

Document:-  
**A/CN.4/SR.380**

**Summary record of the 380th meeting**

Topic:  
**Other topics**

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conditions under which the waters of a bay could be regarded as internal waters, mention should also be made of economic interests.

*It was so agreed.*

*Article 8: Ports*

56. Mr. ZOUREK proposed the deletion of the last sentence of the first paragraph of the comment, reading as follows: "This important question will have to be examined at a later stage in the Commission's work".

*Mr. Zourek's proposal was adopted.*

*Article 9: Roadsteads*

There were no observations on article 9 or the comment thereto.

*Article 10: Islands*

57. Referring to the third paragraph of the comment, Mr. ZOUREK wondered whether it was really necessary or even desirable in view of the eight years in which the Commission could have obtained expert advice on the subject, to refer to the lack of such advice as a reason for the Commission's failure to include an article on groups of islands. The main reason had surely been its inability to agree on the breadth of the territorial sea, and the lack of expert advice had been at most a subsidiary reason.

After some discussion, *it was agreed to replace the words "by the lack of expert advice on the subject" by the words "by lack of the necessary scientific and technical data"*.

58. Mr. FRANÇOIS, Rapporteur, pointed out, with regard to the last paragraph of the comment, that the comment on the draft adopted at the seventh session had contained the further words: "while the general rules will normally apply to other islands forming a group". He had deliberately omitted those words, which appeared to be plainly misleading. The question whether the general rules applied to a particular group of islands was precisely the question which would have to be examined in each particular case.

*Article 11: Drying rocks and drying shoals*

59. With reference to a point raised by Mr. AMADO and Mr. FRANÇOIS, Rapporteur, concerning the words "for further extending the territorial sea" in the article itself, Sir Gerald FITZMAURICE felt that the present text should be retained since it did indicate as clearly as perhaps could be indicated within the compass of a single sentence that drying rocks and drying shoals could only be used once as points of departure for extending the territorial sea and that the process could not be repeated by leapfrogging, as it were, from one rock or shoal to another. The most that could be done was to delete the word "further" if so desired.

*It was agreed that that word should be deleted.*

*The meeting rose at 6.25 p.m.*

## 380th MEETING

Tuesday, 3 July 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. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

*Secretariat:* Mr. LIANG, Secretary to the Commission.

**Consideration of the Commission's draft report covering the work of its eighth session (*continued*)**

*Chapter II: Law of the sea*

*Part I: The territorial sea (A/CN.4/L.68/Add.2) (continued)*

1. The CHAIRMAN invited the Commission to resume its consideration of Chapter II, Part I, of its report.

*Article 12: Delimitation of the territorial sea off opposite coasts*

2. Sir Gerald FITZMAURICE suggested that it should be explained in the comment that articles 12 and 14 of the draft adopted at the previous session had now been fused to form the present article 12, and that the new text covered the delimitation of the territorial sea in straits. That would be done by substituting the words "in straits or off other" for the word "off" in the title.

*Sir Gerald Fitzmaurice's suggestions were adopted.*

3. Mr. SANDSTRÖM said that the last sentence in the first paragraph of the comment gave the impression that the Commission had adopted the system of the median line for all cases, whereas exceptions were permitted in special circumstances, under paragraph 1 of the article. He therefore proposed the insertion of the words "as a general rule" after the words "to adopt" in the last sentence of the first paragraph of the comment.

*Mr. Sandström's amendment was adopted.*

4. In answer to a question by Mr. KRYLOV, Mr. FRANÇOIS, Rapporteur, explained that the case envisaged in the third sentence of the fifth paragraph of the comment was the Black Sea.

*Article 13: Delimitation of the territorial sea at the mouth of a river*

There were no observations on the substance of article 13 or the comment thereto.

*Article 14: Delimitation of the territorial sea of two adjacent States*

There were no observations on the substance of article 14 or the comment thereto.

*Section III: Right of innocent passage*

*Sub-section A: General*

*Article 15: Meaning of the right of innocent passage*

There were no observations on the substance of article 15 or the comment thereto.

*Article 16: Duties of the coastal State*

There were no observations on the substance of article 16 or the comment thereto.

*Article 17: Rights of protection of the coastal State*

5. Mr. ZOUREK considered that, in order to achieve the proper emphasis on the primary criterion, the words "servant normalement à la navigation internationale" should be transferred to the end of paragraph 4 of the French text of article 17. The English text could be left unchanged.

6. Mr. FRANÇOIS, Rapporteur, had no objection to that transposition but suggested that in order to keep the French text in line with the English the phrase in question should read "servent normalement à la navigation internationale".

*It was so agreed.*

7. Mr. ZOUREK thought it should be made clear in the comment that the coastal State could erect permanent installations for the exploitation of the sea-bed and subsoil of the territorial sea, provided they did not hamper the passage of vessels on international sea routes.

8. Mr. FRANÇOIS, Rapporteur, explained that the point was covered in the second paragraph of the comment on article 16, which was the proper place for such an explanation.

*Article 18: Duties of foreign ships during their passage*

9. Mr. ZOUREK, referring to the Commission's decision not to include a provision prohibiting discrimination between foreign vessels of different nationalities, asked whether the statement made in the second sentence of the last paragraph of the comment did not go too far.

10. Mr. FRANÇOIS, Rapporteur, said that the passage in question had been inserted last year in order to meet the special position of Mr. Salamanca's country, and in the absence of that member he would prefer to maintain the text as it stood.

*It was so agreed.*

*Sub-section B: Merchant ships*

*Article 19: Charges to be levied upon foreign ships*

11. Sir Gerald FITZMAURICE suggested that the statement made in the penultimate sentence of the last paragraph of the comment was too categorical. The words "may be entitled" should be substituted for the words "will be entitled".

12. Mr. ZOUREK, agreeing with Sir Gerald Fitzmaurice, said that if his amendment were not accepted, it should at least be made clear that any unjustifiable interference with a vessel passing through straits, coming from or making for a port, must be avoided.

13. Mr. FRANÇOIS, Rapporteur, said that a modification on the lines suggested by Mr. Zourek would be too restrictive. On the other hand, he could accept Sir Gerald Fitzmaurice's amendment, though he would have thought that the point was already covered by the words "in certain circumstances" and by the safeguard contained in the last sentence of the comment.

*Sir Gerald Fitzmaurice's amendment was adopted.*

*Article 20: Arrest on board a foreign ship*

14. Mr. LIANG, Secretary to the Commission, suggested that the last sentence in the fourth paragraph of the comment, which read "The Commission had not yet had an opportunity to study this question", was not strictly accurate, since the Commission had, in a general way, studied the question of conflicts of jurisdiction between the coastal State and the flag State in the field of criminal law, but had decided not to deal with it.

*It was agreed to delete the last sentence of the fourth paragraph of the comment.*

15. Sir Gerald FITZMAURICE considered that the penultimate paragraph of the comment was not sufficiently clear. He could not see where the exception to

sub-paragraph (a) arose, if it was a crime extending only to the territory of the flag State.

16. Mr. FRANÇOIS, Rapporteur, explained that in cases when the consequences of a crime committed on board a ship during passage through a territorial sea made themselves felt only in the flag State, it might be in the interests of the flag State to allow the coastal State to intervene.

17. Sir Gerald FITZMAURICE doubted whether the Commission's intention had been clearly conveyed. The Commission had refused to make an exception to the rule in sub-paragraph (a) by allowing the coastal State the right to intervene, even if it were desirable, in those cases where the consequences of the crime did not extend beyond the ship. His point would be met by the insertion of the words "though extending beyond the ship" after the words "consequences of the crime" in the fifth paragraph of the comment.

*Sir Gerald Fitzmaurice's amendment was adopted.*

*Article 21: Arrest of ships for the purpose of exercising civil jurisdiction*

18. Mr. ZOUREK reminded the Commission that it had omitted the stipulation contained in the second sentence of paragraph 1 of Article 24 adopted at the sixth session<sup>1</sup> which was the article corresponding to the present article 21. In view of the powers conferred on the coastal State in the present paragraph 2, paragraphs 2 and 3 of the article adopted at the seventh session<sup>2</sup> having been deleted owing to the objections of certain governments, that omission had thrown the whole article out of balance. He accordingly proposed that the provision be reinstated by adding at the end of paragraph 1 the following text:

A coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings save only in respect of obligations or liabilities incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

19. Mr. FRANÇOIS, Rapporteur, said that some governments had objected to a provision borrowed from the Hague Conference for the Codification of International Law of 1930 because it might have become out of date now that rules concerning the exercise of civil jurisdiction had been further developed in the 1952 International Convention relating to the Arrest of Sea-going Ships, prepared by experts in maritime law. Though there might be grounds for thinking that those experts, being particularly concerned with the arrest of foreign vessels in ports and inland waters, had neglected the interests of navigation in the territorial sea, the Commission did not at present dispose of the necessary material to establish the reason why they had rejected the system adopted at the Hague Conference. As it was undesirable to have two divergent sets of rules, which would be the

effect of Mr. Zourek's proposal, he believed that it would be wiser to retain the text of article 21 as it stood.

20. Sir Gerald FITZMAURICE pointed out that there was, however, some lack of concordance between the present two paragraphs of article 21. Whereas paragraph 1 referred only to a person on board the ship and not to the ship itself, paragraph 2 was in more general terms and seemed to envisage proceedings against the ship rather than against a person on board.

21. Mr. SANDSTRÖM said that, although he had initially been sympathetic to Mr. Zourek's proposal, he had been convinced by the Rapporteur that the wisest course in the circumstances was to leave the question in abeyance. With regard to what Sir Gerald Fitzmaurice had said, however, he agreed that the opening words of paragraph 2, namely "The provisions of the previous paragraph", were no longer appropriate, now that paragraphs 2 and 3 of the draft adopted at the seventh session had been omitted.

22. Mr. ZOUREK said that the text adopted by the Commission should be of general scope. The 1952 Brussels Convention had been signed by only eleven States and ratified by only three. Consequently, even if it covered the case of ships which were merely passing through the territorial sea—which he doubted—the Commission should not feel bound by it. The fact that the Commission adopted draft articles on a particular subject in no way prevented certain States from adopting other, more far-reaching, rules by means of an international convention, if they so desired.

23. Sir Gerald FITZMAURICE and Mr. KRYLOV said that they would support Mr. Zourek's proposal, which would in their view improve and clarify the text.

*Mr. Zourek's proposal was adopted by 6 votes to 3, with 1 abstention.*

24. Mr. FRANÇOIS, Rapporteur, said he would prepare a revised draft of the comment for consideration at the next meeting.

*Sub-section C: Government ships other than warships*

*Article 22: Government ships operated for commercial purposes*

25. Mr. KRYLOV proposed that for the reasons which he had already indicated at the previous<sup>3</sup> as well as at the present session,<sup>4</sup> article 22 should be amended to read:

The question of the application of the rules contained in sub-sections A and B to government ships operated for commercial purposes is left in abeyance.

26. Mr. FRANÇOIS, Rapporteur, pointed out that the Commission had taken a formal decision to follow the rules of the 1926 Brussels Convention so far as the immunity of government ships in the territorial sea was concerned. Under the Commission's rules of procedure, a two-thirds majority vote would be required to go back on that decision.

<sup>1</sup> *Official Records of the General Assembly, Ninth session, Supplement No. 9 (A/2693), p. 20.*

<sup>2</sup> *Ibid., Tenth session, Supplement No. 9 (A/2934), p. 21.*

<sup>3</sup> A/CN.4/SR.306, para. 50.

<sup>4</sup> A/CN.4/SR.367, para. 81.

27. Mr. ZOUREK moved that the question be reconsidered. The Commission had already agreed to leave a number of questions in abeyance with a view to their discussion at the proposed diplomatic conference. If any question should be dealt with in that way, it was surely one so closely bound up with the principle of State immunity as that dealt with in article 22. In the various cases which had arisen in that connexion, settlement had always been reached by means of a convention, and the rules laid down by the coastal State had in point of fact always been accepted. No practical difficulties were therefore likely to arise from leaving the question in abeyance, and the fact that that was the only appropriate course was clear from the existence of the 1926 Brussels Convention itself, for if the principle of State immunity had not been recognized as valid in that connexion, there would have been no need to conclude a Convention.

28. The CHAIRMAN put to the vote Mr. ZOUREK's motion for reconsideration of article 22.

*Mr. Zourek's motion was rejected by 5 votes to 2, with 5 abstentions.*

*Article 23: Government ships operated for non-commercial purposes*

29. Replying to a question by Mr. FRANÇOIS, Rapporteur, Mr. Zourek, speaking as Chairman of the Drafting Committee, said that all members of the Committee had agreed that the rules contained in sub-section A should apply to government ships operated for non-commercial purposes. The question had been raised, however, whether such ships should be assimilated to warships as regards the right of passage. The Drafting Committee had felt unable to decide that question and had unanimously agreed to recommend that it be left in abeyance.

30. Speaking as a member of the Commission, he felt that all government ships operated for non-commercial purposes, with the sole exception of hospital ships, should be assimilated to warships as regards the right of passage, subject to the provisions of other conventions in force.

31. Sir Gerald FITZMAURICE said that, leaving aside the substance of the matter, he wished merely to suggest that from every point of view the statement that the question of the application of sub-section D had been left in abeyance should be transferred from the article to the comment.

*It was so agreed.*

*Sub-section D: Warships*

*Article 24: Passage*

32. Mr. KRYLOV proposed the deletion of article 24, paragraph 2, since the provision was already contained in article 17, paragraph 4. Article 24, paragraph 1, moreover, made specific reference to article 17, so that paragraph 2 was doubly unnecessary.

33. Mr. SPIROPOULOS feared that unless paragraph 2 were retained, it might be presumed that the passage of warships through straits normally used for international

navigation between two parts of the high seas could be made subject to prior authorization or notification, since it would not be clear that paragraph 4 of article 17 had to be observed as well as the other paragraphs of that article.

34. Mr. ZOUREK suggested that that difficulty could be met by making article 17, paragraph 4, a separate article, to which reference could be made in article 24, paragraph 1, as well as to articles 17 and 18.

35. Mr. KRYLOV suggested that an alternative way of meeting the difficulty would be to indicate in the comment on article 24 that the reference to "the provisions of articles 17 and 18" covered article 17, paragraph 4.

36. Mr. SANDSTRÖM felt that the danger of deleting paragraph 2 lay mainly in the use of the word "normally" in the second sentence of paragraph 1, which read "Normally, it shall grant innocent passage subject to the observance of the provisions of articles 17 and 18". If paragraph 2 were deleted, it would follow that the coastal State could on occasion waive the provisions of article 17, paragraph 4.

37. Sir Gerald FITZMAURICE agreed that it would be unwise to delete paragraph 2. He pointed out, however, that the second sentence of paragraph 1 did not refer to obligations imposed on a coastal State by articles 17 and 18—for there were none—but to the rights conferred on it by those articles.

38. Mr. PAL, on the other hand, felt that paragraph 4 was the only paragraph of article 17 to which any question of observance could possibly apply. He therefore agreed that paragraph 2 of article 24 could well be deleted.

39. Mr. SCALLE agreed with the view expressed by Mr. Pal.

40. After some further discussion, Mr. ZOUREK expressed the view that there was general agreement in principle and that the question was purely one of drafting. The question was whether, having inserted a particular provision in a part of the draft which laid down general rules concerning the right of innocent passage, the Commission was obliged to repeat it in a sub-section dealing with a special category of ship. If so, there were many other provisions in the general rules which would have to be repeated under each of the sub-sections dealing with special categories.

41. Mr. SPIROPOULOS agreed with Mr. Krylov that the best course would be to delete paragraph 2 of article 24 and indicate in the comment that the provisions of article 17, paragraph 4, applied also to warships.

42. Sir Gerald FITZMAURICE felt that that would not be entirely satisfactory. He was at a loss to understand why the proposal should be pressed unless the intention was to make less clear than it was at present that warships enjoyed the right of innocent passage through straits normally used for international navigation. If that were so, he must deplore the fact. The whole purpose of article 24 was to give coastal States the right to refuse warships innocent passage through the territorial sea in certain cases. The Commission had, however, wished to make an absolute exception to that

rule—which was itself an exception—in respect of straits normally used for international navigation. The deletion of paragraph 2 would therefore raise an important question of substance, and since the text had already been approved at the present session, a two-thirds majority vote would be required for the Commission to reconsider it.

43. Mr. SPIROPOULOS said that it was quite clear from their statements that Mr. Zourek and Mr. Krylov did not contest the application of article 17, paragraph 4, to article 24. He could see no objection to transferring the substance of paragraph 2 of article 24 to the comment, which, once it had been adopted by the Commission, represented an authoritative interpretation of the text.

44. Mr. FRANÇOIS, Rapporteur, suggested that he draft a text for inclusion in the comment, as suggested by Mr. Spiropoulos and Mr. Krylov. The Commission could then consider the text at its next meeting.

45. Sir Gerald FITZMAURICE said he would be quite prepared to consider any text submitted by the Rapporteur, although he did not regard the suggested procedure as satisfactory in principle. There appeared to be a fundamental misunderstanding in the Commission concerning the second sentence of paragraph 1 in article 24. It was, as he had already tried to point out, the innocent passage which was “subject to the observance of the provisions of articles 17 and 18”, not the coastal States’s grant of passage. The fact that that did not appear to be generally recognized was an added reason for retaining paragraph 2.

46. The CHAIRMAN said that the Commission would be able to consider the matter further at its next meeting when it had before it the text which the Rapporteur had promised to draft for inclusion in the comment.

*Article 25: Non-observance of the regulations*

There were no observations on article 25 or on the comment thereto.

*Part II. The high seas (A/CN.4/L.68/Add.3) (resumed from the 377th meeting)*

*Article 5: Status of ships (resumed from the 376th meeting)*

47. Mr. FRANÇOIS, Rapporteur, recalled that the Drafting Committee had reserved for subsequent consideration the last seven words of the sentence reading: “A ship may not change its flag during a voyage or while in a port of call”. In the absence of Mr. Scelle it had been unwilling to revert to the matter, but one suggestion that had been made was that the word “fraudulently” should be added to the sentence. In his opinion, the sentence thus worded would simply state what was obvious.

48. Mr. SCELLE pointed out that the majority of frauds occurred while a ship was on the high seas or in a port of call. He thought it most desirable, therefore, that the ship should only change its flag in its home port (*port d'attache*) and then only in the presence of authorities competent to ensure that the change was made properly. That would clearly be quite impossible on the high seas, and although it was conceivable that such

authorities might sometimes be found in a port of call, the fact remained that ports of call were very convenient places in which to commit a fraud.

49. Mr. SPIROPOULOS said that all members of the Commission were equally desirous of preventing any fraud or abuse of the rules they had drafted. In the present instance, however, all they need be concerned with was to ensure that ships sailed under one flag only and did not change from one flag to another and back again at their masters’ or their owners’ convenience. He saw no reason why a ship should not change its flag while in a port of call, and all States would be under strong pressure from their shipping interests to refuse to accept a provision such as that suggested by Mr. Scelle. Ships were often away from their home ports for years at a time, and their owners did not always wish to wait until they had returned there before selling them.

50. Mr. AMADO agreed with Mr. Spiropoulos. Any foreign vessels which visited Rio de Janeiro and were obliged to remain there for anything more than minor repairs were normally bought by Brazil, which was anxious to build up its merchant fleet.

51. Mr. SCELLE pointed out that, if the Commission deleted the words “or while in a port of call”, there would be nothing to prevent an owner who intended to commit a fraud acquiring a second or even a third flag beforehand, committing the fraud and hoisting a new flag as soon as he reached a port of call.

52. Mr. SANDSTRÖM felt that the Commission was faced with the age-old problem of devising measures to entrap or restrain the guilty without causing suffering or inconvenience to the innocent. He understood Mr. Scelle’s point of view, but the solution which he suggested was in many cases impracticable. Norwegian tramps, to take an instance, often worked three or four years in the Pacific before returning to Norway. Did Mr. Scelle contend that they should not be sold in the interval?

53. Mr. SCELLE said that the only entirely satisfactory way out of the difficulty would be to lay down that the change of flag was void in the event of a decision by the courts that fraud had been committed. He recognized, however, that the courts of one country could not be required to annul a decision by the courts of another country, unless there was a convention between them. He appreciated the practical difficulties, but if the words “or while in a port of call” were deleted, the whole purpose of article 5 would be defeated.

54. Sir Gerald FITZMAURICE suggested that a way round the difficulties which had been referred to would be to retain the second sentence of article 5 as it stood, but to add the words “save in the case of a genuine transfer of ownership or change of registry”. It did not require the vessel’s presence in port for ownership to be transferred or registry changed.

55. Mr. SCELLE said that although the text, thus amended, would not entirely exclude the possibility of fraud, it would certainly place a further obstacle in its way. He therefore supported Sir Gerald’s suggestion.

56. Faris Bey el-KHOURI also supported that suggestion. If it were borne in mind that the ship had to carry a certificate of registry, which was not made out by the master but by the competent authorities, the amended text did, in his view, appear to provide complete protection against the possibility of fraud.

*Sir Gerald Fitzmaurice's suggestion was adopted, and it was agreed that the Rapporteur should prepare an appropriate redraft of the comment for consideration at the next meeting.*

*Articles relating to the continental shelf (articles 40-47) (resumed from the 378th meeting)*

*Article 41 (resumed from the 378th meeting)*

57. Mr. FRANÇOIS, Rapporteur, proposed the following new text to replace the passage underlined in the third paragraph of the comment on article 41:

At the eighth session it was proposed that the condition of permanent attachment to the sea-bed should be mentioned in the article itself. At the same time the opinion was expressed that the condition should be made less strict; it would be sufficient that the marine fauna and flora in question should live in constant physical and biological relationship with the sea-bed and the continental shelf; examination of the scientific aspects of that question should be left to the experts. The Commission decided, however, to leave the text of the article and the commentary as they stood.

*The Rapporteur's proposal was adopted.*

*Chapter IV: Other decisions of the Commission (A/CN.4/L.68/Add.5)*

There were no observations on Chapter IV.

*Chapter III: Progress of work on other subjects under study by the Commission (A/CN.4/L.68/Add.4)*

There were no observations on the substance of Chapter III.

*Chapter I: Organization of the session (A/CN.4/L.68)*

There were no observations on Chapter I.

*The meeting rose at 1.30 p.m.*

## 381st MEETING

*Wednesday, 4 July 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. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.*

*Secretariat: Mr. LIANG, Secretary to the Commission.*

**Consideration of the Commission's draft report covering the work of its eighth session (*concluded*)**

*Chapter II: Law of the sea*

*Part II. The high seas (A/CN.4/L.68/Add.3)*

*Article 5: Status of ships (resumed from the previous meeting)*

1. The CHAIRMAN invited the Commission to consider the new text proposed by the Rapporteur to replace the last paragraph of the comment on article 5, which had been amended at the previous meeting by the insertion at the end of the article of the words "save in the case of real transfer of ownership or change of registry". The last paragraph would now read:

The Commission is aware that changes of flag during a voyage are calculated to encourage the abuses stigmatized by this article. The Commission also realizes that the interests of navigation are opposed to total prohibition of change of flag during a voyage or while in a port of call. In adopting the second sentence of this article the Commission intended to condemn any change of flag which cannot be regarded as a *bona fide* transaction.

*The Rapporteur's new text was adopted.*

*Article 32: Conservation*

2. The CHAIRMAN invited the Commission to consider the new text proposed by the Rapporteur to replace sub-paragraphs 3 and 4 of the comment on article 32. The new text read as follows:

3. In the case of article 30, the State requesting the fishing State to take necessary measures of conservation would be a non-adjacent and non-fishing State. Such a State would be concerned only with the continued productivity of the resources. Therefore, the determination involved would be the adequacy of the overall conservation programme.

4. Article 29 contains a criterion which is not included in the other articles: that of the urgency of action. Recourse to unilateral regulation by the coastal State prior to arbitration of the dispute can only be regarded as justified when the delay caused by arbitration would seriously threaten the continued productivity of the resources.

3. Mr. FRANÇOIS, Rapporteur, said that he had modified the original text in order to meet Mr. Sandström's objection that the statement in sub-paragraph 4 to the effect that article 29 included a unique criterion was not true. The modifications he had proposed involved no change of substance.

*The Rapporteur's new text was adopted.*