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Summary record of the 343rd meeting

Topic:
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84. Mr. SPIROPOULOS, Mr. AMADO and Mr. KRYLOV supported Mr. Padillo-Nervo's amendment.

85. The CHAIRMAN put to the vote Mr. Padillo-Nervo's proposal to amend article 9 by the deletion from the second sentence of the words "for the vessels forming the greater part of the tonnage of sea-going ships".

Mr. Padillo-Nervo's proposal was adopted by 9 votes to 3, with one abstention.

86. The CHAIRMAN suggested that article 9, as amended, be referred to the Sub-Committee for revision in the light of the discussion.

It was so agreed.

The meeting rose at 1.15 p.m.

343rd MEETING

Wednesday, 9 May 1956, at 10 a.m.

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Chairman: Mr. F. V. GARCÍA-AMADOR.

Rapporteur: Mr. J. P. A. FRANÇOIS.

Present:

Members: Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. L. PADILLA-NERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97 and Add. 1, A/CN.4/99 and Add. 1-6) (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of item 1 of the agenda: Regime of the high seas.

Article 10: Penal jurisdiction in matters of collision

2. Mr. FRANÇOIS, Special Rapporteur, said it was interesting to note that the principle affirmed in the judgement of the Permanent Court of International Justice in the *Lotus* case was endorsed by only two countries, China and Turkey (A/CN.4/97/Add.1).

3. Other suggestions by governments dealt merely with drafting points, except the South African proposal, which was of substance and should be considered by the Commission. The article had not contemplated the case of a State waiving its jurisdiction over its own nationals in case of their penal or disciplinary responsibility for collision on the high seas. There was a certain analogy with the case of renunciation by a State of the diplomatic immunity enjoyed by its nationals, thus conceding jurisdiction to the other State.

4. Mr. KRYLOV said that the text was fully adequate; the South African proposal should be rejected.

5. Mr. PAL pointed out that in any case the drafting of the article called for revision. In the first phrase of paragraph 1, reference was made to "a collision or any other incident of navigation", whereas a few lines later only collision was mentioned.

6. Further, towards the end of the same paragraph, the phrase "flying the flag" was used. In view of the fact that in article 12—Slave trade—the wording used was "authorized to fly" a flag, it should be made clear whether the authorization to fly a flag or the actual use of a flag was the decisive criterion for the jurisdiction of the flag State.

7. On the whole, the Netherlands amendment provided a better text.

8. Mr. SANDSTRÖM pointed out that the South African amendment raised the thorny question of whether the waiving by a State of its jurisdiction, to the detriment of its own nationals, was legitimate—a question, surely, to be settled by case-law.

9. The CHAIRMAN said that Mr. Pal's points would be considered by the Sub-Committee. The general opinion of the Commission was against the South African proposal.

Subject to drafting changes, *article 10 was adopted.*

Article 11: Duty to render assistance

10. Mr. FRANÇOIS, Special Rapporteur, said that the amendments proposed referred to drafting changes only.

11. He wished to draw attention to an omission from his conclusion in paragraph 102 of document A/CN.4/97/Add.1. Between the two paragraphs of the proposed text, the last sentence of the present article 11 should be inserted, beginning with the work: "After a collision . . . etc." His proposal was based on that of the Yugoslav Government.

12. Sir Gerald FITZMAURICE pointed out that, whereas the Yugoslav proposal referred to "the other vessel", the Special Rapporteur's wording "other vessels" was extremely vague.

It was agreed to refer the Special Rapporteur's text in paragraph 102 of document A/CN.4/97/Add.1 to the Sub-Committee.

Article 12: Slave trade

13. Mr. FRANÇOIS, Special Rapporteur, said that the only amendment of substance was that proposed by the Government of Israel, substituting the term "state

ship” for “warship”. He reminded the Commission that the Economic and Social Council at its last session had decided to call a conference for the adoption of a supplementary convention on the abolition of slavery, the slave trade and institutions and practices similar to slavery. The relevant parts of the draft to be submitted to that conference seemed to be in conformity with the principles embodied in the Commission’s articles on slavery.

14. Mr. PAL suggested clarification of the phrase “that purpose”, which did not seem consistent with the first part of the sentence.

15. Sir Gerald FITZMAURICE suggested that the significant word in the second part of the sentence was “prevent”. If Mr. Pal had in mind that a State should in every circumstance be bound to prevent the unlawful use of its flag, that was surely a different question. The intention, in the article, was to ensure that the flag State was under an obligation to take steps to avoid that particular contingency.

16. Mr. SPIROPOULOS, while appreciating Sir Gerald Fitzmaurice’s explanation, wondered whether the second part of the sentence was really necessary, since it was implicit in the first part.

17. Sir Gerald FITZMAURICE, dissenting, pointed out that the first part referred to the prevention and punishment of the transport of slaves in vessels authorized to fly the colours of a State, while the second part of the sentence dealt with the transport of slaves in ships which might unlawfully fly the flag of a State.

18. Mr. PAL observed that he now saw the point. The unlawful use of a State flag by a vessel generally had international consequences. The intention of the present article was to give jurisdiction to the State whose flag was thus abused, so that it could take preventive measures. Such jurisdiction was intended to be conferred only in the case of abuse and for that special purpose.

Subject to drafting changes in the light of the discussion, *article 12 was adopted.*

Article 13: Piracy

19. Mr. FRANÇOIS, Special Rapporteur, said that the Netherlands Government had proposed the deletion of the words “on the high seas”. He would accept that amendment.

20. Mr. KRYLOV concurred.

21. Mr. PAL asked whether, if that proposal were adopted, a State in whose territorial waters an act of piracy was committed would allow the vessels of another State to intervene.

22. The CHAIRMAN pointed out that an essential condition of piracy was that it should be committed outside the jurisdiction of any State. A vessel so captured would be subject to the jurisdiction of the State of the vessel effecting the capture.

23. Sir Gerald FITZMAURICE observed that in article 14, paragraph 1 (b), the intention had been to cover the case of piracy committed on desert islands,

which were not under the jurisdiction of any State. If that were so, the Netherlands proposal was logical.

24. Mr. AMADO said that international co-operation could be ensured only on the high seas, so that in one sense the phrase “on the high seas”, while adding precision to the article, was redundant.

25. Mr. SANDSTRÖM urged that it was surely an obligation of States to suppress piracy wherever it was committed.

26. Mr. SPIROPOULOS suggested the addition of the phrase “or in any other place not within territorial jurisdiction of another State”, to be found in the first sentence of article 18.

27. Mr. PAL pointed out that, as drafted, the phrase “on the high seas” might refer not to the place of piracy, but to the situs for measures of co-operation. The phrase “on the high seas” should be retained, but expanded to cover all cases of piracy. Mr. Spiropoulos’ proposal would meet that requirement.

Article 13, as amended by Mr. Spiropoulos, was adopted.

Article 14

28. Mr. FRANÇOIS, Special Rapporteur, said that the Netherlands Government had proposed that it should be made clear that the article did not refer to warships or state-owned vessels having a non-commercial public function.

29. Mr. KRYLOV said that he would maintain the position he had taken up when the article was discussed at the seventh session.¹

30. Mr. LIANG, Secretary to the Commission, said that since the previous session the question of the interpretation of paragraph 1 (b) had arisen in connexion with the question of slavery. The problem was whether acts referred to in article 14 were to be regarded as acts of piracy when committed on land outside the jurisdiction of any State. He himself had read paragraph 1 (b) to imply a definite connexion between the act of piracy and the high seas, but it might be advisable to clarify further the phrase “territory outside the jurisdiction of any State”.

31. Sir Gerald FITZMAURICE thought that point had been made clear in paragraph 1 by the reference to “a private vessel or a private aircraft”.

32. Mr. SPIROPOULOS, while agreeing, quoted the case of the crew of a ship landing in “no man’s land” and committing an act of piracy 100 miles from the coast. It would be impossible in an article of that kind to cover all possible contingencies.

33. He emphasized that the text was only a minimum definition of piracy. States had the right to punish other acts of piracy than those mentioned, as could be seen from a comparison between the article and the piracy legislation of individual States.

34. Mr. AMADO, while appreciating the Secretary’s

¹ A/CN.4/SR.330, para. 36.

point, suggested that the question of territory outside the jurisdiction of any State be left to the Sub-Committee.

35. Mr. SPIROPOULOS, concurring, said it should be made clear in the comment on the article that the territory referred to was some such place as a desert island or shoal, and not some remote spot in the hinterland.

36. Mr. LIANG, Secretary to the Commission, said that in the case he had quoted, his own interpretation of article 14—namely, that “piracy” meant acts committed on the high seas or from vessels on the high seas—was partly based on the first part of paragraph 1, referred to by Sir Gerald Fitzmaurice. However, the phrase “or a private aircraft” might provide some basis for a different interpretation, if the sense of the article were not further clarified.

37. Mr. ZOUREK said that he would take his stand on the reservations that he had made in the discussions on the definition of piracy at the seventh session.² He considered, in particular, that the acts of violence and depredation referred to in article 14 constituted acts of piracy even when committed (a) for political ends; (b) by warships or military aircraft; or (c) by aircraft or seaplanes against foreign aircraft or seaplanes, unless, in those three cases, the acts in question were acts of aggression committed; (d) from the high seas against ships, persons or goods situated in territorial waters or internal waters, or against the land.

38. The Secretary’s point was linked with the South African comment. The question of aircraft in general in relation to piracy was an interesting one which had various aspects, such as the question whether acts of violence committed by an aircraft taking off from a desert island or some other place not within the territorial jurisdiction of a State could be regarded as acts of piracy. The analogy between vessels and aircraft was close, and intention and violence were elements common to such acts committed by both.

39. Mr. SPIROPOULOS suggested that the Commission should restrict its consideration to acts of piracy committed by vessels. He wondered whether any cases were known of acts of piracy committed by aircraft. It would be a mistake further to complicate an already controversial subject. In that connexion, sub-paragraph 5 of the first paragraph of the comment on the article (A/2934) would require re-examination.

40. Mr. PAL proposed that in the opening sentence the word “is” be replaced by the word “includes”, and that in paragraph 1 the words “or a private aircraft” be deleted.

41. He further pointed out that in paragraph 1 (a) the words “on which” were somewhat confusing. The intention was not to exclude the vessel “on which” piracy was committed, but the vessel “from which” it was committed. An act of piracy “against” a vessel would normally be committed on that vessel. It should be made clear that the intention was to exclude the pirate vessel from which the act of piracy might be committed “against”, “in” or “on board” another vessel.

42. Sir Gerald FITZMAURICE urged that a precise definition of piracy was required because it gave warships of all nations a right of visit and seizure.

43. Mr. Spiropoulos was correct in pointing out that the definitions of piracy would vary from one country to another. Nevertheless, for cases outside the territorial waters of a State, the jurisdiction of its vessels was limited by the definitions of piracy in international law.

44. With regard to Mr. Pal’s second proposal, it would be a pity to delete the reference to private aircraft, because the Commission should not disregard an aspect of piracy that was both novel and potentially real. Ships could be controlled by aircraft in war; aircraft were also used for fishery protection patrols in territorial waters. It was not difficult to conceive of piracy being committed by an aircraft, particularly a flying-boat.

45. Mr. PAL admitted the force of Sir Gerald Fitzmaurice’s argument for a precise definition of the term “piracy”.

46. Mr. SPIROPOULOS, referring to private aircraft, said that he had merely adduced a point, and had not made a formal proposal. His only desire was to avoid unnecessary complications. While accepting Sir Gerald Fitzmaurice’s argument, he was still of opinion that sub-paragraph 5 of the comment should be revised.

47. In reply to Mr. KRYLOV, Mr. FRANÇOIS, Special Rapporteur, said that deletion of the reference to private aircraft would obviously facilitate the task of the Sub-Committee. Sir Gerald Fitzmaurice’s arguments were, however, compelling and the draft would be enriched by the retention of the reference to private aircraft.

48. Mr. AMADO suggested that sub-paragraph 4 of the first paragraph of the comment should be taken as a basis for reviewing the text of paragraph 1 (b).

49. Mr. KRYLOV and Mr. ZOUREK wished to place on record their opposition to the article in its existing form.

Subject to drafting changes in the light of the discussion, article 14 was adopted.

Article 15

50. Mr. FRANÇOIS, Special Rapporteur, said that the Government of the Netherlands had made the same proposal as for article 14—namely, the assimilation of warships to State-owned vessels having a non-commercial public function. The other proposals were drafting amendments only.

51. Mr. KRYLOV said that the text should be retained and the Netherlands proposal rejected as quite unrealistic.

52. Sir Gerald FITZMAURICE, while sharing Mr. Krylov’s dislike of modifying an adopted text, felt that the Commission was bound to give serious consideration to a proposal of substance raised by a government.

53. The Commission’s conception had been that piracy was essentially an act committed by a ship’s company or persons acting on their own authority, thereby excluding warships. There had come into existence, however, a

² A/CN.4/SR.321, para. 4.

new class of vessel which, though not a warship, was nevertheless acting under the authority of the State. The Netherlands proposal, therefore, had some force. The case contemplated in article 15 was admittedly exceptional. If, however, that was possible in the case of a warship, was it not much more likely to occur in the case of other kinds of government-owned vessels? The question should be ventilated in the Sub-Committee.

54. Mr. PAL supported Sir Gerald Fitzmaurice's last suggestion; precision in such a matter was of the utmost importance.

55. On a point of drafting, he would draw attention to the fact that, whereas article 14, paragraph 1, referred to acts committed "by the crew or the passengers of a private vessel", article 15 referred merely to acts committed by the vessel itself. It should be made clear that the meaning intended was that the acts were committed by persons.

Subject to drafting changes in the light of the discussion, *article 15 was adopted.*

Article 16

56. Mr. FRANÇOIS, Special Rapporteur, said that the government comments related only to points of drafting.

57. Mr. SANDSTRÖM noted that the Special Rapporteur appeared to accept the Belgian Government's amendment, which would have the effect of removing the limitation on the period during which a ship or aircraft would be considered a pirate.

58. Mr. FRANÇOIS, Special Rapporteur, suggested that the point might be referred to the Sub-Committee.

59. Mr. SANDSTRÖM said he would have no objection.

It was agreed to refer article 16 and the point raised by Mr. Sandström to the Sub-Committee.

Article 17

Article 17 was adopted without comment.

Article 18

60. Mr. FRANÇOIS, Special Rapporteur, said that he saw no need to insert a provision concerning the disposal of the pirate ship after seizure, as suggested by the United Kingdom Government. It was undesirable for the Commission to go into too much detail and the matter could be left to national legislation.

61. Sir Gerald FITZMAURICE, while not dissenting from the Special Rapporteur's view, pointed out that the United Kingdom Government was anxious to make it clear that the word "property" in the second sentence included the vessel itself, since the present text might be misconstrued as meaning that the State seizing a pirate ship could take action only with regard to the property on board.

62. Mr. SANDSTRÖM considered that the United Kingdom Government was right in thinking a provision was needed concerning the disposal of a pirate ship after seizure, particularly as confiscation was not always justified—for example, in cases when the crew had mutinied.

63. Mr. SCALLE agreed with Sir Gerald Fitzmaurice.

64. Mr. PAL thought the text was obscure and should be revised so as to make it clear that the State seizing a pirate ship or a ship taken by piracy could take action to dispose of either or both vessels.

65. Mr. PADILLA-NERVO suggested that Sir Gerald Fitzmaurice's point might be met by inserting the words "ships, aircraft or" after the words "action to be taken with regard to the" in the second sentence.

Mr. Padilla-Nervo's amendment was accepted.

Article 18, thus amended, was adopted.

Article 19

66. Mr. FRANÇOIS, Special Rapporteur, said that the government comments were confined to drafting points: he agreed that the wording of the article should be amended to bring it into line with that of article 21, paragraph 3.

Subject to that amendment article 19 was adopted.

Article 20

67. Mr. FRANÇOIS, Special Rapporteur, said that the Government of the Union of South Africa had asked whether it should not be stipulated that a vessel which had repulsed the attack of a pirate might seize the pirate vessel pending the arrival of a warship. As he had stated in paragraph 140 of the addendum to his report (A/CN.4/97/Add.1), such a stipulation was unnecessary because provisional seizure of that kind was no more than legitimate self-defence.

68. Mr. SCALLE agreed with the Special Rapporteur. Moreover, the text as it now stood went further than the rules of municipal law concerning legitimate self-defence, since it allowed a vessel which had repulsed the attack of a pirate to exercise provisionally the police powers of a warship, a situation which concurred entirely with his theory that in the absence of public authorities their functions should be discharged by someone else who was in a position to do so.

69. The CHAIRMAN wondered whether, in view of the restriction imposed in article 20, it should not be made clear in the comment that private vessels were only authorized to effect provisional seizure in legitimate self-defence.

70. Sir Gerald FITZMAURICE agreed that the point could be covered in the comment and the article itself retained without change.

It was agreed that a sentence should be inserted in the comment on the lines of the statement in paragraph 140 of the addendum to the Special Rapporteur's report (A/CN.4/97/Add.1).

Article 20 was adopted without change.

Article 21: Right of visit

71. Mr. FRANÇOIS, Special Rapporteur, observed that the proposal of the Union of South Africa to extend the application of paragraph 1 (b) to the high seas generally, instead of limiting it to the maritime zones regarded as

suspect in connexion with the slave trade, had been rejected by the Commission after long discussion because such extended application would be open to abuse and might be used as a pretext for searching vessels in areas where there was no slave trading.³ He proposed that the Commission should adhere to the decision taken at the previous session.

It was so agreed.

The Netherlands amendment substituting the words "on the high seas" for the words "at sea" in paragraph 1 was adopted.

72. Sir Gerald FITZMAURICE explained that the reason for the United Kingdom amendment substituting the words "any loss" for the words "the loss" in paragraph 3 was that there might in fact have been no loss.

73. Mr. PAL believed that the effect of the United Kingdom amendment would be nullified unless the word "sustained" were deleted.

74. Sir Gerald FITZMAURICE, while not believing that there was much force in that objection, wondered whether Mr. Pal would prefer the phrase "any loss that may have been sustained".

Sir Gerald Fitzmaurice's wording was adopted.

75. Mr. AMADO asked whether the word "loss" in English was the precise equivalent of the word "dommage" in French, which he would have thought was wider in scope.

76. Mr. PADILLA-NERVO thought the text should be made more comprehensive by referring to both damage and loss.

77. Sir Gerald FITZMAURICE agreed that it would be desirable to refer to loss or damage in paragraph 3, particularly as an act of piracy might not necessarily cause damage, but could result in loss if a vessel were delayed.

It was agreed to insert the words "or damage" after the word "loss" in paragraph 3.

Article 21 as amended was adopted.

Article 22: Right of pursuit

78. Mr. FRANÇOIS, Special Rapporteur, said that there were a number of comments affecting the substance of article 22 which the Commission should examine in turn. First, there was the point raised by the Brazilian Government, which considered that for exercising the right of pursuit it was sufficient for the coastal State to have good reason to believe that an offence against its laws or regulations had been or was about to be committed. Perhaps it was not absolutely necessary to make an explicit statement to that effect, but he was prepared to amend the opening words of the article to read: "The pursuit of a foreign vessel, where the coastal State has good reason to believe that an offence has been committed against its laws or regulations."

79. Mr. PADILLA-NERVO agreed with the Brazilian Government's comment and supported the Special Rapporteur's amendment.

80. Sir Gerald FITZMAURICE wondered if the Brazilian Government's point might not be met by deleting from paragraph 1 the words "for an infringement of the laws and regulations of a coastal State". Hot pursuit was legitimate only when an order to stop by a patrol vessel was not complied with. Otherwise, the foreign vessel could not know that it was being pursued. Presumably such an order would not be given unless the foreign vessel had been seen committing an offence, or because there was good reason for thinking that it had already done so.

81. The CHAIRMAN, speaking as a member of the Commission, thought that Sir Gerald Fitzmaurice's proposal to delete the clause stating the conditions on which the right of hot pursuit could be exercised, would give the coastal State far too much latitude.

82. Mr. SCALLE contended that hot pursuit could be undertaken only if a law of the coastal State had been violated. Evidently, the aim of Sir Gerald Fitzmaurice's amendment was to confine the article to procedural matters, without specifying the cases in which hot pursuit was allowed.

83. Mr. SANDSTRÖM believed it was important to retain the clause which Sir Gerald Fitzmaurice had suggested deleting.

84. Mr. PAL did not consider it appropriate to combine in one article the conditions justifying the exercise of the right of hot pursuit and technical details of how it should be carried out.

85. Mr. PADILLA-NERVO, agreeing with Mr. Pal, observed that his point would be met if Sir Gerald Fitzmaurice's amendment were adopted. In that event, the Commission might leave aside the point raised by the Brazilian Government.

86. Mr. SCALLE considered that the article should be confined to the procedure of hot pursuit; he would deprecate any attempt to draft a separate article listing the different cases in which it was permissible, because such a list could not be exhaustive and was bound to be unsatisfactory.

87. Mr. ZOUREK said the Commission would find it difficult to accept Sir Gerald Fitzmaurice's amendment, because it would give the coastal State too wide a right of pursuit.

88. Mr. AMADO said that he was not opposed to the amendment; the words in question were a mere ornament, and whether retained or removed would not affect the practice of States exercising the right of hot pursuit.

89. Mr. SCALLE emphasized that if the clause were retained it would mean that the coastal State could pursue and arrest a foreign vessel only if it could prove that its laws had been infringed; and that, in his view, would be incorrect, because the coastal State was entitled to pursue a foreign vessel for other reasons, for example, in defence of some international interest. If its action was unjusti-

³ A/CN.4/SR.288, paras. 12-54; A/CN.4/SR.289, paras. 2-42 and 54-66.

fiable, the State of the vessel pursued could seek damages. He therefore reaffirmed his support for Sir Gerald Fitzmaurice's amendment.

90. Sir Gerald FITZMAURICE said, with apologies to Mr. Scelle, that he must withdraw his amendment because it now seemed to have wider implications than he had at first realized. He would accordingly support the Special Rapporteur's amendment.

91. Mr. SPIROPOULOS considered that the clause should be retained and that it was impossible to take other considerations, of the kind described by Mr. Scelle, into account: hot pursuit could only be justified if a foreign vessel had violated the laws of the coastal State.

92. The issue raised by the Brazilian Government was a delicate one, and he wondered whether it might not be preferable to leave the text as it stood.

Further discussion of article 22 was adjourned until the next meeting.

The meeting rose at 1.10 p.m.

344th MEETING

Friday, 11 May 1956, at 10 a.m.

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Article 22: Right of pursuit (continued)	50

Chairman: Mr. F. V. GARCÍA-AMADOR.

Rapporteur: Mr. J. P. A. FRANÇOIS.

Present:

Members: Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. L. PADILLA-NERVO, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

Regime of the high seas (item 1 of the agenda) (A/2934, A/CN.4/97 and Add. 1, A/CN.4/99 and Add. 1-6) (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of article 22 (A/2934).

Article 22: Right of pursuit (continued)

2. Mr. PAL, reiterating his conviction that it was necessary to deal separately with the condition on which the right of hot pursuit could be exercised and the pursuit itself, proposed that the first sentence of paragraph 1 be replaced by the following text:

1. The pursuit of a foreign vessel may be undertaken when the coastal State has good reason to believe that an infringement of its laws and regulations has been made. Such pursuit may commence when the foreign vessel is within the internal waters or the territorial sea of the pursuing State and may be continued outside the territorial sea provided that the pursuit has not been interrupted.

That text which, members would note, involved no change of substance, incorporated the Brazilian Government's proposal (A/CN.4/97/Add.1).

3. Mr. FRANÇOIS, Special Rapporteur, had no objection to Mr. Pal's text.

4. Sir Gerald FITZMAURICE found Mr. Pal's proposal acceptable.

Mr. Pal's proposal was adopted.

5. Mr. FRANÇOIS, Special Rapporteur, passing on to the next comment on article 22, said that he failed to understand the Indian Government's observation. As he had pointed out in paragraph 152 of the addendum to his report (A/CN.4/97/Add.1), the right of pursuit in the contiguous zone was recognized in the last sentence of article 22, paragraph 1.

6. In that connexion he would remind members of Sir Gerald Fitzmaurice's argument at the previous session that, because of the essential difference between the territorial sea and the contiguous zone, the obligation on a foreign vessel to comply with an order to stop given in the territorial sea did not hold in the contiguous zone.¹ That view had also been put forward by the United Kingdom Government in its comment, but he found it unacceptable and therefore proposed that the Commission retain the last sentence of paragraph 1 as adopted at the previous session.

7. Sir Gerald FITZMAURICE wished to make clear at the outset that at the previous session he had expounded a personal view based on certain technical considerations. Perhaps members might find useful some passages in an article of his published in the *British Year Book of International Law, 1954*,² in which he had analysed the effects on maritime law of the judgment in the Anglo-Norwegian Fisheries Case.³

8. Neither he nor the United Kingdom Government had been convinced by the Commission's decision, and remained firmly of the opinion that in codifying maritime law a sharp distinction must be maintained between the territorial sea and the contiguous zone.

9. To stipulate that the powers of the coastal State in the contiguous zone should be limited to the exercise of certain special rights did not suffice to bring out clearly the fundamental difference between the status of the two belts. It was generally agreed that the contiguous

¹ A/CN.4/SR.291, paras. 41 and 48.

² Pp. 371-429. (The Law and Procedure of the International Court of Justice, 1951-1954: Point of Substantive Law I; Maritime Law (Territorial Waters, Internal Waters. The Norwegian Fisheries Case)).

³ I.C.J. Report 1951, p. 116.