavia as the only examples.

62. He accepted the amendments proposed by Sir Gerald Fitzmaurice.

*Subject to those amendments and to correction of the typographical errors in the French text of article 5, sub-paragraph 2 (b), the comment was adopted.*

63. Mr. ZOUREK recalled that the United Nations Secretariat was preparing a compilation of the laws of various countries on the nationality of ships.<sup>9</sup> He hoped the volume would cover the question of the right of ships chartered by nationals of a State to fly the flag of that State.

64. Mr. LIANG (Secretary to the Commission) said that the point mentioned by Mr. Zourek would be looked into.

*Article 6 : Ships sailing under two flags  
The comment to article 6 was adopted.*

*Article 7 : Immunity of warships  
The comment to article 7 was adopted.*

*Article 8 : Immunity of other state ships*

65. Mr. SANDSTRÖM said he could not understand the significance of the two underlined words "in

<sup>8</sup> Instead of "... in the case of its own ships or ships sailing in its service, e.g., a ship which is the property of a nationalized company."

<sup>9</sup> *Laws concerning the nationality of ships*, United Nations publication, Sales No.: 1956.V.1; and Supplement, United Nations publication, Sales No.: 59.V.2.

general", which appeared after the words "ships used on government service" in the second sentence of the comment.

66. Mr. KRYLOV agreed with Mr. Sandström's remarks. The words in question appeared to restrict the scope of a decision adopted by the Commission on his (Mr. Krylov's) proposal.

67. Mr. FRANÇOIS (Rapporteur) agreed to deletion of the underlined words "in general".

*The comment to article 8 was adopted subject to deletion of the underlined words "in general".*

*Article 9 : Signals and rules for the prevention of collisions*

68. Mr. FRANÇOIS (Rapporteur) said that the English text of article 9 should be brought into line with the French by inserting the words "the vessels forming" after the words "accepted for".

69. Mr. KRYLOV reiterated his preference for using the expression "the majority of maritime States" in article 9.

70. Mr. SANDSTRÖM proposed the deletion of the words "e.g., in areas not used for international navigation" after the words "danger of confusion" in the first paragraph of the comment because the example chosen was inappropriate.

*The amendment was accepted.*

71. Mr. ZOUREK asked whether it might not be made clearer in the second paragraph of the comment that some members had favoured the expression "the majority of maritime States" because a small vessel could do a considerable amount of damage and reference to tonnages was out of place.

72. Mr. FRANÇOIS (Rapporteur) undertook to modify the text in the sense suggested by Mr. Zourek.<sup>10</sup>

*On that understanding, the comment to article 9 was adopted as amended.*

*Article 10 : Penal jurisdiction in matters of collision*

73. Mr. FRANÇOIS (Rapporteur) said that the first paragraph of the comment should refer to the Permanent Court of International Justice and not the International Court of Justice.

74. Mr. SANDSTRÖM proposed deletion of the words "has long been almost universally observed and" after

<sup>10</sup> In document A/CN.4/L.59/Add.1, paragraph 2 of the comment to article 9 read as follows:

"The Commission used the expression "the greater part of the tonnage of seagoing vessels" in preference to others which it considered, such as 'the majority of maritime States' or 'the majority of vessels'. It was of the opinion that, in the matter of safety of human life at sea, the interest of each State may be judged by the number of persons on board its ships. Hence, the tonnage of the vessels appears to be the best criterion."

the words "confirms a rule" in the last paragraph of the comment.<sup>11</sup>

*It was so agreed.*

75. Mr. LIANG (Secretary to the Commission) considered that the meaning of the third sentence in the first paragraph would be better rendered if the words "international maritime circles" were substituted for the words "merchant service" since the latter suggested that the judgement in the *Lotus* case had caused disquiet in one particular country.

*The Secretary's suggestion was adopted.*

76. Mr. ZOUREK pointed out, without wishing to make any formal proposal, that article 10 dealt with several matters though its title referred to collision only.

*The comment to article 10 was adopted as amended.*

*Article 11: Duty to render assistance*

*The comment to article 11 was adopted.*

*Article 12: Slave trade*

*The comment to article 12 was adopted.*

*Articles 13 - 20: Piracy*

*Article 13*

77. Sir Gerald FITZMAURICE considered that the first sentence in the second paragraph of the comment to article 13 was too categorical: strong arguments could be adduced against the principle laid down in article 13. International law allowed States to take action against pirates irrespective of their nationality and others were required to refrain from interfering. It was a perfectly defensible point of view, endorsed by many authorities, to hold that international law went no further and enunciated no obligation whereby States must suppress piracy. He therefore proposed that that sentence be modified and that the words "laid upon it by international law" be deleted from the second sentence.

78. Mr. FRANÇOIS (Rapporteur) said that he did not altogether agree with the preceding speaker since the Commission had definitely decided that States should co-operate to the fullest possible extent in the repression of piracy.

79. Mr. ZOUREK said that since the Commission had upheld the view that piracy was an international crime something must be said on those lines in the comment.

80. The CHAIRMAN, speaking in his personal capacity, agreed with Sir Gerald Fitzmaurice that failure to suppress piracy was not a violation of international law.

81. Mr. KRYLOV said that the declaration made at the Congress of Vienna in 1815 about the scourge of piracy reinforced the view that it was the duty of States to repress it.

*It was agreed to re-draft the first sentence of the second paragraph to read: "Article 13 lays down a*

*sound principle" instead of "Article 13 lays down a principle which cannot be challenged".*

*The comment to article 13 was adopted as amended.*

*Article 14*

82. Mr. SANDSTRÖM observed that sub-paragraph 3 in the first paragraph of the comment was at present in conflict with article 15 and therefore required some modification.

83. Mr. FRANÇOIS (Rapporteur) said that he would be prepared to meet Mr. Sandström's point by inserting some such wording as "Save in the case provided for in article 15" at the beginning of sub-paragraph 3.

84. Mr. HSU considered the distinction drawn in sub-paragraph 3 to be a false one since acts of piracy could be committed by any kind of vessel and not only by merchantmen.

85. It would be remembered that the Nyon Arrangement had been based on the International Treaty for the Limitation and Reduction of Naval Armament signed in London in 1930 which in its turn had been inspired by the Treaty relating to the Use of Submarines and Noxious Gases in Warfare drawn up at Washington in 1922; the purpose of all three had been to outlaw submarine warfare against merchant vessels, and had little connexion with civil war. He therefore felt that the first two sentences of the second paragraph were somewhat irrelevant and should be amended by substituting the words "brand the sinking of merchant vessels by submarines, against the dictates of humanity, as piratical acts" for the words "are inconsistent with the viewpoint adopted by the Commission" and by deleting the words "which in any case are few in number and concerned with the settlement of very special cases", after the words "that such treaties".

86. Mr. FRANÇOIS (Rapporteur) accepted Mr. Hsu's amendments.

87. Mr. KRYLOV proposed deletion of the words "Acts committed for political ends cannot be regarded as piratical acts" after the first sentence in sub-paragraph 2 on the ground that it was impossible to establish a criterion to distinguish between acts committed for private ends and acts committed for political ends.

88. Mr. FRANÇOIS (Rapporteur) said that the controversial question whether a political act could be regarded as piracy had been discussed at great length in the past and had been raised in the Harvard Draft. He would personally prefer the second sentence of sub-paragraph 2 to be retained. On the other hand it might be desirable to explain a little more fully what was meant by acts committed for private ends.

89. Mr. SANDSTRÖM was opposed to modifying sub-paragraph 2 because it drew an important distinction.

90. Mr. ZOUREK considered Mr. Krylov's proposal to be well-founded. Moreover article 15 implicitly recognized that political acts might be assimilated to acts of piracy.

<sup>11</sup> An additional paragraph was later added to the comment.

91. He suggested that the French text of sub-paragraph 2 might be examined with a view to deciding whether the words *dans un but personnel* was an exact rendering of the words "for private ends".

92. Sir Gerald FITZMAURICE said that he could accept Mr. Krylov's proposal, but thought that the Commission should at its next session reconsider the wording of the first sentence in sub-paragraph 2 so as to find some better expression than "for private ends". The real antithesis which needed to be brought out was between authorized and unauthorized acts and acts committed in a public or in a private capacity. An act committed in a private capacity could have a political purpose but be unauthorized—as, for example, the seizure of a vessel by the member of an opposition party.

93. Mr. HSU supported Mr. Krylov's proposal.

*Mr. Krylov's proposal to delete the second sentence in sub-paragraph 2 of the first paragraph of the comment was adopted by 5 votes to 3, with 3 abstentions.*

94. Faris Bey el-KHOURI criticized the confusing manner in which sub-paragraphs 3, 4 and 5 had been drafted; it could be inferred from the present text that piracy was legal but only on the high seas.

95. The CHAIRMAN felt that the meaning was quite clear. Moreover, the form was customary in legal usage.

96. Mr. FRANÇOIS (Rapporteur) said that he would be unwilling to modify the text for the reasons given by the Chairman.

97. Mr. LIANG (Secretary to the Commission) suggested that sub-paragraph 3 required amendment since piracy could be committed only by individuals and not by vessels. It would be noted that the article itself referred to acts committed by the crew or passengers.

*The comment to article 14 was adopted as amended.<sup>12</sup>*

#### Article 15

*The comment to article 15 was adopted.*

#### Article 16

*The comment to article 16 was adopted.*

#### Article 17

*The comment to article 17 was adopted.*

#### Article 18

*The comment to article 18 was adopted.*

#### Article 19

*The comment to article 19 was adopted.*

#### Article 20

*The comment to article 20 was adopted.*

#### *Article 21: Right of inspection*

98. Mr. FRANÇOIS (Rapporteur) said that the words "right of visit" should be substituted for the words

"right of inspection" in the title of article 21 and in the comment.

99. Sir Gerald FITZMAURICE considered that, in the third paragraph of the comment, the first sentence, in which reference was made to severe penalties, did not accurately reflect the provision contained in the article itself and should be deleted. The article merely stated that if the suspicions proved unfounded, and provided the vessel boarded had not committed any acts to justify them, compensation would be made.

100. In the last sentence of the same paragraph the word "and" should be substituted for the words "or where" after the words "where suspicion proves unfounded".

101. Mr. EDMONDS observed that the comment should bring out that compensation must be adequate.

102. Mr. FRANÇOIS (Rapporteur) accepted Sir Gerald Fitzmaurice's second amendment. The word "or" was due to an error.

*Sir Gerald Fitzmaurice's proposal for the deletion of the first sentence<sup>13</sup> in the third paragraph of the comment was accepted.*

*In the same paragraph, it was also decided to replace the full stop after the word "action" by a comma and to delete the words "This applies".*

103. Mr. ZOUREK considered that the last sentence in the comment should end at the words "to include such a provision" because other arguments in addition to that mentioned in the remainder of the sentence had been put forward.

104. Mr. FRANÇOIS (Rapporteur) considered that omission to be unnecessary because of the presence of the word "mainly".

*The comment to article 21 was adopted as amended.*

*Further consideration of the Commission's draft report was adjourned.*

The meeting rose at 6.10 p.m.

<sup>13</sup> It read as follows: "If the suspicions prove to be unfounded, the penalties must be severe."

## 327th MEETING

Tuesday, 5 July 1955, at 9.30 a.m.

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<sup>12</sup> See *infra*, 330th meeting, para. 1.